

— OECD AND UN MODEL TAX CONVENTIONS

Navigating Tax Treaties

A SIDE-BY-SIDE COMPARATIVE GUIDE

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Intended use of this comparison

This book summarises and compares the OECD Model Tax Convention on Income and on Capital, as it read on 21 November 2017, and the United Nations Model Double Taxation Convention between Developed and Developing Countries, 2021 revision. It complements the original texts and their Commentaries; it does not replace them. The Commentaries are not reproduced here, and no position taken in a Commentary is stated as treaty text.

NOT ADVICE

The content is for educational purposes and is not legal, financial or professional advice. A treaty position depends on the specific bilateral convention in force between the two States concerned, which will differ from both Models. Readers should take advice on their own circumstances.

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How to read this comparison

Each Article is set out paragraph by paragraph, the OECD Model on the left and the UN Model on the right. Where a paragraph is identical in both Models it is set once, across the measure, and marked as such. Where the two diverge, the words that differ are set in a darker weight in each column.

IDENTICAL IN BOTH MODELS, SET ONCE	WORDING DIFFERS	NOT COMPARABLE PHRASE BY PHRASE	OECD ONLY / UN ONLY	UN ALTERNATIVE B FORMULATION
The paragraph is the same in substance and in wording. It is set once on the wash ground, across the full measure rather than in two columns.	The paragraph exists in both Models with differences of wording or of substance. The differing words carry the darker weight.	The paragraph is differently drafted rather than differently worded. The columns should be read whole.	The paragraph has no counterpart in the other Model. The empty column says so.	The UN Model offers the whole Article twice. Alternative A is compared against the OECD text; Alternative B follows it as a separate formulation, not as provisions the OECD Model lacks.

ON NUMBERING

The two Models do not number alike. The UN Model carries Articles 12A, 12B and 14 which the OECD Model does not, and the OECD Model carries Article 30 on territorial extension which the UN Model does not. From entry into force onward the numbers diverge by one: OECD Article 31 is UN Article 30, and OECD Article 32 is UN Article 31. Every page states both numbers in its running head.

Paragraph 3 of Article 2 is left blank in both Models for each State to insert its own existing taxes. Rates are a different matter: the OECD Model fixes its own source-State ceilings, on dividends and on interest, while the UN Model leaves several source-tax rates to bilateral negotiation. Blanks are reproduced as they appear. Lists shown as bracketed outlines in a Model are reproduced as outlines, and are not treated as text agreed between States. Differences of punctuation, capitalisation, hyphenation and British or American spelling are not counted as differences of wording, and where a paragraph is set once as shared text the OECD Model's punctuation is the one shown. Paragraphs are matched by their content, so a paragraph may carry a different number in each Model, and the running label then states both.

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CHAPTER I

Scope of the Convention

Who the Convention reaches, and which taxes it governs.

IN THIS CHAPTER

Persons covered

ARTICLE 1

Taxes covered

ARTICLE 2



OECD ARTICLE 1 • UN ARTICLE 1

Persons covered

The Convention applies to persons who are residents of one or both Contracting States, residence itself being defined in Article 4. Both Models carry the fiscally transparent entity rule and the saving clause preserving a State's right to tax its own residents.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

This Convention shall apply to persons who are residents of one or both of the Contracting States.

PARAGRAPH 2

IDENTICAL IN BOTH MODELS, SET ONCE

For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.

PARAGRAPH 3

WORDING DIFFERS

This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 3 of Article 7, paragraph 2 of Article 9 and Articles 19, 20, 23 [A] [B], 24, 25 and 28.

This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 2 of Article 9, [paragraph 2 of Article 18 (Alternative A) or paragraph 3 of Article 18 (Alternative B)] and Articles 19, 20, [23 A or 23 B], 24, [25 (Alternative A) or 25 (Alternative B)] and 28.

2017 OECD MODEL

2021 UN MODEL

UN PARAGRAPH 4

UN ONLY

No corresponding provision.

[Provision dealing with the application of the Convention to collective investment vehicles]

KEY DIFFERENCES

The saving clause in paragraph 3 lists different excepted Articles in each Model, and the UN Model adds a fourth paragraph on collective investment vehicles that the OECD Model does not have.

PARAGRAPH	OECD 2017	UN 2021
3 AND 4 MORE	'... of Article 7, paragraph 2 of Article 9 and Articles 19, 20, 23 [A] [B], ...'	'... of Article 9, [paragraph 2 of Article 18 (Alternative A) or paragraph 3 of Article 18 (Alternative B)] and Articles 19, 20, [23 A or ...]

Paragraph 4 appears in the UN Model only.

OECD ARTICLE 2 • UN ARTICLE 2

Taxes covered

The Convention reaches taxes on income and on capital imposed on behalf of a Contracting State, its political subdivisions or its local authorities, however levied. Paragraph 3 is left for each State to complete with its own existing taxes.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

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

PARAGRAPH 2

IDENTICAL IN BOTH MODELS, SET ONCE

There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

PARAGRAPH 3

IDENTICAL IN BOTH MODELS, SET ONCE

The existing taxes to which the Convention shall apply are in particular:

(a) (in State A):

(b) (in State B):

2017 OECD MODEL

PARAGRAPH 4

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

KEY DIFFERENCES

The first three paragraphs are identical. Paragraph 4 differs in wording only, in the relative pronoun and in the phrasing of the duty to notify changes in domestic tax law.

PARAGRAPH

OECD 2017

UN 2021

4

'... changes that have been made in their taxation laws.'

'... other of significant changes made to their tax law.'

AND 4 MORE

2021 UN MODEL

WORDING DIFFERS

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. The competent authorities of the Contracting States shall notify each other of significant changes made **to** their **tax law**.

CHAPTER II

Definitions

The defined terms on which every later Article depends, including residence and permanent establishment.

IN THIS CHAPTER

General definitions	ARTICLE 3
Resident	ARTICLE 4
Permanent establishment	ARTICLE 5



OECD ARTICLE 3 • UN ARTICLE 3

General definitions

Article 3 defines the terms the rest of the Convention relies on, among them person, company, enterprise, international traffic, competent authority and national. Terms not defined here take their domestic law meaning under paragraph 2.

2017 OECD MODEL

PARAGRAPH 1

For the purposes of this Convention, unless the context otherwise requires:

- (a) the term “person” includes an individual, a company and any other body of persons;
- (b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (c) the term “enterprise” **applies to the carrying on of any business;**
- (d) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean **respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;**
- (e) the term “international traffic” means **any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;**
- (f) the term “competent authority” means:
 - (i) (in State A):
 - (ii) (in State B):
- (g) the term “national”, in relation to a Contracting State, means:
 - (i) any individual possessing the nationality **or citizenship of that** Contracting State; **and**
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in **that** Contracting State;

2021 UN MODEL

NOT COMPARABLE PHRASE BY PHRASE

For the purposes of this Convention, unless the context otherwise requires:

- (a) the term “person” includes an individual, a company and any other body of persons;
- (b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (c) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean **respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;**
- (d) the term “international traffic” means **any transport by a ship or aircraft, except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;**
- (e) the term “competent authority” means:
 - (i) (in State A):
 - (ii) (in State B):
- (f) the term “national” means:
 - (i) any individual possessing the nationality of **a** Contracting State
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in **a** Contracting State;

2017 OECD MODEL

PARAGRAPH 1 CONTINUED

- (h) the term “business” includes the performance of professional services and of other activities of an independent character.
- (i) the term “recognised pension fund” of a State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:
- (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or
 - (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i).

PARAGRAPH 2

As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires **or the competent authorities agree to a different meaning pursuant to the provisions of Article 25**, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

KEY DIFFERENCES

The definition lists diverge at several points. In paragraph 2 it is the OECD Model that allows the competent authorities to agree a different meaning under Article 25; the UN Model carries no such words.

PARAGRAPH	OECD 2017
1	DIFFERENTLY DRAFTED
2	‘... therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 25, have the meaning that it has at ...’

2021 UN MODEL

NOT COMPARABLE PHRASE BY PHRASE

- (g) the term “recognized pension fund” of a Contracting State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:
- (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities, or
 - (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements to **which** subdivision (i) **applies**.

WORDING DIFFERS

As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

UN 2021
DIFFERENTLY DRAFTED
‘... therein shall, unless the context otherwise requires, have the meaning that it has at ...’

