



Recommendation of the Council
concerning the Application and
Interpretation of the 183 Day
Rule set by the OECD Model
Double Convention on Income
and Capital

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Please cite this document as:

OECD, *Recommendation of the Council concerning the Application and Interpretation of the 183 Day Rule set by the OECD Model Double Convention on Income and Capital*, OECD/LEGAL/0262

Series: OECD Legal Instruments

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Background Information

The Recommendation concerning the Application and Interpretation of the 183 Day Rule set by the OECD Model Double Convention on Income and Capital was adopted by the OECD Council on 24 October 1991 on proposal of the Committee on Fiscal Affairs. The Recommendation advised Adherents, when applying existing bilateral Double Taxation Conventions on Income and Capital, to follow the recommendations of the Report of the Committee on Fiscal Affairs of 24 January 1991 on The 183 Day Rule: Some Problems of Application and Interpretation (DAFFE/CFA(91)6/REV1), concerning the interpretation of the 183 Day Rule set out in paragraph 2 of Article 15 of the Model Convention and, in particular, to adopt the "days of physical presence" uniform method set out in the Report. The Recommendation was abrogated on 8 February 1994 because it was found to be obsolete.

THE COUNCIL,

HAVING REGARD to Article 5b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

HAVING REGARD to the Recommendations of the Council of 11th April 1977 concerning the Avoidance of Double Taxation and of 21st September 1977 concerning Tax Avoidance and Evasion [C(77)40(Final), C(77)149(Final)];

HAVING REGARD to the Report of the Committee on Fiscal Affairs of 24 January 1991 on The 183 Day Rule: Some Problems of Application and Interpretation (DAFFE/CFA(91)6/REV1);

CONSIDERING that the 1977 OECD Model Double Taxation Convention on Income and Capital (hereinafter referred to as the "Model Convention") has helped Member countries to harmonize bilateral conventions on the basis of uniform principles, definitions, rules and methods, to agree on a common interpretation and to extend the existing network of such conventions;

I. RECOMMENDS that Governments of Member countries, when applying existing bilateral Double Taxation Conventions on Income and Capital, follow the recommendations of the above-mentioned Report concerning the interpretation of the 183 Day Rule set out in paragraph 2 of Article 15 of the Model Convention and, in particular, to adopt the "days of physical presence" uniform method set out in the Report.

II. INSTRUCTS the Committee on Fiscal Affairs to modify the Commentary on paragraph 2 of Article 15 of the Model Convention as recommended in paragraph 27 of the Report, when the Model Convention is next revised.

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