THE 2025 UPDATE TO THE OECD MODEL TAX CONVENTION

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Executive summary

This note includes the contents of the 2025 update to the OECD Model Tax Convention (the 2025 Update), which was approved by the Committee on Fiscal Affairs on 13 October 2025 and by the OECD Council on 18 November 2025.

The main changes to the OECD Model Tax Convention included in the 2025 Update are as follows:

- ***Changes to Article 25 and its Commentary*** that include as a new paragraph 6 of Article 25 a provision that confirms the role of competent authorities in determining whether a matter falls within the scope of a tax treaty for purposes of the dispute resolution mechanisms provided under the General Agreement on Trade in Services (GATS).
- ***Changes to the Commentary on Article 5*** to clarify the circumstances in which an individual's home could constitute a "place of business" of the enterprise for which the individual works. These changes are an evolution of existing principles and ensure the Commentary reflects modern working arrangements, providing additional certainty as to when a fixed place of business permanent establishment will, and will not, be created by an individual working from a home or other relevant place.
- ***Changes to the Commentary on Article 5*** that add to the Commentary an alternative (optional) provision on activities in connection with the exploration and exploitation of extractible natural resources, together with related commentary. The centrepiece of the alternative provision is a lower permanent establishment threshold, which would be crossed after a non-resident enterprise had operated in a State for more than a bilaterally agreed time period.
- ***Changes to the Commentary on Article 9*** that respond to questions raised in the context of Working Party 6's work on the transfer pricing aspects of financial transactions (see Chapter X of the *Transfer Pricing Guidelines*) and that clarify the application of Article 9, especially as it relates to domestic laws on interest deductibility, such as those recommended in the final report on BEPS Action 4. Related changes to the ***Commentary on Article 7*** and the ***Commentary on Article 24*** accompany these changes.
- ***Changes to the Commentary on Article 25*** related to Amount B that signpost specific language relating to tax certainty and the elimination of double taxation included in the report on Amount B. These changes are intended to ensure optionality is preserved in all dispute resolution mechanisms for non-adopting jurisdictions.
- ***Changes to the Commentary on Article 26*** to: (*i*) expressly indicate that information received through exchange of information can be used for tax matters concerning persons other than those in respect of which the information was initially received; and (*ii*) reflect agreed interpretative guidance on taxpayer access to exchanged information and the disclosure of reflective non-taxpayer specific information about or generated on the basis of exchanged information.

The 2025 Update also includes the changes and additions made to the observations and reservations of OECD Member countries and the positions of non-Members.

Changes to be included in the 2025 Update to the Model Tax Convention

[The changes to the existing text of the Model Tax Convention appear in ~~strikethrough~~ for deletions and ***bold italics*** for additions.]

A. Changes to the Introduction

1. Replace paragraph 11.2 of the Introduction by the following:

11.2 Since the publication of the first ambulatory version in 1992, the Model Convention was updated ***11*** ~~10~~ times (in 1994, 1995, 1997, 2000, 2002, 2005, 2008, 2010, 2014***,*** ~~and~~ 2017 ***and 2025***). The ~~last such~~ update~~, which was~~ adopted in 2017~~,~~ included a large number of changes resulting from the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project and, in particular, from the final reports on Actions 2, 6, 7 and 14[1] produced as part of that project.

2. Replace the footnote to paragraph 14 of the Introduction by the following:

[1] *United Nations Model Double Taxation Convention between Developed and Developing Countries*, United Nations Publications, New York, first edition 1980, ***2025*** ~~third~~ edition ***forthcoming*** ~~2011~~.

3. Replace footnote 1 to paragraph 15.6 of the Introduction by the following:

[1] ***OECD/Council of Europe (2011), The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol, OECD Publishing, Paris, https://doi.org/10.1787/9789264115606-en.*** ~~Available at http://www.oecd.org/ctp/exchange-of-tax-information/ENG-Amended-Convention.pdf.~~

4. Replace the fifth bullet in paragraph 21 of the Introduction by the following:

- remuneration in respect of an employment in the private sector, exercised in that State, unless the employee is present therein for a period not exceeding 183 days in any twelve month period commencing or ending in the fiscal year concerned and certain conditions are met ***(Article 15)***;

5. Replace paragraph 39 of the Introduction by the following:

39. Also relevant is the Convention on Mutual Administrative Assistance in Tax Matters, which was drawn up within the Council of Europe on the basis of a first draft prepared by the Committee on Fiscal Affairs. This Convention entered into force on 1 April 1995. Another relevant multilateral convention is the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, which was drafted in order to facilitate the implementation of the treaty-related measures resulting from the OECD/G20 Base Erosion and Profit Shifting Project and which ***entered into force on 1 July 2018*** ~~was opened for signature on 31 December 2016~~.

B. Changes to the Articles

Article 25

6. Add the following new paragraph 6 of Article 25:

6. For purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that –

a) a measure "falls within the scope of this Convention" only if it is a measure to which the provisions of Article 24 apply; and

b) notwithstanding paragraph 3 of Article XXII of the General Agreement on Trade in Services, any dispute between them as to whether a measure falls within the scope of this Convention shall be resolved under paragraph 3 of Article 25 or, failing agreement under that procedure, any other procedure agreed to by both Contracting States.

C. Changes to the Commentaries

Commentary on Article 1

7. Replace paragraph 2 of the Commentary on Article 1 by the following:

> 2. This paragraph addresses the situation of the income of entities or arrangements that one or both Contracting States treat as wholly or partly fiscally transparent for tax purposes. The provisions of the paragraph ensure that income of such entities or arrangements is treated, for the purposes of the Convention, in accordance with the principles reflected in the 1999 report of the Committee on Fiscal Affairs entitled "The Application of the OECD Model Tax Convention to Partnerships"~~.~~[1] ***(the Partnership Report).*** That report therefore provides guidance and examples on how the provision should be interpreted and applied in various situations.

8. Replace paragraph 1 of the alternative provision in paragraph 101 of the Commentary on Article 1 by the following:

> 1. If at any time after the signing of this Convention, a Contracting State~~:~~
>
> *a)* reduces the general statutory rate of company tax that applies with respect to substantially all of the income of resident companies with the result that such rate falls below the lesser of either
>
> *(i)* [rate to be determined bilaterally] or
>
> *(ii)* 60 per cent of the general statutory rate of company tax applicable in the other Contracting State; or
>
> *b)* ~~the first-mentioned Contracting State~~ provides an exemption from taxation to resident companies for substantially all foreign source income (including interest and royalties),
>
> the Contracting States shall consult with a view to amending this Convention to restore an appropriate allocation of taxing rights between the Contracting States. If such consultations do not progress, the other State may notify the first-mentioned State through diplomatic channels that it shall cease to apply the provisions of Articles 10, 11, 12 and 21. In such case, the provisions of such Articles shall cease to have effect in both Contracting States with respect to payments to resident companies six months after the date that the other Contracting State issues a written public notification stating that it shall cease to apply the provisions of these Articles.

9. Replace paragraph 107 of the Commentary on Article 1 by the following:

> 107. One example of a tax regime with respect to which treaty benefits might be specifically restricted relates to domestic law provisions that provide for a notional deduction with respect to equity. Contracting States which agree to prevent the application of the provisions of Article 11 to interest that is paid to connected persons who benefit from such notional deductions may do so by adding the following provision to Article 11:
>
> > 2. Notwithstanding the provisions of paragraph 1 of this Article, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State that is connected to the payer ~~(as defined in paragraph 8 of Article 5)~~ may be

taxed in the first-mentioned Contracting State in accordance with domestic law if such resident benefits, at any time during the taxable year in which the interest is paid, from notional deductions with respect to amounts that the Contracting State of which the beneficial owner is a resident treats as equity.

The explanations in paragraph 85 above concerning the reference to a resident that is "connected" to the payer apply equally to the above provision.

10. Delete the following paragraph 110 of the Commentary on Article 1 and the heading preceding it:

~~**Observation on the Commentary**~~

110. ***[Deleted]*** ~~With respect to paragraph 81, *Switzerland* considers that controlled foreign corporation legislation may, depending on the relevant concept, be contrary to the spirit of Article 7.~~

11. Replace paragraphs 111 to 114 of the Commentary on Article 1 by the following:

111. The *United States* reserves the right ***to expand the scope of paragraph 3 to include*** ~~, with certain exceptions, to tax its~~ citizens***, former citizens*** and ***former-long term*** residents,~~ and to include additional Articles as exceptions.~~ ~~including certain former citizens and long-term residents, without regard to the Convention~~.

112. *Canada* ***and Chile*** reserve~~s~~ the right to limit the entities or arrangements covered under paragraph 2 to those that are established in one of the Contracting States.

113. *France* ***and Mexico*** reserve~~s~~ the right, in ***their*** ~~its~~ conventions, not to include or to amend paragraph 2 in order to specify in which situations ***they*** ~~France~~ will recognise the fiscal transparency of entities located in the other Contracting State or in a third State.

114. ***Costa Rica and*** *Germany* reserve~~s~~ the right not to include paragraph 2 in ***their*** ~~its~~ conventions.

12. Replace paragraph 117 of the Commentary on Article 1 by the following:

117. ***Costa Rica,*** *France*, *Germany*, *Hungary*, *Ireland*, ***Latvia,*** *Luxembourg****,*** ***Spain*** and *Switzerland* reserve the right not to include paragraph 3 in their conventions.

13. Add the following new paragraphs 118 to 120 to the Commentary on Article 1:

118. Germany reserves the right to settle the mode of application of limitations on withholding tax rates in its conventions.

119. The Netherlands reserves the right to include an additional exception with respect to paragraph 1 of Article 9 in paragraph 3 of Article 1.

120. Spain reserves the right to amend paragraph 2 in order to specify in which situations Spain will recognise the fiscal transparency of entities located in a third State.

Commentary on Article 2

14. Replace paragraph 3 of the Commentary on Article 2 by the following:

3. This paragraph gives a definition of taxes on income and on capital. Such taxes comprise taxes on total income and on elements of income, on total capital and on elements of capital. They also include taxes on profits and gains derived from the alienation of movable or immovable property, as well as taxes on capital appreciation. Finally, the definition extends to taxes on the total amounts of wages or salaries paid by undertakings ("payroll taxes"; in Germany, "*Lohnsummensteuer*"~~; in France, "*taxe sur les salaires*"~~). Social security charges, or any other charges paid where there is a direct

connection between the levy and the individual benefits to be received, shall not be regarded as "taxes on the total amount of wages".

15. Replace paragraphs 10 and 11 of the Commentary on Article 2 by the following:

10. *Canada*, *Chile*, ***Mexico*** and the *United States* reserve their positions on that part of paragraph 1 which states that the Convention should apply to taxes of political subdivisions or local authorities.

11. *Australia*, ***Colombia,*** *Japan* and *Korea* reserve their position on that part of paragraph 1 which states that the Convention shall apply to taxes on capital.

16. Add the following new paragraphs 13 to 18 to the Commentary on Article 2:

13. Colombia and Costa Rica reserve the right not to include in paragraph 1 taxes imposed on behalf of political subdivisions or local authorities.

14. Costa Rica reserves its position on that part of paragraph 2 which states that the Convention shall apply to taxes on capital appreciation.

15. France reserves the right not to include in its tax conventions the reference to "taxes on the total amount of wages or salaries paid by enterprise" insofar as France does not consider such taxes to be covered income taxes.

16. France reserves the right to replace the term "local" by "territorial" in its conventions in the case of authorities, in accordance with its Constitution.

17. Hungary reserves its position on that part of paragraph 1 which states that the Convention shall apply to taxes on capital if there is no capital tax in the other Contracting State.

18. Spain reserves its position on that part of paragraph 1 which states that the Convention should apply to taxes of local authorities.

Commentary on Article 3

17. Replace paragraphs 14 and 15 of the Commentary on Article 3 by the following:

14. ***Chile, Costa Rica,*** *Italy*, ***Lithuania*** and *Portugal* reserve the right not to include the definitions in subparagraphs 1 *c*) and *h*) ("enterprise" and "business") because they reserve the right to include an article concerning the taxation of independent personal services.

15. ***Türkiye*** ~~*Turkey*~~ reserves the right to use the following definition of the term "international traffic": "the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State".

18. Replace paragraph 18 of the Commentary on Article 3 by the following:

18. ***Hungary and*** *Israel* reserve~~s~~ the right not to limit the definition of "recognised pension fund" to a separate person under the taxation laws.

19. Add the following new paragraphs 20 to 25 to the Commentary on Article 3:

20. With respect to the definition of "national", Costa Rica reserves the right to replace the concepts of partnership and association by "a group of persons".

21. Colombia reserves the right to extend the scope of the definition of "recognised pension fund" to cover severance funds.

22. Belgium reserves the right not to include the words "exclusively or almost exclusively" in the definition of "recognised pension fund".

23. Germany reserves the right to use the term "pension funds" in place of the term "recognised pension funds" in the definition in subparagraph 1 i) and to limit the definition of "pension funds" to such pension funds that are operated exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals.

24. Chile reserves the right to include recognised pension funds within the definition of the term "person".

25. The United States reserves the right to include additional criteria in the definition of "recognised pension fund".

Commentary on Article 4

20. Replace paragraph 25 of the Commentary on Article 4 by the following:

25. *Chile* wishes to clarify that~~, with respect to paragraph 8.12, entities that are not regarded as residents may also include pension funds unless expressly covered by the convention~~ ***where a Contracting State exempts a person from tax under its domestic tax law, Chile does not regard that person as liable to comprehensive taxation nor consider that person to be a resident of a Contracting State, unless addressed specifically in the Convention***.

21. Add the following new paragraph 27.1 to the Commentary on Article 4:

27.1 With respect to paragraphs 8 and 8.3 of the Commentary and the references to "comprehensive taxation", the United States wishes to clarify that, where a Contracting State generally taxes income of individual residents on one basis (e.g. a worldwide basis) but permits a class of individual residents who meet certain criteria to be taxed on a more limited basis (e.g. a territorial basis or on an amount determined without reference to their income), individuals in that class are not subject to that Contracting State's comprehensive taxation and are not considered residents of a Contracting State pursuant to paragraph 1.

22. Paragraph 29 of the Commentary on Article 4 will be replaced in the French version of the OECD Model (to make an editorial correction replacing "*société*" with "*sociétés*" in the last sentence of the paragraph). No corresponding correction is required in the English version of the OECD Model.

23. Replace paragraph 31 of the Commentary on Article 4 by the following:

31. The *United States* reserves the right ***not to treat a company resident in both Contracting States as a resident of either Contracting State for purposes of claiming the benefits provided by the Convention.*** ~~to use a place of incorporation test for determining the residence of a corporation, and, failing that, to deny dual resident companies certain benefits under the Convention.~~

24. Replace paragraph 34 of the Commentary on Article 4 by the following:

34. ***Colombia, Costa Rica,*** Estonia***,*** ~~and~~ Latvia***, Lithuania and the United States*** reserve the right to include the place of incorporation or a similar criterion in paragraph 1.

25. Add the following new paragraphs 36 to 43 to the Commentary on Article 4:

36. Colombia and Costa Rica reserve the right to deny benefits under the Convention to dual resident persons other than individuals.

37. Costa Rica reserves the right to add "domicile" and "residence" to the factors listed in paragraph 3.

38. The United States reserves the right to exclude from the definition of "resident" in paragraph 1 any person whose tax is determined in that Contracting State, in whole or in part, on a fixed-fee, "forfait" or similar basis.

39. France reserves the right not to include the second sentence of paragraph 3 regarding the consequences of the absence of an agreement between the States in the case of a conflict related to the residence of a legal entity.

40. France considers that public law entities of a State, its political subdivisions or its territorial authorities should be considered residents for purposes of the Convention in the same way as the State, its political subdivisions and its territorial authorities, and reserves the right to refer to them in its conventions.

41. Hungary reserves the right to use the place of effective management concept in cases of dual residence of companies and other bodies of persons with the addition that when determining the place of effective management, one should not only consider the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made, but should also take into account the place where the chief executive officer and other senior executives usually carry on their activities as well as the place where the senior day-to-day management of the enterprise is usually carried on.

42. Australia reserves the right to replace "settle" with "endeavour to resolve" in subparagraph d) of paragraph 2.

43. Australia reserves the right to omit the phrase "except to the extent and in such manner as may be agreed by the competent authorities of the Contracting States" in paragraph 3.

Commentary on Article 5

26. Delete the following paragraphs 18 and 19 of the Commentary on Article 5:

18. ***[Deleted]*** ~~Even though part of the business of an enterprise may be carried on at a location such as an individual's home office, that should not lead to the automatic conclusion that that location is at the disposal of that enterprise simply because that location is used by an individual (e.g. an employee) who works for the enterprise. Whether or not a home office constitutes a location at the disposal of the enterprise will depend on the facts and circumstances of each case. In many cases, the carrying on of business activities at the home of an individual (e.g. an employee) will be so intermittent or incidental that the home will not be considered to be a location at the disposal of the enterprise (see paragraph 12 above). Where, however, a home office is used on a continuous basis for carrying on business activities for an enterprise and it is clear from the facts and circumstances that the enterprise has required the individual to use that location to carry on the enterprise's business (e.g. by not providing an office to an employee in circumstances where the nature of the employment clearly requires an office), the home office may be considered to be at the disposal of the enterprise.~~

19. ***[Deleted]*** ~~A clear example is that of a non-resident consultant who is present for an extended period in a given State where she carries on most of the business activities of her own consulting enterprise from an office set up in her home in that State; in that case, that home office constitutes a location at the disposal of the enterprise. Where, however, a cross-frontier worker performs most of his work from his home situated in one State rather than from the office made available to him in the other State, one should not consider that the home is at the disposal of the~~

~~enterprise because the enterprise did not require that the home be used for its business activities. It should be noted, however, that since the vast majority of employees reside in a State where their employer has at its disposal one or more places of business to which these employees report, the question of whether or not a home office constitutes a location at the disposal of an enterprise will rarely be a practical issue. Also, the activities carried on at a home office will often be merely auxiliary and will therefore fall within the exception of paragraph 4.~~

27. Replace paragraph 32 of the Commentary on Article 5 by the following:

32. As mentioned in paragraphs 44 and 55, temporary interruptions of activities do not cause a permanent establishment to cease to exist. Similarly, as discussed in paragraph ***29***~~6~~, where a particular place of business is used for only very short periods of time but such usage takes place regularly over long periods of time, the place of business should not be considered to be of a purely temporary nature.

28. Replace paragraph 35 of the Commentary on Article 5 by the following:

35. For a place of business to constitute a permanent establishment the enterprise using it must carry on its business wholly or partly through it. As stated in paragraph ***7***~~3~~ above, the activity need not be of a productive character. Furthermore, the activity need not be permanent in the sense that there is no interruption of operation, but operations must be carried out on a regular basis.

29. Add the following new heading and paragraphs 44.1 to 44.21 to the Commentary on Article 5:

Cross-border working from a home or other relevant place

44.1. Increasingly, some individuals are able to, and choose to for personal reasons, carry out all or part of their work for an enterprise of a Contracting State from a place in the other Contracting State that is not a premises of the enterprise nor the premises of another enterprise with contractual or other connections to the first-mentioned enterprise such as a customer, supplier or associated enterprise (e.g. the individual's home or another place such as a second home, a holiday rental, the home of a friend or relative etc.). Such cross-border working arrangements present particular issues when determining whether a home or other place described in the preceding sentence (hereafter "other relevant place") is a fixed place of business through which the business of an enterprise is wholly or partly carried on in accordance with paragraph 1 of Article 5.

44.2. Arrangements where a home or other relevant place is used by an individual to carry out activities related to the business of an enterprise will typically have features that distinguish them from the use of other places by an enterprise. For example, most homes or other relevant places are not accessible by other persons working for the enterprise and have a greater degree of connection to, and are under the control of, the individual. As a result, it may be difficult to establish whether the activities carried out at such a place are sufficient to constitute a fixed place of business through which the business of that enterprise is carried on. The considerations below are relevant, but not exhaustive, for determining whether a home or other relevant place is a fixed place of business through which the business of an enterprise is carried on.

44.3. As described in paragraph 8 above, whether a permanent establishment exists in a State must be determined on the basis of the facts and circumstances applicable during a given period and not those applicable during a past or future period in which the way the business of the enterprise is carried on is different.

44.4. According to the definition in paragraph 1 of Article 5, a place of business must be fixed to constitute a permanent establishment. This requires that a place of business has a

certain degree of permanency (see paragraph 28 above). The determination of whether a home or other relevant place is fixed will be undertaken in accordance with paragraphs 28 to 34.

44.5. Paragraph 4 of Article 5 will also need to be considered in the context of the activities undertaken by the individual. Even if a fixed place of business would otherwise constitute a permanent establishment under paragraph 1 of Article 5, paragraph 4 will deem that place not to constitute a permanent establishment if the activities undertaken at that place are limited to activities of a preparatory or auxiliary character.

44.6. To constitute a permanent establishment under paragraph 1 of Article 5, a home or other relevant place must be a place of business of the enterprise. The mere fact that a place is used by an individual (e.g. an employee) to carry out activities related to the business of an enterprise should not lead to the automatic conclusion that that place is a place of business of that enterprise. Whether or not such a place constitutes a place of business of the enterprise will depend on the facts and circumstances of each case.

44.7. In many cases, the carrying on of activities related to the business of an enterprise at the home of an individual (e.g. an employee), or at another relevant place, will be so intermittent or incidental that the place will not be considered to be a place of business of the enterprise (see paragraph 12 above). Where, however, a home, or another relevant place, is used on a continuous basis during an extended period of time for carrying on activities related to the business of an enterprise, this and other facts (such as those considered further below) may indicate that that place should be considered a place of business of the enterprise.

44.8. An individual will typically spend time at a home or other relevant place in a private context and may also undertake activities related to the business of an enterprise at the same home or other relevant place. This presents certain considerations that need to be taken into account in determining whether that home or other relevant place is a place of business of the enterprise. In the specific context of the use by an individual of that individual's home or another relevant place to carry out activities related to the business of an enterprise, that home or other relevant place would generally not be considered a place of business of the enterprise if the individual worked from that home or relevant place for less than 50 per cent of their total working time for that enterprise over the course of any twelve-month period commencing or ending in the fiscal year concerned. Exceptions to the approach in the prior sentence are not anticipated to occur in most situations given the context and understanding of cross-border working arrangements described in paragraph 44.1 above.

44.9. The actual conduct of the individual will determine the calculation of working time. The formal contractual arrangements between the individual and the enterprise (including any relevant policies of the enterprise) may be of practical assistance in this regard, to the extent that they correspond with the actual conduct of the individual.

44.10. If an individual works from a home or other relevant place for at least 50 per cent of their total working time over the course of any twelve-month period commencing or ending in the fiscal year concerned, then whether the enterprise has a place of business at such a place will be determined by the facts and circumstances.

44.11. A prominent consideration is whether there is a commercial reason for the activities to be undertaken by that individual in the Contracting State where the home or other relevant place is located. A commercial reason for the performance of the individual's activities related to the business of the enterprise in a Contracting State will be considered

to exist where the physical presence of the individual in that State will itself facilitate the carrying on of the business of the enterprise, such as where there are people or resources in that State to which the enterprise needs access for the performance of its business activities.

44.12. Generally, this would be the case if the enterprise has a reason to have an individual (e.g. an employee) physically present in that other Contracting State for the conduct of the activities of the enterprise and the use of that home or other relevant place facilitates the conduct of such activities. For example, it might be that if the home or other relevant place was not available, then the enterprise would make use of other premises in the other State (such as an office rented by the enterprise). A commercial reason will be present where the individual directly engages with customers, suppliers, associated enterprises or other persons on behalf of the enterprise and that engagement is facilitated by the individual being located in that State.

44.13. As described in paragraph 7 above, it is axiomatic to assume that each part of an enterprise contributes to the productivity of the whole, and determining whether arrangements have a commercial reason accordingly does not require a consideration of whether the individual's use of a home or other relevant place has a "productive character". There may be several reasons for using a home or other relevant place to carry out activities related to the business of an enterprise; if one of those reasons is a commercial reason, then this indicator will be satisfied.

44.14. Consistent with the considerations described in paragraph 12 above, a commercial reason would not be considered present if that engagement is on an intermittent or incidental basis. For example, short occasional visits to the premises of a customer, or engagement that is minor in the context of the overall business relationship with that customer, would not be sufficient to conclude that there was a commercial reason for the performance of the individual's activities related to the business of the enterprise in a Contracting State. Evaluating whether there is a commercial reason will require a consideration of the business of the enterprise and how the specific activities of the individual relate to that business.

44.15. A commercial reason requires a link between the individual's presence at a home or other relevant place in that State and the carrying on of the business of the enterprise. This would not be the case where an enterprise enables an individual to work from home or another relevant place solely to obtain or retain the services of that individual.

44.16. An enterprise that permits work from home or another relevant place solely to reduce costs (for example, reduced expenditure on office space) will do so for that purpose, and not because there is a commercial reason for an individual to perform activities related to the business of the enterprise in the Contracting State or in the same geographic region of the State where the home or other relevant place is located.

44.17. A commercial reason to undertake activities related to the business of the enterprise in the other Contracting State may exist if, for example, any of the following take place and are facilitated (e.g. because they require physical interaction in that State or in the same geographic region as that State) by an individual working from a home or another relevant place in that other State:

- ***meetings between the individual and customers of the enterprise;***
- ***cultivation of a new customer base, or identification of business opportunities;***
- ***identification of new suppliers, managing relationships with suppliers, or undertaking, monitoring or managing contractual arrangements with suppliers;***

- ***the real-time, or near real-time, interaction with customers or suppliers in different time zone(s) (e.g. providing call centre services, or virtual IT support or medical services);***
- ***access to business-relevant expertise that is used in the conduct of the activities of the enterprise, such as regular meetings with personnel of a university carrying out research relevant to the business of the enterprise;***
- ***collaboration with other businesses;***
- ***performance of services for customers or clients located in that other State where such services require the physical presence of employees or other personnel of the enterprise in that other State (e.g. training or repair services performed on the premises of the customer);***
- ***interaction with employees and other personnel of the enterprise, or of associated enterprises.***

These considerations apply in the same way irrespective of whether the person is a third party or an associated enterprise.

44.18. The mere presence of customers or suppliers of the enterprise, of other persons mentioned in paragraph 44.17 above, or of an associated enterprise in the Contracting State where the home or other relevant place is located should not lead to the automatic conclusion that there is a commercial reason for the use of such a place in that State to carry out activities related to the business of the enterprise. Likewise, the mere fact that the home or other relevant place is located in a different time zone to that of the Contracting State in which the enterprise is located should not lead to the automatic conclusion that there is a commercial reason for the use of such a place in that State to carry out activities related to the business of an enterprise.

44.19. Where there is no commercial reason for undertaking the activities related to the business of the enterprise of a Contracting State from a home or other relevant place located in the other Contracting State, that place would not be a place of business of the enterprise unless other facts and circumstances indicated otherwise.

44.20. Different considerations from those described above are presented in circumstances where an individual is the only person, or the primary person, conducting the business of an enterprise. A clear example is that of a non-resident consultant who is present for an extended period in a given State where she carries on most of the business activities of her own consulting enterprise from an office set up in her home in that State; in that case, that home office constitutes a place of business of the enterprise.