OECD ARTICLE 4 · UN ARTICLE 4

Resident

Residence determines which State may tax under the Convention and is fixed by liability to tax under domestic law by reason of domicile, residence, place of management or a similar criterion. Dual residence is resolved by the tie-breaker rules in paragraphs 2 and 3.

2017 OECD MODEL

PARAGRAPH 1

For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of **his** domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof as well as a recognised pension fund of that State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2021 UN MODEL

WORDING DIFFERS

For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of **that person's** domicile, residence, place of **incorporation, place of** management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof as well as a recognized pension fund of that State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

PARAGRAPH 2

IDENTICAL IN BOTH MODELS, SET ONCE

Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of 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 a resident only of 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 a resident only of 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 a resident only of 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.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 3

IDENTICAL IN BOTH MODELS, SET ONCE

Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

KEY DIFFERENCES

The UN Model adds place of incorporation to the criteria in paragraph 1. The individual tie-breaker is common to both Models; the entity rule turns on mutual agreement in each.

PARAGRAPH	OECD 2017	UN 2021
1 AND 1 MORE	'... under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and ...'	'... under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, place of incorporation, place of management or any other criterion of a ...'

OECD ARTICLE 5 • UN ARTICLE 5

Permanent establishment

A permanent establishment is a fixed place of business through which the business of an enterprise is wholly or partly carried on, and its presence is what allows a source State to tax business profits under Article 7. The Article sets out the non-exhaustive list of what the term includes especially, the building site rule, the preparatory and auxiliary exclusions, the agency rule and the anti-fragmentation rule.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

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.

PARAGRAPH 2

WORDING DIFFERS

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.

The term “permanent establishment” includes especially:

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

PARAGRAPH 3

WORDING DIFFERS

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

The term “permanent establishment” also encompasses:

- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned.

2017 OECD MODEL

PARAGRAPH 4

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;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that such activity or, in the case of subparagraph f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

PARAGRAPH 4.1

Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- (a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- (b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character, provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

2021 UN MODEL

WORDING DIFFERS

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 or **display** 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 or **display**;
- (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;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that such activity or, in the case of subparagraph (f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

IDENTICAL IN BOTH MODELS, SET ONCE

2017 OECD MODEL

PARAGRAPH 5

Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise **and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are**

- (a) in the name of the enterprise, or
- (b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

PARAGRAPH 5 CONTINUED

- (c) for the provision of services by that enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

2021 UN MODEL

WORDING DIFFERS

Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, where a person is acting in a Contracting State on behalf of an enterprise, **that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, if such a person**

- (a) **habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are**
 - (i) in the name of the enterprise, or
 - (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
 - (iii) for the provision of services by that enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) **does not habitually conclude contracts nor plays the principal role leading to the conclusion of such contracts, but habitually maintains in that State a stock of goods or merchandise from which that person regularly delivers goods or merchandise on behalf of the enterprise.**

WORDING DIFFERS

2017 OECD MODEL

UN PARAGRAPH 6

No corresponding provision.

OECD PARAGRAPH 6 • UN PARAGRAPH 7

Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the firstmentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

OECD PARAGRAPH 7 • UN PARAGRAPH 8

The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

2021 UN MODEL

UN ONLY

Notwithstanding the preceding provisions of this Article but subject to the provisions of paragraph 7, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person.

WORDING DIFFERS

Paragraphs 5 and 6 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

IDENTICAL IN BOTH MODELS, SET ONCE

2017 OECD MODEL
2021 UN MODEL
OECD PARAGRAPH 8 • UN PARAGRAPH 9

IDENTICAL IN BOTH MODELS, SET ONCE

For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

KEY DIFFERENCES

One of the most significant areas of divergence between the Models. The UN Model lowers the building site threshold, adds a services permanent establishment and an insurance rule, narrows the preparatory and auxiliary exclusions, and defines the dependent agent permanent establishment more broadly, its paragraph 5(b) reaching a person who habitually maintains a stock of goods from which deliveries are regularly made on behalf of the enterprise.

PARAGRAPH	OECD 2017	UN 2021
2	'... 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 management; (b) a branch; (c) an office; (d) a factory; (e) a workshop; (f) a mine, an oil or gas well, a quarry or any other place ...'
3 AND 7 MORE	'... if it lasts more than twelve months.'	'... or activities last more than six months; (b) the furnishing of services, including consultancy services, by an enterprise through ... commencing or ending in the fiscal year concerned.'
4 AND 3 MORE	'... 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 ...'	'... to include: (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise; (b) the maintenance of a stock ...'
5 AND 7 MORE	'... on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the ...'	'... deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, if such a person (a) habitually concludes contracts, or habitually plays the ...'
6 AND 1 MORE	'Paragraph 5 shall not apply where the person acting in a Contracting State on behalf ...'	'Paragraphs 5 and 6 shall not apply where the person acting in a Contracting State ...'

Paragraph 6 appears in the UN Model only.

Taxation of income

The allocation of taxing rights over each class of income, and the source-State rights the UN Model adds.

IN THIS CHAPTER

Income from immovable property	ARTICLE 6	Capital gains	ARTICLE 13
Business profits	ARTICLE 7	Independent personal services	UN ARTICLE 14
International shipping and air transport	ARTICLE 8	Income from employment	ARTICLE 15
Associated enterprises	ARTICLE 9	Directors' fees	ARTICLE 16
Dividends	ARTICLE 10	Entertainers and sportspersons	ARTICLE 17
Interest	ARTICLE 11	Pensions	ARTICLE 18
Royalties	ARTICLE 12	Government service	ARTICLE 19
Fees for technical services	UN ARTICLE 12A	Students	ARTICLE 20
Income from automated digital services	UN ARTICLE 12B	Other income	ARTICLE 21



OECD ARTICLE 6 • UN ARTICLE 6

Income from immovable property

Income from immovable property may be taxed in the State where the property is situated. The Article defines immovable property by reference to the law of that State and extends the rule to income from agriculture and forestry.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

PARAGRAPH 2

IDENTICAL IN BOTH MODELS, SET ONCE

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 and aircraft shall not be regarded as immovable property.

PARAGRAPH 3

WORDING DIFFERS

The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

The provisions of paragraph 1 shall **also** apply to income derived from the direct use, letting or use in any other form of immovable property.

2017 OECD MODEL

PARAGRAPH 4

The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

2021 UN MODEL

WORDING DIFFERS

The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise **and to income from immovable property used for the performance of independent personal services.**

KEY DIFFERENCES

The differences are confined to wording and to the treatment of immovable property of an enterprise, the UN Model retaining a reference to independent personal services consistent with its Article 14.

PARAGRAPH	OECD 2017	UN 2021
3	'The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other ...'	'The provisions of paragraph 1 shall also apply to income derived from the direct use, letting or use in any other ...'
4	'... income from immovable property of an enterprise.'	'... income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.'

OECD ARTICLE 7 • UN ARTICLE 7

Business profits

Under the OECD Model business profits are taxable in the source State only so far as they are attributable to a permanent establishment there. The UN Model adds a limited force of attraction, reaching also profits from sales of the same or similar goods and from other business activities of the same or similar kind carried on in that State. The Models then take different routes to attributing those profits.

2017 OECD MODEL

PARAGRAPH 1

Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits **that are attributable to the permanent establishment in accordance with the provisions of paragraph 2** may be taxed in **that** other State.

PARAGRAPH 2

For the **purposes of this Article and Article [23 A] [23 B]**, the profits **that are attributable** in each Contracting State to **the** permanent establishment **referred to in paragraph 1** are the profits it might be expected to make, **in particular in its dealings with other parts of the enterprise**, if it were a **separate and independent** enterprise engaged in the same or similar activities under the same or similar conditions, **taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.**

2021 UN MODEL

WORDING DIFFERS

The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of **the enterprise** may be taxed in **the** other State **but only so much of them as is attributable to:**

- (a) **that permanent establishment;**
- (b) **sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or**
- (c) **other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.**

NOT COMPARABLE PHRASE BY PHRASE

Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on **business in the other Contracting State through a permanent establishment situated therein, there shall** in each Contracting State **be attributed to that permanent establishment the profits which** it might be expected to make if it were a **distinct and separate** enterprise engaged in the same or similar activities under the same or similar conditions and **dealing wholly independently with the enterprise of which it is a permanent establishment.**

2017 OECD MODEL

PARAGRAPH 3

Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.

UN PARAGRAPH 4

No corresponding provision.

