



Recommendation of the Council
concerning the Avoidance of
Double Taxation with respect to
Taxes on Estates and
Inheritances and on Gifts

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Background Information

The Recommendation concerning the Avoidance of Double Taxation with respect to Taxes on Estates and Inheritances and on Gifts was adopted by the OECD Council on 3 June 1982 on the proposal of the Committee on Fiscal Affairs. The Recommendation recommends that Adherents conform to the Model Convention and pursue efforts to conclude bilateral conventions for the avoidance of double taxation with respect to taxes on estates and inheritances or on gifts.

THE COUNCIL,

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

HAVING REGARD to the Recommendations of the Council of 28 June 1966 concerning the Avoidance of Double Taxation with respect to taxes on Estates and Inheritances [C(66)50(Final)] and of 11 April 1977 concerning the Avoidance of Double Taxation with respect to Taxes on Income and on Capital [C(77)40(Final)];

HAVING REGARD to the Report of the Committee on Fiscal Affairs of 3 March 1982 on the OECD Convention for the Avoidance of Double Taxation with respect to Taxes on Estates and Inheritances and on Gifts;

CONSIDERING the desirability of extending to taxes on estates and inheritances and on gifts the efforts of Member countries with regard to the elimination of double taxation and of concluding conventions between them for that purpose;

CONSIDERING also the need to harmonize existing 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 to all Member countries;

CONSIDERING that the new Model Convention will make it possible to confirm and extend the existing international co-operation in tax matters;

I. RECOMMENDS to the Governments of Member countries:

1. To pursue their efforts to conclude bilateral conventions for the avoidance of double taxation with respect to taxes on estates and inheritances or on gifts with those Member countries with which they have not yet entered into such conventions and to revise those existing conventions between them which may no longer be in keeping with present-day needs;

2. When concluding new bilateral conventions or revising existing bilateral conventions between them, to conform to the Model Convention set out in the Annex hereto as interpreted by the Commentaries thereto and having regard to the reservations to the Model Convention, which are contained in the Report referred to above.

II. REQUESTS the Governments of Member countries to notify the Organisation of the text of any new or revised double taxation conventions concluded with each other and, where appropriate, the reasons why the provisions of the Model Convention have not been adopted in such conventions.

III. INSTRUCTS the Committee on Fiscal Affairs:

1. To examine the notifications so supplied and to report to it as appropriate;

2. To conduct periodic reviews of situations where double taxation may occur, in the light of experience gained by Member countries, and to make appropriate proposals for its removal.

IV. DECIDES to repeal the Recommendation of the Council of 28 June 1966 referred to above.

ANNEX

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MODEL DOUBLE TAXATION CONVENTION ON ESTATES AND INHERENCES AND ON GIFTS

TITLE OF THE CONVENTION

Convention between (State A) and (State B) for the avoidance of double taxation with respect to taxes on estates and inheritances and on gifts

PREAMBLE OF THE CONVENTION

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

ESTATES, INHERITANCES AND GIFTS COVERED

This Convention shall apply:

- a) to estates and inheritances where the deceased was domiciled, at the time of his death, in one or both of the Contracting States, and
- b) to gifts where the donor was domiciled, at the time of the gift, in one or both of the Contracting States.

Article 2

TAXES COVERED

1. This Convention shall apply to taxes on estates and inheritances and on gifts imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on estates and inheritances taxes imposed by reason of death in the form of taxes on the corpus of the estate, of taxes on inheritances, of transfer duties, or of taxes on *donationes mortis causa*. There shall be regarded as taxes on gifts taxes imposed on transfers *inter vivos* only because such transfers are made for no, or less than full, consideration.

3. The existing taxes to which the Convention shall apply are:

- a) (in State A)
- b) (in State B)

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term “property which forms part of the estate of, or of a gift made by, a person domiciled in a Contracting State” includes any property the devolution or transfer of which, under the law of a Contracting State, is liable to a tax covered by the Convention;
 - b) the term “competent authority” means:
 - i) (in State A)
 - ii) (in State B)
2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4

FISCAL DOMICILE

1. For the purposes of this Convention, the term “person domiciled in a Contracting State” means any person whose estate or whose gift, under the law of that State, is liable to tax therein by reason of the domicile, residence or place of management of that person or any other criterion of a similar nature. However, this term does not include any person whose estate or whose gift is liable to tax in that State only in respect of property situated therein.
2. Where by reason of the provisions of paragraph 1 an individual is domiciled in both Contracting States, then his status shall be determined as follows:
 - a) he shall be deemed to be domiciled in the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be domiciled in the State with which his personal and economic relations are closer (centre of vital interests);
 - b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be domiciled in the State in which he has an habitual abode;
 - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be domiciled in the State of which he is a national;
 - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is domiciled in both Contracting States, then it shall be deemed to be domiciled in the State in which its place of effective management is situated.

CHAPTER III

TAXING RULES

Article 5

IMMOVABLE PROPERTY

1. Immovable property which forms part of the estate of, or of a gift made by, a person domiciled in a Contracting State and which is situated in the other Contracting State may be taxed in that other State.

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also apply to immovable property of an enterprise and to immovable property used for the performance of professional services or other activities of an independent character.