44.21. The following examples illustrate the application of paragraph 1 of Article 5 in the context of cross-border working from a home or other relevant place. Example A considers whether a place of business is fixed and Examples B to E consider more specifically whether a home or other relevant place is a place of business of an enterprise. When reading these examples, it is important to remember that paragraph 1 of Article 5 must be applied based on the facts and circumstances of each case:

- ***Example A: An employee of RCo, an enterprise of State R, works from State R as part of her regular working pattern. During a twelve-month period, she rents and works from a place in State S for a period of three consecutive months following a holiday stay in State S.***

  The place in State S from which she works should not be considered fixed because RCo's business has been carried on at that place for three months during the twelve-month period. It therefore lacks permanence.

The same conclusion would arise where the facts were the same as above but the time working from a place in State S resulted from some other personal reason, such as to care for a sick relative. The conclusion would also be the same if the facts were the same as the above, but the place from which she worked was not a place where she was staying but was some other place.

In circumstances where a place is used to perform the activities of the enterprise on a recurrent basis over several years, each period of time during which the place is used needs to be considered in combination with the number of times during which that place is used over a number of years.

The fact that an individual retains a place (such as a holiday home) and incurs costs related to its upkeep throughout a period is not relevant; the time spent performing activities related to the business of the enterprise from that place is the determinative consideration in evaluating whether that place is fixed for purposes of paragraph 1 of Article 5.

- *Example B: An employee of RCo, an enterprise of State R, works from her home in State S for one or two days per week throughout a twelve-month period, which totals 30 per cent of her working time during that twelve-month period.*

  The home in State S from which she works should be considered fixed because the place has been used to undertake activities related to the business of RCo throughout the twelve-month period and therefore has a sufficient degree of permanence.

  The individual spends less than 50 per cent of her working time working from her home in State S. In the absence of other facts and circumstances showing otherwise, the home would not be a place of business of RCo and therefore it would not be a fixed place of business permanent establishment of RCo in State S.

- *Example C: An employee of RCo, an enterprise of State R, works from his home in State S for 80 per cent of his working time in any twelve-month period. He regularly visits clients of RCo in State S in order to provide services to those clients.*

  The home in State S from which he works should be considered fixed because the place has been used to undertake activities related to the business of RCo throughout the twelve-month period and therefore has a sufficient degree of permanence.

  The individual spends at least 50 per cent of his working time working from his home in State S and there is a commercial reason for the individual's presence in State S. RCo has a commercial reason for the employee's presence in State S because it facilitates the provision of services by RCo (through the individual) to customers in State S, where the individual's home is located. In the absence of other facts and circumstances showing otherwise, the home would be a place of business of RCo and a fixed place of business permanent establishment of RCo in State S.

- *Example D: An employee of RCo, an enterprise of State R, works from his home in State S for 60 per cent of his working time in a twelve-month period. He has an exclusively client-facing role and provides services to clients of RCo in State R, in State S and in third States. He provides those services remotely and does so without physically meeting those clients. Once a quarter, he visits the premises of a client in State S to spend a day reviewing performance against the terms of the contract with RCo.*

  The home in State S from which he works should be considered fixed because the place has been used to undertake activities related to the business of RCo throughout the twelve-month period and therefore has a sufficient degree of permanence.

While the individual spends more than 50 per cent of his working time working from his home in State S, other facts and circumstances including the reason for the individual's presence in State S must also be considered. The mere presence of clients of RCo in State S does not mean there is a commercial reason for his presence there. In addition, his visits to a client are on an intermittent and incidental basis. As a result, there is no commercial reason for him to carry out activities related to the business of RCo at his home in State S.

In the absence of other facts and circumstances showing otherwise, the home would not be a place of business of RCo and therefore would not be a fixed place of business permanent establishment of RCo in State S.

- ***Example E: An employee of RCo, an enterprise of State R, works almost exclusively from her home located in State S. The employee provides services virtually to customers in State R and/or in other jurisdictions located in time zones which differ from that in State S. The performance of those activities in State S enables the employee to be fully available (e.g. offering real-time or near real-time services around the clock) to customers of RCo in the time zones where those customers are located.***

  The home in State S from which she works should be considered fixed because the place has been used to undertake activities related to the business of RCo throughout the twelve-month period and therefore has a sufficient degree of permanence.

  The individual spends at least 50 per cent of her working time working from her home in State S and there is a commercial reason for the individual's presence in State S. RCo has a commercial reason for the employee's presence in State S because it facilitates the provision of services by RCo (through the individual) to customers in State R (and to those located in other time zones that differ to that of State S). In the absence of other facts and circumstances showing otherwise, the home would be a place of business of RCo and a fixed place of business permanent establishment of RCo in State S.

30. Replace paragraphs 47 and 48 of the Commentary on Article 5 by the following:

47. Subparagraph *f*) provides that mines, oil or gas wells, quarries or any other place of extraction of natural resources are permanent establishments. The term "any other place of extraction of natural resources" should be interpreted broadly. It includes, for example, all places of extraction of hydrocarbons whether on***shore*** or ***offshore*** ~~off-shore~~.

48. Subparagraph *f*) refers to the extraction of natural resources, but does not mention the exploration of such resources, whether on***shore*** or off-shore. Therefore, whenever income from such activities is considered to be business profits, the question whether these activities are carried on through a permanent establishment is governed by paragraph 1. Since, however, it has not been possible to arrive at a common view on the basic questions of the attribution of taxation rights and of the qualification of the income from exploration activities, the Contracting States may agree upon the insertion of specific provisions. They may agree, for instance, that an enterprise of a Contracting State, as regards its activities of exploration of natural resources in a place or area in the other Contracting State:

a) shall be deemed not to have a permanent establishment in that other State; or

b) shall be deemed to carry on such activities through a permanent establishment in that other State; or

c) shall be deemed to carry on such activities through a permanent establishment in that other State if such activities last longer than a specified period of time.

The Contracting States may moreover agree to ~~submit the income from such activities to any other rule.~~ ***adopt the free-standing alternative provision on the taxation of activities carried out in connection with the exploration and exploitation of extractible natural resources that is described in paragraphs 170 to 203 below, the centrepiece of which is a lower permanent establishment threshold that would be crossed after a non-resident enterprise had carried out relevant activities in a State for more than a bilaterally agreed period.***

31. Replace paragraphs 116 and 117 of the Commentary on Article 5 by the following:

116. A parent company may, however, be found, under the rules of paragraph 1 or 5 of the Article, to have a permanent establishment in a State where a subsidiary has a place of business. Thus, any space or premises belonging to the subsidiary that is at the disposal of the parent company (see paragraphs 10 to ***17*** ~~19~~ above) and that constitutes a fixed place of business through which the parent carries on its own business will constitute a permanent establishment of the parent under paragraph 1, subject to paragraphs 3 and 4 of the Article (see for instance, the example in paragraph 15 above). Also, under paragraph 5, a parent will be deemed to have a permanent establishment in a State in respect of any activities that its subsidiary undertakes for it if the conditions of that paragraph are met (see paragraphs 82 to 99 above), unless paragraph 6 of the Article applies.

117. The same principles apply to any company forming part of a multinational group so that such a company may be found to have a permanent establishment in a State where it has at its disposal (see paragraphs 10 to ***17*** ~~19~~ above) and uses premises belonging to another company of the group, or if the former company is deemed to have a permanent establishment under paragraph 5 of the Article (see paragraphs 82 to 99 above). The determination of the existence of a permanent establishment under the rules of paragraph 1 or 5 of the Article must, however, be done separately for each company of the group. Thus, the existence in one State of a permanent establishment of one company of the group will not have any relevance as to whether another company of the group has itself a permanent establishment in that State.

32. Replace paragraph 124 of the Commentary on Article 5 by the following:

124. The distinction between a web site and the server on which the web site is stored and used is important since the enterprise that operates the server may be different from the enterprise that carries on business through the web site. For example, it is common for the web site through which an enterprise carries on its business to be hosted on the server of an Internet Service Provider (ISP). Although the fees paid to the ISP under such arrangements may be based on the amount of disk space used to store the software and data required by the web site, these contracts typically do not result in the server and its location being at the disposal of the enterprise (see paragraphs 10 to ***17*** ~~19~~ above), even if the enterprise has been able to determine that its web site should be hosted on a particular server at a particular location. In such a case, the enterprise does not even have a physical presence at that location since the web site is not tangible. In these cases, the enterprise cannot be considered to have acquired a place of business by virtue of that hosting arrangement. However, if the enterprise carrying on business through a web site has the server at its own disposal, for example it owns (or leases) and operates the server on which the web site is stored and used, the place where that server is located could constitute a permanent establishment of the enterprise if the other requirements of the Article are met.

33. Add the following new headings and paragraphs 170 to 203 to the Commentary on Article 5:

The taxation of activities in connection with the exploration and exploitation of extractible natural resources

170. This section of the Commentary sets out an alternative provision that States could use to govern the taxation of enterprises in the extractive industries. Its centrepiece is a

lower permanent establishment threshold, which would be crossed after a non-resident enterprise had operated in a State for more than a bilaterally agreed period. The provision is similar to that found in a number of existing bilateral tax treaties. The alternative provision set out here brings greater consistency and certainty of interpretation for States agreeing to such an approach. It is drafted as a free-standing article for use in a bilateral tax treaty based on the Convention.

171. Countries with abundant extractible natural resources (oil, gas and minerals) face policy choices concerning their exploitation. Implications for jobs and the effect on the environment, for example, are among the issues to be considered. But countries will certainly look to secure for themselves an adequate share of the value that is bound up in the resources that they own and which is due, in part at least, to their finite nature. How countries secure that share of the value is a complex matter, and will depend on factors unique to each country, to the non-resident enterprises, and to the resource in question. Typically, countries will use several instruments to optimise their return on the exploitation of those resources – for example, production-sharing contracts, up-front bonus payments, ongoing royalties, as well as corporate income taxes (possibly in a ring-fenced regime with a higher rate).

172. Guidance on how to deploy these instruments, and other possible ones, is beyond the scope of this Commentary. Instead, the starting point of this section of the Commentary is that States have agreed bilaterally, taking all considerations into account, to enlarge the taxing right of the source State over profits from the exploitation of its extractible natural resources by non-resident enterprises beyond what a treaty following the Convention would otherwise deliver – and to do so through lowering the permanent establishment threshold.

173. Some of those considerations, emphasised by States that do not favour this provision, are the increased compliance and administrative burdens due to the presence of more permanent establishments, with the attendant difficulties of attributing profits (or losses), especially where the permanent establishment can last for only a short period. Striking a balance between the source and the residence State is a matter for bilateral negotiation. But source States should be mindful that the extraction of natural resources can be a difficult, risky, and technically advanced process, and the investing enterprise may require a higher return than would an enterprise operating in a less risky industry. It is therefore important that in allocating greater taxing rights to the source State, this post-tax rate of return for the enterprise is not lowered excessively, especially for pre-existing investments.

174. However, the alternative provision set out here recognises that some States choose, and other States agree, to adopt a regime for the taxation of profits in the extractive industries that is more in favour of the source State – especially where activities are carried out offshore – and that this is most frequently done by setting a lower permanent establishment threshold than would follow from the provisions of Article 5. The point is that under Article 7 a State may generally tax the profits of non-resident enterprises (which may be disproportionately involved in the extractive industries, especially in small countries) only if those enterprises carry on business in that State though a permanent establishment. That condition will likely be fulfilled for onshore exploitation activities – a mine, for example, will generally constitute a permanent establishment – and the same might be true for offshore exploitation activities themselves. But offshore exploration and various service activities connected with offshore exploration or exploitation may be of short duration and may not take place at a geographically fixed place of business (see also paragraph 48

above) – which would mean they were not performed through a permanent establishment within the meaning of paragraph 1 of Article 5.

175. Some States consider that a provision restricted to offshore activities is sufficient because, as just mentioned, the main site for onshore activities – a mine, for example – will generally be a permanent establishment for a non-resident enterprise doing the mining. Furthermore, short duration and mobile services may be more prevalent in the offshore sector. These services can be highly profitable, and the places they are performed may not fall within the definition of a permanent establishment in paragraph 1 of Article 5.

176. Other States might see a need for a provision that covers both offshore and onshore activities in order to capture a fuller share of the value of those onshore resources. The activities of some enterprises carrying out work connected to onshore finite natural resources – such as engineering or consultancy services or seismic surveys – might otherwise fall below the permanent establishment threshold. For example, a mining operation may require the services of individuals resident in a neighbouring country whose activities, without such a provision, would not create a permanent establishment under either paragraph 1 of Article 5 or under the alternative provision for services in paragraph 144 above. Another feature of a provision covering onshore activities is that it would treat non-resident service providers carrying out similar work offshore and onshore equally. However, bringing onshore activities within the scope of the provision could set up a difference in treatment for an enterprise that was, for example, performing similar advanced technical work at both a mine and a factory. States will want to balance these considerations when deciding on the geographical scope of the provision.

177. Given the multiplicity of existing bilateral provisions governing the taxation of activities in connection with the exploration and exploitation of natural resources, some of which may not operate as intended, the Committee considered that it would be helpful to offer a standard provision that States that wanted a different taxation treatment of such activities could use in their bilateral treaties. The following is an example of such a provision. It is based in large part on existing practice and therefore reflects certain policy choices that States have made:

Provision on activities in connection with the exploration and exploitation of extractible natural resources

1. The provisions of this Article shall apply notwithstanding the provisions of Articles 5 and 13.

Offshore only	*Offshore and onshore*
2. For the purposes of this Article, the term "relevant activity" means an activity carried on offshore in connection with the exploration or exploitation of the seabed and its subsoil and their natural resources.	*2. For the purposes of this Article, the term "relevant activity" means an activity carried on in connection with the exploration or exploitation of the seabed and its subsoil and their natural resources. The term also includes the exploration for and exploitation of onshore finite natural resources, and other specialised activities carried on in connection therewith.*

However, the operation of ships or aircraft used for the primary purpose of (i) transporting supplies or personnel, or (ii) towing or anchor handling, or the operation of other vessels whose function is auxiliary to the exploration or

exploitation of the seabed and its subsoil and their natural resources, does not constitute a relevant activity.

3. Where an enterprise of a Contracting State carries on relevant activities in the other Contracting State for a period or periods exceeding in the aggregate [period to be bilaterally agreed] in any twelve month period commencing or ending in the fiscal year concerned, the relevant activities carried on in that other State shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State.

4. Gains derived by a resident of a Contracting State from the alienation of:

a) immovable property referred to in Article 6 (including exploration or exploitation rights) pertaining to natural resources situated in the other Contracting State; or

Offshore only	*Offshore and onshore*
b) movable property forming part of the business property of a permanent establishment which that resident has in the other Contracting State and which is used in connection with the exploration or exploitation of the seabed and its subsoil and their natural resources situated in that other State; or	***b) movable property forming part of the business property of a permanent establishment which that resident has in the other Contracting State and which is used in connection with the exploration or exploitation of the seabed and its subsoil and their natural resources, or onshore finite natural resources, situated in that other State; or***

c) shares or comparable interests, such as interests in a partnership or trust, if at any time during the 365 days preceding the alienation these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from property mentioned in subparagraphs a) or b) or from such property taken together

may be taxed in that other State.

Paragraph 1 of the provision

178. This paragraph provides that the provision shall apply notwithstanding the provisions of Articles 5 and 13 of the Convention, which might otherwise preclude the taxation by a State with finite natural resources of certain income and gains derived in connection with the exploration and exploitation of those resources by a non-resident. Conversely, where the source State maintains its taxing right by virtue of Articles 5 or 13 but not by virtue of this provision, that taxing right continues.

Paragraph 2 of the provision

179. This paragraph defines the term "relevant activity" and it has two forms: one for States that wish to confine the scope of the article to offshore activities, and one for those that wish to include onshore activities.

180. The reference to activities carried on "offshore" (in the "Offshore only" version of paragraph 2) means, for a Contracting State, activities carried on within the area of its internal or archipelagic waters, its territorial sea, and any area beyond its territorial sea in which, in accordance with international law, it may exercise its sovereign rights with respect to the seabed and subsoil and their natural resources. The above terms have the

meaning ascribed to them in the United Nations Convention on the Law of the Sea 1982[1], which codifies this aspect of what is now generally regarded as customary international law. This paragraph is without prejudice to paragraph 1 of the Commentary on Article 3, which notes that: "In addition to the definitions contained in the Article, Contracting States are free to agree bilaterally on definitions of the terms 'a Contracting State' and 'the other Contracting State'. Furthermore, Contracting States are free to agree bilaterally to include in the possible definitions of 'Contracting States' a reference to continental shelves." As compared to the "Offshore only" version of paragraph 2, the "Offshore and onshore" version of paragraph 2 does not limit the concept of "relevant activities" with respect to the exploration or exploitation of the seabed or its subsoil and their natural resources to activities carried on offshore. In the "Offshore and onshore" version of paragraph 2, the concept of "relevant activities" also includes activities performed onshore in connection with the offshore exploration and exploitation activities (in addition to the onshore activities covered in the second sentence and discussed in paragraph 183 below).

181. In both cases, through the use of the expression "in connection with", the term "relevant activity" includes not only the activities of exploration and exploitation themselves, but also the performance of certain related services. The paragraphs below explain how these services are generally performed within the fields of exploration and exploitation.

182. For offshore activities there is a specific exclusion for the activities of certain vessels. But the relevant activities otherwise include all activities connected with the exploration and exploitation of the seabed, its subsoil, and their natural resources (with the added limitation, in the "Offshore only" version of the provision, that such relevant activities must also be carried on offshore). In practice, given the remoteness and difficulty of offshore activities, services performed offshore (e.g. saturation diving on the seabed and the laying of pipelines) are frequently exclusively associated with the exploration and exploitation of natural resources.

183. For onshore activities, the use of the qualifying word "specialised" restricts the coverage of related services to those that are tailored to the onshore exploration and exploitation activities. Specialised services involve a degree of expertise or the use of specialised equipment that would not be involved in the provision of similar services in a different context. Where an enterprise provides services (e.g. catering services) to an array of clients in various industries, using the same type of equipment and expertise in respect of all clients, this would typically be considered generic (non-specialised). Moreover, a service is not considered specialised merely because it is performed at the site where onshore exploration and exploitation activities are also taking place; however, if the site is especially remote and difficult to access or operate in, this could suggest that most services performed at that site are specialised. Examples of specialised activities include the assembly, installation and maintenance of specialised mining infrastructure and equipment, the performance of engineering and consultancy services relating to the onshore exploration and exploitation activities, and the carrying out of seismic surveys. But supplying a mine operator with electricity, water or Internet access – or even a monthly delivery by road of provisions from a cross-border supplier – are generic (non-specialised) services that fall outside the scope of the provision. Distinctions can be drawn, for example,

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[1] ***Türkiye dissociates itself from the reference made to the United Nations Convention on the Law of the Sea, to which it is not a party. The participation of Türkiye in the discussions regarding the OECD Model Tax Convention on Income and on Capital cannot be construed as a change in the well-known legal position of Türkiye with regard to the said instrument.***

between the provision of Internet access to a mine operator (non-specialised) and the provision of information technology services specifically tailored to the nature of mining operations (specialised); between the installation of a water pipe at an onshore drilling site involving the same equipment and degree of expertise on behalf of the installer as would be involved at any other geographic location (non-specialised) and the installation of a water pipe involving specific equipment and expertise to adapt to the nature of the drilling site (specialised). The profits from such non-specialised activities are nevertheless subject to the ordinary rules of Article 5 (including, as applicable, its paragraph 3) and Article 7. For example, an enterprise of a Contracting State that provides standard food delivery services to a mining site in the other Contracting State would not be covered under paragraph 2 of the provision. However, that enterprise might nevertheless have a permanent establishment in that other Contracting State if the conditions of paragraph 1 of Article 5 are satisfied (such that the profits attributable to that permanent establishment would be taxable in that other Contracting State, in accordance with Article 7).

184. Following the same logic, the language at the end of the provision that applies to both its forms contains a specific exclusion for transportation, towing, anchor handling, and the operation of other vessels whose functions are auxiliary to the exploration or exploitation of the seabed and its subsoil and their natural resources. Towing services include those services performed by tugboats, and encompass services that assist in the moving of ocean vessels in and out of port and between berths, towing (pushing) of barges, and transporting port pilots to ships waiting to enter a ship channel or port. Vessels performing auxiliary functions include those used for fire-fighting and rescue support. But, for example, the following types of vessels carry out core activities to natural resource exploitation and are hence not covered by the exemption: oil production vessels; rigs or platforms (including those used for accommodation); floating storage production and offloading vessels used for hydrocarbon resources; dredging vessels; pipe-laying vessels; seismic or underwater survey vessels; and heavy-lift vessels.

185. Article 8 already provides that the profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State. Therefore, although some transportation vessels may already in effect be excluded from the operation of this provision because their journeys fall within definition of "international traffic", this specific exclusion from the operation of the alternative provision is a wider one. But the profits from the operation of these excluded vessels are nevertheless subject to the ordinary rules of Article 5 and Article 7. For example, an enterprise of a Contracting State that operates a tugboat to tow dredging vessels in and out of a port in the other Contracting State could be excluded under paragraph 2 of the provision, but might nevertheless have a permanent establishment in that other Contracting State pursuant to paragraph 1 of Article 5 (such that the profits attributable to that permanent establishment would be taxable in that other Contracting State, in accordance with Article 7).

186. The formulation "in connection with" is also used in a temporal sense, and includes equivalent activities at every stage of the process of extracting natural resources: exploration (when preliminary surveys take place, exploratory rights are acquired and the exploration itself happens); development (when the necessary infrastructure is built); production (when the resources are extracted, processed, transported, marketed and sold – processes that could together be described as "exploitation"); and decommissioning (when infrastructure is removed and sites are rehabilitated).

187. In referring to "the seabed and its subsoil and their natural resources", or "onshore finite natural resources", the provision encompasses the extraction of non-renewable commodities such as hydrocarbons, precious metals, metal ores, rare earth elements and

other minerals. Following the logic of paragraph 171, it does not cover, for example, the harnessing of renewable resources such as hydroelectric, wind, wave, tidal or solar power.

188. Some treaties that include an article similar to this provision exclude from scope those activities mentioned in paragraph 4 of Article 5. Following the more common practice, in the interest of simplicity, and recognising that these activities can be high-value, this provision does not do that; it also seems less appropriate to include such a provision for activities that can already be of a much shorter duration than would normally take place through a permanent establishment. Nor does it seem as likely that activities covered by this provision (both offshore and onshore) would be of a preparatory or auxiliary character. Nevertheless, States that wish to provide for such exemptions could do so – for example, by adding to the end of paragraph 3 the words: ", unless the activities of such enterprise are limited to those mentioned in paragraph 4 of Article 5 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 of Article 5 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph."

Paragraph 3 of the provision

189. Where an enterprise of a Contracting State carries on relevant activities in the other Contracting State for more than a minimum period to be bilaterally agreed, this paragraph deems those activities to be carried on through a permanent establishment in that other State. This encompasses all relevant activities carried on by the enterprise – without regard to whether such activities relate to one or more customers, projects or other factors – provided that such activities are carried out in the other Contracting State. Activities carried out anywhere else are not relevant to the assessment of whether a permanent establishment is deemed to exist in that other State. For example, analysis of satellite imaging data or other geophysical data carried out in State R by an enterprise that is a resident of State R is irrelevant to the question whether the enterprise has a permanent establishment in State S, even though that is where the deposits to be explored may be located.

190. Once a permanent establishment is deemed to exist, the source State may tax the non-resident enterprise's profits attributable to the deemed permanent establishment in accordance with Article 7 and the residence State will eliminate double taxation in accordance with Article 23. There is no requirement that the activities are attached to the same project or performed for the same customer; the test is only one of duration in the source State. The usual rules of Article 7 will apply to the attribution of profits to that deemed permanent establishment.

191. The duration of the time threshold is to be bilaterally agreed. Existing bilateral treaties that contain a similar provision use a range of different thresholds (that include 30, 90, and 183 days and other periods).

192. Paragraph 3 of the provision refers to activities "in the other Contracting State". In order to clarify the meaning of this phrase, it is an established practice for States to define themselves by using a formulation that (for example) includes the area in which, in accordance with international law, they may exercise their sovereign rights with respect to the seabed and its subsoil and their natural resources.

193. Paragraph 3 contains no anti-contract splitting rule, for the reasons set out at paragraph 52 above. But some States may nevertheless wish to deal expressly with such abuses, especially those States that do not include in their treaties the principal purposes test at paragraph 9 of Article 29. Such a provision could be drafted along the following lines:

For the sole purpose of determining whether the "[period to be bilaterally agreed]" threshold in paragraph 3 has been exceeded, where an enterprise of a Contracting State carries on relevant activities in the other Contracting State and substantially the same relevant activities are carried on in that other State during different periods of time by one or more enterprises closely related to the first-mentioned enterprise within the meaning of paragraph 8 of Article 5, these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on the relevant activities.

This rule would not require the relevant activities to be performed at the same location but only that the relevant activities carried on by one or more closely related enterprises were "substantially the same" (rather than "connected", as in the provision in paragraph 52). The expression "substantially the same" would apply to the same type of resource and method of exploration or extraction. So, for example, it would not permit the aggregation of drilling activities on the continental shelf with on-shore exploration and mining, or of geomagnetic field analysis at sea with seismic exploration on land. There would be no minimum period during which the fragmented activities had to take place to fall within the scope of the rule. This reflects the fact that the bilaterally agreed period specified in paragraph 3 of the provision may be substantially lower than the twelve month period in paragraph 3 of Article 5.

194. The anti-contract splitting rule above refers to one or more enterprises closely related to the first-mentioned enterprise "within the meaning of paragraph 8 of Article 5". This is because the Convention defines the term there for the purposes of paragraphs 4.1 and 6 of Article 5. States adopting the rule might prefer to move the definition from paragraph 8 of Article 5 to paragraph 1 of Article 3 – in which case the words "within the meaning of paragraph 8 of Article 5" above would be deleted.

Paragraph 4 of the provision

195. This paragraph deals with the taxation of gains, assigning to the source State the primary right to tax gains from the disposal of certain assets (immovable property, certain movable property, and shares and other comparable interests). The source State's right to tax these gains will generally be preserved by the operation of paragraphs 1, 2 or 4 of Article 13. However, paragraph 4 of the provision brings together the rules governing the treatment of each category of extractives-related income and gains, thereby providing transparency and clarity. Subparagraphs a), b) and c) describe the assets in question. Subparagraph c) is a potential expansion of the taxing right under paragraph 4 of Article 13.

196. Subparagraph a) confirms that, for purposes of the application of paragraph 4, exploration and exploitation rights pertaining to natural resources are within the definition of immovable property. These rights fall within the definition of immovable property in Article 6 (either explicitly or for example as property accessory to immovable property), and thus also fall within the ambit of paragraph 1 of Article 13. It is not considered necessary to define an exploration or exploitation right. Because a partial right is itself a right, the term also encompasses arrangements such as farm-in and farm-out agreements, under which, for example, the owner of an oil or gas interest (the farmor) assigns part of it (as opposed to the whole of it) to another person (the farmee), in exchange for certain obligations – e.g. to share the cost of a project, to perform some service, or just to make a cash payment.

