



Recommendation of the Council concerning Tax Treaty Override

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Date(s)

Adopted on 02/10/1989

Background Information

The Recommendation concerning Tax Treaty Override was adopted by the OECD Council on 2 October 1989 on the proposal of the Committee on Fiscal Affairs. The Recommendation recommends that Adherents undertake bilateral or multilateral consultations to address problems connected with tax treaty provisions and to avoid enacting legislation that contradicts international treaty obligations.

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 Recommendation of the Council of 11 April 1977 concerning the Avoidance of Double Taxation [C(77)40(Final)];

HAVING REGARD to the Recommendation of the Council of 3 June 1982 concerning the Avoidance of Double Taxation with respect to Taxes on Estates and Inheritances and on Gifts [C(82)64(Final)];

HAVING REGARD to the Report of the Committee on Fiscal Affairs of 29 June 1989 on Tax Treaty Override [DAFFE/CFA/89.13(2nd Revision)];

CONSIDERING that double taxation conventions contribute to the removal of obstacles to the free movement of goods, services, capital and manpower between Member countries of the OECD and that the network of conventions brings certainty into international tax matters;

CONSIDERING that such certainty has been called into question, and to some extent undermined, by the enactment of legislation which is intended to nullify unilaterally the application of international treaty obligations;

CONSIDERING that bilateral or multilateral consultations are the first course of action in dealing with problems arising from conflicts between domestic legislation and treaty provisions;

I. RECOMMENDS Member countries;

1. To undertake promptly bilateral or multilateral consultations to address problems connected with tax treaty provisions, whether arising in their own country or raised by countries with which they have tax treaties;
2. To avoid enacting legislation which is intended to have effects in clear contradiction to international treaty obligations.

II. INSTRUCTS the Committee on Fiscal Affairs to follow developments in this area and to bring to the attention of the Council any action which would constitute a material breach of Member countries' international treaty obligations.

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- **Recommendations:** OECD legal instruments which are not legally binding but practice accords them great moral force as representing the political will of Adherents. There is an expectation that Adherents will do their utmost to fully implement a Recommendation. Thus, Members which do not intend to do so usually abstain when a Recommendation is adopted, although this is not required in legal terms.
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