

SIGNIFICANT OECD DEVELOPMENTS

IATJ ASSEMBLY 2010 – ROME
Patrick J. Boyle, Tax Court of Canada
patrick.boyle@tcc-cci.ca

1. OECD Model Tax Convention – 2010 Update

Available at www.OECD.org/tax.

Approved by Council in July 2010. Expected to be in next published update of OECD Model Tax Convention – September 2010.

Significant Updates:

- Business Profits – Article 7
 - elimination of all double taxation
- Collective Investment Vehicles' entitlement to treaty benefits – Commentary
 - person, resident, beneficial owner
- State-Owned Entities' entitlement to treaty benefits – Commentary
 - Sovereign Wealth Funds
 - Sovereign Immunity.

2. Business Profits: New Article 7 and Commentary

Implements 2008 Attribution of Profits Report.

July 2008 Draft. Comments to January 2010. In 2010 Updated Model Convention.

2009 revisions to Draft

- Paragraph 7(3) aims to ensure all cases of double taxation are eliminated.
- Paragraph 24 of the Commentary aims to limit paperwork burden to be comparable to non-arm's length situations.

Common Telecommunications Transactions – Commentary

- Satellite operators, roaming fees, cable and phone line rights as royalties or PEs.

When are Services Provided in the Course of Employment – Commentary

3. Entertainers & Sportsmen/Artistes & Athletes

April 2010 Draft Commentary Revision to Article 17

Interviews and advertising, event reporting and commentators, promoters, former politicians' speaking engagements, horse and race car owners, allocation of fees.

Not in 2010 updated Model Convention.

4. Mutual Agreement Procedures – MAP – Statistics

MAP statistics published on OECD website

- Improve timeliness of processing and completing MAP cases.
- Enhance transparency.

Only 2006 and 2007 statistics available

- Most member countries received more MAP requests (13% average increase) and had more requests in total awaiting resolution.
- Average completion time 19 months (14% decrease).

2007 recommendation that arbitration be required if MAP fails.

New Article 7(3) effectively guarantees MAP with respect to allocation of business income to a PE.

5. Revised Transfer Pricing Guidelines

Article 9 Arm's length principle.

1995 Guidelines.

Revised Guidelines approved July 2010:

- Selection of most appropriate method.
- Application of transactional profit methods.
- How to perform a comparability analysis
- Transfer pricing aspects of Business Restructurings

New review announced of Transfer Pricing Aspects of Intangibles.

New Task Force on Tax and Development.

6. Partnership and Flow-Through Entity FTE Update

2010 Updated Model Convention addresses treaty entitlements of:

- Collective Investment Vehicles.
- State-Owned Entities.

Partnership Report 1999

Flow-Through Entity cases:

- *Swift* (UK)
- *TD Securities LLC* (Canada)
- *Linklaters LLP* (India)
- *Bayfine* (UK)
- Commentaries in IBFD & IFA