197. Subparagraph b) is in two parts (offshore only, and offshore and onshore) and encompasses a gain derived by a resident of a Contracting State from the alienation of movable property forming part of the business property of a permanent establishment and

used in connection with the exploration or exploitation mentioned in paragraph 2 of the provision. The subparagraph therefore matches the provision in paragraph 2 of Article 13.

198. Subparagraph c) deals with shares or comparable interests that, at any time during the 365 days preceding their alienation, derived more than 50 per cent of their value directly or indirectly from the property mentioned in subparagraphs a) and b). The provision is modelled on the one in paragraph 4 of Article 13, but goes beyond it by allowing the aggregation of the value of the property mentioned in subparagraphs a) and b) when applying the 50 per cent value test. This would allow, for example, the source State to tax the gains from the disposal of shares in a company where 30 per cent of the value was contributed by extraction rights and 30 per cent by a movable rig that was exploiting those rights.

Employment Income

199. The provision deals with the taxation only of the enterprise that performs relevant activities. However, provisions in some bilateral treaties also enlarge the taxing right of the source State over income from employment beyond that permitted by Article 15. Article 15 itself would preserve the source State's right to tax a non-resident's employment income in most instances. But where a non-resident employee performed consecutive contracts with different non-resident employers – and the remuneration was not borne by a permanent establishment (including one deemed to exist under paragraph 3 of the provision) – Article 15 would not provide for source State taxation (unless the non-resident employee was present in the source State for a period or periods exceeding 183 days in any twelve month period commencing or ending in the fiscal year concerned). Depending on the facts and circumstances, the formal contractual relationship between the employee and the employer could be challenged for purposes of determining the "employer" for Article 15 purposes (see paragraphs 8.1 to 8.28 of the Commentary on Article 15), if necessary invoking the principal purposes test in paragraph 9 of Article 29. But if this situation remains a concern, a provision such as the following could be inserted after paragraph 2 of Article 15:

> *Notwithstanding the preceding provisions of this Article, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State, and connected with relevant activities within the meaning of Article [X] carried on in that other State, may be taxed in that other State if the employment is so exercised for a period or periods exceeding in the aggregate [period to be bilaterally agreed] in any twelve month period commencing or ending in the fiscal year concerned.*

200. Under this provision, the State where the employment was exercised could tax the remuneration of a non-resident employee even if the employer did not have a permanent establishment, provided the employment was exercised there for more than a bilaterally agreed period in the relevant twelve month period. But whether or not the provision is used, Article 15 preserves the right of the State where a non-resident's employment is exercised to tax the remuneration in respect of any such employment, regardless of its duration, if the remuneration is borne by a permanent establishment (including one deemed to exist under paragraph 3 of the provision) that the employer has in that State, given that the condition in subparagraph c) of paragraph 2 of Article 15 is not met.

201. An alternative way of expanding the taxing rights of the source State over employment income would be to amend subparagraph a) of paragraph 2 of Article 15 as follows:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days (or, where the employment is exercised in connection with relevant activities within the meaning of paragraph 3 of Article [X], [period to be bilaterally agreed]) in any twelve month period commencing or ending in the fiscal year concerned, and

Under this approach, the test refers to days of presence, rather than the period in which the employment is exercised, in line with the way that Article 15 otherwise operates.

202. States contemplating the use of an expanded provision on employment income should recall that, as explained in the Commentary on Article 15, one reason for the general rule in that Article is to avoid taxation of short-term employment contracts in the source State where the employment income is not allowed as a deductible expense in the State of source. States adopting this provision may wish to consider the potential increase in administrative burden where the employer is neither a resident of, nor has a permanent establishment in, that State.

203. States that adopt the exemption method should also be careful to ensure that the inclusion of an expanded provision on employment income does not result in double non-taxation of that income. These States may wish to exclude such employment income from exemption and apply the credit method, as suggested by paragraph 35 of the Commentary on Articles 23 A and 23 B.

34. Renumber and replace paragraphs 170 to 216 of the Commentary on Article 5 by the following:

204~~170~~***.*** Concerning paragraph 64, *Germany* reserves its position on whether and under which circumstances the acquisition of a right of disposal over the transport capacity of pipelines or the capacity of technical installations, lines and cables for the transmission of electrical power or communications (including the distribution of radio and television programs) owned by an unrelated third party could result in disposal over the pipeline, cable or line as a fixed place of business.

205~~171~~***.*** Regarding paragraph 104, *Mexico* believes that the arm's length principle should also be considered in determining whether or not an agent is of an independent status for purposes of paragraph 6 of the Article and wishes, when necessary, to add wording to its conventions to clarify that this is how the paragraph should be interpreted.

206~~172~~***.*** *Germany*, as regards sentence 3 of paragraph 50, takes the view that business activities limited to on-site planning and supervision over a construction project can only constitute a permanent establishment if they meet the requirements specified in paragraph 1 of Article 5.

207~~173~~***.*** *Italy* and *Portugal* deem as essential to take into consideration that — irrespective of the meaning given to the third sentence of paragraph 2 — as far as the method for computing taxes is concerned, national systems are not affected by the new wording of the model, i.e. by the elimination of Article 14.

208~~174~~***.*** The *Czech Republic* has expressed a number of explanations and reservations on the report on "Issues Arising Under Article 5 of the OECD Model Tax Convention". In particular, the Czech Republic does not agree with the interpretation mentioned in paragraphs 24 (first part of the paragraph) and 25 (first part of the paragraph). According to its policy, these examples could also be regarded as constituting a permanent establishment if the services are furnished on its territory over a substantial period of time.

209~~175~~***.*** As regards paragraph 50, the *Czech Republic* adopts a narrower interpretation of the term "installation project" and therefore, it restricts it to an installation and assembly related to a construction project. Furthermore, the Czech Republic adheres to an interpretation that

supervisory activities will be automatically covered by paragraph 3 of Article 5 only if they are carried on by the building contractor. Otherwise, they will be covered by it, but only if they are expressly mentioned in this special provision. In the case of an installation project not in relation with a construction project and in the case that supervisory activity is carried on by an enterprise other than the building contractor and it is not expressly mentioned in paragraph 3 of Article 5, then these activities are automatically subject to the rules concerning the taxation of income derived from the provision of other services.

210~~176.~~ In relation to paragraphs 122 to 131, the *United Kingdom* takes the view that a server used by an e-tailer, either alone or together with web sites, could not as such constitute a permanent establishment.

211~~177.~~ *Chile* and *Greece* do not adhere to all the interpretations in paragraphs 122 to 131.

212~~178.~~ *Germany* does not agree with the interpretation of the "painter example" in paragraph 17 which it regards as inconsistent with the principle stated in the first sentence of paragraph 12, thus not giving rise to a permanent establishment under Article 5 paragraph 1 of the Model Convention. As regards the example described in paragraph 25, Germany would require that the consultant has disposal over the offices used apart from his mere presence during the training activities.

213~~179.~~ *Germany* reserves its position concerning the scope and limits of application of guidance in sentence 2 of paragraph 28 and paragraphs 29 and 30, taking the view that in order to permit the assumption of a fixed place of business, the necessary degree of permanency requires a certain minimum period of presence during the year concerned, irrespective of the recurrent or other nature of an activity. Germany does in particular not agree with the criterion of economic nexus — as described in sentence 1 of paragraph 30 — to justify an exception from the requirements of qualifying presence and duration.

214~~180.~~ *Germany*, as regards paragraph 98 (with reference to paragraphs 83, and 28 to 30), attaches increased importance to the requirement of minimum duration of representation of the enterprise under Article 5 paragraph 5 of the Model Convention in the absence of a residence and/or fixed place of business of the agent in the source country. Germany therefore in these cases takes a particularly narrow view on the applicability of the factors mentioned in paragraphs 28 to 30.

~~181. *Italy* wishes to clarify that, with respect to paragraphs 97, 116, 117 and 118, its jurisprudence is not to be ignored in the interpretation of cases falling in the above paragraphs.~~

215~~182.~~ *Mexico* and *Portugal* wish to reserve their right not to follow the position expressed in paragraphs 122 to 131.

216~~183.~~ ~~Turkey~~ ***Türkiye*** reserves its position on whether and under which circumstances the activities referred to in paragraphs 122 to 131 constitute a permanent establishment.

217~~184.~~ *Finland* and *Sweden* consider that when a State chooses to include in a convention the alternative version of paragraph 4 of Article 5 in paragraph 78 of the Commentary, it is not necessary also to include paragraph 4.1 of Article 5 in the convention.

218~~185.~~ *Germany* reserves its position regarding the application of the first sentence of paragraph 9.

219~~186.~~ *Greece* does not adhere to all of the interpretations in paragraph 45.

220. Israel reserves the right, when applying the approach described in paragraph 44.8, to determine whether the 50 per cent threshold is met by using the greater of: a comparison between the number of full or partial working days present in the

Contracting State in which the home or other relevant place is located ("home jurisdiction") and the number of full working days present outside of the home jurisdiction (counting days of presence that are working days in either the home jurisdiction or in another relevant jurisdiction); or a comparison between the number of full or partial days actually worked from the home jurisdiction and the number of full days actually worked outside of the home jurisdiction.

221. Regarding paragraph 44.18, Israel reserves the right to consider a commercial reason to exist where a number of employees are located in the Contracting State in which the home or other relevant place is located creating a meaningful group relative to their business unit.

222. Regarding paragraph 44.19, Israel wishes to clarify that, where there is no commercial reason for undertaking the activities related to the business of the enterprise of a Contracting State from a home or other relevant place located in the other Contracting State, it will take account of circumstances whereby the individual is employed to perform activity that is "core" to the business or activity that significantly contributes to value creation for the enterprise.

223. Regarding paragraph 44.20, Israel reserves the right to consider a home office used by one of the primary persons of an enterprise, such as a founder, partner or relatively significant senior executive, to constitute a permanent establishment of the enterprise.

224. Israel reserves the right to consider that the facts and circumstances of example D in paragraph 44.21 could indicate that the physical presence of the employee in that State facilitates his quarterly visits to clients in the same region or enables him to provide services in a different time zone.

225. In relation to paragraphs 44.1 to 44.21, the Czech Republic reserves its position regarding the application of the additional specific criteria described in those paragraphs because it does not agree that the category of premises involved should be so determinative and thus limiting the possibility of existence of a permanent establishment in cases of working from a home (or other relevant place) when assessing the existence of "a fixed place of business through which the business of an enterprise is wholly or partly carried on".

226. Chile does not adhere to all of the interpretations in paragraphs 44.6 to 44.21.

227. Regarding paragraph 104, Colombia believes that the arm's length principle should also be considered in determining whether or not an agent is of an independent status for purposes of paragraph 6 of the Article and wishes, when necessary, to add wording to its conventions to clarify that this is how the paragraph should be interpreted.

Reservations on the Article

228~~187~~***.*** The *United States* reserves its right to follow the versions of paragraphs 5 and 6 as they stood before the 2017 update of the Model Tax Convention.

Paragraph 1

229~~188~~. *Australia* reserves the right to treat an enterprise as having a permanent establishment in a State if it ~~carries on activities relating to natural resources or~~ operates substantial equipment in that State with a certain degree of continuity, or a person – acting in that State on behalf of the enterprise – manufactures or processes in that State goods or merchandise belonging to the enterprise.

~~189. Considering the special problems in applying the provisions of the Model Convention to offshore hydrocarbon exploration and exploitation and related activities, *Canada*, *Denmark*, *Ireland*, *Latvia*, *Norway* and the *United Kingdom* reserve the right to insert in a special article provisions related to such activities.~~

230~~190~~. *Chile* ***and Colombia*** reserve~~s~~ the right to deem an enterprise to have a permanent establishment in certain circumstances where services are provided. ***Chile also reserves the right to propose in bilateral negotiations other forms of taxation of services.***

231~~191~~. The *Czech Republic* and the *Slovak Republic*, whilst agreeing with the "fixed place of business" requirement of paragraph 1, reserve the right to propose in bilateral negotiations specific provisions clarifying the application of this principle to arrangements for the performance of services over a substantial period of time.

232~~192~~. *Greece* reserves the right to treat an enterprise as having a permanent establishment in Greece if the enterprise carries on planning, supervisory or consultancy activities in connection with a building site or construction or installation project lasting more than six months, ~~if scientific equipment or machinery is used in Greece for more than three months by the enterprise in the exploration or extraction of natural resources~~ or if the enterprise carries out more than one separate project, each one lasting less than six months, in the same period of time (i.e. within a calendar year).

~~193. *Greece* reserves the right to insert special provisions relating to offshore activities.~~

233~~194~~. *Estonia* and *Mexico* reserve the right to tax individuals performing professional services or other activities of an independent character if they are present in these States for a period or periods exceeding in the aggregate 183 days in any twelve month period.

234~~195~~. *New Zealand* reserves the right to insert provisions that deem a permanent establishment to exist if, for more than six months, an enterprise ~~conducts activities relating to the exploration or exploitation of natural resources or~~ uses or leases substantial equipment.

235~~196~~. ~~Turkey~~ ***Türkiye*** reserves the right to treat a person as having a permanent establishment in ~~Turkey~~ ***Türkiye*** if the person performs professional services and other activities of independent character, including planning, supervisory or consultancy activities, with a certain degree of continuity either directly or through the employees of a separate enterprise.

236~~197~~. *Latvia* reserves the right to deem any person performing professional services or other activities of an independent character to have a permanent establishment if that person is present in the State for a period or periods exceeding in the aggregate 183 days in any twelve month period.

237. Chile reserves the right to deem an enterprise to have a permanent establishment in certain circumstances where substantial equipment is operated.

Paragraph 2

238~~198~~. *Canada*, *Chile****, Colombia, Costa Rica*** and *Israel* reserve the right in subparagraph 2 *f*) to replace the words "of extraction" with the words "relating to the exploration for or the exploitation".

239~~199~~. *Greece* reserves the right to include paragraph 2 of Article 5 as it was drafted in the 1963 Draft Convention.

240~~200~~. *Greece* and *Mexico* reserve the right in subparagraph 2 *f*) to replace the words "of extraction" with the words "relating to the extraction, exploration for or the exploitation".

Paragraph 3

241~~201~~. *Australia*, *Chile*, *Greece*, *Korea*, *New Zealand*, *Portugal* and ~~*Turkey*~~ ***Türkiye*** reserve their positions on paragraph 3, and consider that any building site or construction or installation project which lasts more than six months should be regarded as a permanent establishment.

242~~202~~. *Australia* reserves the right to treat an enterprise as having a permanent establishment in a State if it carries on in that State supervisory or consultancy activities for more than 183 days in any twelve month period in connection with a building site or construction or installation project in that State.

243~~203~~. *Korea* reserves its position so as to be able to tax an enterprise which carries on supervisory activities for more than six months in connection with a building site or construction or installation project lasting more than six months.

244~~204~~. *Slovenia* reserves the right to include connected supervisory or consultancy activities in paragraph 3 of the Article.

245~~205~~. ***Chile,*** *Mexico* and the *Slovak Republic* reserve the right to tax an enterprise that carries on supervisory activities for more than six months in connection with a building site or a construction, assembly, or installation project.

246~~206~~. ***Costa Rica and*** *Mexico* ~~and the *Slovak Republic*~~ reserve their position on paragraph 3 and consider that any building site or construction, assembly~~,~~ or installation project that lasts more than six months should be regarded as a permanent establishment. ***Costa Rica additionally considers that a supervisory or consultancy activity connected with any building site, construction, assembly or installation project constitutes a permanent establishment if such supervisory or consultancy activity lasts for a period of more than six months.***

246.1 Colombia reserves the right to include a lower time threshold to create a permanent establishment for the situations described in this paragraph.

247~~207~~. ***Hungary,*** *Poland* and *Slovenia* reserve the right to replace “construction or installation project” with “construction, assembly, or installation project”.

248~~208~~. *Portugal* reserves the right to treat an enterprise as having a permanent establishment in Portugal if the enterprise carries on an activity consisting of planning, supervising, consulting, any auxiliary work or any other activity in connection with a building site or construction or installation project lasting more than six months, if such activities or work also last more than six months.

249~~209~~. The *United States* reserves the right to add “a***n installation or*** drilling rig or ship used for the exploration of ***the seabed and its subsoil and their*** natural resources” to the activities covered by the twelve month threshold test in paragraph 3.

Paragraph 4

250~~210~~. *Chile* reserves the right to amend paragraph 4 by eliminating subparagraph *f*), replacing the text of subparagraph *e*) with “the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities, for the enterprise;”, and deleting “or, in the case of subparagraph *f*), the overall activity of the fixed place of business,” from the final part of paragraph 4.

251~~211~~. *Mexico* reserves the right to exclude subparagraph *f*) of paragraph 4 of the Article to consider that a permanent establishment could exist where a fixed place of business is maintained for any combination of activities mentioned in subparagraphs *a*) to *e*) of paragraph 4.

252. Colombia reserves the right not to include the word “delivery” in subparagraphs a) and b) of paragraph 4.

Paragraph 4.1

253~~212~~. *Finland*, ***Hungary,*** *Luxembourg*, *Sweden****,*** ~~and~~ *Switzerland* ***and the United States*** reserve the right not to include paragraph 4.1 in their conventions.

Paragraph 5

254~~213~~. *Finland*, ~~*Germany,*~~ ***Hungary,*** *Luxembourg*, *Sweden* and *Switzerland* reserve the right to use the previous version of paragraph 5 of Article 5 (i.e. the version included in the Model Tax Convention immediately before the 2017 update of the Model Tax Convention).

255. Germany reserves the right to limit paragraph 5 of Article 5 to persons who habitually exercise an authority to conclude contracts in the name of the enterprise in accordance with the version of paragraph 5 of Article 5 in the 2014 Model Tax Convention.

Paragraph 6

256~~214~~. *Finland*, ***Hungary,*** *Luxembourg****, Portugal*** and *Sweden* reserve the right to use the previous version of paragraph 6 of Article 5 (i.e. the version included in the Model Tax Convention immediately before the 2017 update of the Model Tax Convention).

257~~215~~. *Germany* reserves the right to use the previous version of paragraph 6 (i.e. the version included in the Model Tax Convention immediately before the 2017 update of the Model Tax Convention) because it does not agree that a person should not be considered an independent agent only because the person acts exclusively or almost exclusively on behalf of one or more closely related enterprises.

Paragraph 8

258~~216~~. *Finland****, Hungary*** and *Sweden* reserve the right not to include paragraph 8 in their conventions.

35. Add the following heading and new paragraph 259 to the Commentary on Article 5:

Other reservations

259. Colombia reserves the right to provide that an insurance enterprise of a Contracting State shall, except with respect 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 6 applies.

Commentary on Article 6

36. Replace paragraph 5 of the Commentary on Article 6 by the following:

5. *Finland****,*** ~~and~~ *Latvia* ***and Lithuania*** reserve the right to tax income of shareholders in resident companies from the direct use, letting, or use in any other form of the right to enjoyment of immovable property situated in their countries and held by the company, where such right is based on the ownership of shares or other corporate rights in the company.

37. Replace paragraph 8 of the Commentary on Article 6 by the following:

8. *Canada****,*** ~~and~~ *Latvia* ***and Lithuania*** reserve the right to include in paragraph 3 a reference to income from the alienation of immovable property.

38. Replace paragraphs 11 and 12 of the Commentary on Article 6 by the following:

11. *Australia* ***and Colombia*** reserve~~s~~ the right to include rights relating to all natural resources under this Article.

12. ***Costa Rica and*** *Mexico* reserve~~s~~ the right to treat as immovable property any right that allows the use or enjoyment of immovable property situated in a Contracting State where that use or enjoyment relates to time sharing since under ***their*** ~~its~~ domestic law such right is not considered to constitute immovable property.

39. Replace paragraph 14 of the Commentary on Article 6 by the following:

14. ~~*Israel* and~~ *Latvia* ***and Lithuania*** reserve the right to include in paragraph 2 "any option or similar right to acquire immovable property".

40. Add the following new paragraphs 17 to 20 to the Commentary on Article 6:

17. Colombia reserves the right to amend the definition of "immovable property" to include expressly other property.

18. Costa Rica reserves the right to include in the definition of the term "immovable property" the income derived from silvicultural activities.

19. Costa Rica reserves the right to include in the definition of the term "immovable property" the rights relating to exploration and exploitation of immovable property since under its domestic law such rights are not considered to constitute immovable property.

20. Lithuania reserves the right to modify the second sentence of the definition of the term "immovable property" to make clear that the sentence does not apply for domestic law purposes.

Commentary on Article 7

41. Replace paragraph 7 of the Commentary on Article 7 by the following:

7. In order to provide maximum certainty on how profits should be attributed to permanent establishments, the Committee therefore decided that the 2008 Report's full conclusions should be reflected in a new version of Article 7, together with accompanying Commentary, to be used in the negotiation of future treaties and the amendment of existing treaties. In addition, in order to provide improved certainty for the interpretation of treaties that had already been concluded on the basis of the previous wording of Article 7, the Committee decided that a revised Commentary for that previous version of the Article[***1***] should also be prepared, to take into account those aspects of the report that did not conflict with the Commentary as it read before the adoption of the 2008 Report.

[***1***] ***That revised Commentary was included in the 2008 update of the OECD Model and is applicable to the interpretation and application of treaties signed before or after 2008 that include the version of Article 7 as it read before the 2010 update of the OECD Model (see the Annex to the Commentary on Article 7 for the text of Article 7 and its Commentary as they read after the 2008 update and until the 2010 update of the OECD Model).***

42. Replace paragraph 59 of the Commentary on Article 7 with the following:

59. As is the case for paragraph 2 of Article 9, a corresponding adjustment is not automatically to be made under paragraph 3 simply because the profits attributed to the permanent establishment have been adjusted by one of the Contracting States. The corresponding adjustment is required only ~~if~~ ***to the extent that*** the other State considers that the adjusted profits conform with ***the principles of*** paragraph 2. In other words, ~~paragraph 3 may not be invoked and~~

~~should not be applied where the profits attributable to the permanent establishment are adjusted to a level that is different from what they would have been if they had been correctly computed in accordance with the principles of paragraph 2. Regardless of which State makes the initial adjustment, the other State is obliged to make an appropriate corresponding adjustment only if it considers that the adjusted profits correctly reflect what the profits would have been if the permanent establishment's dealings had been transactions at arm's length. T~~***t***he other State is committed to make ***an appropriate*** ~~such a~~ corresponding adjustment ~~only~~ if it considers that the initial adjustment is justified ~~both~~ in principle***, but only in an*** ~~and as regards the~~ amount ***that it considers reflects what the profits would have been if they had been correctly computed in accordance with the principles of paragraph 2***. ***Where the Contracting States consult through the mutual agreement procedure and agree on the amount of such an adjustment, the Contracting State that made the initial adjustment to the profits attributed to the permanent establishment would also agree as part of the mutual agreement to align the amount of that initial adjustment so that the profits attributed to the permanent establishment are the same in both Contracting States and double taxation is eliminated.***

43. Replace paragraphs 84 and 85 of the Commentary on Article 7 by the following:

84. ***Türkiye*** ~~*Turkey*~~ does not share the views expressed in paragraph 28 of the Commentary on Article 7 ***except for the explanations with respect to Articles 7 and 13***.

Reservations on the Article

85. *Australia* ***and Chile*** reserve~~s~~ the right to include a provision that will permit ***their*** ~~its~~ domestic law to apply in relation to the taxation of profits from any form of insurance.

44. Replace paragraphs 88 to 90 of the Commentary on Article 7 by the following:

88. ***Chile, Costa Rica***, Italy~~,~~ ***and*** Portugal ~~and *Turkey*~~ reserve the right to tax persons performing independent personal services under a separate article which corresponds to Article 14 as it stood before its elimination in 2000. ~~In the case of Turkey, the question of whether persons other than individuals should be included in that article shall be determined by bilateral negotiations.~~

89. ***Chile, Colombia and*** ~~T~~***t***he *United States* reserve~~s~~ the right to amend Article 7 to provide that, in applying paragraphs 1 and 2 of the Article, any income or gain attributable to a permanent establishment during its existence may be taxable by the Contracting State in which the permanent establishment exists even if the payments are deferred until after the permanent establishment has ceased to exist. The United States also wishes to note that it reserves the right to apply such a rule, as well, under Articles 10, 11, 12, 13 and 21.

90. ***Türkiye*** ~~*Turkey*~~ reserves the right to subject income from the leasing of containers to a withholding tax at source in all cases. In case of the application of Articles 5 and 7 to such income, ***Türkiye*** ~~Turkey~~ would like to apply the permanent establishment rule to the simple depot, depot-agency and operational branch cases.

45. Replace paragraphs 92 and 93 of the Commentary on Article 7 by the following:

92. *Australia* ~~and *Portugal*~~ reserve***s*** the right to propose in bilateral negotiations a provision to the effect that, if the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, the competent authority may apply to that enterprise for that purpose the provisions of the taxation law of that State, subject to the qualification that such law will be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

93. ***Costa Rica and*** *Mexico* reserve~~s~~ the right to tax in the State where the permanent establishment is situated business profits derived from the sale of goods or merchandise carried out directly by its home office situated in the other Contracting State, provided that those goods and merchandise are of the same or similar kind as the ones sold through that permanent establishment. ~~T~~***In the case of Mexico, t***he Government of Mexico will apply this rule only as a safeguard against abuse and not as a general "force of attraction" principle; thus, the rule will not apply when the enterprise proves that the sales have been carried out for reasons other than obtaining a benefit under the Convention.

46. Replace paragraphs 96 to 98 of the Commentary on Article 7 by the following:

96. *Austria*, *Chile*, ***Colombia*** ~~*Greece*~~, ***and*** *Mexico*~~, the *Slovak Republic* and *Turkey*~~ reserve the right to use the previous version of Article 7, i.e. the version that was included in the Model Tax Convention immediately before the 2010 update of the Model Tax Convention. They do not, therefore, endorse the changes to the Commentary on the Article made through that update. ***Chile wishes to clarify that, with respect to the previous version of Article 7, Chile will adhere to the interpretations in the Commentary of the previous version of Article 7, i.e. the version that was included in the Model Tax Convention immediately before the 2010 update of the Model Tax Convention, subject to its reservations and observations on that previous version.***

97. ***The United States reserves the right not to include the reference to Article [23A] [23B] in paragraph 2.*** ~~*Portugal* reserves its right to continue to adopt in its conventions the text of the Article as it read before 2010 until its domestic law is adapted in order to apply the new approach.~~

98. ***Hungary and*** *Slovenia* reserve~~s~~ the right to specify that a potential adjustment will be made under paragraph 3 only if it is considered justified.

47. Replace paragraph 100 of the Commentary on Article 7 by the following:

100. ***Costa Rica and*** *Latvia* reserve~~s~~ the right to use the previous version of Article 7, i.e. the version that was included in the Model Tax Convention immediately before the 2010 update of the Model Tax Convention, subject to ***their*** ~~its~~ positions on that version (see the Annex to the Non-OECD Economies' Positions on Article 7).

48. Add the following new paragraphs 101 to 104 to the Commentary on Article 7:

101. Costa Rica reserves the right to add a provision regarding expenses to be allowed as deductions.

102. Lithuania reserves the right to maintain in its conventions a specific article dealing with the taxation of "independent personal services". Accordingly, reservation is also made with respect to all corresponding modifications made to the Articles and Commentaries of the Model Tax Convention as a result of the elimination of Article 14.

103. Lithuania reserves the right to add to paragraph 2 a clarification that expenses to be allowed as deductions by a Contracting State shall include only expenses that are deductible under the domestic laws of that State.