2021 UN MODEL

NOT COMPARABLE PHRASE BY PHRASE

In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

UN ONLY

Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

2017 OECD MODEL

UN PARAGRAPH 5

No corresponding provision.

2021 UN MODEL

UN ONLY

For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

OECD PARAGRAPH 4 • UN PARAGRAPH 6

IDENTICAL IN BOTH MODELS, SET ONCE

Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

KEY DIFFERENCES

The OECD Model applies the authorised approach of paragraph 2 with the corresponding adjustment in paragraph 3. The UN Model keeps the pre-2010 structure, allows a deduction rule with limits, denies deductions for certain internal charges, and adds paragraphs the OECD Model does not have.

PARAGRAPH	OECD 2017	UN 2021
1 AND 6 MORE	'... establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.'	'... (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same ...'
2	DIFFERENTLY DRAFTED	DIFFERENTLY DRAFTED
3	DIFFERENTLY DRAFTED	DIFFERENTLY DRAFTED

Paragraphs 4, 5 appear in the UN Model only.

OECD ARTICLE 8 · UN ARTICLE 8

International shipping and air transport

Under the OECD Model, and under Alternative A of the UN Model, profits from the operation of ships or aircraft in international traffic are taxable only in the State of the enterprise. Alternative B of the UN Model allows the source State to tax shipping profits where the activities there are more than casual. The Article also covers participation in a pool, a joint business or an international operating agency.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1 · ALTERNATIVE A

IDENTICAL IN BOTH MODELS, SET ONCE

Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

PARAGRAPH 2 · ALTERNATIVE A

IDENTICAL IN BOTH MODELS, SET ONCE

The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

UN PARAGRAPH 1 · ALTERNATIVE B

UN ALTERNATIVE B FORMULATION

The OECD text is compared against Alternative A above.

Profits of an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.

2017 OECD MODEL

2021 UN MODEL

UN PARAGRAPH 2 • ALTERNATIVE B

UN ALTERNATIVE B FORMULATION

The OECD text is compared against Alternative A above.

Profits of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State unless the shipping activities arising from such operation in the other Contracting State are more than casual. If such activities are more than casual, such profits may be taxed in that other State. The profits to be taxed in that other State shall be determined on the basis of an appropriate allocation of the overall net profits derived by the enterprise from its shipping operations. The tax computed in accordance with such allocation shall then be reduced by ____ per cent [the percentage is to be established through bilateral negotiations].

UN PARAGRAPH 3 • ALTERNATIVE B

UN ALTERNATIVE B FORMULATION

The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

KEY DIFFERENCES

Alternative A of the UN Model corresponds to the OECD text and both its paragraphs are identical to it. Alternative B is a separate three paragraph formulation under which the source State may tax a share of shipping profits from activities that are more than casual, the share being left to bilateral negotiation.

The UN Model also offers Alternative B, a separate formulation in 3 paragraphs, set out after the main text.

OECD ARTICLE 9 • UN ARTICLE 9

Associated enterprises

Where associated enterprises deal on terms other than those between independent parties, a Contracting State may adjust profits to the arm's length result. Paragraph 2 requires the other State to make a corresponding adjustment.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

PARAGRAPH 2

WORDING DIFFERS

Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of **this** Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of **the** Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

2017 OECD MODEL

UN PARAGRAPH 3

No corresponding provision.

2021 UN MODEL

UN ONLY

The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

KEY DIFFERENCES

The UN Model adds a third paragraph excluding a corresponding adjustment where judicial, administrative or other legal proceedings have produced a final ruling imposing a penalty for fraud, gross negligence or wilful default.

PARAGRAPH	OECD 2017	UN 2021
2	'... In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each ...'	'... In determining such adjustment, due regard shall be had to the other provisions of the Convention and the competent authorities of the Contracting States shall, if necessary, consult each ...'

Paragraph 3 appears in the UN Model only.

OECD ARTICLE 10 • UN ARTICLE 10

Dividends

Dividends may be taxed in the State of residence of the recipient, and also in the source State at a limited rate where the beneficial owner is a resident of the other State. The Article defines dividends and restricts extraterritorial taxation of undistributed profits.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

PARAGRAPH 2

WORDING DIFFERS

However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State **and** according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);
- (b) 15 per cent of the gross amount of the dividends in all other cases. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

- (a) ___ per cent **[the percentage is to be established through bilateral negotiations]** of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);
- (b) ___ per cent **[the percentage is to be established through bilateral negotiations]** of the gross amount of the dividends in all other cases. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

PARAGRAPH 3

IDENTICAL IN BOTH MODELS, SET ONCE

The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

2017 OECD MODEL

PARAGRAPH 4

The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

PARAGRAPH 5

Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

KEY DIFFERENCES

The OECD Model fixes the source-State ceilings at 5 and 15 per cent with a 25 per cent holding and a 365 day test. The UN Model leaves the two rates to bilateral negotiation but keeps the 25 per cent direct holding threshold expressly.

PARAGRAPH	OECD 2017
2 AND 4 MORE	'... resident of the other Contracting State, the tax so charged shall not exceed: (a) 5 per cent of the gross amount of the dividends if the beneficial owner is ...'
4 AND 2 MORE	'... resident through a permanent establishment situated therein and the holding in respect of which ...'
5	'... is effectively connected with a permanent establishment situated in that other State, nor subject ...'

2021 UN MODEL

WORDING DIFFERS

The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, **or performs in that other State independent personal services from a fixed base situated therein**, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment **or fixed base**. In such case the provisions of Article 7 **or Article 14, as the case may be**, shall apply.

WORDING DIFFERS

Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment **or a fixed base** situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

UN 2021
'... resident of the other Contracting State, the tax so charged shall not exceed: (a) ___ per cent [the percentage is to be established through bilateral negotiations] of the gross ...'
'... resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which ...'
'... is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject ...'

OECD ARTICLE 11 · UN ARTICLE 11

Interest

Interest may be taxed in the State of residence of the recipient and, at a limited rate, in the State in which it arises. The Article defines interest, locates its source and applies an arm's length limit to excessive amounts.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

PARAGRAPH 2

WORDING DIFFERS

However, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed **10** per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

However, interest arising in a Contracting State may also be taxed in that State **and** according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed ____ per cent **[the percentage is to be established through bilateral negotiations]** of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

PARAGRAPH 3

IDENTICAL IN BOTH MODELS, SET ONCE

The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

2017 OECD MODEL

PARAGRAPH 4

The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the **debt-claim** in respect of which the interest is paid is effectively connected with **such permanent establishment. In such case the provisions of Article 7 shall apply.**

PARAGRAPH 5

Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

2021 UN MODEL

WORDING DIFFERS

The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, **or performs in that other State independent personal services from a fixed base situated therein**, and the **debt claim** in respect of which the interest is paid is effectively connected with

(a) **such permanent establishment or fixed base, or with**

(b) **business activities referred to in (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.**

WORDING DIFFERS

Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment **or a fixed base** in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment **or fixed base**, then such interest shall be deemed to arise in the State in which the permanent establishment **or fixed base** is situated.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 6

IDENTICAL IN BOTH MODELS, SET ONCE

Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

KEY DIFFERENCES

The OECD Model sets a 10 per cent ceiling in paragraph 2; the UN Model leaves the rate to bilateral negotiation. The permanent establishment carve-outs also differ, the UN Model retaining its independent personal services reference.

PARAGRAPH	OECD 2017	UN 2021
2 AND 2 MORE	'... a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the ...'	'... a resident of the other Contracting State, the tax so charged shall not exceed ____ per cent [the percentage is to be established through bilateral negotiations] of the gross ...'
4 AND 6 MORE	'... State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent ...'	'... that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with (a) such ...'
5 AND 2 MORE	'... in a Contracting State a permanent establishment in connection with which the indebtedness on ...'	'... in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on ...'

OECD ARTICLE 12 • UN ARTICLE 12

Royalties

Royalties are defined as payments for the use of, or the right to use, copyright, patents, trade marks, designs, secret formulae and similar rights, and information concerning industrial, commercial or scientific experience. The Models allocate the taxing right differently.

2017 OECD MODEL

PARAGRAPH 1

Royalties arising in a Contracting State and **beneficially owned by** a resident of the other Contracting State **shall be taxable only** in that other State.

UN PARAGRAPH 2

No corresponding provision.

OECD PARAGRAPH 2 • UN PARAGRAPH 3

The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, **trade mark**, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

2021 UN MODEL

WORDING DIFFERS

Royalties arising in a Contracting State and **paid to** a resident of the other Contracting State **may be taxed** in that other State.