Article 6

MOVABLE PROPERTY OF A PERMANENT ESTABLISHMENT OR A FIXED BASE

1. Movable property of an enterprise which forms part of the estate of, or of a gift made by, a person domiciled in a Contracting State, which is the business property of a permanent establishment situated in the other Contracting State, may be taxed in that other State.

2. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

3. The term “permanent establishment” includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop; and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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

5. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

- e) the maintenance of a fixed place of business solely for the purpose of carrying on for the enterprise any other activity of a preparatory or auxiliary character; or
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Movable property which forms part of the estate of, or of a gift made by, a person domiciled in a Contracting State, used for the performance of professional services or other activities of an independent character and pertaining to a fixed base situated in the other Contracting State, may be taxed in that other State.

Article 7

OTHER PROPERTY

Property, wherever situated, which forms part of the estate of, or of a gift made by, a person domiciled in a Contracting State, and not dealt with in Articles 5 and 6, shall be taxable only in that State.

Article 8

DEDUCTION OF DEBTS

1. Debts especially secured on any property referred to in Article 5 shall be deducted from the value of that property. Debts, not being especially secured on any property referred to in Article 5, which are represented by the acquisition, conversion, repair or upkeep of any such property, shall be deducted from the value of that property.

2. Subject to the provisions of paragraph 1, debts pertaining to a permanent establishment referred to in paragraph 1 of Article 6, or to a fixed base referred to in paragraph 6 of Article 6, shall be deducted from the value of the permanent establishment or the fixed base as the case may be.

3. Other debts shall be deducted from the value of property to which the provisions of Article 7 apply.

4. If a debt exceeds the value of the property from which it is deductible in a Contracting State, according to the provisions of paragraphs 1 or 2, the excess shall be deducted from the value of any other property taxable in that State.

5. Any excess still remaining in one Contracting State after the deductions referred to in paragraphs 3 or 4 shall be deducted from the value of the property liable to tax in the other Contracting State.

6. Where the provisions of paragraphs 1 to 5 would oblige one Contracting State to deduct debts to an extent greater than that provided for under its law, those provisions shall apply only to the extent that the other Contracting State is not obliged to deduct the same debts under its own law.

CHAPTER IV

METHODS FOR ELIMINATING DOUBLE TAXATION

Article 9A

EXEMPTION METHOD

1. The Contracting State in which the deceased was domiciled at his death, or the donor was domiciled at the time of the gift, shall exempt from tax any property which, in relation to the same event and in accordance with the provisions of this Convention, may be taxed in the other Contracting State.

2. The former Contracting State shall also exempt from tax any property which, in relation to a previous gift and in accordance with the provisions of the Convention, may have been taxed in the other Contracting State. That former State, however, shall not exempt from tax any property which was taxable in that State in accordance with the provisions of Articles 5 or 6 of the Convention.

3. In each case the former Contracting State may take the exempted property into account in calculating the amount of tax on any remaining property.

Article 9B

CREDIT METHOD

1. The Contracting State in which the deceased was domiciled at his death, or the donor was domiciled at the time of the gift, shall allow as a deduction from the tax calculated according to its law an amount equal to the tax paid in the other Contracting State on any property which, in relation to the same event and in accordance with the provisions of this Convention, may be taxed in that other State.

2. The former Contracting State shall also allow as a deduction from such tax an amount equal to the tax which has been paid in the other Contracting State on a previous gift in accordance with the provisions of the Convention to the extent that such a deduction has not been allowed under the provisions of paragraph 1 at the time of that gift. That former State, however, shall not allow a deduction in respect of tax paid on property which was taxable in that State in accordance with the provisions of Articles 5 or 6 of the Convention.

3. The deductions referred to in paragraphs 1 and 2 shall not, however, exceed that part of the tax of the former Contracting State, as computed before any deduction is made, which is attributable to the property in respect of which the deduction is to be allowed.

CHAPTER V

SPECIAL PROVISIONS

Article 10

NON-DISCRIMINATION

1. Nationals of a Contracting State, wherever they are domiciled, shall not be subjected in the other Contracting State to any taxation, or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The term "nationals" means:

- a) all individuals possessing the nationality of a Contracting State;
- b) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3. Stateless persons who are domiciled in a Contracting State shall not be subjected in either Contracting State to any taxation, or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances are or may be subjected.

4. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 11

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, shall endeavour to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 12

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws or administrative practice of that or of the other State;
- b) to supply information which is not obtainable under the laws, or in the normal course of the administration, of that or of the other State;
- c) professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

Article 13

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 14

TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications, [to any part of the territory of (State A) or of (State B) which is specifically excluded from the application of the Convention or] to any State or territory for whose international relations (State A) or (State B) is responsible, which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 16 shall also terminate, in the manner provided for in that Article, the application of the Convention [to any part of the territory of (State A) or of (State B) or] to any State or territory to which it has been extended under this Article.

CHAPTER VI

FINAL PROVISIONS

Article 15

ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) (in State A)

b) (in State B)

Article 16

TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year In such event, the Convention shall cease to have effect:

a) (in State A)

b) (in State B)

TERMINAL CLAUSE

Note: The terminal clause shall be drafted in accordance with the constitutional procedure of both Contracting States.

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