104. The Slovak Republic reserves the right to use the previous version of Article 7 (i.e. the version that was included in the Model Tax Convention immediately before the 2010 update of the Model Tax Convention).

Commentary on Article 8

49. Replace paragraph 12 of the Commentary on Article 8 by the following:

12. The paragraph does not apply to a shipbuilding yard operated in one ***Contracting State*** ~~country~~ by a shipping enterprise ***of the other Contracting State*** ~~having its place of effective management in another country~~.

50. Replace paragraph 29 of the Commentary on Article 8 by the following:

29. *Germany*, *Greece*, *Mexico* and ***Türkiye*** ~~*Turkey*~~ reserve their position as to the application of the Article to income from inland transportation of passengers or cargo and from container services (see paragraphs 4, 6, 7 and 9 above).

51. Delete the following paragraph 33 of the Commentary on Article 8:

33. ***[Deleted]***~~*Denmark*, *Norway* and *Sweden* reserve the right to insert special provisions regarding profits derived by the air transport consortium Scandinavian Airlines System (SAS).~~

52. Replace paragraph 34 of the Commentary on Article 8 by the following:

34. ***Costa Rica reserves the right to include within the scope of "profits from the operation of ships or aircraft in international traffic" income generated by a) the temporary rental of ships or aircraft in empty hulk and b) the use or rental of containers (including trailers and auxiliary equipment used for the transport of containers).*** ~~[Deleted]~~

53. Delete the following paragraph 40 of the Commentary on Article 8:

40. ***[Deleted]*** ~~The *Slovak Republic* reserves the right to tax under Article 12 profits from the leasing of ships, aircraft and containers.~~

54. Replace paragraphs 41 and 42 of the Commentary on Article 8 by the following:

41. ***Chile and*** *Ireland* reserve~~s~~ the right to include within the scope of the Article income from the rental of ships or aircraft on a bareboat basis if either the ships or aircraft are operated in international traffic by the lessee or if the rental income is incidental to profits from the operation of ships or aircraft in international traffic.

42. ***Türkiye*** ~~*Turkey*~~ reserves the right to broaden the scope of the Article to cover transport by road vehicle and to make a corresponding change to the definition of "international traffic" in Article 3.

Commentary on Article 9

55. Replace paragraphs 1 to 6 of the Commentary on Article 9 by the following:

1. This Article deals with adjustments to profits that may be made for tax purposes where transactions have been entered into between associated enterprises (parent and subsidiary companies and companies under common control) ~~on~~ ***under conditions that are not*** ~~other than~~ arm's length ~~terms~~. The Committee has spent considerable time and effort (and continues to do so) examining the conditions for the application of this Article, its consequences and the various methodologies which may be applied to adjust profits where transactions have been entered into ~~on~~ ***under conditions that are not*** arm's length ~~terms~~. Its conclusions are set out in the report entitled *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*~~,~~ ***(the "OECD Transfer Pricing Guidelines"),***[1] which is periodically updated to reflect the progress of the work of the Committee in this area. That report represents internationally agreed principles

and provides guidelines for the application of the arm's length principle of which the Article is the authoritative statement.

[*footnote*: 1 The original version of that report was approved by the Council of the OECD on 27 June 1995. Published in a loose-leaf format as *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, OECD, Paris, 1995.]

2. This paragraph provides that the taxation authorities of a Contracting State may, for the purpose of calculating tax liabilities of associated enterprises, re-write the accounts of the enterprises if, as a result of the special relations between the enterprises, the accounts do not show the ~~true taxable~~ ***arm's length*** profits ***that would have accrued*** ~~arising~~ in that State. It is evidently appropriate that adjustment should be sanctioned in such circumstances. The provisions of this paragraph apply only if special conditions have been made or imposed between the two enterprises ***that differ from what independent parties would have agreed under similar circumstances and, therefore, the provisions would not apply to any*** ~~No~~ re-writing of the accounts of associated enterprises ~~is authorised~~ if the transactions between such enterprises have taken place on ~~normal open market commercial terms (on~~ an arm's length basis~~)~~. ***The arm's length principle and the guidance on its interpretation in the OECD Transfer Pricing Guidelines should be followed in any re-writing of accounts to which this paragraph applies.[2]***

[***footnote: 2 See Recommendation of the Council on the Determination of Transfer Pricing between Associated Enterprises [C(95)126/FINAL, as amended]. The Recommendation is reproduced in the Appendix to the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.***]

3. ***As reflected in Chapter X of the OECD Transfer Pricing Guidelines, countries may take different views on the application of Article 9 to determine the balance of debt and equity funding of an entity within a multinational enterprise group. Whilst some Contracting States use the accurate delineation of the transaction described in the OECD Transfer Pricing Guidelines to determine whether and the extent to which a purported loan between associated enterprises should be regarded as a loan for tax purposes (or as another kind of transaction, in particular a contribution to equity capital), other Contracting States address the issue of the balance of debt and equity funding of an entity under their domestic laws (including judicial doctrines). Under both approaches, the determination whether and the extent to which a purported loan should be respected as a loan will precede any attempt to price the transaction so determined. In then considering whether the pricing of a transaction respected as a loan can be regarded as arm's length, the guidance in Chapters I, II, III and X of the OECD Transfer Pricing Guidelines should be followed to price the controlled transaction.***

~~3. As discussed in the Committee on Fiscal Affairs' Report on "Thin Capitalisation",[2] there is an interplay between tax treaties and domestic rules on thin capitalisation relevant to the scope of the Article. The Committee considers that:~~

~~*a*) the Article does not prevent the application of national rules on thin capitalisation insofar as their effect is to assimilate the profits of the borrower to an amount corresponding to the profits which would have accrued in an arm's length situation;~~

~~*b*) the Article is relevant not only in determining whether the rate of interest provided for in a loan contract is an arm's length rate, but also whether a prima facie loan~~

~~can be regarded as a loan or should be regarded as some other kind of payment, in particular a contribution to equity capital;~~

~~c) the application of rules designed to deal with thin capitalisation should normally not have the effect of increasing the taxable profits of the relevant domestic enterprise to more than the arm's length profit, and that this principle should be followed in applying existing tax treaties.~~

~~[footnote 2: Adopted by the Council of the OECD on 26 November 1986 and reproduced in Volume II of the full version of the OECD Model Tax Convention at page R(4)-1.]~~

3.1 Once the profits of the associated enterprises have been allocated in accordance with the arm's length principle, it is for the domestic law of each Contracting State to determine whether and how such profits should be taxed, as long as there is conformity with the requirements of other provisions of the Convention. Article 9 does not deal with the issue of whether expenses are deductible when computing the taxable income of either enterprise. The conditions for the deductibility of expenses are a matter to be determined by domestic law, subject to the provisions of the Convention and, in particular, paragraph 4 of Article 24. Paragraphs 30 and 31 of the Commentary on Article 7 make a similar statement for the application of Article 7. Examples of domestic rules that can deny a deduction for expenses include certain rules on entertainment expenses and rules on interest expenses such as the fixed ratio and group ratio rules recommended in the final report on Action 4 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project.[1]

[***footnote 1***: ***OECD (2015), Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241176-en.***]

4. The question ***may*** arise~~s~~ ~~as to~~ whether special procedural rules which some countries have adopted for dealing with transactions between ***associated enterprises*** are consistent with the Convention. For instance, ***is*** ~~it may be asked whether~~ the reversal of the burden of proof or ***certain procedural*** presumptions ~~of any kind~~ which are sometimes found in domestic laws ~~are~~ consistent with the arm's length principle~~.~~? ***The consistency of procedural rules with the Convention is not a question addressed under Article 9, but should be considered under Article 24 (see paragraphs 75 and 80 of the Commentary on Article 24).*** ~~A number of countries interpret the Article in such a way that it by no means bars the adjustment of profits under national law under conditions that differ from those of the Article and that it has the function of raising the arm's length principle at treaty level. Also,~~ ***A***lmost all member countries consider that additional information requirements which would be more stringent than the normal requirements, or even a reversal of the burden of proof, would not constitute discrimination within the meaning of Article 24. However, in some cases the application of the national law of some countries may result in adjustments to profits at variance with the principles of the Article. Contracting States are enabled by the Article to deal with such situations ~~by means of corresponding adjustments (see below) and~~ under mutual agreement procedures.

Paragraph 2

5. The re-writing of transactions between associated enterprises in the situation envisaged in paragraph 1 may give rise to economic double taxation (taxation of the same income in the hands of different persons), insofar as an enterprise of State A whose profits are revised upwards will be liable to tax on an amount of profit which has already been taxed in the hands of its associated enterprise in State B. Paragraph 2 provides that in these circumstances, State B shall make an appropriate adjustment so as to relieve the double taxation.

6. It should be noted, however, that an adjustment is not automatically to be made in State B simply because the profits in State A have been increased; the adjustment is due only ~~if~~ ***to the extent that*** State B considers that the figure of adjusted profits correctly reflects what the profits would have been if the transactions had been at arm's length. In other words, ~~the paragraph may not be invoked and should not be applied where the profits of one associated enterprise are increased to a level which exceeds what they would have been if they had been correctly computed on an arm's length basis.~~ State B is ~~therefore~~ committed to make an adjustment of the profits of the affiliated company if it considers that the adjustment made in State A is justified ~~both~~ in principle***, but only in an amount that State B considers reflects profits computed on an arm's length basis*** ~~and as regards the amount~~. ***As provided in the last sentence of paragraph 2, the Contracting States shall, if necessary, consult each other in determining an appropriate adjustment, with a view to eliminating the economic double taxation that may otherwise result where there is a difference of views between the Contracting States on the amount of the adjustment required to reflect profits computed on an arm's length basis, having due regard to the other provisions of the Convention, including Article 25 (see paragraph 11 of this Commentary).***

6.1 As noted in paragraph 3.1 above, Article 9 applies only for the purposes of allocating profits to the associated enterprises in accordance with the arm's length principle. It does not deal with the computation of taxable income, which is a question of domestic law. For instance, the denial of a deduction in the computation of taxable income under the domestic law of a Contracting State (as discussed in paragraph 3.1) does not in itself result in economic double taxation for the purposes of paragraph 2 and there is thus no obligation on the other Contracting State to make a corresponding adjustment.

56. Renumber paragraph 6.1 of the Commentary on Article 9 as paragraph 6.2.

57. Replace paragraph 15 of the Commentary on Article 9 by the following:

15. ***Australia and New Zealand observe that they do not elect for the optional simplified and streamlined approach as incorporated as an Annex to Chapter IV of the OECD Transfer Pricing Guidelines to be used as a proxy for the arm's length principle and adhere to the last sentence of footnote 48 of that Annex. Australia and New Zealand may recognise such an approach for their political commitment, up to 31 December 2029, with respect to covered jurisdictions listed in the "Statement on the definition of covered jurisdiction for the Inclusive Framework political commitment on Amount B" that have a bilateral tax treaty in effect with Australia or New Zealand, respectively.*** ~~The *United States* observes that there may be reasonable ways to address cases of thin capitalisation other than changing the character of the financial instrument from debt to equity and the character of the payment from interest to a dividend. For instance, in appropriate cases, the character of the instrument (as debt) and the~~

~~character of the payment (as interest) may be unchanged, but the taxing State may defer the deduction for interest paid that otherwise would be allowed in computing the borrower's net income.~~

58. Replace paragraphs 17 and 17.1 of the Commentary on Article 9 by the following:

17. ***Australia, Colombia and New Zealand reserve the right not to apply a correlative adjustment in all cases under paragraph 2 where the simplified and streamlined approach as incorporated as an Annex to Chapter IV of the OECD Transfer Pricing Guidelines was used as the basis for, or as a source of support for the primary adjustment.*** ~~[Deleted]~~

17.1 ***Türkiye reserves the right not to apply a corresponding adjustment in all cases (except for cases where its Inclusive Framework political commitment with respect to covered jurisdictions is applied) under paragraph 2 where the simplified and streamlined approach as incorporated as an Annex to Chapter IV of the OECD Transfer Pricing Guidelines is used as the basis for, or as a source of support for the primary adjustment.*** ~~*Italy* reserves the right to insert in its treaties a provision according to which it will make adjustments under paragraph 2 of Article 9 only in accordance with the procedure provided for by the mutual agreement article of the relevant treaty.~~

59. Replace paragraph 19 of the Commentary on Article 9 by the following:

19. ***Chile, Colombia,*** *Hungary* and *Slovenia* reserve the right to specify in paragraph 2 that a correlative adjustment will be made only if they consider that the primary adjustment is justified.

Commentary on Article 10

60. Replace paragraphs 72 and 73 of the Commentary on Article 10 by the following:

72. The *United States* reserves the right to ***restrict the level of treaty benefits for dividends paid by*** ~~provide that shareholders of certain pass-through entities, such as~~ Regulated Investment Companies and Real Estate Investment Trusts~~, will not be granted the direct dividend investment rate, even if they would qualify based on their percentage ownership~~.

73. ~~*Germany* and~~ *Portugal* reserve***s*** the right to exclude partnerships from the scope of application of subparagraph *a*) of paragraph 2, as provided in the Model Tax Convention before 2017.

61. Replace paragraphs 75 and 76 of the Commentary on Article 10 by the following:

75. ***Costa Rica,*** *Israel*, *Latvia*, *Mexico*, *Portugal* and ***Türkiye*** ~~*Turkey*~~ reserve their positions on the rates of tax in paragraph 2.

76. *Australia*, *Estonia*, *Japan*, ~~and~~ *Latvia* ***and Lithuania*** reserve the right not to include the requirement for the competent authorities to settle by mutual agreement the mode of application of paragraph 2.

62. Add the following new paragraph 77.2 to the Commentary on Article 10:

77.2 Colombia reserves the right to tax, at a uniform rate of not less than 10 per cent, all dividends referred to in paragraph 2.

63. Replace paragraphs 80 to 81.1 of the Commentary on Article 10 by the following:

80. ***Costa Rica,*** *France* and *Mexico* reserve the right to amplify the definition of dividends in paragraph 3 so as to cover all income subjected to the taxation treatment of distributions.

81. *Canada* ~~and *Germany*~~ reserve***s*** the right to amplify the definition of dividends in paragraph 3 so as to cover certain interest payments which are treated as distributions under ***its*** ~~their~~ domestic law.

81.1 ***Germany and*** *Portugal* reserve~~s~~ the right to amplify the definition of dividends in paragraph 3 so as to cover certain payments~~, made under profit participation arrangements,~~ which are treated as distributions under ***their*** ~~its~~ domestic law.

64. Add the following new paragraph 82.3 to the Commentary on Article 10:

82.3 Colombia reserves the right to include in the definition of dividends other payments made by companies or entities which are treated as dividends according to its domestic law.

65. Replace paragraphs 83 to 85 of the Commentary on Article 10 by the following:

83. *Canada* and the *United States* reserve the right to impose their branch tax on the earnings of a company attributable to a permanent establishment situated in these countries. Canada ***and the United States*** also reserve~~s~~ the right to impose this tax on profits attributable to the alienation of immovable property situated in ***either*** Canada ***or the United States, as the case may be, but in the case of Canada only*** by a company carrying on a trade in immovable property.

84. ***Colombia reserves the right to apply its domestic rules on the taxation of dividends distributed from profits that have not been subject to tax at the level of the company, and to impose its tax on the transfer of profits attributable to permanent establishments that have not been subject to tax in Colombia.*** ~~[Deleted]~~

85. ***Türkiye*** ~~*Turkey*~~ reserves the right to tax, in a manner corresponding to that provided by paragraph 2 of the Article, the part of the profits of a company of the other Contracting State that carries on business through a permanent establishment situated in ***Türkiye*** ~~*Turkey*~~ that remains after taxation pursuant to Article 7.

Commentary on Article 11

66. Replace paragraph 38 of the Commentary on Article 11 by the following:

38. *Chile*, ***Costa Rica,*** *Hungary*, *Israel*, *Latvia*, *Mexico*, *Portugal*~~, the Slovak Republic~~ and ***Türkiye*** ~~*Turkey*~~ reserve their positions on the rate provided in paragraph 2.

67. Replace paragraphs 40.1 and 41[2] of the Commentary on Article 11 by the following:

40.1 ***Australia,*** *Estonia*, *Japan*, ~~and *Latvia*~~ ***and Lithuania*** reserve the right not to include the requirement for the competent authorities to settle by mutual agreement the mode of application of paragraph 2.

Paragraph 3

41. ***Costa Rica*** ~~Mexico~~ reserves the right to consider as interest other types of income, such as income derived from financial leasing and factoring contracts.

[2] Paragraph 40 of the Commentary on Article 11 will be replaced in the French version of the OECD Model (to substitute the English term “expatriated entity” for “*entité expatrié”*). No corresponding change will be made in the English version of the OECD Model.

68. Replace paragraphs 43 and 44 of the Commentary on Article 11 by the following:

43. *Canada*, *Chile**, Germany*** and *Norway* reserve the right to delete the reference to debt-claims carrying the right to participate in the debtor's profits.

44. *Chile*, *Greece**, Mexico*** and *Spain* reserve the right to widen the definition of interest by including a reference to their domestic law in line with the definition contained in the 1963 Draft Convention.

69. Add the following new paragraph 45.2 to the Commentary on Article 11:

45.2 Germany reserves the right to include a provision that allows for the taxation of income derived from certain debt-claims which, in the calculation of the debtor's profits, are deductible.

Commentary on Article 12

70. Replace paragraph 27.1 of the Commentary on Article 12 by the following:

27.1 As regards paragraph 10.1, ***Chile and*** *Italy* considers that where contracts grant exclusive distribution rights of a product or a service together with other rights referred to in the definition of royalties, the part of the payment made, under these contracts, in consideration for the exclusive distribution rights of a product or a service may, depending on the circumstances, be covered by the Article.

71. Add the following new paragraph 28.1 to the Commentary on Article 12:

28.1 Colombia does not adhere to the interpretations provided in paragraphs 8.2, 13.1, 14, 14.1, 14.2, 14.4, 15, 16 and 17.3; and considers that some of the payments referred to in those paragraphs fall within the scope of the Article.

72. Delete the following paragraph 30 of the Commentary on Article 12:

30. ***[Deleted]*** ~~The *Slovak Republic* does not adhere to the interpretation in paragraphs 14, 15 and 17. The Slovak Republic holds the view that payments relating to software fall within the scope of the Article where less than the full rights to software are transferred, either if the payments are in consideration for the right to use a copyright on software for commercial exploitation or if they relate to software acquired for the personal or business use of the purchaser when, in this last case, the software is not absolutely standardised but somehow adapted to the purchaser.~~

73. Replace paragraph 31.7 of the Commentary on Article 12 by the following:

31.7 ***Türkiye*** ~~*Turkey*~~ reserves its position on whether and under what circumstances the payments referred to in paragraphs 9.1, 9.3, 10.1 and 10.2 constitute royalties.

74. Replace paragraph 36 of the Commentary on Article 12 by the following:

36. *Australia*, *Chile*, ***Colombia, Costa Rica, Israel,*** *Korea*, *Mexico*, *New Zealand*, *Poland*, *Portugal*, the *Slovak Republic*, *Slovenia* and ***Türkiye*** ~~*Turkey*~~ reserve the right to tax royalties at source.

75. Replace paragraph 40 of the Commentary on Article 12 by the following:

40. *Canada*, *Chile*, ***Colombia, Costa Rica,*** the *Czech Republic*, ***Israel,*** *Latvia* and the *Slovak Republic* reserve the right to add the words "for the use of, or the right to use, industrial, commercial or scientific equipment" to paragraph 2.

76. Replace paragraphs 43 and 44 of the Commentary on Article 12 by the following:

43. ***Chile and Colombia reserve the right to include payments received for the furnishing of technical assistance, technical services and consulting services within the definition of royalties.*** ~~[Deleted]~~

44. ***Chile reserves the right to amend the definition of royalties to include payments for the use of, or the right to use, any other intangible property.*** ~~[Deleted]~~

77. Replace paragraphs 46 and 46.1 of the Commentary on Article 12 by the following:

46. ***Türkiye*** ~~*Turkey*~~ reserves the right to tax at source income from the leasing of industrial, commercial or scientific equipment.

46.1 *Mexico* ~~and the *United States*~~ reserve***s*** the right to treat as a royalty a gain derived from the alienation of a property described in paragraph 2 of the Article, provided that the gain is contingent on the productivity, use or disposition of the property.

78. Replace paragraph 48 of the Commentary on Article 12 by the following:

48. *Australia*, *Belgium*, *Canada*, *Chile*, ***Colombia,*** the *Czech Republic*, *Estonia*, *France*, *Israel*, *Latvia*, *Mexico*, the *Slovak Republic* and *Slovenia* reserve the right, in order to fill what they consider as a gap in the Article, to propose a provision defining the source of royalties by analogy with the provisions of paragraph 5 of Article 11, which deals with the same problem in the case of interest.

79. Delete the following paragraph 50 of the Commentary on Article 12:

50. ***[Deleted]*** ~~The *Slovak Republic* reserves the right to subject payments for the use of, or the right to use, software rights to a tax regime different from that provided for copyrights.~~

Commentary on Article 13

80. Replace paragraphs 39 and 40 of the Commentary on Article 13 by the following:

39. *Chile* reserves the right to tax gains from the alienation of shares or other corporate rights in its companies ***and wishes to clarify that such alienation may be direct or indirect***.

40. ***Türkiye*** ~~*Turkey*~~ reserves the right, in accordance with its legislation, to tax capital gains from the alienation, within its territory, of movable capital and any property other than those mentioned in paragraph 2.

81. Replace paragraphs 42 and 43 of the Commentary on Article 13 by the following:

42. ***Israel reserves its right to tax gains from alienation of options or similar rights to acquire immovable property situated in Israel.*** ~~*Latvia* reserves the right to insert in a special article provisions regarding capital gains relating to activities carried on offshore in a Contracting State in connection with the exploration or exploitation of the sea bed, its subsoil and their natural resources~~.

43. ***Switzerland reserves the right to omit the words "at any time during the 365 days preceding the alienation" in paragraph 4 of its conventions.*** ~~*Denmark*, *Ireland*, *Norway* and the *United Kingdom* reserve the right to insert in a special article provisions regarding capital gains relating to offshore hydrocarbon exploration and exploitation and related activities.~~

82. Delete the following paragraphs 43.1 and 44 of the Commentary on Article 13:

~~43.1 *Greece* reserves the right to insert in a special article provisions regarding capital gains relating to offshore exploration and exploitation and related activities.~~

44. ***[Deleted]***~~*Denmark*, *Norway* and *Sweden* reserve~~***s*** ~~the right to insert special provisions regarding capital gains derived by the air transport consortium Scandinavian Airlines System (SAS).~~

83. Replace paragraph 46 of the Commentary on Article 13 by the following:

46. The *United States* ~~wants to~~ reserve***s*** its right to apply its tax on certain real estate gains under the Foreign Investment in Real Property Tax Act.

84. Replace paragraph 51 of the Commentary on Article 13 by the following:

51. *Belgium*, ***Lithuania***, *Luxembourg*~~,~~ ***and*** the *Netherlands* ~~and *Switzerland*~~ reserve the right not to include paragraph 4 in their conventions.

85. Add the following new paragraphs 52 to 56 to the Commentary on Article 13:

52. Costa Rica reserves the right to tax gains from the alienation of shares or rights in a company that is a resident of Costa Rica.

53. Colombia reserves the right to tax (i) gains from the alienation of shares or other rights in a company that is resident in Colombia and (ii) gains from the alienation of comparable interests or other rights, such as interests in a partnership or trust, in an entity or arrangement that is resident in or located in Colombia.

54. Colombia and Mexico reserve the right to include a provision stating that the Convention does not prevent a Contracting State from applying its domestic legislation regarding gains from the indirect transfer of property located in that Contracting State.

55. Germany reserves the right to include a provision according to which, in the case of an alienation of shares by an individual after a change of residence, the gain is determined on the basis of the value on which any exit taxation was based.

56. Hungary reserves the right to provide expressly that it will apply the provisions of paragraph 4 notwithstanding the provisions of paragraph 2.

Commentary on Article 15

86. Replace paragraph 6.1 of the Commentary on Article 15 by the following:

6.1 The application of the second condition in the case of fiscally transparent partnerships presents difficulties since such partnerships cannot qualify as a resident of a Contracting State under Article 4 (see paragraph ***8.13*** ~~8.8~~ of the Commentary on Article 4). While it is clear that such a partnership could qualify as an "employer" (especially under the domestic law definitions of the term in some countries, e.g. where an employer is defined as a person liable for a wage tax), the application of the condition at the level of the partnership regardless of the situation of the partners would therefore render the condition totally meaningless.

87. Delete the following paragraph 15 of the Commentary on Article 15:

15. ***[Deleted]***~~*Denmark*, *Norway* and *Sweden* reserve~~***s*** ~~the right to insert special provisions regarding remuneration derived in respect of an employment exercised aboard an aircraft operated in international traffic by the air transport consortium Scandinavian Airlines System (SAS).~~

88. Delete the following paragraphs 17 and 18 of the Commentary on Article 15:

17. ***[Deleted]****~~Ireland~~*, *~~Norway~~* and the *~~United Kingdom~~* ~~reserve the right to insert in a special article provisions regarding income derived from employment relating to offshore hydrocarbon exploration and exploitation and related activities.~~

18. ***[Deleted]****~~Latvia~~ reserves the right to insert in a special article provisions regarding income derived from dependent personal services relating to activities carried on offshore in a Contracting State in connection with the exploration or exploitation of the sea bed, its subsoil and their natural resources.*

89. Replace paragraph 22 of the Commentary on Article 15 by the following:

22. ***Türkiye*** ~~*Turkey*~~, with regard to paragraph 3, reserves the right to tax exclusively the remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise resident in ***Türkiye*** ~~*Turkey*~~.

Commentary on Article 16

90. Replace paragraph 4 of the Commentary on Article 16 by the following:

4. ***Colombia*****,** *Estonia****, Latvia*** ***and Lithuania*** reserve the right to tax under this Article any remuneration of a member of a board of directors or any other similar organ of a resident company.

91. Replace paragraph 6 of the Commentary on Article 16 by the following:

6. *Belgium* reserves the right to state that remuneration that a person dealt with in Article 16 receives in respect of daily activities ~~as well as remuneration that a partner of a company, other than a company with share capital, receives in respect of his personal activities for the company~~ shall be taxable in accordance with the provisions of Article 15.

92. Add the following new paragraphs 8 and 9 to the Commentary on Article 16:

8. Mexico reserves the right to tax under this Article any remuneration of a sole administrator and any other persons who perform supervisory activities with respect to the management of a company resident in Mexico.

9. Hungary and Portugal reserve the right to include members of organs similar to a board of directors, or members of a supervisory board, within the scope of the Article. Hungary further reserves the right to provide expressly that the remuneration of members of the board of directors or of a similar organ paid in respect of other functions within the company does not fall within the scope of the Article.

Commentary on Article 17

93. Replace paragraph 11.3 of the Commentary on Article 17 by the following:

11.3 As a general rule it should be noted, however, that, regardless of Article ***17*** ~~7~~, the Convention would not prevent the application of general anti- avoidance rules of the domestic law of the State of source which would allow that State to tax either the entertainer/sportsperson or the star-company in abusive cases, as is recognised in paragraphs 76 to 79 of the Commentary on Article 1. Also, paragraph 9 of Article 29 will prevent the benefits of provisions such as those of Articles 7 and 15 from being granted in these abusive cases.