UN ONLY

However, royalties arising in a Contracting State may also be taxed in that State and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed ___ per cent [the percentage is to be established through bilateral negotiations] of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

WORDING DIFFERS

The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, **or films or tapes used for radio or television broadcasting**, any patent, **trademark**, design or model, plan, secret formula or process, or for **the use of, or the right to use, industrial, commercial or scientific equipment or for** information concerning industrial, commercial or scientific experience.

2017 OECD MODEL

OECD PARAGRAPH 3 • UN PARAGRAPH 4

The provisions of **paragraph 1** shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with **such permanent establishment. In such case the provisions of Article 7 shall apply.**

UN PARAGRAPH 5

No corresponding provision.

2021 UN MODEL

WORDING DIFFERS

The provisions of **paragraphs 1 and 2** shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, **or performs in that other State independent personal services from a fixed base situated therein**, and the right or property in respect of which the royalties are paid is effectively connected with

(a) such permanent establishment or fixed base, or with

(b) business activities referred to in (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

UN ONLY

Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

2017 OECD MODEL

2021 UN MODEL

OECD PARAGRAPH 4 • UN PARAGRAPH 6

IDENTICAL IN BOTH MODELS, SET ONCE

Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

KEY DIFFERENCES

The OECD Model gives the exclusive right to tax to the residence State. The UN Model permits source-State taxation at a rate left to negotiation, defines royalties more widely to take in payments for the use of equipment, adds a rule deeming where royalties arise, and refers to a fixed base and to its Article 14. The excess payment rule for special relationships is in both Models.

PARAGRAPH	OECD 2017	UN 2021
1 AND 2 MORE	'Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State ...'	'Royalties arising in a Contracting State and paid to a resident of the other Contracting State ...'
2 AND 2 MORE	'... use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial ...'	'... cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or ...'
3 AND 7 MORE	'The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident ...'	'The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being ...'

Paragraphs 2, 5 appear in the UN Model only.

UN ARTICLE 12 A

Fees for technical services

Article 12A has no counterpart in the OECD Model. It allows the State in which fees for technical services arise to tax them at a rate fixed by bilateral negotiation, whether or not the service provider has a presence in that State.

2017 OECD MODEL

UN PARAGRAPH 1

No corresponding provision.

UN PARAGRAPH 2

No corresponding provision.

UN PARAGRAPH 3

No corresponding provision.

2021 UN MODEL

UN ONLY

Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

UN ONLY

However, notwithstanding the provisions of Article 14 and subject to the provisions of Articles 8, 16 and 17, fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed ___ per cent [the percentage is to be established through bilateral negotiations] of the gross amount of the fees.

UN ONLY

The term “fees for technical services” as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:

- (a) to an employee of the person making the payment;
- (b) for teaching in an educational institution or for teaching by an educational institution; or
- (c) by an individual for services for the personal use of an individual.

2017 OECD MODEL

UN PARAGRAPH 4

No corresponding provision.

2021 UN MODEL

UN ONLY

The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other State, or performs in the other Contracting State independent personal services from a fixed base situated in that other State, and the fees for technical services are effectively connected with:

- (a) such permanent establishment or fixed base, or
- (b) business activities referred to in (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

UN PARAGRAPH 5

No corresponding provision.

UN ONLY

For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the fees was incurred, and such fees are borne by the permanent establishment or fixed base.

2017 OECD MODEL

UN PARAGRAPH 6

No corresponding provision.

2021 UN MODEL

UN ONLY

For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other Contracting State through a permanent establishment situated in that other State or performs independent personal services through a fixed base situated in that other State and such fees are borne by that permanent establishment or fixed base.

UN PARAGRAPH 7

No corresponding provision.

UN ONLY

Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

KEY DIFFERENCES

A UN Model Article with no OECD equivalent. Fees for managerial, technical or consultancy services are taxable at source, subject to the exclusions in paragraph 3, which cover payments to an employee of the payer, payments by an individual for services for the personal use of an individual, and payments for teaching in or by an educational institution.

Paragraphs 1, 2, 3, 4, 5, 6, 7 appear in the UN Model only.

UN ARTICLE 12 B

Income from automated digital services

Article 12B has no counterpart in the OECD Model and was added in the 2021 revision. It allows the State in which income from automated digital services arises to tax that income, with an election in paragraph 3 to be taxed instead on qualified profits.

2017 OECD MODEL

UN PARAGRAPH 1

No corresponding provision.

UN PARAGRAPH 2

No corresponding provision.

UN PARAGRAPH 3

No corresponding provision.

2021 UN MODEL

UN ONLY

Income from automated digital services arising in a Contracting State, underlying payments for which are made to a resident of the other Contracting State, may be taxed in that other State.

UN ONLY

However, subject to the provisions of Article 8 and notwithstanding the provisions of Article 14, income from automated digital services arising in a Contracting State may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the income is a resident of the other Contracting State, the tax so charged shall not exceed ___ per cent [the percentage is to be established through bilateral negotiations] of the gross amount of the payments underlying the income from automated digital services.

UN ONLY

The provisions of paragraph 2 shall not apply if the beneficial owner of the income from automated digital services, being a resident of a Contracting State, requests the other Contracting State where such income arises, to subject its qualified profits from automated digital services for the fiscal year concerned to taxation at the tax rate provided for in the domestic laws of that State. If the beneficial owner so requests, subject to the provisions of Article 8 and notwithstanding the provisions of Article 14, the taxation by that Contracting State shall be carried out accordingly. For the purposes of this paragraph, the qualified profits shall be 30 per cent of the amount resulting from applying the profitability ratio of that beneficial owner's automated digital services business segment to the gross annual revenue from automated digital services derived from the Contracting State where such income arises. Where segmental accounts are not maintained by the beneficial owner, the overall profitability ratio of the beneficial owner will be applied to determine qualified profits.

2017 OECD MODEL

2021 UN MODEL

UN PARAGRAPH 3 CONTINUED

UN ONLY

However, where the beneficial owner belongs to a multinational enterprise group, the profitability ratio to be applied shall be that of the business segment of the group relating to the income covered by this Article, or of the group as a whole in case segmental accounts are not maintained by the group, provided such profitability ratio of the multinational enterprise group is higher than the aforesaid profitability ratio of the beneficial owner. Where the segmental profitability ratio or, as the case may be, the overall profitability ratio of the multinational enterprise group to which the beneficial owner belongs is not available to the Contracting State in which the income from automated digital services arises, the provisions of this paragraph shall not apply; in such a case, the provisions of paragraph 2 shall apply.

UN PARAGRAPH 4

UN ONLY

No corresponding provision.

For the purposes of paragraph 3, “multinational enterprise group” means any “group” that includes two or more enterprises, the tax residence for which is in different jurisdictions. Further, for the purposes of paragraph 3, the term “group” means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public stock exchange.

UN PARAGRAPH 5

UN ONLY

No corresponding provision.

The term “automated digital services” as used in this Article means any service provided on the Internet or another electronic network, in either case requiring minimal human involvement from the service provider.

2017 OECD MODEL

UN PARAGRAPH 6

No corresponding provision.

2021 UN MODEL

UN ONLY

The term “automated digital services” includes especially:

- (a) online advertising services;
- (b) supply of user data;
- (c) online search engines;
- (d) online intermediation platform services;
- (e) social media platforms;
- (f) digital content services;
- (g) online gaming;
- (h) cloud computing services; and
- (i) standardized online teaching services.

UN PARAGRAPH 7

No corresponding provision.

UN ONLY

The provisions of this Article shall not apply if the payments underlying the income from automated digital services qualify as “royalties” or “fees for technical services” under Article 12 or Article 12A as the case may be.

UN PARAGRAPH 8

No corresponding provision.

UN ONLY

The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the income from automated digital services, being a resident of a Contracting State, carries on business in the other Contracting State in which the income from automated digital services arises through a permanent establishment situated in that other State, or performs in the other Contracting State independent personal services from a fixed base situated in that other State, and the income from automated digital services is effectively connected with:

- (a) such permanent establishment or fixed base, or
- (b) business activities referred to in subparagraph (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

2017 OECD MODEL

UN PARAGRAPH 9

No corresponding provision.

2021 UN MODEL

UN ONLY

For the purposes of this Article and subject to paragraph 10, income from automated digital services shall be deemed to arise in a Contracting State if the underlying payments for the income from automated digital services are made by a resident of that State or if the person making the underlying payments for the automated digital services, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to make the payments was incurred, and such payments are borne by the permanent establishment or fixed base.

