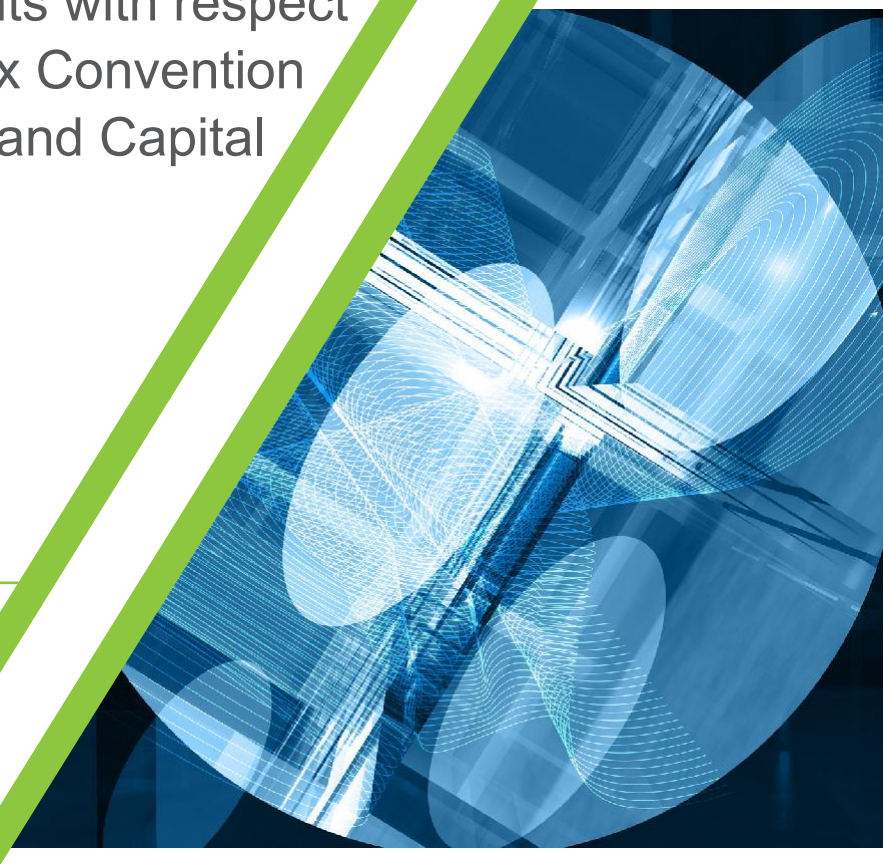
Recommendation of the Council concerning the Attribution of Income to Permanent Establishments with respect to the Model Tax Convention on Income and Capital



OECD Legal Instruments

OECD
BETTER POLICIES FOR BETTER LIVES

This document is published under the responsibility of the Secretary-General of the OECD. It reproduces an OECD Legal Instrument and may contain additional material. The opinions expressed and arguments employed in the additional material do not necessarily reflect the official views of OECD Member countries.

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

For access to the official and up-to-date texts of OECD Legal Instruments, as well as other related information, please consult the Compendium of OECD Legal Instruments at http://legalinstruments.oecd.org.

Please cite this document as:
OECD, *Recommendation of the Council concerning the Attribution of Income to Permanent Establishments with respect to the Model Tax Convention on Income and Capital*, OECD/LEGAL/0274

Series: OECD Legal Instruments

© OECD 2025

This document is provided free of charge. It may be reproduced and distributed free of charge without requiring any further permissions, as long as it is not altered in any way. It may not be sold.

This document is available in the two OECD official languages (English and French). It may be translated into other languages, as long as the translation is labelled "unofficial translation" and includes the following disclaimer: *"This translation has been prepared by [NAME OF TRANSLATION AUTHOR] for informational purpose only and its accuracy cannot be guaranteed by the OECD. The only official versions are the English and French texts available on the OECD website http://legalinstruments.oecd.org"*

Background Information

The Recommendation concerning the Attribution of Income to Permanent Establishments with respect to the Model Tax Convention on Income and Capital was adopted by the OECD Council on 26 November 1993 on proposal of the Committee on Fiscal Affairs. The Recommendation advised Adherents to follow the recommendations of the Report on the Attribution of Income to Permanent Establishments [DAFFE/CFA(93)10/REV2] when interpreting the Article 7 of the Model Tax Convention for the purpose of determining the income to be attributed to a permanent establishment located in a given State of an enterprise of another State. The Recommendation was abrogated on 17 July 2008 and replaced by the OECD Recommendation of the Council on the Attribution of Profits to Permanent Establishments [OECD/LEGAL/0368].

THE COUNCIL,

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

HAVING REGARD to the Recommendation of the Council of 23rd July 1992 concerning the Model Tax Convention on Income and on Capital (hereinafter referred to as the "Model Tax Convention") [C(92)122(FINAL)];

HAVING REGARD TO the Report of the Committee on Fiscal Affairs on the Attribution of Income to Permanent Establishments [DAFFE/CFA(93)10/REV2];

CONSIDERING that the Model Tax 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;

CONSIDERING that the determination, for tax purposes, of the income attributable to a multinational enterprise's permanent establishment situated in another State presents certain difficulties that need to be resolved as these difficulties could impede the setting-up of branches abroad;

CONSIDERING that this requires, in particular, that the Commentary on Article 7 of the Model Tax Convention be modified to clarify the relationship between the principles set forth in paragraphs 2 and 3 of that Article and to provide more guidance for the application of these principles;

I. RECOMMENDS that Governments of Member countries, when applying existing bilateral tax conventions on income and on capital, follow the recommendations of the above-mentioned Report concerning the interpretation of Article 7 of the Model Tax Convention for the purpose of determining the income to be attributed to a permanent establishment located in a given State of an enterprise of another State.

II. INSTRUCTS the Committee on Fiscal Affairs to include in the next update of the Model Tax Convention the changes to the Commentary on Article 7 that are recommended in Annex III to the above-mentioned Report.

About the OECD

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD Member countries are: Australia, Austria, Belgium, Canada, Chile, Colombia, Costa Rica, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Türkiye, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Legal Instruments

Since the creation of the OECD in 1961, around 460 substantive legal instruments have been developed within its framework. These include OECD Acts (i.e. the Decisions and Recommendations adopted by the OECD Council in accordance with the OECD Convention) and other legal instruments developed within the OECD framework (e.g. Declarations, international agreements).

All substantive OECD legal instruments, whether in force or abrogated, are listed in the online Compendium of OECD Legal Instruments. They are presented in five categories:

- **Decisions** are adopted by Council and are legally binding on all Members except those which abstain at the time of adoption. They set out specific rights and obligations and may contain monitoring mechanisms.

- **Recommendations** are adopted by Council and are not legally binding. They represent a political commitment to the principles they contain and entail an expectation that Adherents will do their best to implement them.

- **Substantive Outcome Documents** are adopted by the individual listed Adherents rather than by an OECD body, as the outcome of a ministerial, high-level or other meeting within the framework of the Organisation. They usually set general principles or long-term goals and have a solemn character.

- **International Agreements** are negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.

- **Arrangement, Understanding and Others**: several other types of substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.