94. Replace paragraphs 15 and 15.1 of the Commentary on Article 17 by the following:

15. With respect to the examples given in paragraph 3, ***France and Türkiye*** ~~*Turkey*~~ consider~~s~~ that the activity of a model or mannequin performing as such (e.g. a model presenting clothes during a fashion show or photo session) falls within the scope of this Article regarding the performance and appearance nature of this activity.

15.1 ***For the interpretation of Article 17,*** *France* ***refers to the wording*** ~~considers that the statement in the first sentence~~ of paragraph 13 ***as it read until 21 September*** ~~, which is at variance with the wording prior to the~~ 1995~~. revision, is incorrect, because it does not conform with reality to characterise a priori as business the public activities at issue — and in particular cultural activities — that do not ordinarily have a profit motive. In addition, this statement is not consistent with the second sentence of the same paragraph or with paragraph 14, which explicitly provides the right to apply a special exemption regime to the public activities in question: if applied generally to business activities, such a regime would be unjustified, because it would then be contrary to fiscal neutrality and tax equality.~~

95. Replace paragraph 19 of the Commentary on Article 17 by the following:

19. ***Chile and Colombia reserve the right to include income derived by such resident from any personal activity exercised in the other Contracting State related to his reputation as an entertainer or as a sportsperson.*** ~~[Deleted]~~

Commentary on Article 18

96. Add the following new paragraphs 72 and 73 to the Commentary on Article 18:

72. Chile reserves the right to restrict the scope of this Article to pensions only.

73. Hungary observes, with respect to paragraph 18, that the method of determining pension payments may also be of paramount importance when deciding on taxation rules for cross-border pensions.

Commentary on Article 19

97. Replace paragraph 5.5 of the Commentary on Article 19 by the following:

5.5 Where the transfer is made in the opposite direction and the pension rights are transferred from a private scheme to a public scheme, some States tax the whole pension payments under Article 19. Other States, however, apportion the pension payments based on the relative source of the pension entitlement so that part is taxed under Article 18 and another part under Article ***19*** ~~18~~. In so doing, some States consider that if one source has provided by far the principal amount of the pension, then the pension should be treated as having been paid exclusively from that source. Nevertheless, it is recognised that apportionment often raises significant administrative difficulties.

98. Replace paragraph 8 of the Commentary on Article 19 by the following:

8. ***Germany reserves the right to include salaries, wages and other remuneration paid by a legal entity under public law in respect of services rendered to that legal entity under public law within the scope of Article 19.*** *Germany* ***also*** reserves the right to include a provision that covers services rendered to special private law institutions serving public purposes and financed from public budgets, e.g. the Goethe Institute or the German Academic Exchange Service, as well as remuneration paid to a specialist or volunteer seconded to the other Contracting State under a development assistance program, as government services under Article 19.

99. Delete the following paragraph 9 of the Commentary on Article 19:

9. ***[Deleted]*** ~~The *United States* reserves the right to modify the text to indicate that its application is not limited by Article 1.~~

100. Replace paragraph 11 of the Commentary on Article 19 by the following:

11. *France* reserves the right to specify in its conventions that salaries, wages, and other similar remuneration paid by a Contracting State or a political subdivision or ***territorial*** ~~local~~ authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State if the individual is a national of both Contracting States. Also, France reserves its position concerning subdivision *b*)(*ii*) of paragraph 1 in view of the difficulties raised by this provision.

101. Replace paragraph 13 of the Commentary on Article 19 by the following:

13. *France* considers that ~~the scope of the application of Article 19 should cover~~:

- remuneration paid by public ***law*** ~~legal~~ entities of the State***,*** ~~or~~ a political subdivision or ***territorial*** ~~local~~ authority thereof ***should be assimilated to remuneration paid by the State, a political subdivision and a territorial authority, and reserves the right to refer to them in its conventions***~~, because the identity of the payer is less significant than the public nature of the income~~;
- ***the scope of application of article 19 should cover the*** public remuneration of entertainers and sportspersons in conformity with the wording of the Model prior to 1995 (without applying the criterion of ***industrial or commercial*** ~~business~~ activity, seldom relevant in these cases), as long as Article 17 does not contain a provision along the lines suggested in paragraph 14 of the Commentary on Article 17.

Commentary on Article 20

102. Replace paragraph 5 of the Commentary on Article 20 by the following:

5. *Estonia,* ~~and~~ *Latvia* ***and Lithuania*** reserve the right to amend the Article to refer to any apprentice or trainee.

103. Add the following new paragraph 8 to the Commentary on Article 20:

8. Costa Rica reserves the right to add an article that addresses the situation of teachers, professors and researchers, subject to various conditions and to make a corresponding modification to paragraph 1 of Article 15.

Commentary on Article 21

104. Replace paragraph 13 of the Commentary on Article 21 by the following:

13. *Australia*, *Canada*, *Chile*, ***Colombia, Costa Rica,*** *Mexico*, *New Zealand* and the *Slovak Republic* reserve their positions on this Article and would wish to maintain the right to tax income arising from sources in their own country.

105. Replace paragraph 17 of the Commentary on Article 21 by the following:

17. The *United States* reserves the right to provide for exemption in both States of child support ***and certain alimony*** payments.

106. Add the following new paragraph 19 to the Commentary on Article 21:

19. Chile reserves its right to tax guarantee fees between related parties as other income under this article.

Commentary on Article 22

107. Replace paragraph 10 of the Commentary on Article 22 by the following:

10. *New Zealand*, *Portugal* and ***Türkiye*** ~~*Turkey*~~ reserve their positions on this Article if and when they impose taxes on capital.

108. Delete the following paragraph 12 of the Commentary on Article 22:

12. ***[Deleted]***~~*Denmark*, *Norway* and *Sweden* reserve**s** the right to insert special provisions regarding capital represented by aircraft operated in international traffic, when owned by the air transport consortium Scandinavian Airlines System (SAS).~~

109. Add the following new paragraph 15 to the Commentary on Article 22:

15. Colombia reserves the right to tax capital situated in its territory other than the property mentioned in this Article.

Commentary on Articles 23 A and 23 B

110. Delete the following paragraph 81 of the Commentary on Articles 23 A and 23 B:

81. ***[Deleted]*** ~~*Switzerland* reserves its right not to apply the rules laid down in paragraph 32.3 in cases where a conflict of qualification results from a modification to the internal law of the State of source subsequent to the conclusion of a Convention.~~

111. Replace paragraph 85 of the Commentary on Articles 23 A and 23 B by the following:

85. The *United States* reserves its right not to include in paragraph 1 the parenthetical phrase "(except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State or because the capital is also capital owned by a resident of that State)". ~~Furthermore, the United States wishes to express the opinion that paragraph 1, which has been added to address so-called "economic double taxation" is inconsistent with paragraphs 1 and 2 of the Commentary, which explain that Article 23 deals only with so called "juridical double taxation".~~

Commentary on Article 24

112. Replace paragraph 20 of the Commentary on Article 24 by the following:

20. Example 1: Under the domestic income tax law of State A, companies incorporated in that State or having their place of effective management in that State are residents thereof. Under the domestic income tax law of State B, only companies that have their place of effective management in that State are residents thereof. The State A-State B tax convention ***includes the alternative version of paragraph 3 of Article 4 in paragraph 24.5 of the Commentary on Article 4 but*** is ***otherwise*** identical to this Model Tax Convention. The domestic tax law of State A provides that dividends paid to a company incorporated in that country by another company incorporated in that country are exempt from tax. Since a company incorporated in State B that would have its place

of effective management in State A would be a resident of State A for purposes of the State A-State B Convention, the fact that dividends paid to such a company by a company incorporated in State A would not be eligible for this exemption, even though the recipient company is in the same circumstances as a company incorporated in State A with respect to its residence, would constitute a breach of paragraph 1 absent other relevant different circumstances.

113. Replace paragraph 75 of the Commentary on Article 24 with the following:

75. Also, paragraph 4 does not prohibit additional information requirements with respect to payments made to non-residents since these requirements***, including the reversal of the burden of proof,*** are intended to ensure similar levels of compliance and verification in the case of payments to residents and non-residents.

114. Replace paragraphs 89 to 92 of the Commentary on Article 24 by the following:

89. *Chile****, Colombia, Israel*** and the *United Kingdom* reserve their position on the second sentence of paragraph 1.

Paragraph 2

90. *Chile*, *Estonia*, ***Israel,*** *Japan*, *Switzerland* and the *United States* reserve the right not to insert paragraph 2 in their conventions.

Paragraph 3

90.1 In view of its particular taxation system, *Chile* retains its freedom of action with regard to the provisions in the Convention relating to the rate and form of ***remittance*** ~~distribution~~ of profits by permanent establishments.

90.2 Colombia reserves the right to impose its tax on the transfer of profits attributable to permanent establishments.

~~***Paragraph 4***~~

91. ***[Deleted]*** ~~*France* accepts the provisions of paragraph 4 but wishes to reserve the possibility of applying the provisions in its domestic laws relative to the limitation to the deduction of interest paid by a French company to an associated or related company.~~

Paragraph 6

92. *Chile*, ***Colombia,*** *Greece*, ***Israel*** and the *United Kingdom* reserve the right to restrict the application of the Article to the taxes covered by the Convention.

Commentary on Article 25

115. Add the following new paragraph 12.1 to the Commentary on Article 25:

12.1 When considering a request from a taxpayer for a case concerning the profits of associated enterprises under Article 9 to be considered in the mutual agreement procedure, or when considering possible resolution of such a case (including a potential resolution in an arbitration process under paragraph 5 of Article 25), both States must have regard to paragraphs 6 and 72, and should also consider paragraph 79, of the Annex to Chapter IV of the Transfer Pricing Guidelines adopted on 16 February 2024[1] and follow the directions within those paragraphs where relevant to the issue being considered under the mutual agreement procedure. A taxpayer should similarly have regard to the aforementioned paragraphs of the Transfer Pricing Guidelines and consider them when making any submission in support of a request for a mutual agreement procedure in such a case.

1 See OECD (2025), Consolidated Report on Amount B: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/182b47ad-en for the text of the Annex, which had not yet been incorporated in a published version of the Transfer Pricing Guidelines as of the date of publication of the 2025 Model Convention.

116. Replace paragraph 14 of the Commentary on Article 25 by the following:

14. It should be noted that the mutual agreement procedure, unlike the disputed claims procedure under domestic law, can be set in motion by a taxpayer without waiting until the taxation considered by him to be "not in accordance with the Convention" has been charged against or notified to him. To be able to set the procedure in motion, he must, and it is sufficient if he does, establish that the "actions of one or both of the Contracting States" will result in such taxation, and that this taxation appears as a risk which is not merely possible but probable. Such actions mean all acts or decisions, whether of a legislative or a regulatory nature, and whether of general or individual application, having as their direct and necessary consequence the charging of tax against the complainant contrary to the provisions of the Convention. Thus, for example, if a change to a Contracting State's tax law would result in a person deriving a particular type of income being subjected to taxation not in accordance with the Convention, that person could set the mutual agreement procedure in motion as soon as the law has been amended and that person has derived the relevant income or it becomes probable that the person will derive that income. Other examples include filing a return in a self assessment system or the active examination of a specific taxpayer reporting position in the course of an audit, to the extent that either event creates the probability of taxation not in accordance with the Convention (e.g. where the self assessment reporting position the taxpayer is required to take under a Contracting State's domestic law would, if proposed by that State as an assessment in a non-self assessment regime, give rise to the probability of taxation not in accordance with the Convention, or where circumstances such as a Contracting State's published positions or its audit practice create a significant likelihood that the active examination of a specific reporting position such as the taxpayer's will lead to proposed assessments that would give rise to the probability of taxation not in accordance with the Convention). Another example might be a case where a Contracting State's transfer pricing law requires a taxpayer to report taxable income in an amount greater than would result from the actual prices used by the taxpayer in its transactions with a related party, in order to comply with the arm's length principle, and where there is substantial doubt whether the taxpayer's related party will be able to obtain a corresponding adjustment in the other Contracting State in the absence of a mutual agreement procedure. Such actions may also be understood to include the bona fide taxpayer-initiated adjustments which are authorised under the domestic laws of some countries and which permit a taxpayer, under appropriate circumstances, to amend a previously-filed tax return in order to report a price in a controlled transaction, or an attribution of profits to a permanent establishment, that is, in the taxpayer's opinion, in accordance with the arm's length principle (see paragraph ***6.2*** ~~6.1~~ of the Commentary on Article 9 and paragraph 59.1 of the Commentary on Article 7). As indicated by the opening words of paragraph 1, whether or not the actions of one or both of the Contracting States will result in taxation not in accordance with the Convention must be determined from the perspective of the taxpayer. Whilst the taxpayer's belief that there will be such taxation must be reasonable and must be based on facts that can be established, the tax authorities should not refuse to consider a request under paragraph 1 merely because they consider that it has not been proven (for example to domestic law standards of proof on the "balance of probabilities") that such taxation will occur.

117. Replace paragraph 38 of the Commentary on Article 25 by the following:

38. In seeking a mutual agreement, the competent authorities must first, of course, determine their position in the light of the rules of their respective taxation laws and of the provisions of the Convention, which are as binding on them as much as they are on the taxpayer. Should the strict application of such rules or provisions preclude any agreement, it may reasonably be held that the competent authorities, as in the case of international arbitration, can, subsidiarily, have regard to considerations of equity in order to give the taxpayer satisfaction. ***When considering a request from a taxpayer for a case concerning the profits of associated enterprises under Article 9 to be considered in the mutual agreement procedure, or when considering possible resolution of such a case (including a potential resolution in an arbitration process under paragraph 5 of Article 25), both States must have regard to paragraphs 6 and 72, and should also consider paragraph 79, of the Annex to Chapter IV of the Transfer Pricing Guidelines adopted on 16 February 2024[1] and follow the directions within those paragraphs where relevant to the issue being considered under the mutual agreement procedure.***

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1 See OECD (2025), Consolidated Report on Amount B: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/182b47ad-en for the text of the Annex, which had not yet been incorporated in a published version of the Transfer Pricing Guidelines as of the date of publication of the 2025 Model Convention.

118. Replace paragraph 63 of the Commentary on Article 25 by the following:

63. This paragraph provides that, in a case where the competent authorities are unable to reach an agreement under paragraph 2 within two years, the unresolved issues will, at the written request of the person who presented the case, be solved through an arbitration process. This process is not dependent on a prior authorisation by the competent authorities: once the requisite procedural requirements have been met, the unresolved issues that prevent the conclusion of a mutual agreement must be submitted to arbitration. ***When considering possible resolution of unresolved issues in a mutual agreement procedure case in arbitration, there must be regard to paragraphs 6 and 72 of the Annex to Chapter IV of the Transfer Pricing Guidelines adopted on 16 February 2024[1], and the directions in those paragraphs must be followed where relevant to these unresolved issues (including, for the avoidance of doubt, when proposing potential options to resolve the unresolved issues to an arbitration panel, in the conduct of any arbitration procedure and, where relevant, when agreeing the sources of authority that shall be considered by an arbitration panel to resolve the unresolved issues).***

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1 See OECD (2025), Consolidated Report on Amount B: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/182b47ad-en for the text of the Annex, which had not yet been incorporated in a published version of the Transfer Pricing Guidelines as of the date of publication of the 2025 Model Convention.

119. Replace paragraph 65.1 of the Commentary on Article 25 by the following:

65.1 Paragraph 5 includes the essential conditions of the arbitration process. The last sentence of the paragraph expressly requires the competent authorities to agree on the mode of application of that process and it is therefore expected that most of the procedural aspects of the process will be determined in an agreement between the competent authorities (see paragraph 85 below and the sample “mutual agreement on arbitration” included in the Annex). Some States, however, may prefer to incorporate into the Convention itself certain of these procedural aspects. Whilst this increases the complexity of the arbitration provision, a State may consider that the importance of

some of these aspects (such as the rules concerning the appointment of the arbitrators and the confidentiality of information communicated to them) is such that these issues should be addressed in the Convention itself. Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "Multilateral Instrument"), which ***entered into force on 1 July 2018*** ~~was opened for signature on 31 December 2016~~, provides a good example of a convention that includes many of the procedural aspects of the arbitration process.

120. Replace paragraphs 88 to 94 of the Commentary on Article 25 and the heading preceding them by the following:

Paragraph 6 ~~**III. Interaction of the mutual agreement procedure with the dispute resolution mechanism provided by the General Agreement on Trade in Services**~~

88. ***Paragraph 6 provides a rule that clarifies the relationship between the Convention and the General Agreement on Trade in Services (GATS).*** The application of the ~~General Agreement on Trade in Services (~~GATS~~)~~, which entered into force on 1 January 1995 and which all member countries have signed, ***has continued to*** raise~~s~~ particular concerns in relation to the mutual agreement procedure.

89. Paragraph 3 of Article XXII of the GATS provides that a dispute ***between World Trade Organization (WTO) Members*** as to the application of Article XVII of the Agreement, a national treatment rule, may not be dealt with under the dispute resolution mechanisms provided by Articles XXII and XXIII of the Agreement if the disputed measure "falls within the scope of an international agreement between them[1] relating to the avoidance of double taxation" (e.g. a tax convention). If there is disagreement over whether a measure "falls within the scope" of such an international agreement, paragraph 3 goes on to provide that either ***WTO Member*** ~~State~~ involved in the dispute may bring the matter to the Council on Trade in Services, which shall refer the dispute for binding arbitration. A footnote to paragraph 3, however, contains the important exception that if the dispute relates to an international agreement "which exist[s] at the time of the entry into force" of the Agreement, the matter may not be brought to the Council on Trade in Services unless both ***WTO Members*** ~~States~~ agree. ***The footnote implicitly provides a role to taxation authorities in determining whether a taxation measure in dispute falls within the scope of a given tax treaty and, thus, whether or not the matter is properly addressed by the Council on Trade in Services.***

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1 ***The European Union (EU) is a WTO Member. Member States of the EU are also themselves WTO Members. Under Article 3(1)(e) of the Treaty on the Functioning of the European Union, the EU common commercial policy is an exclusive competence of the European Union. The EU, represented by the European Commission, is therefore the only proper respondent or claimant with respect to any WTO dispute settlement procedure. The EU does not, however, enter into bilateral tax treaties, which remain the competence of individual EU Member States. In this context, in accordance with principles of customary international law, the term "Member" as used in the GATS is interpreted to permit Article XXII to have its intended effect with respect to bilateral tax treaties to which EU Member States are parties.***

90. That paragraph ***and the footnote thereto*** raise~~s~~ two particular ***issues*** ~~problems~~ with respect to tax treaties. ***To address these issues, an alternative provision was included in the Commentary on Article 25 in 1995 and, in 2025, that alternative provision was deleted when a new paragraph 6 was added to Article 25.***

91. First***, as a consequence of its reference to "agreements … which exist on the date of entry into force of the WTO Agreement"***, the footnote ***to paragraph 3 of Article XXII of the GATS*** ~~thereto~~ provides for the different treatment of tax conventions ***that depends on whether those tax conventions were*** concluded before ***or*** ~~and~~ after the entry into force of the ~~GATS~~***WTO Agreement. The requirement that both parties consent to bring a matter before the Council on Trade in Services is provided only with respect to tax conventions concluded before 1 January 1995. This distinction also creates uncertainty as to whether the process provided by the footnote applies with respect to*** ~~something that may be considered inappropriate, in particular where~~ a ***tax*** convention in existence at the time of the entry into force of the ~~GATS~~***WTO Agreement that*** is subsequently renegotiated***,*** or where a***n amending*** protocol is concluded after that time in relation to a convention existing at that time. ***To the extent that the treatment provided by the footnote is desirable, there does not appear to be a basis from a policy point of view to justify a distinction between tax conventions concluded before or after the entry into force of the WTO Agreement for purposes of its application. Paragraph 6 of Article 25 eliminates both this distinction between tax conventions concluded before or after 1 January 1995 and the uncertainty described above with respect to conventions in existence at that time but subsequently amended or renegotiated. It ensures that the condition found in the footnote to paragraph 3 of Article XXII of the GATS is applicable to all tax conventions entered into by a country that include paragraph 6.***

92. Second, the phrase "falls within the scope" is inherently ambiguous, as indicated by the inclusion in paragraph 3 of Article XXII of the GATS of both an arbitration procedure and a clause exempting pre-existing conventions from its application in order to deal with disagreements related to its meaning. Whilst it seems clear that a country could not argue in good faith[1] that a measure relating to a tax to which no provision of a tax convention applied fell within the scope of that convention, it is unclear whether the phrase covers all measures that relate to taxes that are covered by all or only some provisions of the tax convention.

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[1] The obligation of applying and interpreting treaties in good faith is expressly recognised in Articles 26 and 31 of the *Vienna Convention on the Law of Treaties*; thus, the exception in paragraph 3 of Article XXII of the GATS applies only to good faith disputes.

92.1 To clarify when a taxation measure "falls within the scope" of the Convention and to provide certainty of application, subparagraph a) of paragraph 6 provides that a measure "falls within the scope of this Convention" if it is a measure to which the provisions of Article 24 apply. As provided in paragraph 6 of Article 24, the scope of Article 24 extends to taxes of every kind and description levied by, or on behalf of, the State, its political subdivisions or local authorities. A national treatment dispute between Contracting States involving any tax matter will thus only be brought to the Council for Trade in Services if both Contracting States agree (either that the measure does not fall within the scope of the Convention or that the dispute should be resolved by the Council for Trade in Services). This effectively ensures that such disputes will be resolved through the Article 25 mutual agreement procedure, applying the non-discrimination provisions of Article 24, absent the consent of both Contracting States to bring the dispute to the Council for Trade in Services (which would approach the dispute from the perspective of the national treatment obligations in Article XVII of the GATS). This approach reflects the rationale underlying paragraph 6 that where the non-discrimination discipline provided by Article 24 applies to a "measure", that discipline should not be displaced by the non-discrimination obligations provided under Article XVII of the GATS.

92.2 Some Contracting States may prefer a more limited definition of "falls within the scope of this Convention" that refers to a covered tax as defined in Article 2 of the Convention (that is, taxes on income and on capital). Such a definition would protect the application of the GATS Article XVII national treatment obligations to taxes that are not Article 2 "covered taxes" (in particular, indirect taxes such as value added taxes and goods and services taxes), as one of the Contracting States could bring a matter related to such taxes to the Council for Trade in Services without the other Contracting State's agreement. Such a more limited definition could, however, result in a tax measure being disputed both through the MAP (where the measure was within the scope of Article 24 but not Article 2) and before the Council for Trade in Services.

92.3 Where Contracting States have agreed to restrict the application of Article 24 to "covered taxes" as defined in Article 2, subparagraph a) confirms that taxes that are not Article 2 "covered taxes" (and any requirements connected therewith[1]) do not fall within the scope of the Convention for purposes of paragraph 6. Where the scope of Article 24 has been so restricted, taxes that are not Article 2 "covered taxes" (and any requirements connected therewith) would not be subject to the non-discrimination discipline of Article 24 but would be subject to the GATS Article XVII national treatment obligations.

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1 *By their terms, paragraphs 1, 2 and 5 of Article 24 apply to any taxation "or any requirement connected therewith".*

92.4 Where Contracting States have bilaterally agreed not to include Article 24 in their Convention, no tax treaty non-discrimination discipline would apply to tax measures as between the Contracting States and there would be no potential overlap between Article 24 and the GATS Article XVII national treatment obligations. As a consequence, paragraph 6 would not be necessary and could be omitted.

92.5 Contracting States may also wish to agree bilaterally a definition of the term "measure", consistent with the definition included in Article XXVIII(a) of the GATS[1], to provide greater clarity and certainty. The following is an example of such a definition:

> *For the purposes of [paragraph 6 of Article 25], the term "measure" means any law, regulation, rule, procedure, decision, administrative action or any other similar provision or action.*

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1 *Article XXVIII(a) of the GATS provides that, for the purpose of the GATS "'measure' means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form …".*

92.6 Notwithstanding the definition in subparagraph a) of paragraph 6, disputes may arise in specific cases as to whether a measure "falls within the scope of [the] Convention". Under subparagraph b) of paragraph 6, such disputes shall be resolved by the competent authorities pursuant to paragraph 3 of Article 25, or, failing agreement under that procedure, any other procedure agreed to by both Contracting States, thereby confirming the role of the taxation authorities of the Contracting States in determining whether a measure falls within the scope of the Convention. The reference to "any other procedure" in subparagraph b) is intended to confirm the competent authorities' flexibility to agree bilaterally some other process outside paragraph 3 of Article 25 to resolve the dispute. This reference would, for example, permit the competent authorities to agree to bring the dispute before the Council for Trade in Services where they are themselves otherwise unable to

agree on a resolution, or to agree to implement an arbitration process to resolve the dispute (see paragraph 69 above).

93. ***Some Contracting States may have concerns about the timely resolution of disputes as to whether a measure "falls within the scope" of the Convention, also considering that the arbitration provision in paragraph 5 of the Article would not apply to a paragraph 3 mutual agreement procedure case. To address these concerns, Contracting States may wish to provide expressly in their Convention for a procedure that shall apply where the competent authorities are not able to reach agreement within a bilaterally agreed time period (for example, to bring the matter to the Council on Trade in Services if there is no agreement in the mutual agreement procedure within a bilaterally agreed time period).***

~~93. Contracting States may wish to avoid these difficulties by extending bilaterally the application of the footnote to paragraph 3 of Article XXII of the GATS to conventions concluded after the entry into force of the GATS. Such a bilateral extension, which would supplement — but not violate in any way — the Contracting States' obligations under the GATS, could be incorporated in the convention by the addition of the following provision:~~

> ~~For purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.~~

94. Problems similar to those discussed above may arise in relation with other bilateral or multilateral agreements related to trade or investment. Contracting States are free, in the course of their bilateral negotiations, to amend ***paragraph 6*** ~~the provision suggested above~~ so as to ensure that issues relating to the taxes covered by their tax convention are dealt with through the mutual agreement procedure rather than through the dispute settlement mechanism of such agreements. ***In considering any amended version of paragraph 6, Contracting States should keep in mind the formulation of the tax provisions, if any, already included in the relevant bilateral or multilateral trade and investment agreement or agreements, and the consequences of such a provision with respect to the non-discrimination obligations provided in those other agreements, as well as the extent to which the particular trade or investment agreement already provides satisfactory coordination, both from a substantive and a procedural point of view, between the agreement and any tax convention or conventions in force between the parties to that trade or investment agreement.***

121. Replace paragraphs 97 to 100 of the Commentary on Article 25 by the following:

97. ***Colombia,*** *Denmark*, *Israel*, *Korea*, *Mexico****, the Slovak Republic*** and ***Türkiye*** ~~*Turkey*~~ reserve the right not to include paragraph 5 in their conventions.

98. ~~*Mexico* and~~ *Poland* reserve***s its*** ~~their~~ position~~s~~ on the second sentence of paragraph 2. ***Poland*** ~~These countries~~ consider***s*** that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to time limits prescribed by their domestic laws.

99. With respect to paragraph 2, ***Türkiye*** ~~*Turkey*~~, for the purpose of regulating tax refund claims, reserves the right to require its taxpayers to make an application to the competent tax office within one year to claim the tax refund resulting from a mutual agreement reached, beginning from the notification date of the result of such agreement.