UN PARAGRAPH 10

No corresponding provision.

UN ONLY

For the purposes of this Article, income from automated digital services shall be deemed not to arise in a Contracting State if the underlying payments for the income from automated digital services are made by a resident of that State which carries on business in the other Contracting State through a permanent establishment situated in that other State or performs independent personal services through a fixed base situated in that other State and such underlying payments towards automated digital services are borne by that permanent establishment or fixed base.

UN PARAGRAPH 11

No corresponding provision.

UN ONLY

Where, by reason of a special relationship between the payer and the beneficial owner of the income from automated digital services or between both of them and some other person, the amount of the payments underlying such income, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments underlying such income from automated digital services shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

KEY DIFFERENCES

A UN Model Article with no OECD equivalent. The rate in paragraph 2 is left to bilateral negotiation. Paragraph 3 lets the beneficial owner elect instead to be taxed on qualified profits, being 30 per cent of the amount produced by applying its profitability ratio to gross annual revenue from automated digital services in the source State, and taxed at that State's own rate.

Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 appear in the UN Model only.

OECD ARTICLE 13 • UN ARTICLE 13

Capital gains

The Article allocates the right to tax gains on the alienation of property, taking each class of property in turn: immovable property, business property of a permanent establishment, ships and aircraft, shares deriving value from immovable property, and other property.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

PARAGRAPH 2

WORDING DIFFERS

Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State **or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services**, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) **or of such fixed base**, may be taxed in that other State.

PARAGRAPH 3

IDENTICAL IN BOTH MODELS, SET ONCE

Gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

PARAGRAPH 4

IDENTICAL IN BOTH MODELS, SET ONCE

Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.

2017 OECD MODEL

UN PARAGRAPH 5

No corresponding provision.

UN PARAGRAPH 6

No corresponding provision.

UN PARAGRAPH 7

No corresponding provision.

2021 UN MODEL

UN ONLY

Gains, other than those to which paragraph 4 applies, derived by a resident of a Contracting State from the alienation of shares of a company, or comparable interests, such as interests in a partnership or trust, which is a resident of the other Contracting State, may be taxed in that other State if the alienator, at any time during the 365 days preceding such alienation, held directly or indirectly at least ____ per cent [the percentage is to be established through bilateral negotiations] of the capital of that company or entity.

UN ONLY

Gains derived by a resident of a Contracting State from the alienation of a right granted under the law of the other Contracting State which allows the use of resources that are naturally present in that other State and that are under the jurisdiction of that other State, may be taxed in that other State.

UN ONLY

Subject to paragraphs 4 and 5, gains derived by a resident of a Contracting State from the alienation of shares of a company, or comparable interests of an entity, such as interests in a partnership or trust, may be taxed in the other Contracting State if

- (a) the alienator, at any time during the 365 days preceding such alienation, held directly or indirectly at least ____ per cent [the percentage is to be established through bilateral negotiations] of the capital of that company or entity; and
- (b) at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from
 - (i) a property any gain from which would have been taxable in that other State in accordance with the preceding provisions of this Article if that gain had been derived by a resident of the first-mentioned State from the alienation of that property at that time, or
 - (ii) any combination of property referred to in subdivision (i).

2017 OECD MODEL

2021 UN MODEL

OECD PARAGRAPH 5 • UN PARAGRAPH 8

WORDING DIFFERS

Gains from the alienation of any property, other than that referred to in paragraphs 1, **2, 3 and 4**, shall be taxable only in the Contracting State of which the alienator is a resident.

Gains from the alienation of any property other than that referred to in paragraphs 1 **to 7** shall be taxable only in the Contracting State of which the alienator is a resident.

KEY DIFFERENCES

The UN Model permits source-State taxation of gains on the alienation of substantial shareholdings, and the 2021 revision added paragraphs 6 and 7 allowing the source State to tax gains on the direct and offshore indirect transfer of certain property. Neither appears in the OECD Model.

PARAGRAPH	OECD 2017	UN 2021
2 AND 1 MORE	'... State has in the other Contracting State, including such gains from the alienation of ...'	'... State has in the other Contracting State or of movable property pertaining to a fixed base available to a ... for the purpose of performing independent personal services, including such gains from the alienation of ...'
5	'... than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting ...'	'... than that referred to in paragraphs 1 to 7 shall be taxable only in the Contracting ...'

Paragraphs 5, 6, 7 appear in the UN Model only.

UN ARTICLE 14

Independent personal services

Article 14 was deleted from the OECD Model in 2000, its subject matter absorbed into Articles 5 and 7. The UN Model retains it, allowing the source State to tax income from professional services where a fixed base is present or a 183 day threshold is met.

2017 OECD MODEL

UN PARAGRAPH 1

No corresponding provision.

2021 UN MODEL

UN ONLY

Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

UN PARAGRAPH 2

No corresponding provision.

UN ONLY

The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

KEY DIFFERENCES

A UN Model Article with no current OECD equivalent. The source State may tax where the provider has a fixed base regularly available, or is present for 183 days or more in any twelve month period.

Paragraphs 1, 2 appear in the UN Model only.

OECD ARTICLE 15 · UN ARTICLE 15

Income from employment

Employment income is taxable in the State of residence unless the employment is exercised in the other State, in which case that State may tax the remuneration. The 183 day rule, the employer test and the permanent establishment test in paragraph 2 limit source-State taxation.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

PARAGRAPH 2

WORDING DIFFERS

Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any **twelve month** period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any **twelve-month** period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment **or a fixed base** which the employer has in the other State.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 3

IDENTICAL IN BOTH MODELS, SET ONCE

Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

KEY DIFFERENCES

The UN Model titles the Article Dependent personal services. Paragraphs 1 and 3 are identical; the difference is in paragraph 2, where the UN Model adds a fixed base to the employer test.

PARAGRAPH	OECD 2017	UN 2021
2	'... is not borne by a permanent establishment which the employer has in the other ...'	'... is not borne by a permanent establishment or a fixed base which the employer has in the other ...'

OECD ARTICLE 16 • UN ARTICLE 16

Directors' fees

Directors' fees and similar payments derived by a resident of one State as a member of the board of a company resident in the other State may be taxed in that other State. The UN Model extends the rule.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

UN PARAGRAPH 2

UN ONLY

No corresponding provision.

Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

KEY DIFFERENCES

The UN Model adds a second paragraph covering the salaries and wages of an official in a top-level managerial position, which the OECD Model does not have.

Paragraph 2 appears in the UN Model only.

OECD ARTICLE 17 • UN ARTICLE 17

Entertainers and sportspersons

Income from the personal activities of an entertainer or sportsperson may be taxed in the State where the activities are exercised, whether the income accrues to the performer or to another person. Which other Articles it displaces differs: the OECD Model sets aside Article 15 in both paragraphs, while the UN Model sets aside Articles 14 and 15 in paragraph 1 and Articles 7, 14 and 15 in paragraph 2.

2017 OECD MODEL

PARAGRAPH 1

Notwithstanding the provisions of **Article 15**, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from **that resident's** personal activities as such exercised in the other Contracting State, may be taxed in that other State.

PARAGRAPH 2

Where income in respect of personal activities exercised by an entertainer or a sportsperson **acting** as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of **Article 15**, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

2021 UN MODEL

WORDING DIFFERS

Notwithstanding the provisions of **Articles 14 and 15**, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from **his** personal activities as such exercised in the other Contracting State, may be taxed in that other State.

WORDING DIFFERS

Where income in respect of personal activities exercised by an entertainer or a sportsperson **in his capacity** as such accrues not to the entertainer or sportsperson **himself** but to another person, that income may, notwithstanding the provisions of **Articles 7, 14 and 15**, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

KEY DIFFERENCES

The UN Model titles the Article Artistes and sportspersons and refers to independent personal services in paragraph 1, consistent with its Article 14. The substance of both paragraphs is otherwise the same.

PARAGRAPH

OECD 2017

1 AND 1 MORE

'Notwithstanding the provisions of Article 15, income derived by a resident of ...'

2 AND 2 MORE

'... exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer ...'

UN 2021

'Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of ...'

'... exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer ...'

OECD ARTICLE 18 · UN ARTICLE 18

Pensions

Pensions and similar remuneration paid in consideration of past employment are dealt with here, government service pensions being governed by Article 19. The UN Model offers two formulations, and the choice between them changes which State may tax.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1 · ALTERNATIVE A

IDENTICAL IN BOTH MODELS, SET ONCE

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

UN PARAGRAPH 2 · ALTERNATIVE A

UN ONLY

No corresponding provision.

Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

UN PARAGRAPH 1 · ALTERNATIVE B

UN ALTERNATIVE B FORMULATION

The OECD text is compared against Alternative A above.

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in that State.

2017 OECD MODEL

UN PARAGRAPH 2 • ALTERNATIVE B

The OECD text is compared against Alternative A above.

2021 UN MODEL

UN ALTERNATIVE B FORMULATION

However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by a resident of that other State or if the person paying the pensions or similar remuneration, whether he is a resident of a Contracting State or not, has in that other State a permanent establishment or a fixed base in connection with which the obligation to pay the pensions or similar remuneration was incurred, and such pensions or similar remuneration are borne by such permanent establishment or fixed base.

UN PARAGRAPH 3 • ALTERNATIVE B

UN ALTERNATIVE B FORMULATION

Notwithstanding the provisions of paragraphs 1 and 2, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

KEY DIFFERENCES

The OECD Model has a single pension provision, corresponding broadly to Alternative A paragraph 1 of the UN Model, which is identical to it. Alternative A adds a second paragraph on social security payments. Alternative B is a separate three paragraph formulation under which a pension may also be taxed in the State from which it is paid.

Paragraph 2 appears in the UN Model only. The UN Model also offers Alternative B, a separate formulation in 3 paragraphs, set out after the main text.

OECD ARTICLE 19 • UN ARTICLE 19

Government service

Salaries and pensions paid by a Contracting State or its subdivisions in respect of services rendered to that State are taxable in that State, subject to the local national and resident exception. Paragraph 3 returns payments for a business to Articles 15 to 18.

2017 OECD MODEL

PARAGRAPH 1

- (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

PARAGRAPH 2

- (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

2021 UN MODEL

WORDING DIFFERS

- (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that **other** State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

WORDING DIFFERS

- (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that **other** State.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 3

IDENTICAL IN BOTH MODELS, SET ONCE

The provisions of Articles 15, 16, 17, and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

KEY DIFFERENCES

Paragraph 3 is identical. The differences are in paragraphs 1 and 2, and are of wording rather than of substance.

PARAGRAPH	OECD 2017	UN 2021
1	'... taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who: (i) is a ...'	'... taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who: (i) is a ...'
2	'... Contracting State if the individual is a resident of, and a national of, that State.'	'... Contracting State if the individual is a resident of, and a national of, that other State.'

OECD ARTICLE 20 • UN ARTICLE 20

Students

Payments received by a student, business trainee or apprentice from outside the host State for maintenance, education or training are not taxed in that State. Residence immediately before the visit is the test.

2017 OECD MODEL

SINGLE PROVISION

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

KEY DIFFERENCES

A single provision in both Models. The UN Model reads student or business trainee or apprentice where the OECD Model reads student or business apprentice.

PARAGRAPH

OECD 2017

Single

'Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of ...'

2021 UN MODEL

WORDING DIFFERS

Payments which a student or business **trainee or** apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

UN 2021

'Payments which a student or business trainee or apprentice who is or was immediately before visiting a Contracting State a resident of ...'

OECD ARTICLE 21 • UN ARTICLE 21

Other income

Under the OECD Model, items of income not dealt with in the other Articles are taxable only in the State of residence, wherever they arise. Under the UN Model, paragraph 3 allows such income arising in the other Contracting State also to be taxed there. Income connected with a permanent establishment, or with a fixed base within the UN Model's Article 14, is returned to Article 7.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

PARAGRAPH 2

WORDING DIFFERS

The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, **or performs in that other State independent personal services from a fixed base situated therein**, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment **or fixed base**. In such case the provisions of Article 7 **or Article 14, as the case may be**, shall apply.

2017 OECD MODEL

2021 UN MODEL

UN PARAGRAPH 3

UN ONLY

No corresponding provision.

Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

KEY DIFFERENCES

The UN Model adds a third paragraph allowing the source State to tax items of other income arising in it, which the OECD Model does not have.

PARAGRAPH	OECD 2017	UN 2021
2 AND 2 MORE	'... State through a permanent establishment situated therein and the right or property in respect ...'	'... State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect ...'

Paragraph 3 appears in the UN Model only.

CHAPTER IV

Taxation of capital

Capital itself, where a Contracting State taxes it.

IN THIS CHAPTER

Capital

ARTICLE 22



OECD ARTICLE 22 · UN ARTICLE 22

Capital

Where a Contracting State taxes capital, the Article allocates the right by class of asset: immovable property, business property of a permanent establishment, ships and aircraft, and all other elements.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

PARAGRAPH 2

WORDING DIFFERS

Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.

Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State **or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services** may be taxed in that other State.

PARAGRAPH 3

IDENTICAL IN BOTH MODELS, SET ONCE

Capital of an enterprise of a Contracting State that operates ships or aircraft in international traffic represented by such ships or aircraft, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

2017 OECD MODEL

PARAGRAPH 4

All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

2021 UN MODEL

WORDING DIFFERS

[All other elements of capital of a resident of a Contracting State shall be taxable only in that State.]

[The question of the taxation of all other elements of capital of a resident of a Contracting State is left to bilateral negotiations. Should the negotiating parties decide to include in the Convention an Article on the taxation of capital, they will have to determine whether to use the wording of paragraph 4 as shown or wording that leaves taxation to the State in which the capital is located.]

KEY DIFFERENCES

Paragraphs 1 and 3 are identical. Paragraph 2 differs, the UN Model extending it to movable property pertaining to a fixed base. Paragraph 4 gives all other elements of capital to the residence State in both Models, but the UN Model shows it in brackets and adds a note leaving the question to bilateral negotiation.

PARAGRAPH	OECD 2017	UN 2021
2	'... State has in the other Contracting State may be taxed in that other State.'	'... State has in the other Contracting State or by movable property pertaining to a fixed base available to a ... for the purpose of performing independent personal services may be taxed in that other State.'
4	'... shall be taxable only in that State.'	'... shall be taxable only in that State.] [The question of the taxation of all other elements of capital of ... the State in which the capital is located.]'

CHAPTER V

Methods for the elimination of double taxation

Exemption and credit, and the relief a residence State must give.

IN THIS CHAPTER

Exemption method

ARTICLE 23A

Credit method

ARTICLE 23B



OECD ARTICLE 23 A · UN ARTICLE 23 A

Exemption method

Where a resident derives income taxable in the source State under the Convention, the residence State exempts that income, with a credit instead for certain classes: Articles 10 and 11 under the OECD Model, and Articles 10, 11, 12, 12A and 12B under the UN Model. Paragraph 4 withholds exemption where the source State has applied the Convention to exempt the income.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

Where a resident of a Contracting State derives income or owns capital which may be taxed in the other Contracting State in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State or because the capital is also capital owned by a resident of that State), the firstmentioned State shall, subject to the provisions of paragraphs 2 and 3, exempt such income or capital from tax.

PARAGRAPH 2

WORDING DIFFERS

Where a resident of a Contracting State derives items of income which **may be taxed in the other Contracting State in** accordance with the provisions of Articles 10 and 11 (**except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State**), the firstmentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income **derived from** that other State.

Where a resident of a Contracting State derives items of income which, in accordance with the provisions of Articles 10, 11, **12, 12A and 12B may be taxed in** the other **Contracting** State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income **which may be taxed in** that other State.

PARAGRAPH 3

WORDING DIFFERS

Where in accordance with any provision of **the** Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

Where in accordance with any provision of **this** Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

2017 OECD MODEL

PARAGRAPH 4

The provisions of paragraph 1 shall not apply to income derived or capital owned by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 **or** 11 to such income.

2021 UN MODEL

WORDING DIFFERS

The provisions of paragraph 1 shall not apply to income derived or capital owned by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10, 11, **12 or 12A, or the provisions of Article 12B**, to such income; **in the case where the other Contracting State does not exempt the income, the first-mentioned State shall allow the deduction of tax provided for by paragraph 2.**

KEY DIFFERENCES

Paragraph 2 of the OECD Model covers Articles 10 and 11 only. The UN Model extends the credit to royalties under Article 12 and to the income covered by its Articles 12A and 12B, and its cross-references follow its own numbering.

