

# **OECD vs. UN Model Income Tax Convention**

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**ITC Mumbai 2013**

# **OECD vs. UN Model Income Tax Convention**

- **Models are mostly identical**
- **But with significant exceptions:**
  - **Historically UN Model more source state taxation rights (e.g., services PE, force of attraction, royalty withholding, capital gains real property companies)**
  - **UN has not followed OECD's new Article 7**
  - **UN has not dropped Article 14**

# Article 5 – Permanent establishment

## OECD – Building site

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts **more than twelve months**.

## UN – Building site

3. The term "permanent establishment" also encompasses: (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last **more than six months**;

# Article 5 – Permanent establishment

## OECD - Services

None.

## UN - Services

**(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned.**

# Article 5 – Permanent establishment

## OECD – Agent/Delivery goods

5.(...) [W]here a person (...) and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless (...).

## UN - Agent/Delivery goods

5. (...) [W]here a person is acting on behalf of an enterprise (...)

- a. (...) [agent; same as OECD]
- b. **Has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.**

# Article 5 – Permanent establishment

**OECD – Insurance company**

**None.**

**UN – Insurance company**

**6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.**

# Article 5 – Permanent establishment

## OECD – Independent agent

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

## UN – Independent agent

7. [Same]. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

# Article 6 – Income from immovable property

OECD – Enterprise/Independent Personal services

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

UN - Enterprise/Independent Personal services

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise **and to income from immovable property used for the performance of independent personal services.**

# Article 7 – Business profits

## OECD

**New Article 7 – Authorised  
OECD Approach**

## UN

**Old Article 7, with extension:**

**If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.**

# Article 7 – Business profits UN

**3. [Deduction of expenses allowed]. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. (...)**

# Article 8 - Shipping, inland waterways, transport and air transport

OECD

None.

UN

2. Profits from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated **unless the shipping activities arising from such operation in the other Contracting State are more than casual. If such activities are more than casual, such profits may be taxed in that other State. The profits to be taxed in that other State shall be determined on the basis of an appropriate allocation of the overall net profits derived by the enterprise from its shipping operations. The tax computed in accordance with such allocation shall then be reduced by \_\_\_ per cent. (The percentage is to be established through bilateral negotiations.)**

# Article 9 – Associated enterprises

OECD

None.

UN

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

# Articles 10, 11 and 12

## OECD

Art. 10: 15/5 per cent

Art. 11: 10 per cent

Art. 12: exclusive residence  
state taxation

## UN

Artt. 10, 11, 12: no fixed  
percentages

# Article 12 - Royalties

## OECD

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

## UN

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, **or films or tapes used for radio or television broadcasting**, any patent, trademark, design or model, plan, secret formula or process, **or for the use of, or the right to use, industrial, commercial or scientific equipment** or for information concerning industrial, commercial or scientific experience.

# Article 12 - Royalties

## OECD

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

## UN

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment or fixed base, **or with (b) business activities referred to in (c) of paragraph 1 of Article 7.** In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

# Article 13 – Capital gains UN

**4. Gains from the alienation of shares of the capital stock of a company, or of an interest in a partnership, trust or estate, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State. In particular:**

**(a) Nothing contained in this paragraph shall apply to a company, partnership, trust or estate, other than a company, partnership, trust or estate engaged in the business of management of immovable properties, the property of which consists directly or indirectly principally of immovable property used by such company, partnership, trust or estate in its business activities.**

**(b) For the purposes of this paragraph, "principally" in relation to ownership of immovable property means the value of such immovable property exceeding 50 per cent of the aggregate value of all assets owned by the company, partnership, trust or estate.**

# **Article 14 – Independent personal services**

**OECD**

**Deleted in 2000.**

**UN**

**Continued.**

# Article 16 – Directors' fees

## OECD

**Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.**

## UN

- 1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State may be taxed in that other State.**
- 2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.**

# Article 18 - Pensions

## OECD

**Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.**

## UN

### Article 18 (alternative A)

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

### Article 18 (alternative B)

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in that State.
2. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by a resident of that other State or a permanent establishment situated therein.
3. Notwithstanding the provisions of paragraphs 1 and 2, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

# Article 21 – Other income

**OECD**

**None.**

**UN**

**3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.**