100. *Canada* ***and Chile*** reserve~~s~~ the right to include a provision similar to those referred to in paragraph 62 of the Commentary on Article 7 and paragraph 10 of the Commentary on Article 9, which effectively sets a time limit within which a Contracting State can make an adjustment to the income of an enterprise. ***Chile additionally reserves the right not to include the second sentence of paragraph 2 unless such time limits for an adjustment to the income of an enterprise are agreed in bilateral negotiations.***

122. Replace paragraph 102 of the Commentary on Article 25 by the following:

102. Due to policy and administrative considerations, *Chile* ~~and *Hungary*~~ reserve***s*** the right not to include paragraph 5 in ***its*** ~~their~~ conventions.

Commentary on Article 26

123. Replace paragraphs 11 and 12 of the Commentary on Article 26 by the following:

11. Reciprocal assistance between tax administrations is feasible only if each administration is assured that the other administration will treat with proper confidence the information which it will receive in the course of their co-operation. The confidentiality rules of paragraph 2 apply to all types of information received under paragraph 1, including both information provided in a request and information transmitted in response to a request. Hence, the confidentiality rules cover, for instance, competent authority letters, including the letter requesting information. At the same time, it is understood that the requested State can disclose the minimum information contained in a competent authority letter (but not the letter itself) necessary for the requested State to be able to obtain or provide the requested information to the requesting State, without frustrating the efforts of the requesting State. If, however, court proceedings or the like under the domestic laws of the requested State necessitate the disclosure of the competent authority letter itself, the competent authority of the requested State may disclose such a letter unless the requesting State otherwise specifies. ***The confidentiality rules also apply to reflective non-taxpayer specific information (i.e. information about or generated on the basis of the information that was received by a Contracting State through the exchange of information such as, statistical data, as well as non-taxpayer specific notes, summaries, and memoranda incorporating exchanged information). However, such reflective non-taxpayer specific information may be disclosed to third parties if the information does not, directly or indirectly, reveal the identity of one or more taxpayers and the sending and receiving States have consulted with each other and it is concluded that the disclosure and use of such information would not impair tax administration in either the sending or the receiving State. It is understood that there should be a written record of this consultation and its outcome. Consistent with established practice, this consultation and conclusion (and the written record of such consultation and conclusion) can also be achieved in the multilateral context, where the disclosure and use are foreseen in a multilateral process, such as a peer review methodology.*** The maintenance of secrecy in the receiving Contracting State is a matter of domestic laws. It is therefore provided in paragraph 2 that information communicated under the provisions of the Convention shall be treated as secret in the receiving State in the same manner as information obtained under the domestic laws of that State. Sanctions for the violation of such secrecy in that State will be governed by the administrative and penal laws of that State. In situations in which the requested State determines that the requesting State does not comply with its duties regarding the confidentiality of the information exchanged under this Article, the requested State may suspend assistance under this Article until such time as proper assurance is given by the requesting State that those duties will indeed be respected. If necessary, the competent authorities may enter into

specific arrangements or memoranda of understanding regarding the confidentiality of the information exchanged under this Article.

12. Subject to paragraphs 12.3 and 12.4, the information obtained may be disclosed only to persons and authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes with respect to which information may be exchanged according to the first sentence of paragraph 1, or the oversight of the above. This means that the information ***(whether obtained with respect to one or multiple taxpayers)*** may also be communicated to the taxpayer~~,~~ ***(or*** his proxy***) to the extent that such information has a bearing on the outcome of a tax matter concerning such taxpayer,*** or to the witnesses. ***As an example, in the context of an exchange of information that contains information with respect to multiple taxpayers, the principle set out in the preceding sentence means that a taxpayer is a "person concerned" only to the extent that the information has a bearing on the outcome of a tax matter concerning that particular taxpayer.*** ~~This also means that i~~***I***nformation can ***also*** be disclosed to governmental or judicial authorities charged with deciding whether such information should be released to the taxpayer, his proxy or to the witnesses. The information received by a Contracting State may be used by such persons or authorities only for the purposes mentioned in paragraph 2. ***Such use is not limited to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1 in respect of the person or persons for which the information was received, but also includes the use for such purposes in respect of any other person. The receiving Contracting State is not required to inform or to request authorisation from the sending Contracting State regarding such use. Except as provided in paragraph 11,*** ~~Furthermore,~~ information covered by paragraph 1, whether taxpayer-specific or not, should not be disclosed to persons or authorities not mentioned in paragraph 2, regardless of domestic information disclosure laws such as freedom of information or other legislation that allows greater access to governmental documents.

Commentary on Article 29

124. Replace paragraph 186 of the Commentary on Article 29 by the following:

186. The following example illustrates the application of this alternative provision. Assume that an individual who is a resident of State R and who owns shares in a company resident of State S assigns the right to receive dividends declared by that company to another company resident of State R which owns more than ***25*** ~~10~~ per cent of the capital of the paying company for the principal purpose of obtaining the reduced rate of source taxation provided for in subparagraph *a*) of paragraph 2 of Article 10. In such a case, if it is determined that the benefit of that subparagraph should be denied pursuant to paragraph 9, the alternative provision would allow the competent authority of State S to grant the benefit of the reduced rate provided for in subparagraph *b*) of paragraph 2 of Article 10 if that competent authority determined that such benefit would have been granted in the absence of the assignment to another company of the right to receive dividends.

125. Replace paragraph 189 of the Commentary on Article 29 by the following:

189. *Belgium*, ***France,*** *Hungary*, *Luxembourg* and *Switzerland* reserve the right not to include paragraph 8 in their conventions.

126. Replace paragraph 191 of the Commentary on Article 29 by the following:

191. ***Chile, Mexico and*** ~~T~~***t***he *United States* reserves its right to expand the scope of paragraph 8 to include income treated as attributable to a permanent establishment in the State of source

and to permanent establishments in States that do not have a tax convention with the State of source irrespective of the rate of tax, unless the residence State includes the income in its base.

127. Add the following new paragraph 192 to the Commentary on Article 29:

192. Germany reserves the right to include a provision expressly confirming that the convention shall not be construed so as to prevent a Contracting State from applying the provisions of its domestic law that aim to prevent tax evasion or tax avoidance.

D. Changes to the Positions of Non-Member Economies

Introduction

128. Replace paragraph 4 of the Introduction to the Non-OECD Economies' Positions on the OECD Model Tax Convention by the following:

> 4. This section reflects the following non-OECD economies' positions on the Model Tax Convention:

Albania	Argentina	Armenia
Azerbaijan	Belarus	Brazil
Bulgaria	~~Colombia~~	~~Costa Rica~~
Croatia	Democratic Republic of the Congo	Gabon
Georgia	Hong Kong, China	India
Indonesia	Ivory Coast	Kazakhstan
~~Lithuania~~	Malaysia	Morocco
Nigeria	People's Republic of China	***Peru***
Philippines	Romania	Russia
Serbia	Singapore	South Africa
Thailand	Tunisia	Ukraine
United Arab Emirates	Viet~~nam~~ ***Nam***	

Positions on Article 1 and its Commentary

129. Replace paragraph 2 of the Positions on Article 1 and its Commentary by the following:

> 2. ~~*Costa Rica*,~~ *Serbia* and *Singapore* reserve their position on paragraph 2.

130. Replace paragraph 4 of the Positions on Article 1 and its Commentary by the following:

> 4. ~~*Costa Rica*,~~ *Serbia* and *Singapore* reserve their position on paragraph 3.

131. Add the following new paragraphs 4.1 and 4.2 to the Positions on Article 1 and its Commentary:

> ***4.1 Nigeria reserves the right to include as an additional paragraph in its agreements a subject-to-tax rule to allow for the source State to tax-back income not taxed, or not sufficiently taxed (at rate to be bilaterally negotiated), in the residence State.***

4.2 Because Hong Kong Special Administrative Region is not a sovereign State, Hong Kong, China reserves the right to not use wording with sovereign connotations such as "Convention" and "State" in its bilateral agreements.

Positions on Article 2 and its Commentary

132. Replace paragraph 2.1 of the Positions on Article 2 and its Commentary by the following:

2.1 *Argentina*~~, *Colombia* and *Costa Rica*~~ reserve***s*** the right not to include in paragraph 1 taxes imposed on behalf of political subdivisions or local authorities.

133. Replace paragraph 5.2 of the Positions on Article 2 and its Commentary by the following:

5.2 ***Nigeria reserves its position on the application of the Convention to taxes on capital.*** ~~*Colombia* reserves the right to limit the application of the Convention to taxes on capital to the extent that during the fiscal year concerned both Contracting States impose taxes on the same capital or on the same elements of capital.~~

134. Replace paragraphs 7 and 8 of the Positions on Article 2 and its Commentary by the following:

7. *Armenia*, ~~*Lithuania*~~, *Romania* and *Tunisia* hold the view that "taxes on the total amounts of wages or salaries paid by enterprises" should not be regarded as taxes on income and therefore reserve the right not to include these words in paragraph 2.

8. ~~*Costa Rica* and~~ *Ukraine* reserve***s its*** ~~their~~ position on that part of paragraph 2 which states that the Convention shall apply to taxes on capital appreciation.

Positions on Article 3 and its Commentary

135. Replace paragraph 2 of the Positions on Article 3 and its Commentary by the following:

2. Croatia reserves the right to include a recognised pension fund, an investment fund and a non-profit organization within the definition of a "person". ~~[Deleted]~~

136. Replace paragraphs 4.1 and 5 of the Positions on Article 3 and its Commentary by the following:

4.1 ~~*Argentina*, *Azerbaijan*~~, *Brazil*, ~~*Costa Rica*, *Lithuania*~~ ***Malaysia, Peru*** and *Singapore* reserve the right not to include the definitions of "enterprise" and "business" in paragraph 1 of Article 3 because they reserve the right to include an article concerning the taxation of independent personal services ***(and, in the case of Malaysia, an article concerning the taxation of fees for technical services)***.

5. With respect to the definition of "international traffic", Bulgaria and ***Nigeria*** ~~*Croatia*~~ reserve the right to extend the scope of the definition to cover road and railway transportation in bilateral conventions***. In the case of Nigeria, this position applies only to conventions with neighbouring jurisdictions***.

137. Replace paragraph 8 of the Positions on Article 3 and its Commentary by the following:

8. *India****, Nigeria*** and *South Africa* reserve the right to include in the definition of "person" only those entities which are treated as taxable unit under the taxation laws in force in the respective Contracting States.

138. Replace paragraph 10 of the Positions on Article 3 and its Commentary by the following:

10. ***Croatia reserves the right not to limit the definition of "recognised pension fund" to a separate person under the taxation laws.*** ~~With respect to the definition of "national", *Costa Rica* reserves the right to replace the concepts of partnership and association by "a group of persons".~~

139. Replace paragraph 13 of the Positions on Article 3 and its Commentary by the following:

13. ***Nigeria reserves the right to include a definition of "third State" in its agreements to include non-State jurisdictions.*** ~~*Colombia* reserves the right to extend the scope of the definition of "recognised pension fund" to cover severance funds.~~

140. Add the following new paragraphs 14 and 15 to the Positions on Article 3 and its Commentary:

14. Hong Kong, China reserves the right to include a trust and a partnership in the definition of "person".

15. The United Arab Emirates reserves the right not to limit the definition of "recognised pension fund" to a separate person under the taxation laws.

Positions on Article 4 and its Commentary

141. Replace paragraph 1 of the Positions on Article 4 and its Commentary by the following:

1. *Albania*, *Armenia*, *Azerbaijan*, *Belarus*, *Bulgaria*, ~~*Colombia*, *Costa Rica*,~~ *Indonesia*, ~~Lithuania,~~ ***Nigeria, Peru***, *Russia*, *Thailand*, *Ukraine* and *Viet~~nam~~* ***Nam*** reserve the right to include the place of incorporation or a similar criterion (registration for Belarus and *Viet~~nam~~* ***Nam***) in paragraph 1.

142. Add the following paragraph 3.2 to the Positions on Article 4 and its Commentary:

3.2 Croatia reserves the right to include an investment fund and a non-profit organisation in paragraph 1 and thus to treat them as residents for the purposes of the Convention.

143. Replace paragraph 5 of the Positions on Article 4 and its Commentary by the following:

5. *Armenia*, *Bulgaria*, *Russia*, *Thailand* and *Viet~~nam~~* ***Nam*** reserve the right to use the place of incorporation (registration for *Viet~~nam~~* ***Nam***) as the test for paragraph 3.

144. Delete the following paragraphs 8 and 8.1 of the Positions on Article 4 and its Commentary:

8. ***[Deleted]***~~*Costa Rica* reserves the right to deny benefits under the Convention to dual resident persons other than individuals.~~

~~8.1 *Costa Rica* reserves the right to add "domicile" and "residence" to the factors listed in paragraph 3.~~

145. Replace paragraph 9 of the Positions on Article 4 and its Commentary by the following:

9. In the opinion of *Viet~~nam~~* ***Nam*** the personal relations and economic relations mentioned in paragraphs 14 and 15 of the Commentary should be separated and one given priority over the other. For Viet~~nam~~ ***Nam***, economic relations, particularly the criterion of the country where employment is exercised, is more important to determine the country of residence for treaty purposes in the case of a dual resident individual.

Positions on Article 5 and its Commentary

146. Replace paragraph 2 of the Positions on Article 5 and its Commentary by the following:

2. In paragraph 2, in addition to "the extraction of" natural resources, ~~*Argentina*~~, ~~*Brazil*~~, *Gabon*, *Ivory Coast*, *Morocco*, the *Philippines*, *Russia*, *Thailand*, *Tunisia* and the *United Arab Emirates* reserve the right to refer to the "exploration for" such resources.

147. Replace paragraph 2.2 of the Positions on Article 5 and its Commentary by the following:

2.2 ***Brazil and Peru*** ~~*Colombia* and *Costa Rica*~~ reserve the right to replace the words "of extraction" with the words "relating to the exploration for***,*** or the exploitation ***or the extraction***" in subparagraph 2 *f*).

148. Replace paragraph 4 of the Positions on Article 5 and its Commentary by the following:

4. *India*, *Indonesia*, *Thailand* and *Viet~~nam~~* ***Nam*** reserve the right to add to paragraph 2 an additional subparagraph that would cover a warehouse in relation to a person supplying storage facilities for others.

149. Replace paragraphs 6 and 6.1 of the Positions on Article 5 and its Commentary by the following:

6. *Gabon* and *Viet~~nam~~* ***Nam*** reserve the right to add to paragraph 2 an additional subparagraph that would cover an installation structure or equipment used for the exploration for natural resources.

6.1 ~~*Argentina*,~~ *Gabon* and *Ivory Coast* reserve the right to add to paragraph 2 an additional subparagraph that would cover places where fishing activities take place.

150. Add the following new paragraph 6.4 to the Positions on Article 5 and its Commentary:

6.4 Nigeria reserves the right to add to paragraph 2 an additional subparagraph that would cover a "sales outlet".

151. Replace paragraphs 8 and 9 of the Positions on Article 5 and its Commentary by the following:

8. *Argentina*, *Armenia*, *Brazil*, ~~*Colombia*,~~ *Georgia*, ***Peru,*** *Thailand* and *Viet~~nam~~* ***Nam*** reserve their position on paragraph 3 as they consider that any building site or construction, assembly or installation project which lasts more than six months should be regarded as a permanent establishment.

9. *Albania*~~,~~ ~~*Costa Rica*,~~ ***and*** the *Democratic Republic of the Congo* ~~and *Hong Kong, China*~~ reserve their position on paragraph 3 and consider that any building site, construction, assembly or installation project or a supervisory or consultancy activity connected therewith constitutes a permanent establishment if such site, project or activity lasts for a period of more than six months.

152. Replace paragraph 11 of the Positions on Article 5 and its Commentary by the following:

11. *Argentina*, *Malaysia*, the *People's Republic of China*, *Singapore*, *South Africa*, *Thailand* and *Viet~~nam~~* ***Nam*** reserve the right to treat an enterprise as having a permanent establishment if the enterprise carries on supervisory activities in connection with a building site or a construction, assembly, or installation project that constitute a permanent establishment under paragraph 3 (in the case of Malaysia, the period for this permanent establishment is negotiated separately).

153. Replace paragraph 14 of the Positions on Article 5 and its Commentary by the following:

14. *Albania*, *Armenia*, *Azerbaijan*, ~~*Lithuania*,~~ *Serbia*, *South Africa*, *Thailand*~~,~~ ***and*** *Viet~~nam~~* ***Nam*** ~~and *Hong Kong, China*~~ reserve the right to treat an enterprise as having a permanent establishment if the enterprise furnishes services, including consultancy services, through employees or other personnel engaged by the enterprise for such purpose, but only where

activities of that nature continue (for the same or a connected project [other than in the case of Armenia]), within the country for a period or periods aggregating more than six months within any twelve month period.

154. Replace paragraph 14.2 of the Positions on Article 5 and its Commentary by the following:

14.2 ***Nigeria reserves the right to deem any building site, construction, assembly or installation project or any supervisory activity connected therewith to constitute a permanent establishment if such site, project or activity lasts for a period of more than six months.*** ~~Lithuania reserves the right to insert special provisions regarding a permanent establishment relating to activities carried on in a Contracting State in connection with the exploration or exploitation of natural resources.~~

155. Delete the following paragraphs 14.3 to 14.6 of the Positions on Article 5 and its Commentary:

14.3 ***[Deleted]*** ~~*Argentina* reserves the right to treat an enterprise as having a permanent establishment if the enterprise carries on activities in that State related to the exploitation or extraction of natural resources, including fishing activities, without a fixed place of business during a period exceeding three months in any twelve month period commencing or ending in the fiscal year concerned.~~

14.4 ***[Deleted]*** ~~*Indonesia* reserves the right to insert a provision that deems a permanent establishment to exist if, for more than a negotiated period, an installation, drilling rig or ship is used for the exploration of natural resources.~~

14.5 ***[Deleted]*** ~~*Indonesia*, the *United Arab Emirates* and *Vietnam* **Nam** reserve the right to tax income derived from activities relating to exploration and exploitation of natural resources.~~

14.6 ***[Deleted]*** ~~*South Africa* reserves the right to insert a provision that deems a permanent establishment to exist if, for more than six months, an enterprise conducts activities relating to the exploration or exploitation of natural resources.~~

156. Delete the following paragraph 14.8 of the Positions on Article 5 and its Commentary:

~~14.8 *Colombia* reserves the right to deem an enterprise to have a permanent establishment whenever it carries on activities in the other Contracting State in connection with the exploration for or the exploitation of natural resources, as well as in certain circumstances where services are performed.~~

157. Replace paragraph 15 of the Positions on Article 5 and its Commentary by the following:

15. *Albania*, *Armenia*, *Azerbaijan*, ***Brazil,*** *Gabon*, *India*, *Indonesia*, *Ivory Coast*, *Malaysia*, *Morocco*, ***Nigeria,*** *Russia*, *Thailand*, *Tunisia*, *Ukraine* and *Viet~~nam~~* ***Nam*** reserve their position on paragraph 4 as they consider that the term “delivery” should be deleted from subparagraphs *a*) and *b*).

158. Replace paragraph 16.1 of the Positions on Article 5 and its Commentary by the following:

16.1 Azerbaijan reserves the right to interpret subparagraph 4 d) such that a permanent establishment will be deemed to exist if the collection of information exceeds 183 days within a twelve-month period. Furthermore, if such collection is part of the overall business activities of the enterprise, a permanent establishment will also be deemed to exist. ~~[Deleted]~~

159. Add the following new paragraphs 16.3 and 16.4 and the heading preceding paragraph 16.3 to the Positions on Article 5 and its Commentary:

Paragraph 4.1

16.3 Nigeria reserves the right to replace the references in paragraph 4.1 to "two enterprises" or "two places" with wording that extend the text of the paragraph to apply to multiple enterprises or places.

16.4 The United Arab Emirates reserves the right to replace "or"' with an "and" between subparagraphs a) and b) of paragraph 4.1.

160. Replace paragraph 17 of the Positions on Article 5 and its Commentary by the following:

17. *Albania, ~~Argentina,~~ Armenia, Azerbaijan, Gabon, India, Indonesia, Ivory Coast,* ***Malaysia,*** *Morocco,* ***Nigeria,*** *Russia, Thailand, Tunisia*, *Ukraine* and *Viet~~nam~~* ***Nam*** reserve the right to treat an enterprise as having a permanent establishment if a person acting on behalf of the enterprise habitually maintains a stock of goods or merchandise in a Contracting State from which the person regularly delivers goods or merchandise ***(or, in the case of Malaysia, fills orders)*** on behalf of the enterprise.

161. Add the following new paragraph 17.5 to the Positions on Article 5 and its Commentary:

17.5 Nigeria reserves the right not to include the phrase "that are routinely concluded without material modification by the enterprise" in paragraph 5 of Article 5.

162. Replace paragraphs 18 and 19 of the Positions on Article 5 and its Commentary by the following:

18. *Albania*, *Azerbaijan*, *Gabon*, *Ivory Coast*, *Morocco*, *Serbia*, *Thailand*, *Tunisia* and *Viet~~nam~~* ***Nam*** reserve the right to make clear that an agent whose activities are conducted wholly or almost wholly on behalf of a single enterprise will not be considered an agent of an independent status.

19. *~~Colombia,~~ Gabon*, *India*, *Indonesia*, *Ivory Coast*, *Morocco*, ***Peru,*** *Russia*, *Thailand*, *Tunisia,* and *Viet~~nam~~* ***Nam*** reserve the right to provide that an insurance enterprise of a Contracting State shall, except with respect to re-insurance (other than in the case of India), 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 6 applies.

163. Add the following new paragraph 19.3 to the Positions on Article 5 and its Commentary:

19.3 Nigeria reserves the right to include a separate article in its agreements reserving a Contracting State's right to tax where an insurance enterprise of the other Contracting State, through a person, (i) collects insurance premiums in the first-mentioned Contracting State or (ii) insures risks located in the first-mentioned Contracting State, even where the person acting for the insurance enterprise is an independent agent acting for the insurance enterprise in the ordinary course of the agent's business.

164. Replace paragraphs 20 to 22 of the Positions on Article 5 and its Commentary by the following:

20. *~~Argentina,~~* ***Brazil,*** *India*, *Morocco* and *Viet~~nam~~* ***Nam*** do not agree with the words "the twelve month test applies to each individual site or project" found in paragraph 51 of the Commentary. They consider that a series of consecutive short term sites or projects operated by a contractor would give rise to the existence of a permanent establishment in the country concerned.

21. *~~Bulgaria,~~* ***Brazil,*** *Serbia* and *Singapore* would add to paragraph ***87~~97~~*** of the Commentary on Article 5 their views that a person, who is authorised to negotiate the essential elements of the

contract, and not necessarily all the elements and details of the contract, on behalf of a foreign resident, can be said to conclude contracts.

22. ***As regards paragraph 50,*** *Bulgaria* ~~does not~~ adhere***s*** to ***an*** ~~the~~ interpretation, ~~given in paragraph 50 of the Commentary on Article 5, and is of the opinion~~ that supervision of a building site or a construction project, where carried on by a~~nother~~ person ***other than the main contractor***, ***is*** ~~are~~ not covered by paragraph 3 ~~of the Article, if not~~ ***unless*** expressly provided for ***in the provision***.

165. Delete the following paragraph 26.1 of the Positions on Article 5 and its Commentary by the following:

~~26.1 *Argentina* does not agree with the interpretation given in paragraph 36; it is of the view that the letting or leasing of tangible or intangible property by themselves may constitute a permanent establishment of the lessor in certain circumstances, particularly where the lessor supplies personnel after installation to operate the equipment.~~

166. Replace paragraph 31 of the Positions on Article 5 and its Commentary by the following:

31. *India* ***and Nigeria*** do~~es~~ not agree with the interpretation given in paragraph 97; ***they are*** ~~it is~~ of the view that the mere fact that a person has attended or participated in negotiations in a State between an enterprise and a client, can in certain circumstances, be sufficient, by itself, to conclude that the person has exercised in that State an authority to conclude contracts in the name of the enterprise. India ***and Nigeria are*** ~~is~~ also of the view that a person, who is authorised to negotiate the essential elements of the contract, and not necessarily all the elements and details of the contract, on behalf of a foreign resident, can be said to exercise the authority to conclude contracts.

167. Replace paragraph 46 of the Positions on Article 5 and its Commentary by the following:

46. ***Nigeria does not agree with the interpretation given in paragraph 132 to 143. Nigeria particularly does not agree with the interpretation given in paragraph 140 that provisions that are sometimes included in bilateral agreements that allow a State to tax the gross amount of the fees paid for certain services if the payer of the fees is a resident of that State do not seem to provide an appropriate way of taxing services. Nigeria reserves the right to include in its bilateral agreements a separate article that allows a State to tax the gross amount of the fees paid for certain services if the payer of the fees is a resident of that State.*** ~~Regarding paragraph 104, *Colombia* believes that the arm's length principle should also be considered in determining whether or not an agent is of an independent status for purposes of paragraph 6 of the Article and wishes, when necessary, to add wording to its conventions to clarify that this is how the paragraph should be interpreted.~~

168. Replace paragraph 50 of the Positions on Article 5 and its Commentary by the following:

50. ***Brazil and*** India do~~es~~ not agree with the interpretation given in paragraph 69 because ***they*** ~~it~~ consider~~s~~ that collection of data for the purpose of determination or quantification of risk, by an enterprise in the business of managing risks, such as insurance, is not an activity of preparatory or auxiliary character.

169. Replace paragraph 55 of the Positions on Article 5 and its Commentary by the following:

55. ***India does not agree with the conditions, including time threshold and commercial reason, detailed in paragraph 44.1 to 44.21 of the Commentary on Article 5 for regarding an individual's home where activities related to the business of an enterprise are carried out, a place of business of the enterprise. India considers that in such a case, individual's home can be considered as being at the disposal of the enterprise, and it constitutes a place of***

business of the enterprise for the purpose of application of Article 5. ~~*India* does not agree with the view expressed in paragraph 19 of Commentary on Article 5 that where a cross-frontier worker performs most of his work from his home situated in one State rather than from the office made available to him in the other State, his home should not be considered as being at the disposal of the enterprise. India considers that in such a case, the home of the employee can be considered as being at the disposal of the enterprise, for the purpose of application of Article 5.~~

170. Add the following new paragraphs 57 to 61 to the Positions on Article 5 and its Commentary:

57. Argentina disagrees with the definitions described in paragraphs 180 and 192 and considers that States may define themselves in their bilateral treaties in accordance with their domestic laws.

58. Nigeria does not agree with the interpretation provided in paragraphs 44.14 to 44.15. Nigeria will consider a commercial reason to be present where there is engagement on intermittent or short occasional visits to the premises of a customer in respect of an activity that lasts more than 6 months.

59. Nigeria does not agree with the interpretation provided in paragraph 44.16. Nigeria considers that reduction of costs of an enterprise will present a valid reason for not acquiring an office space in the Contracting State. Nigeria submits that this will constitute a commercial reason and the individual performing activities in that home or another relevant place would give rise to a permanent establishment in the country concerned where the business activity of that enterprise lasts more than 6 months.