PARAGRAPH	OECD 2017	UN 2021
2 AND 6 MORE	'... these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State), the firstmentioned State shall allow as ...'	'... 12B may be taxed in the other Contracting State, the first-mentioned State shall allow as ...'
3	'Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is ...'	'Where in accordance with any provision of this Convention income derived or capital owned by a resident of a Contracting State is ...'
4 AND 2 MORE	'... Article 10 or 11 to such income.'	'... provisions of Article 12B, to such income; in the case where the other Contracting State does not exempt the ... deduction of tax provided for by paragraph 2.'

OECD ARTICLE 23 B • UN ARTICLE 23 B

Credit method

The residence State allows as a deduction from its own tax an amount equal to the tax paid in the source State, limited to the part of its tax attributable to that income. Exempt income may still be taken into account in fixing the rate.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

Where a resident of a Contracting State derives income or owns capital which may be taxed in the other Contracting State in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State or because the capital is also capital owned by a resident of that State), the firstmentioned State shall allow:

- (a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State;
- (b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State. Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

PARAGRAPH 2

WORDING DIFFERS

Where in accordance with any provision of **the** Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

Where, in accordance with any provision of **this** Convention, income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

KEY DIFFERENCES

The two Models are close here. The differences are in wording and in cross-references.

PARAGRAPH

OECD 2017

UN 2021

2

'Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is ...'

'Where, in accordance with any provision of this Convention, income derived or capital owned by a resident of a Contracting State is ...'

CHAPTER VI

Special provisions

Non-discrimination, dispute resolution, administrative assistance and entitlement to benefits.

IN THIS CHAPTER

Non-discrimination	ARTICLE 24
Mutual agreement procedure	ARTICLE 25
Exchange of information	ARTICLE 26
Assistance in the collection of taxes	ARTICLE 27
Members of diplomatic missions and consular posts	ARTICLE 28
Entitlement to benefits	ARTICLE 29



OECD ARTICLE 24 • UN ARTICLE 24

Non-discrimination

Nationals of one State are not to be subjected in the other to taxation more burdensome than that borne by its own nationals in the same circumstances, and the Article extends the principle to stateless persons, permanent establishments, deductions and foreign-owned enterprises.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

Nationals of a Contracting State 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

IDENTICAL IN BOTH MODELS, SET ONCE

PARAGRAPH 2

Stateless persons who are residents of 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, in particular with respect to residence, are or may be subjected.

IDENTICAL IN BOTH MODELS, SET ONCE

PARAGRAPH 3

The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

IDENTICAL IN BOTH MODELS, SET ONCE

2017 OECD MODEL

PARAGRAPH 4

Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, **or** paragraph 4 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

2021 UN MODEL

WORDING DIFFERS

Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, paragraph 6 of Article 12, **paragraph 7 of Article 12A or paragraph 11 of Article 12B** apply, interest, royalties, **fees for technical services, payments underlying income from automated digital services**, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

PARAGRAPH 5

IDENTICAL IN BOTH MODELS, SET ONCE

Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the firstmentioned State are or may be subjected.

PARAGRAPH 6

IDENTICAL IN BOTH MODELS, SET ONCE

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

KEY DIFFERENCES

Five of the six paragraphs are identical. Both Models qualify paragraph 4 by reference to Article 9(1); the difference is that the UN Model also cross-refers to its Articles 12(6), 12A(7) and 12B(11), so that fees for technical services and payments underlying income from automated digital services are expressly covered.

PARAGRAPH	OECD 2017	UN 2021
4 AND 3 MORE	'... provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of ...'	'... the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, paragraph 6 of Article 12, paragraph 7 of Article 12A or paragraph 11 of Article 12B ...'

OECD ARTICLE 25 • UN ARTICLE 25

Mutual agreement procedure

A person who considers that the actions of a Contracting State result in taxation not in accordance with the Convention may present the case to a competent authority, which endeavours to resolve it by mutual agreement. Arbitration is where the Models part: the OECD Model provides for it in paragraph 5, Alternative A of the UN Model has no arbitration paragraph, and Alternative B provides a materially different mechanism.

2017 OECD MODEL

PARAGRAPH 1 • ALTERNATIVE A

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 law 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.

PARAGRAPH 2 • ALTERNATIVE A

The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, 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** Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

PARAGRAPH 3 • ALTERNATIVE A

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.

2021 UN MODEL

WORDING DIFFERS

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 law of those States, present his case to the competent authority of **the** Contracting State **of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national.** 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.

WORDING DIFFERS

The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, 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 **this** Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

IDENTICAL IN BOTH MODELS, SET ONCE

2017 OECD MODEL

PARAGRAPH 4 • ALTERNATIVE A

The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

OECD PARAGRAPH 5

Where,

- (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities, any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

UN PARAGRAPH 1 • ALTERNATIVE B

The OECD text is compared against Alternative A above.

2021 UN MODEL

WORDING DIFFERS

The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. **The competent authorities, through consultations, may develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.**

No corresponding provision.

OECD ONLY

UN ALTERNATIVE B FORMULATION

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 law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. 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.

2017 OECD MODEL

UN PARAGRAPH 2 • ALTERNATIVE B

The OECD text is compared against Alternative A above.

2021 UN MODEL

UN ALTERNATIVE B FORMULATION

The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, 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 this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

UN PARAGRAPH 3 • ALTERNATIVE B

UN ALTERNATIVE B FORMULATION

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.

UN PARAGRAPH 4 • ALTERNATIVE B

UN ALTERNATIVE B FORMULATION

The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, may develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

2017 OECD MODEL

UN PARAGRAPH 5 • ALTERNATIVE B

The OECD text is compared against Alternative A above.

2021 UN MODEL

UN ALTERNATIVE B FORMULATION

Where,

- (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the presentation of the case to the competent authority of the other Contracting State, any unresolved issues arising from the case shall be submitted to arbitration if either competent authority so requests. The person who has presented the case shall be notified of the request. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. The arbitration decision shall be binding on both States and shall be implemented notwithstanding any time limits in the domestic laws of these States unless both competent authorities agree on a different solution within six months after the decision has been communicated to them or unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

KEY DIFFERENCES

Paragraphs 1 to 4 carry the basic mutual agreement rules and are present in both Models. The OECD Model then adds arbitration in paragraph 5. The UN Model offers Alternative A, which stops at the basic rules, and Alternative B, a separate five paragraph formulation whose arbitration differs from the OECD provision in the trigger, the period and the effect of the decision.

PARAGRAPH	OECD 2017	UN 2021
1 AND 2 MORE	'... the domestic law 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 ...'	'... the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under ...'
2	'... with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic ...'	'... with a view to the avoidance of taxation which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic ...'
4	'... in the sense of the preceding paragraphs.'	'... in the sense of the preceding paragraphs. The competent authorities, through consultations, may develop appropriate bilateral procedures, conditions, methods ... mutual agreement procedure provided for in this Article.'

Paragraph 5 appears in the OECD Model only. The UN Model also offers Alternative B, a separate formulation in 5 paragraphs, set out after the main text.

OECD ARTICLE 26 • UN ARTICLE 26

Exchange of information

The competent authorities exchange information foreseeably relevant to carrying out the Convention or administering domestic tax law, subject to the confidentiality rules in paragraph 2 and the limits in paragraph 3. Bank secrecy is no answer under paragraph 5.

2017 OECD MODEL

PARAGRAPH 1

The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

PARAGRAPH 2

Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

2021 UN MODEL

WORDING DIFFERS

The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws **of the Contracting States** concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. **In particular, information shall be exchanged that would be helpful to a Contracting State in preventing avoidance or evasion of such taxes.** The exchange of information is not restricted by Articles 1 and 2.

WORDING DIFFERS

Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and **it** shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, **or** the determination of appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 3

IDENTICAL IN BOTH MODELS, SET ONCE

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting 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 Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

PARAGRAPH 4

IDENTICAL IN BOTH MODELS, SET ONCE

If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 5

IDENTICAL IN BOTH MODELS, SET ONCE

In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

UN PARAGRAPH 6

UN ONLY

No corresponding provision.

The competent authorities shall, through consultation, develop appropriate methods and techniques concerning the matters in respect of which exchanges of information under paragraph 1 shall be made.

KEY DIFFERENCES

Both Models state that the exchange is not restricted by Articles 1 and 2, and both allow the wider uses of information. The genuine UN additions are the express statement that exchanged information may be helpful in preventing avoidance or evasion, and a sixth paragraph requiring the competent authorities to consult on methods and techniques.

