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International Tax Update: OECD Releases Latest Edition of Model Tax Convention

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BY SCHNEIDER DOWNS PROFESSIONAL

On April 25, the Organisation for Economic Co-operation and Development (OECD) formally released the tenth edition of its *Model Tax Convention on Income and Capital (*the *Convention)*. Based in Paris, the OECD is an international organization comprised of over 100 member and nonmember countries that come together to provide guidance on a wide variety of global economic issues.

One of the organization's many focuses has been to provide uniform guidance on the application and interpretation of tax treaties between contracting countries, like the 1982 treaty between the United States and Australia that dictates when and how citizens will be taxed on specific items of income so that those citizens are not taxed twice on the same income. In addition to aiding in the interpretation of treaty provisions, the *Convention* also provides a baseline for negotiations that can be used by contracting countries looking to enter into a mutual treaty.

The 10th edition of the *Convention* comes largely as a result of the OECD's *Action Plan on Base Erosion and Profit Shifting*, which aims to prevent double non-taxation, as well as the artificial segregation of taxable income to no or low-tax jurisdictions.[1] One of the most significant changes to the *Convention* arose from the need to deter taxpayers from shifting income to low or no-tax jurisdictions solely for tax savings purposes. This change came in the form of the addition of Article 29, an anti-abuse provision that disallows the benefits of a particular treaty provision to the taxpayer, if "obtaining that benefit was one of the principal purposes" of the underlying transaction that yields the benefit.[2] The provision explicitly disallows taxpayers to forum and treaty shop for the best tax jurisdiction for their individual needs if tax savings is the primary purpose of the underlying transaction.

Other issues addressed in the new edition include a clarification of the definition of "permanent establishment," which is the fixed place where a corporation or partnership carries out its business[3], along with updates on accepted mutual agreement procedures.[4] Additionally, many of the commentary explanations that accompany the *Convention* have been revised to reflect the substantive changes that have been made to the document.

The global economy continues to rapidly expand and change, and with the changes comes a growing impact on taxpayers on an international level. It is important to understand the significant impact tax treaties will continue to have on taxpayers as more businesses and investments move into and out of the United States.

Where and when a taxpayer – whether they be an individual or a business/entity – can and should be taxed are both challenging questions to answer. Those answers are never simple, since they often involve complex analyses of the multiple countries' tax laws and treaty provisions.

While the above-mentioned guidance documents are a great resource, if you have any concerns regarding the potential double taxation of income, it is always best to consult your accountant or one of our Schneider Downs tax professionals!

[1] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing. http:.//dx.doi.org/10.1787/9789264202719-en

[2] Article 29, OECD (2017), Model Tax Convention on Income and Capital: Condensed Version 2017, OECD Publishing. http://dx.doi.org/10.1787/mtc_cond-2017-en

[3] Article 5, OECD (2017), Model Tax Convention on Income and Capital: Condensed Version 2017, OECD Publishing. http://dx.doi.org/10.1787/mtc_cond-2017-en

[4] Article 25, OECD (2017), Model Tax Convention on Income and Capital: Condensed Version 2017, OECD Publishing. http://dx.doi.org/10.1787/mtc_cond-2017-en

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