60. Nigeria does not agree with the conclusion in example D of paragraph 44.21. Nigeria considers that the quarterly visits to the premises of a client in State S to review performance against the terms of the contract with RCo will constitute a commercial reason for the employee's presence in State S. Since he carries out activities related to the business of RCo at his home in State S, the home would be a place of business of RCo and therefore would be a fixed place of business or permanent establishment of RCo in State S.

61. With respect to paragraph 44.8, Malaysia reserves the right to bilaterally agree on the percentage of total working time below which the use by an individual of that individual's home or another relevant place to carry out activities related to the business of an enterprise would generally not be considered to constitute that home or other relevant place a place of business of the enterprise.

Positions on Article 6 and its Commentary

171. Replace paragraph 1.1 of the Positions on Article 6 and its Commentary by the following:

1.1 ***Nigeria reserves the right to extend the meaning of "agriculture" to include aquaculture and fishing.*** ~~*Costa Rica* reserves the right to include in paragraph 1, immovable property, the income derived from silvicultural activities.~~

172. Delete the following paragraphs 2.1 and 2.2 of the Positions on Article 6 and its Commentary:

~~2.1 *Lithuania* reserves the right to include in the definition of the term "immovable property" any option or similar right to acquire immovable property.~~

~~2.2 *Colombia* reserves the right to include rights relating to all natural resources under this Article. Colombia also reserves the right to amend the definition of "immovable property" to include expressly other property.~~

173. Replace paragraph 3 of the Positions on Article 6 and its Commentary by the following:

3. ***Nigeria reserves the right in bilateral agreements with neighboring countries to, in addition to ships and aircraft, extend the exclusion from the definition of immovable property to boats, railway and road transport vehicles.*** ~~Lithuania reserves the right to modify the second sentence of the definition of the term "immovable property" to make clear that the sentence does not apply for domestic law purposes.~~

174. Delete the following paragraphs 3.2 to 5 of the Positions on Article 6 and its Commentary:

~~3.2 *Costa Rica* reserves the right to include in paragraph 2 the rights relating to exploration and exploitation of immovable property as well as any right that allows the use or enjoyment of immovable property situated in a Contracting State where that use or enjoyment relates to time sharing since under its domestic law such right is not considered to constitute immovable property.~~

~~***Paragraph 3***~~

~~4. *Lithuania* reserves the right to include in paragraph 3 a reference to income from the alienation of immovable property.~~

~~5. *Lithuania* also reserves the right to tax income of shareholders in resident companies from the direct use, letting, or use in any other form of the right to enjoyment of immovable property situated in their country and held by the company, where such right is based on the ownership of shares or other corporate rights in the company.~~

Positions on Article 7 and its Commentary

175. Replace paragraphs 1 and 1.1 of the Positions on Article 7 and its Commentary by the following:

1. *Argentina*, *Azerbaijan*, *Brazil*, *Bulgaria*, ~~*Costa Rica*~~, *Indonesia*, *Malaysia,* ~~*Romania*~~, *Russia*, *Serbia*, *Singapore*, *South Africa* and *Thailand* reserve the right to use the previous version of Article 7, i.e. the version that was included in the Model Tax Convention immediately before the 2010 Update, subject to their positions on that previous version (see annex below).

1.1 *India* ***and Nigeria*** reserve~~s~~ the right to use the previous version of Article 7, i.e. the version that was included in the Model Tax Convention immediately before the 2010 update, subject to its positions on that previous version (see annex below). ***They*** ~~It~~ do~~es~~ not agree with the approach to the attribution of profits to permanent establishments in general that is reflected in the revised Article, in its Commentary and in the consequential changes to the Commentary on other Articles (i.e. paragraph 21 of the Commentary on Article 8, paragraphs 32.1 and 32.2 of the Commentary on Article 10, paragraphs 25.1 and 25.2 of the Commentary on Article 11, paragraphs 21.1 and 21.2 of the Commentary on Article 12, paragraphs 27.1 and 27.2 of the Commentary on Article 13, paragraph 7.2 of the Commentary on Article 15, paragraphs 5.1 and 5.2 of the Commentary on Article 21, paragraphs 3.1 and 3.2 of the Commentary on Article 22 and subparagraph 40 *a*) of the Commentary on Article 24).

176. Replace paragraph 1.4 of the Positions on Article 7 and its Commentary by the following:

1.4 ***Peru*** ~~Colombia~~ reserves the right to use the previous version of Article 7, i.e. the version that was included in the Model Tax Convention immediately before the 2010 Update, and ***therefore does not endorse*** ~~to disregard~~ the changes to the Commentary on the Article made through that update.

177. Add the following new paragraph 1.5 to the Positions on Article 7 and its Commentary:

1.5 India reserves the right to include in the profits attributable to the permanent establishment business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through a permanent establishment situated in that State or from other business activities carried on in that State of the same or similar kind as those effected through that permanent establishment.

178. Replace paragraphs 2.1 and 2.2 of the Positions on Article 7 and its Commentary by the following:

2.1 *Albania*, ~~*Argentina*~~, *Azerbaijan*, *Brazil*, ~~*Costa Rica, Croatia,*~~ *Gabon*, *Indonesia*, *Ivory Coast*, ~~*Lithuania*~~, *Malaysia*, *Morocco*, the *People's Republic of China*, *Russia*, *Serbia*, *Singapore*, *Thailand*, *Tunisia* and *Viet~~nam~~* ***Nam*** reserve the right to maintain in their conventions a specific article dealing with the taxation of "independent personal services". Accordingly, reservation is also made with respect to all the corresponding modifications in the Articles and the Commentaries, which have been modified as a result of the elimination of Article 14.

2.2 ***Peru reserves the right to tax persons performing independent personal services under a separate article which corresponds to Article 14 as it stood before its elimination in 2000.*** ~~[Deleted]~~

179. Replace paragraphs 3 to 4 of the Positions on Article 7 and its Commentary by the following:

3. ~~*Argentina*~~, *Morocco* and *Thailand* reserve the right to tax in the State where the permanent establishment is situated business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through a permanent establishment situated in that State or from other business activities carried on in that State of the same or similar kind as those effected through that permanent establishment. They will apply this rule only as a safeguard against abuse and not as a general "force of attraction principle". Thus, the rule will not apply when the enterprise proves that the sales or activities have been carried out for reasons other than obtaining a benefit under the Convention.

3.1 *Indonesia* ***and Nigeria*** reserve~~s~~ the right to tax, in the State where the permanent establishment is situated, business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through that permanent establishment or from other business activities carried on in that State of the same or similar kind as those carried on through that permanent establishment.

4. *Albania*~~, *Costa Rica*~~ and *Viet~~nam~~* ***Nam*** reserve the right to tax in the State where the permanent establishment is situated business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through a permanent establishment situated in that State or from other business activities carried on in that State of the same or similar kind as those effected through that permanent establishment.

180. Delete the following paragraph 5 of the Positions on Article 7 and its Commentary:

5. ***[Deleted]***~~*Argentina* reserves the right to provide that a Contracting State shall not be obliged to allow the deduction of expenses incurred abroad which are not reasonably attributable to the activity carried on by the permanent establishment, taking into account the general principles contained in its domestic legislation concerning executive and administrative expenses for assistance services.~~

181. Replace paragraph 7 of the Positions on Article 7 and its Commentary by the following:

7. *Armenia*~~, *Lithuania*~~ and *Serbia* reserve the right to add to paragraph 2 a clarification that expenses to be allowed as deductions by a Contracting State shall include only expenses that are deductible under the domestic laws of that State.

182. Delete the following paragraph 9 of the Positions on Article 7 and its Commentary:

9. ***[Deleted]*** ~~*Colombia* reserves the right to amend Article 7 to provide that, in applying paragraphs 1 and 2 of the Article, profits attributable to a permanent establishment during its existence may be taxable by the Contracting State in which the permanent establishment exists even if the payments are deferred until after the permanent establishment has ceased to exist.~~

183. Replace paragraph 10 of the Positions on Article 7 and its Commentary by the following:

10. ***Nigeria*** ~~Costa Rica~~ reserves the right to add a provision regarding expenses to be allowed as deductions.

184. Replace paragraph 12 of the Positions on Article 7 and its Commentary by the following:

12. *Argentina*, ~~*Brazil,*~~ *Bulgaria*, *Indonesia*, *Malaysia*, ~~*Romania,*~~ *Russia*, *Serbia*, *Singapore*, *South Africa* and *Thailand* will interpret Article 7 as it read before the 2010 Update in line with the relevant Commentary as it stood prior to that update.

185. Delete the following paragraph 13 of the Positions on Article 7 and its Commentary:

13. ***[Deleted]*** ~~*Argentina* considers that the "separate entity approach" and the arm's length principle should be applied symmetrically to dealings between the permanent establishment and the head office of the enterprise — both to determine the correct attribution of profits (deduction of expenses) to the permanent establishment and the taxation of profits of the head office from those dealings — according to the fiction that the permanent establishment is a separate enterprise and that such an enterprise is independent from the rest of the enterprise of which it is a part.~~

Positions on Article 8 and its Commentary

186. Replace paragraph 1 of the Positions on Article 8 and its Commentary by the following:

1. *Armenia* ~~and *Lithuania*~~ reserve***s*** the right in exceptional cases to apply the permanent establishment rule in relation to profits derived from the operation of ships in international traffic.

187. Add the following new paragraph 2.2 to the Positions on Article 8 and its Commentary:

2.2 Nigeria reserves the right to allow the State of source to tax profits from the operation of ships and aircraft in international traffic.

188. Replace paragraph 4.1 of the Positions on Article 8 and its Commentary by the following:

4.1 *Azerbaijan* reserves the right to ***tax, under Article 12,*** ~~include a provision which provides for taxation of the~~ profits ***derived*** from the leasing of ***ships, aircraft and*** containers ~~in the same way as the profits from international transportation when such profits are supplementary or incidental to international transportation~~.

189. Replace paragraph 5.1 of the Positions on Article 8 and its Commentary by the following:

5.1 ***Brazil,*** *India* ***and Nigeria*** reserve~~s~~ the right to apply Article 12 and not Article 8 to profits from leasing ships or aircraft on a bare charter basis. ***Nigeria additionally reserves the right to apply Article 12 and not Article 8 to profits from the leasing of containers.***

190. Replace paragraph 6.1 of the Positions on Article 8 and its Commentary by the following:

6.1 *Bulgaria*, ***Nigeria,*** ~~*Croatia,*~~ *Russia* and *South Africa* reserve the right to extend the scope of the Article to cover international road and railway transportation in bilateral conventions. ***In the case of Nigeria, this position is limited to tax treaties with neighbouring States. Bulgaria***

additionally reserves the right to make a corresponding change to the definition of "international traffic" in Article 3.

191. Replace paragraphs 6.5 and 6.6 of the Positions on Article 8 and its Commentary by the following:

6.5 *Viet~~nam~~* ***Nam*** reserves the right to provide that the taxing right with respect to income derived from international transportation shall be shared 50/50.

6.6 The *United Arab Emirates* reserves the right to include in its bilateral conventions a provision to confirm that income from selling tickets on behalf of other enterprises, income derived from selling technical services to third parties, income from bank deposits and other investments, such as bonds, shares and other debentures, are covered by Article 8 provided that this income is incidental to the operation of air transport enterprises operating in international traffic. ***The United Arab Emirates also reserves the right to include within the scope of paragraph 1: income from international transport of passengers, livestock, mail, parcels, merchandise or goods by air or by sea; income from leasing or chartering aircraft or ships used in international traffic; and income from leasing of equipment which are integral to the seaworthiness of ships or the airworthiness of aircraft used in international traffic.***

192. Replace paragraphs 7 to 12 of the Positions on Article 8 and its Commentary by the following:

7. ***Brazil, Bulgaria and Nigeria reserve the right to tax under Article 12 payments from the leasing of ships or aircraft on a bareboat charter basis where payments "for the use or right to use industrial, commercial or scientific equipment" are included in the definition of royalties.*** ~~*Costa Rica* reserves the right to include within the scope of "profits from the operation of ships or aircraft in international traffic" income generated by a) the temporary rental of ships or aircraft in empty hulk and b) the use or rental of containers (including trailers and auxiliary equipment used for the transport of containers).~~

Positions on the Commentary

8. ***Nigeria and*** *Viet~~nam~~* ***Nam*** disagree~~s~~ with the interpretation presented in paragraph 5 of the Commentary.

9. *Viet~~nam~~* ***Nam*** disagrees with the interpretation presented in paragraph 10 of the Commentary in relation to the incidental leasing of containers.

10. *Brazil*, *India*, ~~and~~ *Malaysia* ***and Nigeria*** reserve their position on the application of this Article to income from ancillary activities (see paragraphs 4 to 10.1).

11. ***Nigeria does not agree with the second sentence of paragraph 14 and reserves the right to subject such interest to the provisions of Article 11.*** ~~*Singapore* reserves its position on the application of this Article to income from ancillary activities. It takes the view that Article 8 does not cover any ancillary activities that are not expressly mentioned in Singapore's tax conventions.~~

12. *India* ***and Nigeria*** do~~es~~ not agree with the view that income derived by an enterprise from trading of emission permits and credits in the example given in paragraph 14.1 would be covered by Article 8.

Positions on Article 9 and its Commentary

193. Replace paragraphs 1 and 2 of the Positions on Article 9 and its Commentary by the following:

1. ~~*Brazil*, *Thailand* and~~ *Viet~~nam~~* ***Nam*** reserve***s*** the right not to insert paragraph 2 in ***its*** ~~their~~ conventions.

2. ~~*Bulgaria* and~~ *Russia* reserve***s*** the right to replace "shall" by "may" in the first sentence of paragraph 2 in ***its*** ~~their~~ conventions.

194. Replace paragraph 6 of the Positions on Article 9 and its Commentary by the following:

6. ***Nigeria reserves its right to insert a provision according to which any appropriate adjustment to the amount of the tax charged in a Contracting State pursuant to paragraph 2 shall not be implemented in the case of fraud, gross negligence or wilful default.*** ~~*Argentina* reserves its right to insert a provision according to which any appropriate adjustment to the amount of the tax charged therein on those profits shall not be implemented in the case of fraud, wilful default or neglect.~~

195. Replace paragraph 7 of the Positions on Article 9 and its Commentary and the heading preceding that paragraph by the following:

Position*s* on the Commentary

7. As regards paragraph ***6*** ~~1~~ of the Commentary on Article 9, Brazil ***observes that it may condition a corresponding adjustment on a previous request by the taxpayer in accordance with its domestic regulations.*** ~~reserves its right to provide for an approach in its domestic legislation that makes use of fixed margins derived from industry practices in line with the arm's length principle. In consequence, it reserves the right not adhere the application of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations where the guidelines contradicts this approach.~~

196. Add the following new paragraph 8 to the Positions on Article 9 and its Commentary:

8. As regards paragraph 1 of the Commentary on Article 9, India has not agreed to the OECD Transfer Pricing Guidelines, and hence reserves the right to deviate from them in accordance with the provisions in its domestic laws.

Positions on Article 10 and its Commentary

197. Replace paragraphs 3 to 5 of the Positions on Article 10 and its Commentary by the following:

3. *Bulgaria*, *India*, ~~*Lithuania*~~, *Malaysia*, *Russia*, *Serbia*, ~~and~~ *Singapore* ***and the United Arab Emirates*** reserve the right not to include the requirement for the competent authorities to settle by mutual agreement the mode of application of paragraph 2.

3.1 *Azerbaijan* ***and Nigeria*** reserve~~s~~ the right not to include in ***their*** ~~its~~ bilateral conventions the sentence stating that the competent authorities shall settle the mode of application of paragraph 2 by mutual agreement as ***they*** ~~it~~ use~~s~~ uniform regulations for the implementation of all ***their*** ~~its~~ bilateral conventions.

4. ***Peru and the United Arab Emirates reserve their position on the rates of tax provided in paragraph 2.*** ~~[Deleted]~~

5. *Azerbaijan* and ***Nigeria*** ~~*Romania*~~ reserve the right to tax ***all dividends referred to in this paragraph*** at a uniform rate to be negotiated.

198. Replace paragraphs 7 to 7.3 of the Positions on Article 10 and its Commentary by the following:

7. ~~*Colombia*~~, *Serbia* and *Vietnam* ***Nam*** reserve the right to tax, at a uniform rate of not less than 10 per cent, all dividends referred to in paragraph 2.

7.1 ***[Deleted]*** ~~*Argentina* reserves the right to include a provision in its bilateral treaties to provide that the taxation rate provided in paragraph 2 shall not be applicable where a local~~

~~company distributes profits exceeding the total amount of aggregate tax profits at the end of the fiscal year immediately before the date of distribution, taking into account that the taxation on the dividends that exceed the aggregate profits is considered to be a taxation at the level of the company.~~

7.2 *Argentina*~~, *India*~~ and *Indonesia* reserve the right to settle the rate of tax in bilateral negotiations.

7.3 ***India reserves the right to settle the rate of tax and the minimum percentage of holding (in subparagraph a)) in bilateral negotiations.*** ~~*Costa Rica* reserves the right to increase the rates of tax on dividends in its bilateral conventions.~~

199. Delete the following paragraph 7.3 of the Positions on Article 10 and its Commentary:

~~7.3 *Costa Rica* reserves the right to increase the rates of tax on dividends in its bilateral conventions.~~

200. Replace paragraphs 8 to 10 of the Positions on Article 10 and its Commentary by the following:

8. ~~*Argentina*, *Russia* and *Tunisia* reserve the right to include a provision that will allow them to apply the thin capitalisation measures of their domestic law notwithstanding any other provisions of the Convention.

9. As their legislation does not provide for such concepts as “jouissance” shares, “jouissance” rights, mining shares and founders’ shares, *Albania*, *Armenia*, ~~*Bulgaria*~~, *Belarus*, *Malaysia* and *Serbia* reserve the right to omit them from paragraph 3.

10. *Bulgaria* reserves the right to ***expand the definition of dividends in paragraph 3 in order to cover expressly certain payments that represent profits from the dissolution of a company or redemption of shares.*** ~~replace, in paragraph 3, the words “income from other corporate rights” by “income from other rights”.~~

201. Replace paragraphs 10.3 to 12 of the Positions on Article 10 and its Commentary by the following:

10.3 ~~*Argentina*~~, ***Brazil, Bulgaria and Peru*** reserve~~s~~ the right to expand the definition of dividends in paragraph 3 to cover certain payments that are treated as distributions of dividends according to ***their*** ~~its~~ domestic law.

10.4 *Bulgaria* reserves the right to propose in bilateral negotiations ~~the inclusion of~~ a ***specific anti-avoidance*** clause according to which ***certain payments, including*** ~~a dividend which is treated as a~~ hidden distribution***s*** of profits***, that are subjected to the same taxation treatment as dividends*** under its ***domestic*** law~~s~~ would remain taxable according to its laws, notwithstanding the ***provisions of*** ~~relief under~~ paragraph 2~~ of the Article~~.

~~10.5 *Costa Rica* reserves the right to amplify the definition of dividends in paragraph 3 so as to cover all income subjected under its domestic law to the taxation treatment of distributions.~~

Paragraph 5

11. *Argentina*, *Kazakhstan*, *Morocco*, ***Peru,*** *Russia* and *Tunisia* reserve the right to apply a branch profits tax.

12. *Brazil* reserves the right to levy withholding tax on profits of a permanent establishment at the same rate of tax as is provided in paragraph 2~~, as is the traditional rule in the Brazilian income tax system~~.

202. Replace paragraph 14.1 of the Positions on Article 10 and its Commentary by the following:

14.1 ***Azerbaijan reserves the right to apply a profit remittance tax on a permanent establishment.*** ~~*Colombia* reserves the right to apply its domestic rules on the taxation of dividends~~

~~distributed from profits that have not been subject to tax at the level of the company, and to impose its tax on the transfer of profits attributable to permanent establishments that have not been subject to tax in Colombia.~~

Positions on Article 11 and its Commentary

203. Replace paragraphs 1 and 2 of the Positions on Article 11 and its Commentary by the following:

1. ~~*Bulgaria* and~~ *Ukraine* reserve***s*** the right to exclude from the scope of the Article interest on a debt-claim where the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid is to take advantage of this Article and not for bona fide commercial reasons.

Paragraph 2

2. *Argentina*, *Brazil*, ~~*Costa Rica*~~, *India*, *Ivory Coast*, ~~*Latvia*~~, ***Nigeria,*** the *Philippines*, ~~*Romania*~~, *Thailand**,*** ~~and~~ *Ukraine* ***and the United Arab Emirates*** reserve their positions on the rate provided for in paragraph 2.

204. Delete the following paragraph 3 of the Positions on Article 11 and its Commentary:

3. ***[Deleted]*** ~~*Brazil* reserves the right to add to its conventions a paragraph dealing with interest paid to a government of a Contracting State or one of its political subdivisions or a local authority thereof or any agency (including a financial institution) wholly owned by the said government and stating that such interest is taxable only in the State of residence of the creditor. However, if interest is paid by a government of a Contracting State or one of its political subdivisions or a local authority thereof or any agency (including a financial institution) wholly owned by the said government, such interest shall be taxable only in that Contracting State (i.e. in the State of source).~~

205. Replace paragraphs 4 and 4.1 of the Positions on Article 11 and its Commentary by the following:

4. *Bulgaria*, *India*, ~~*Lithuania*~~, *Malaysia*, *Russia*, *Serbia**,*** ~~and~~ *Singapore* ***and the United Arab Emirates*** reserve the right not to include the requirement for the competent authorities to settle by mutual agreement the mode of application of paragraph 2.

4.1 *Azerbaijan* ***and Nigeria*** reserve~~s~~ the right not to include in ***their*** ~~its~~ bilateral conventions the sentence stating that the competent authorities shall settle the mode of application of paragraph 2 by mutual agreement as ***they*** ~~it~~ uses uniform regulations for the implementation of all ***their*** ~~its~~ bilateral conventions.

206. Delete the following paragraph 6 from the Positions on Article 11 and its Commentary:

6. ***[Deleted]*** ~~*Malaysia* reserves the right to exclude premiums or prizes from the definition of interest, in accordance with the treatment of such payments under its domestic law.~~

207. Replace paragraphs 7 to 7.2 of the Positions on Article 11 and its Commentary by the following:

7. *Brazil* and *Thailand* reserve the right to consider as interest any other income assimilated to ***(or, in the case of Brazil, subject to the same taxation treatment as)*** income from money lent by the tax law of the Contracting State in which the income arises.

7.1 *Bulgaria*, *Morocco* and *Tunisia* reserve the right to amend the definition of interest to clarify that interest payments treated as distributions under ***their*** ~~its~~ domestic law fall within Article 10.

7.2 ***Azerbaijan reserves the right to treat penalty charges for late payment as interest for purposes of the Article. Azerbaijan also reserves the right to consider as interest the income derived from financial leasing and factoring contracts.*** ~~*Costa Rica* reserves the right~~

~~to extend the definition of interest to include other types of income, such as income derived from financial leasing and factoring contracts.~~

208. Add the following new paragraphs 7.3 to 7.6 to the Positions on Article 11 and its Commentary:

7.3 Peru reserves the right to widen the definition of interest to include income which is subjected under its domestic law to the same taxation treatment as income from money lent.

7.4 Nigeria reserves the right not to include in its agreements the second sentence of paragraph 2 that excludes penalty charges for late payment from the definition of interest.

7.5 Nigeria reserves the right to clarify in the definition of interest that payments treated as distributions under Article 10 will not be categorised as interest.

7.6 India reserves the right to consider as interest the income derived from financial leasing and factoring contracts.

209. Replace paragraph 8.1 of the Positions on Article 11 and its Commentary by the following:

8.1 *Morocco* ***and Nigeria*** reserve~~s~~ the right to include in paragraph 4 a reference to other business activities carried on in the other State of the same and similar kind as those effected through a permanent establishment.

210. Delete the following paragraph 9 of the Positions on Article 11 and its Commentary:

~~9. ***[Deleted]*** *Malaysia* does not agree with paragraph 20 of the Commentary as under Malaysian domestic legislation, premiums or prizes are not taxable.~~

Positions on Article 12 and its Commentary

211. Replace paragraph 1 the Positions on Article 12 and its Commentary by the following:

1. ~~*Bulgaria* and~~ *Ukraine* reserve***s*** the right to exclude from the scope of this Article royalties arising from property or rights created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

212. Replace paragraph 3 of the Positions on Article 12 and its Commentary by the following:

3. *Albania*, *Argentina*, *Armenia*, *Azerbaijan*, *Belarus*, *Brazil*, *Bulgaria*, ~~*Colombia*, *Costa Rica*~~, *Croatia*, the *Democratic Republic of the Congo*, *Gabon*, *Indonesia*, *Ivory Coast*, *Kazakhstan*, *Malaysia*, *Morocco*, ***Nigeria,*** the *People's Republic of China*, ***Peru,*** the *Philippines*, *Romania*, *Russia*, *Serbia*, *Singapore*, *South Africa*, *Thailand*, *Tunisia*, *Ukraine*, *Viet~~nam~~* ***Nam*** and *Hong Kong, China* reserve the right to tax royalties at source.

213. Delete the following paragraph 3.1 of the Positions on Article 12 and its Commentary:

~~3.1 *Costa Rica* reserves the right to retain a 10 per cent rate of tax at source in its bilateral conventions.~~

214. Replace paragraph 6 of the Positions on Article 12 and its Commentary by the following:

6. The *Philippines*, *Thailand* and *Viet~~nam~~* ***Nam*** reserve the right to include fees for technical services in the definition of royalties.

215. Replace paragraphs 7.2 and 8 of the Positions on Article 12 and its Commentary by the following:

7.2 ***Peru reserves the right to include fees for technical assistance services, technical services and digital services in the definition of "royalties".*** ~~*Colombia* reserves the right to~~

~~include payments received for the furnishing of technical assistance, technical services and consulting services within the definition of royalties.~~

8. *Albania*, *Armenia*, *Azerbaijan*, *Belarus*, *Brazil*, *Bulgaria*, ~~*Colombia*, *Costa Rica*,~~ *India*, *Indonesia*, *Kazakhstan*, *Malaysia*, ***Nigeria,*** the *People's Republic of China*, ***Peru,*** the *Philippines*, *Romania*, *Russia*, *Serbia*, *Thailand* and *Viet~~nam~~* ***Nam*** reserve the right to include in the definition of royalties payments for the use of, or the right to use, industrial, commercial or scientific equipment.

216. Replace paragraphs 10 to 12.1 of the Positions on Article 12 and its Commentary by the following:

10. ~~*Argentina*,~~ *Brazil*, *Morocco* and *Romania* reserve the right to include in the definition of ~~the~~ royalties payments for transmissions by satellite, cable, optic fibre or similar technology.

10.1 *Argentina* and *Viet~~nam~~* ***Nam*** reserve the right to include in the definition of royalties, payments for the use of or the right to use of "films, tapes or digital media used for radio or television broadcasting".

11. *Albania*, *Malaysia*, *Serbia* and *Viet~~nam~~* ***Nam*** reserve the right to deal with fees for technical services in a separate Article similar to Article 12.

12. *Albania*, *Argentina*, *Armenia*, *Azerbaijan*, *Belarus*, *Brazil*, *Bulgaria*, ~~*Colombia*,~~ ~~*Croatia*,~~ *Gabon*, *Indonesia*, *Ivory Coast*, *Kazakhstan*, ~~*Lithuania*,~~ *Malaysia*, *Morocco*, ***Nigeria,*** the *People's Republic of China*, ***Peru,*** the *Philippines*, *Romania*, *Serbia*, *Singapore*, *South Africa*, *Thailand*, *Tunisia*, *Ukraine*, *Viet~~nam~~* ***Nam*** and *Hong Kong, China* reserve the right, in order to fill what they consider as a gap in the Article, to add a provision defining the source of royalties by analogy with the provisions of paragraph 5 of Article 11, which deals with the same issue in the case of interest.

12.1 *Morocco* ***and Nigeria*** reserve~~s~~ the right to include in the paragraph a reference to other business activities carried on in the other State of the same and similar kind as those effected through a permanent establishment.

217. Replace paragraphs 12.2 and 12.3 of the Positions on Article 12 and its Commentary by the following:

12.2 The *Democratic Republic of the Congo* and *Malaysia* reserve their position on the treatment of software.

12.3 ***Azerbaijan and*** Kazakhstan reserve~~s~~ the right to include in the definition of royalties payments for the use of, or the right to use, software.

218. Add the following new paragraphs 12.4 to 12.7 to the Positions on Article 12 and its Commentary:

12.4 Nigeria reserves the right to provide in its agreements for the mode of taxation of royalties, particularly by reference to its domestic law.

12.5 Nigeria reserves the right to cover payments for the use of, or the right to use, any copyright in the definition of royalties and not to limit the scope of the definition to copyrights of literary, artistic or scientific work.

12.6 Nigeria reserves the right to include in the definition of royalties payments received as a consideration for the use of, or the right to use, any software, or paid as a consideration for the acquisition of any copy of software for the purpose of using it.

12.7 The United Arab Emirates reserves the right to expressly exclude from the definition of royalties any "royalties or other payments in respect of the operation of mines or quarries or exploitation of petroleum or other natural resources or related activities".

219. Replace paragraphs 13 and 14 of the Positions on Article 12 and its Commentary by the following:

13. *Argentina*, ***Brazil,*** *Morocco*, *Serbia* and *Tunisia* do not adhere to the interpretation in paragraphs 14 and 15 of the Commentary. They hold the view that payments relating to software fall within the scope of the Article where less than the full rights to software are transferred, either if the payments are in consideration for the right to use a copyright on software for commercial exploitation or if they relate to software acquired for the personal or business use of the purchaser.

14. *Vietnam* ***Nam*** does not agree with paragraph 9 of the Commentary. Even if the phrase "for the use of, or the right to use, industrial, commercial or scientific equipment" is not included in paragraph 2 and income from the leasing of equipment falls under Article 7, the fact that an enterprise of a Contracting State leases heavy equipment to a person resident in *Vietnam* ***Nam*** will constitute a permanent establishment of that enterprise in *Vietnam* ***Nam***.

220. Delete the following paragraph 17.1 of the Positions on Article 12 and its Commentary:

17.1 *Colombia* does not adhere to the interpretations provided in paragraphs 8.2, 13.1, 14, 14.1, 14.2, 14.4, 15, 16 and 17.3; under its tax laws some of the payments referred to may constitute royalties.

221. Replace paragraph 18 of the Positions on Article 12 and its Commentary by the following:

18. ***Brazil and*** *India* do**es** not agree with the interpretation that information concerning industrial, commercial or scientific experience is confined to only previous experience.

222. Replace paragraph 24 of the Positions on Article 12 and its Commentary by the following:

24. *Bulgaria* does not ***agree that*** adhere to the interpretation, given in paragraph 14.4 of the Commentary on Article 12 ***will apply in all cases. Bulgaria will examine each case taking into account all circumstances, including the rights granted in relation to the acts of distribution.*** , and is of the opinion that a distribution intermediary who distributes software to clients and with relation to these clients requests from the software copyright holder or from another person who has the right to copy the software, to provide software copies, irrespective whether on a tangible media or electronically, uses the copyright in the software product.

223. Add the following new paragraph 25 to the Positions on Article 12 and its Commentary:

25. Nigeria reserves its position on the interpretations provided in paragraphs 8.2, 9, 9.1, 9.2, 14, 14.1, 14.2, 15, 16 and 17.3, as it is of the view that some of the payments referred to may constitute royalties.

Positions on Article 13 and its Commentary

224. Replace paragraph 1 of the Positions on Article 13 and its Commentary by the following:

1. *Argentina* and *Brazil* reserve**s** the right to tax at source gains from the alienation of property situated in a Contracting State other than property mentioned in paragraphs 1, 2, 3 and 4.

225. Delete the following paragraph 3.1 of the Positions on Article 13 and its Commentary:

3.1 *Lithuania* reserves the right to insert special provisions regarding capital gains relating to activities carried on in a Contracting State in connection with the exploration or exploitation of natural resources.

226. Replace paragraphs 4 to 8 of the Positions on Article 13 and its Commentary by the following:

4. ***Peru reserves the right to tax gains from the direct and indirect alienation of shares or other securities of companies resident in Peru.*** ~~*Lithuania* reserves the right to limit the application of paragraph 3 to enterprises operating ships and aircraft in international traffic.~~

5. ***Argentina,*** ~~*Colombia*, *Costa Rica*, *India*~~ and *Vietnam* ***Nam*** reserve the right to tax gains from the alienation of shares or rights in a company that is a resident of their respective c***ountries***~~y~~.

5.1 India reserves the right to tax gains from the direct and indirect alienation of shares or rights in a company, or of comparable interests, such as interests in a partnership or trust, that is a resident of India.

6. *Bulgaria* reserves the right to tax gains from the alienation of shares or rights***, other than shares quoted on a regulated stock exchange,*** in a company that is a resident of Bulgaria ~~other than shares quoted on a regulated stock exchange~~.

7. *Bulgaria* reserves the right to extend the scope of the provision to cover gains from the alienation of ***road or*** railway ~~and road transport~~ vehicles ***and to make a corresponding change to the definition of "international traffic" in Article 3***.

8. *Viet~~nam~~* ***Nam*** reserves the right to modify paragraph 4 so that the immovable property in question need only be 30 per cent of all assets owned by the company.

227. Replace paragraph 11 of the Positions on Article 13 and its Commentary by the following:

11. ***Nigeria reserves the right to extend the scope of paragraph 3 in bilateral agreements with neighboring countries to cover gains from the alienation of boats and railway and road transport vehicles.*** ~~*Lithuania* reserves the right not to include paragraph 4 in its conventions.~~

228. Add the following new paragraphs 12 to 14 to the Positions on Article 13 and its Commentary:

12. Nigeria reserves the right to tax at source gains derived by a resident of the other Contracting State from the alienation of shares of a company, or comparable interests, such as interests in a partnership or trust, if the alienator, at any time during the 365 days preceding such alienation, held directly or indirectly a certain percentage threshold of the capital of the company or entity.

13. Nigeria reserves the right to include a special provision to tax at source gains derived from the alienation of a right granted under its law which allows the use of resources that are naturally present and are under its jurisdiction.

14. Nigeria reserves the right to provide for source State taxation of gains derived from the indirect transfer of shares or any property located in its jurisdiction.

Positions on Article 15 and its Commentary

229. Replace paragraphs 1 and 2 of the Positions on Article 15 and its Commentary by the following:

1. ***Bulgaria and Nigeria reserve the right to add an article which addresses the situation of teachers, professors and researchers, subject to various conditions, and to make a corresponding modification to paragraph 1 of Article 15.*** ~~[Deleted]~~

2. ***Malaysia reserves the right to provide that the remuneration derived in respect of an employment exercised aboard ships or aircraft will be taxable only in the State of residence of their operator.*** ~~[Deleted]~~

230. Delete the following paragraph 3 of the Positions on Article 15 and its Commentary:

3. ***[Deleted]***~~*Lithuania* reserves the right to insert special provisions regarding income derived from dependent personal services relating to activities carried on in a Contracting State in connection with the exploration or exploitation of natural resources.~~

231. Delete the following paragraph 5.2 of the Positions on Article 15 and its Commentary:

~~5.2 *Azerbaijan* reserves the right to provide that the remuneration derived in respect of an employment exercised aboard ships or aircraft will be taxable only in the State of residence of their operator.~~

232. Replace paragraph 5.3 of the Positions on Article 15 and its Commentary by the following:

5.3 *Hong Kong, China* reserves the right to modify paragraph 3 to provide that the remuneration of an employee who works aboard a ship or aircraft operated in international traffic shall be taxable only in the ***jurisdiction*** ~~State~~ of residence of the enterprise that operates such ship or aircraft.

Positions on Article 16 and its Commentary

233. Replace paragraphs 1 and 2 of the Positions on Article 16 and its Commentary by the following:

1. *Albania*, *Azerbaijan*, *Bulgaria*, *Croatia*, the *Democratic Republic of the Congo*,~~*Indonesia*~~, ~~*Lithuania*~~ and *Serbia* reserve the right to tax under this Article any remuneration of a member of a board of directors or any other similar organ of a resident company.

2. ***Nigeria reserves the right to tax under this Article any remuneration of a member of a governing organ of a resident entity other than a company (for example, a public institution, educational institution or non-governmental organisation) where such governing organ performs functions similar to those of the board of directors of a company.*** ~~[Deleted]~~

234. Replace paragraph 4 of the Positions on Article 16 and its Commentary by the following:

4. *Indonesia*, *Malaysia****, Nigeria*** and *Viet~~nam~~* ***Nam*** reserve the right to extend the Article to cover the remuneration of top-level managerial officials.

235. Add the following new paragraphs 5 and 6 and the heading preceding paragraph 6 to the Positions on Article 16 and its Commentary:

5. Nigeria reserves the right to replace the term "similar payments" with "remuneration" in its agreements.

Position on the Commentary

6. Nigeria does not agree with the interpretation provided in paragraph 2 of the Commentary that the Article does not apply to remuneration paid to member of the board of directors of a company on account of other functions with the company, e.g. as ordinary employee. Nigeria reserves the right to interpret income covered by the Article to include salaries and other similar remuneration received by a member of the board of directors in the performance of employment functions to the company as an employee.

Positions on Article 17 and its Commentary

236. Replace paragraph 3 of the Positions on Article 17 and its Commentary by the following:

3. *Argentina*, ~~and~~ *Brazil* ***and Nigeria*** do not agree with the interpretation in paragraph 3, according to which Article 17 should not be extended to a model performing as such and presenting clothes during a fashion show. They consider that, under some circumstances, a fashion show may be regarded as of an entertainment nature. Thus, the income derived by a model from the participation in such a fashion show may be included in Article 17 (as opposed to the income derived by a model from other activities, i.e. the photo session, where the activity performed is clearly not of an entertainment nature).

237. Replace paragraphs 7 and 8 of the Positions on Article 17 and its Commentary by the following:

7. *India* does not agree with the interpretation given in paragraph 9 restricting the scope of Article 17 only to personal activities that have a close connection with performance. India considers that any consideration received by an entertainer or a sportsperson for any personal activity, including appearance***, as well as payments received on cancellation of an event are*** ~~is~~ covered by Article 17.

8. *India* ***and Nigeria*** do~~es~~ not agree with the third example in paragraph 9.1, related to reporting or commenting activities during the broadcasting of an entertainment or sports event, as ***they*** ~~it~~ considers that such activities are covered by Article 17.

238. Add the following new paragraph 11 to the Positions on Article 17 and its Commentary:

11. Nigeria does not agree with the interpretation in paragraph 9 that payments received in the event of the cancellation of a performance are outside the scope of Article 17.

Positions on Article 18 and its Commentary

239. Replace paragraphs 1 and 2 of the Positions on Article 18 and its Commentary by the following:

1. ***Nigeria reserves the right to include in the title of the Article an explicit reference to annuities***. ~~[Deleted]~~

2. *Brazil*, ~~*Bulgaria*~~, *Ivory Coast*, *South Africa* and *Ukraine* reserve the right to include in paragraph 1 an explicit reference to annuities.

240. Add the following new paragraphs 3 to 5 to the Positions on Article 18 and its Commentary:

3. Nigeria reserves the right to include a separate paragraph to provide the following definition of "annuity": "a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time in consideration of past employment under an obligation to make the payments in return for adequate and full consideration in money or money's worth".

4. Nigeria reserves the right to include a separate paragraph to provide for exclusive source State taxation of pensions and other payments made under a public scheme which is part of the social security system of a Contracting State, a political subdivision or a local authority thereof.

5. Hong Kong, China reserves the right to include a separate paragraph to provide for the source jurisdiction's exclusive right to tax pensions and other similar remuneration made under a pension or retirement scheme which is a public scheme being part of the social security system of a Contracting Party or a scheme in which individuals may participate to secure retirement benefits and which is recognized for tax purposes in a Contracting Party.

Positions on Article 19 and its Commentary

241. Replace paragraph 1 of the Positions on Article 19 and its Commentary by the following:

1. ***Azerbaijan reserves the right to include within the scope of the Article remuneration paid by public law institutions that serve public purposes and are financed from public budgets (e.g. remuneration paid to reporters of the Azerbaijan State News Agency (AZERTAC)).*** ~~*Argentina* reserves the right to tax at source pensions covered by subparagraph 2 *b*).~~

Positions on Article 20 and its Commentary

242. Replace paragraphs 1 and 2 of the Positions on Article 20 and its Commentary by the following:

1. *Albania*, *Brazil****, Nigeria*** and *Serbia* reserve the right to add a second paragraph providing for the granting to visiting students of the same tax exemptions, reliefs or reductions as are granted to residents in respect of any subsidies, grants and payments for dependent personal services.

2. ~~Lithuania and~~ *Morocco* reserve***s*** the right to refer to any apprentice and to a trainee in this Article.

243. Replace paragraph 4 of the Positions on Article 20 and its Commentary by the following:

4. *Viet~~nam~~* ***Nam*** reserves the right to provide that remuneration for services rendered by a student or business apprentice in a Contracting State shall not be taxed in that State, provided that such services are in connection with his studies or training.

244. Replace paragraph 6 of the Positions on Article 20 and its Commentary by the following:

6. *Brazil*, ~~*Bulgaria, Costa Rica*~~, *India*, *Ivory Coast*, *Morocco*, ***Nigeria,*** the *People's Republic of China*, the *Philippines*, *Serbia*, *Thailand*, *Tunisia* and *Viet~~nam~~* ***Nam*** reserve the right to add an article which addresses the situation of teachers, professors and researchers, subject to various conditions***,*** and ~~are free~~ to make a corresponding modification to paragraph 1 of Article 15.

245. Add the following new paragraph 12 to the Positions on Article 20 and its Commentary:

12. Nigeria reserves the right to include an explicit reference to business apprentices in the title of the Article.

Positions on Article 21 and its Commentary

246. Replace paragraph 1 of the Positions on Article 21 and its Commentary by the following:

1. *Albania*, ~~*Argentina, Azerbaijan,*~~ *Belarus*, *Brazil*, ~~*Colombia, Costa Rica*~~, *Gabon*, *India*, *Indonesia*, *Ivory Coast*, *Malaysia*, *Morocco*, ***Nigeria, Peru,*** *Russia*, *Serbia*, *Singapore*, *South Africa*, *Thailand* and *Viet~~nam~~* ***Nam*** reserve their positions on this Article as they wish to maintain the right to tax income arising from sources in their own country.

247. Add the following new paragraph 2 to the Positions on Article 21 and its Commentary:

2. Azerbaijan reserves the right to extend the wording of paragraph 1 and grant exclusive taxing rights to the State of residence, provided that the resident is the beneficial owner of the income.

Positions on Article 22 and its Commentary

248. Replace paragraphs 1 and 2 of the Positions on Article 22 and its Commentary by the following:

1. *Argentina* reserves the right to tax ***the*** capital ***of a company that is a resident of Argentina***~~, other than property mentioned in paragraph 3, that is situated on its territory~~.

2. *Brazil*, *Bulgaria*, *Indonesia*, *Malaysia*, the *People's Republic of China*, *Singapore*, *Thailand* and *Viet~~nam~~* ***Nam*** reserve their positions on the Article if and when they impose taxes on capital.

Positions on Articles 23A and 23B and its Commentary

249. Replace paragraphs 1 and 2 of the Positions on Articles 23 A and 23 and their Commentary and the heading preceding them by the following:

POSITIONS ON ARTICLES 23 A AND 23 B (EXEMPTION METHOD AND CREDIT METHOD) AND *THEIR* ~~IT~~S COMMENTARY

Positions on the Article

1. *Albania*, ~~*Argentina*, *Brazil*,~~ *India*, *Ivory Coast*, *Malaysia*, *Morocco*, the *People's Republic of China*, *Serbia*, *Thailand*, *Tunisia* and *Viet~~nam~~* ***Nam*** reserve the right to add tax sparing provisions in relation to the tax incentives that are provided for under their respective national laws.

2. ~~*Argentina* and~~ *Vietnam* ***Nam*** reserve***s*** the right to add a matching credit for some or all of the income covered under Articles 10, 11 and 12 with the result that tax shall be deemed to have been paid, for purposes of the Article on elimination of double taxation, at a certain rate, to be negotiated, of the gross income.

250. Delete the following paragraph 3 of the Positions on Articles 23 A and 23 B and their Commentary:

3. ***[Deleted]*** ~~*Brazil* reserves the right to add a matching credit for some or all of the income covered under Articles 11 and 12 with the result that tax shall be deemed to have been paid, for purposes of the Article on elimination of double taxation, at a certain rate, to be negotiated, of the gross income.~~

251. Replace paragraph 4 of the Positions on Articles 23 A and 23 B and their Commentary by the following:

4. ~~*Brazil* and~~ *Tunisia* reserve***s*** the right to provide that income covered under Article 10 shall be exempt or entitled to a matching credit in the other Contracting State.

252. Delete the following paragraph 5 of the Positions on Articles 23 A and 23 B and their Commentary:

5. ***[Deleted]*** ~~*Brazil* reserves its position on paragraph 4 of Article 23 A.~~

Positions on Article 24 and its Commentary

253. Replace paragraphs 1 to 2.1 of the Positions on Article 24 and its Commentary and the heading preceding paragraph 1 by the following:

~~***Paragraph 1***~~

1. ***Nigeria reserves the right to include a separate paragraph that states that: "The provisions of this Article shall not prevent a Contracting State from implementing the interest deductibility rule or thin capitalisation rule in its domestic law."*** ~~[Deleted]~~

Paragraph 1

2. *Brazil*, ~~*Colombia*~~, ~~*Romania*~~, *Russia*, *Singapore*, *Thailand* and *Viet~~nam~~* ***Nam*** reserve their position on the second sentence of paragraph 1.

2.1 ***[Deleted]*** ~~*Bulgaria* reserves the right to omit the words "other or" in the first sentence of paragraph 1.~~

254. Replace paragraphs 4 and 5 of the Positions on Article 24 and its Commentary by the following:

4. *Albania*, ***Azerbaijan,*** *Bulgaria*, *India*, ~~*Malaysia*~~, ***Nigeria, Peru,*** the *Philippines*, *Russia*, *Serbia*, *Singapore****, the United Arab Emirates*** and *Viet~~nam~~* ***Nam*** reserve the right not to insert paragraph 2 in their conventions.

Paragraph 3

5. *Argentina****, Brazil and Peru*** reserve~~s~~ the right to apply a branch profits tax.

255. Delete the following paragraph 6 of the Positions on Article 24 and its Commentary:

6. ***[Deleted]*** ~~*Brazil* reserves its position on paragraph 3 since royalties paid by a permanent establishment situated in Brazil to its head office abroad are not deductible under its law.~~

256. Delete the following paragraphs 7.2 and 7.3 of the Positions on Article 24 and its Commentary:

~~7.2 *Argentina* reserves the right to provide in paragraph 3 that no exemptions or concession provided for in its internal laws shall be granted as long as that would result in a transfer of taxes to foreign tax administrations.~~

~~7.3 *Colombia* reserves the right to impose its tax on the transfer of profits attributable to permanent establishments.~~

257. Replace paragraphs 8 and 8.1 of the Positions on Article 24 and its Commentary by the following:

8. *Viet~~nam~~* ***Nam*** reserves its position on this paragraph in the case of interest paid to non-residents that is not subject to a withholding tax.

8.1 *Malaysia* reserves its position on this paragraph in the case of interest, royalties, ~~or~~ fees for technical services***, or other disbursements*** paid to non-residents where withholding tax has not been deducted.

258. Replace paragraph 8 of the Positions on Article 24 and its Commentary by the following:

8.3 ***Peru accepts the provisions of paragraph 4 but reserves the right to apply the tax treatment described in subsection a.4) of its Income Tax Law.*** ~~*Argentina* reserves the right not to include paragraph 4 of Article 24.~~

259. Add the following new paragraphs 8.4 and 8.5 to the Positions on Article 24 and its Commentary:

8.4 Nigeria reserves the right to include in paragraph 4 references to other articles that it reserves the right to include in its agreements and that provide for source State taxation, such as articles on fees for services, insurance and payments underlying income from automated digital services.

8.5 Nigeria reserves the right not to include in its agreements the second sentence of paragraph 4 referencing taxable capital.

260. Replace paragraph 10 of the Positions on Article 24 and its Commentary by the following:

10. *Albania*, ~~*Argentina*~~, *Brazil*, *Bulgaria*, ~~*Colombia*~~, *Malaysia*, the *Philippines*, *Romania*, *Serbia*, *Singapore*, *Thailand*, *Tunisia*, *Viet~~nam~~* ***Nam,*** ~~and~~ *Ukraine* ***and Hong Kong, China*** reserve the right to restrict the scope of the Article to the taxes covered by the Convention.

261. Add the following new paragraph 13 to the Positions on Article 24 and its Commentary:

13. Nigeria does not agree with the conclusion reached in paragraph 74, which suggests that thin capitalisation rules will not be discriminatory only when they are compatible with paragraph 1 of Article 9 or paragraph 6 of Article 11. Nigeria disagrees with the statement in the second sentence of that paragraph that domestic thin capitalisation rules, which only apply to non-resident creditors, are prohibited by paragraph 4 of the Article, if such rules are not compatible with paragraph 1 of Article 9 or paragraph 6 of Article 11.

Positions on Article 25 and its Commentary

262. Replace paragraph 1 of the Positions on Article 25 and its Commentary by the following:

1. The *Philippines* ~~and *Thailand*~~ reserve***s its*** ~~their~~ position~~s~~ on the last sentence of paragraph 1.

263. Add the following new paragraph 1.2 to the Positions on Article 25 and its Commentary:

1.2 Hong Kong, China reserves the right to replace "domestic law" by "internal laws" in paragraphs 1 and 2 because Hong Kong, China is not a sovereign State.

264. Replace paragraphs 2 and 3 of the Positions on Article 25 and its Commentary by the following:

2. ~~*Bulgaria, t*~~***T***he *Philippines* ~~and *Thailand*~~ reserve***s*** ~~their~~ ***its*** position~~s~~ on the second sentence of paragraph 2. The ***Philippines*** ~~se countries~~ consider***s*** that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to time limits prescribed by ***its*** ~~their~~ domestic laws.

Paragraph 3

3. ~~*Thailand*, *Tunisia* and *Ukraine*~~ reserve***s its*** ~~their~~ position on the second sentence of paragraph 3 on the grounds that ***it has*** ~~they have~~ no authority under ***its*** ~~their respective~~ laws to eliminate double taxation in cases not provided for in the Convention.

265. Replace paragraph 4.1 of the Positions on Article 25 and its Commentary by the following:

4.1 *Brazil*, ***Bulgaria, Croatia***, *India*, *Indonesia*, ***Malaysia, Nigeria,*** the *People's Republic of China*, ***Peru, Romania,*** *Serbia*, *South Africa****, the United Arab Emirates*** and *Hong Kong, China* reserve the right not to include paragraph 5 in their conventions.

266. Add the following new heading and paragraphs 4.3 and 4.4 to the Positions on Article 25 and its Commentary:

Paragraph 6

4.3 India reserves the right to modify paragraph 6 to exclude the reference to "any other procedure agreed to by both Contracting States".

4.4 Nigeria reserves the right to replace paragraph 6 with the following: "Notwithstanding any other Agreement of which the Contracting States are or may become parties, any dispute over a measure taken by a Contracting State involving a tax covered by Article 2 or, in the case of non-discrimination, any taxation measure taken by a Contracting State, including a dispute whether this Agreement applies, shall be settled only under this Agreement, unless the competent authorities of the Contracting States agree otherwise."

267. Delete the following paragraph 6 of the Positions on Article 25 and its Commentary:

6. ***[Deleted]*** ~~*Argentina* considers that paragraph 1 of the Article does not bind the competent authorities to commence or accept a mutual agreement procedure case where the taxpayer alleges that taxation is not in accordance with the Convention in respect of a hypothetical case, rather than an actual case.~~

268. Delete the following paragraph 9 of the Positions on Article 25 and its Commentary:

9. ***[Deleted]*** ~~With reference to paragraphs 86 and 87, because *Brazil* has a very strict tax secrecy policy that prevents the disclosure of information related to the case to a third party, it is of the view that mutual agreement procedures should not be discussed and implemented by anyone other than the competent authorities of the Contracting States, who should put their best efforts to reach a suitable bilateral solution.~~

269. Add the following new paragraph 12 to the Positions on Article 25 and its Commentary:

12. Bulgaria does not adhere to the interpretation in paragraph 49 of the Commentary on Article 25. Bulgaria holds the view that interest and penalties are not taxes covered by the Convention and, therefore, cannot be dealt with in the mutual agreement procedure.

Positions on Article 26 and its Commentary

270. Replace paragraph 1 of the Positions on Article 26 and its Commentary by the following:

1. ***Hong Kong, China reserves the right to replace "domestic law" by "internal laws" in paragraphs 1 and 2 because Hong Kong, China is not a sovereign state. Hong Kong, China also reserves the right to replace the words "it has no domestic interest in such information" by "there is no tax interest in such information to that Contracting Party" for the same reason.*** ~~[Deleted]~~

271. Replace paragraph 3 of the Positions on Article 26 and its Commentary by the following:

3. As regards paragraph 10.3 of the Commentary, *Hong Kong, China* wishes to clarify its position on the exchange of information that existed prior to the entry into force of the bilateral agreement. In view of its ***internal*** ~~domestic~~ law requirements, Hong Kong, China will only exchange information relating to taxable periods after the agreement came into operation.

Positions on Article 29 and its Commentary

272. Add the following new paragraphs 4 and 5 to the Positions on Article 29 and its Commentary:

4. Nigeria reserves the right not to include subparagraph 8 c) in its agreements.

5. Hong Kong, China reserves the right to include a provision expressly confirming that "Nothing in the Agreement shall prejudice the right of each Contracting Party to apply its internal laws and measures concerning tax evasion or avoidance, whether or not described as such".

Positions on Article 30 and its Commentary

273. Replace paragraph 1 of the Positions on Article 30 and its Commentary by the following:

1. *Indonesia*, *Malaysia*, the *People's Republic of China*, *Singapore**,*** ~~and~~ *Thailand* ***and the United Arab Emirates*** reserve their position on this Article.

Positions on Article 32 and its Commentary

274. Add the following new headings and paragraph 1 following the Positions on Article 30 and its Commentary:

POSITIONS ON ARTICLE 32 (TERMINATION) AND ITS COMMENTARY

Position on the Article

1. Hong Kong, China reserves the right to replace "diplomatic channels" by "official channels" because Hong Kong, China is not a sovereign State.