PARAGRAPH	OECD 2017	UN 2021
1 AND 1 MORE	'... thereunder is not contrary to the Convention. The exchange of information is not restricted ...'	'... thereunder is not contrary to the Convention. In particular, information shall be exchanged that would be helpful to a Contracting State in preventing avoidance or evasion of such taxes. The exchange of information is not restricted ...'
2 AND 1 MORE	'... 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) concerned ...'	'... the same manner as information obtained under the domestic laws of that State and it shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned ...'

Paragraph 6 appears in the UN Model only.

OECD ARTICLE 27 · UN ARTICLE 27

Assistance in the collection of taxes

The Contracting States lend each other assistance in the collection of revenue claims, with the requested State applying its own law as if the claim were its own. Paragraphs 3 to 8 govern acceptance, time limits, priority and the limits of the duty.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

IDENTICAL IN BOTH MODELS, SET ONCE

PARAGRAPH 2

The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

IDENTICAL IN BOTH MODELS, SET ONCE

PARAGRAPH 3

When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

IDENTICAL IN BOTH MODELS, SET ONCE

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 4

IDENTICAL IN BOTH MODELS, SET ONCE

When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the firstmentioned State or is owed by a person who has a right to prevent its collection.

PARAGRAPH 5

IDENTICAL IN BOTH MODELS, SET ONCE

Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

PARAGRAPH 6

IDENTICAL IN BOTH MODELS, SET ONCE

Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 7

IDENTICAL IN BOTH MODELS, SET ONCE

Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- (a) in the case of a request under paragraph 3, a revenue claim of the firstmentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the firstmentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

PARAGRAPH 8

IDENTICAL IN BOTH MODELS, SET ONCE

In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to carry out measures which would be contrary to public policy (ordre public);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

KEY DIFFERENCES

Every paragraph of this Article is identical in both Models, and it is therefore set once across the measure rather than in two columns.

OECD ARTICLE 28 • UN ARTICLE 28

Members of diplomatic missions and consular posts

Nothing in the Convention affects the fiscal privileges of members of diplomatic missions or consular posts under general international law or under special agreements.

2017 OECD MODEL

2021 UN MODEL

SINGLE PROVISION

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

IDENTICAL IN BOTH MODELS, SET ONCE

KEY DIFFERENCES

The operative provision is identical in both Models, and is therefore set once across the measure.

OECD ARTICLE 29 • UN ARTICLE 29

Entitlement to benefits

The Article denies treaty benefits where the conditions for them are not met, through a limitation on benefits rule, a rule for triangular cases involving permanent establishments, and a principal purpose test. It is the longest Article in the comparison.

2017 OECD MODEL

PARAGRAPH 1

[Provision that, subject to paragraphs 3 to 5, restricts treaty benefits to a resident of a Contracting State who is a “qualified person” as defined in paragraph 2].

PARAGRAPH 2

[Definition of situations where a resident is a qualified person, which covers — an individual; — a Contracting State, its political subdivisions and their agencies and instrumentalities; — certain publicly-traded companies and entities; — certain affiliates of publicly-listed companies and entities; — certain non-profit organisations and recognised pension funds; — other entities that meet certain ownership and base erosion requirements; — certain collective investment vehicles.]

2021 UN MODEL

WORDING DIFFERS

Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded by this Convention (other than a benefit under paragraph 3 of Article 4, paragraph 2 of Article 9 or Article 25) unless such resident is a “qualified person”, as defined in paragraph 2, at the time that the benefit would be accorded.

NOT COMPARABLE PHRASE BY PHRASE

A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded by the Convention if, at that time, the resident is:

- (a) an individual;
- (b) that Contracting State, or a political subdivision or local authority thereof, or an agency or instrumentality of that State, political subdivision or local authority;
- (c) a company or other entity, if, throughout the taxable period that includes that time, the principal class of its shares (and any disproportionate class of shares) is regularly traded on one or more recognised stock exchanges, and either:
 - (i) its principal class of shares is primarily traded on one or more recognised stock exchanges located in the Contracting State of which the company or entity is a resident; or
 - (ii) the company's or entity's primary place of management and control is in the Contracting State of which it is a resident;
- (d) a company, if:

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 2 CONTINUED

NOT COMPARABLE PHRASE BY PHRASE

- (i) throughout the taxable period that includes that time, at least 50 per cent of the aggregate vote and value of the shares (and at least 50 per cent of the aggregate vote and value of any disproportionate class of shares) in the company is owned directly or indirectly by five or fewer companies or entities entitled to benefits under subparagraph (c) of this paragraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of the Contracting State from which a benefit under this Convention is being sought or is a qualifying intermediate owner; and
- (ii) with respect to benefits under this Convention other than under Article 10, less than 50 per cent of the company's gross income, and less than 50 per cent of the tested group's gross income, for the taxable period that includes that time, is paid or accrued, directly or indirectly, in the form of payments that are deductible in that taxable period for purposes of the taxes covered by this Convention in the company's Contracting State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property, and in the case of a tested group, not including intra-group transactions) to persons that are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph (a), (b), (c) or (e);
- (e) a person, other than an individual, that
 - (i) is a [agreed description of the relevant non-profit organisations found in each Contracting State],

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 2 CONTINUED

NOT COMPARABLE PHRASE BY PHRASE

- (ii) is a recognised pension fund;
- (f) a person other than an individual, if
 - (i) at that time and on at least half the days of a twelve-month period that includes that time, persons who are residents of that Contracting State and that are entitled to the benefits of this Convention under subparagraph (a), (b), (c) or (e) own, directly or indirectly, shares representing at least 50 per cent of the aggregate vote and value (and at least 50 per cent of the aggregate vote and value of any disproportionate class of shares) of the shares in the person, provided that, in the case of indirect ownership, each intermediate owner is a qualifying intermediate owner, and
 - (ii) less than 50 per cent of the person's gross income, and less than 50 per cent of the tested group's gross income, for the taxable period that includes that time, is paid or accrued, directly or indirectly, in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's Contracting State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property, and in the case of a tested group, not including intra-group transactions), to persons that are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph (a), (b), (c) or (e) of this paragraph; or
- (g) [a collective investment vehicle to which paragraph 4 of Article 1 applies];

2017 OECD MODEL

PARAGRAPH 3

[Provision that provides treaty benefits to certain income derived by a person that is not a qualified person if the person is engaged in the active conduct of a business in its State of residence and the income emanates from, or is incidental to, that business].

PARAGRAPH 3 CONTINUED

PARAGRAPH 4

[Provision that provides treaty benefits to a person that is not a qualified person if at least more than an agreed proportion of that entity is owned by certain persons entitled to equivalent benefits].

2021 UN MODEL

WORDING DIFFERS

- (a) A resident of a Contracting State shall be entitled to benefits under this Convention with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned State and the income derived from the other State emanates from, or is incidental to, that business. For purposes of this Article, the term “active conduct of a business” shall not include the following activities or any combination thereof:
- (i) operating as a holding company;
 - (ii) providing overall supervision or administration of a group of companies;
 - (iii) providing group financing (including cash pooling); or
 - (iv) making or managing investments, unless these activities are carried on by a bank [list financial institutions similar to banks that the Contracting States agree to treat as such], insurance enterprise or registered securities dealer in the ordinary course of its business as such.

WORDING DIFFERS

- (b) If a resident of a Contracting State derives an item of income from a business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other State from a connected person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the business activity carried on by the resident in the first-mentioned State to which the item is related is substantial in relation to the same or complementary business activity carried on by the resident or such connected person in the other Contracting State. Whether a business activity is substantial for the purposes of this paragraph shall be determined based on all the facts and circumstances.
- (c) For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting State shall be deemed to be conducted by such resident.

WORDING DIFFERS

[A rule providing so-called derivative benefits. The question of how the derivative benefits paragraph should be drafted in a convention that follows the detailed version is discussed in the Commentary.]

2017 OECD MODEL

PARAGRAPH 5

[Provision that provides treaty benefits to a person that qualifies as a “headquarters company”].

2021 UN MODEL

WORDING DIFFERS

A company that is a resident of a Contracting State that functions as a headquarters company for a multinational corporate group consisting of such company and its direct and indirect subsidiaries shall be entitled to benefits under this Convention with respect to dividends and interest paid by members of its multinational corporate group, regardless of whether the resident is a qualified person. A company shall be considered a headquarters company for this purpose only if:

- (a) such company's primary place of management and control is in the Contracting State of which it is a resident;
- (b) the multinational corporate group consists of companies resident of, and engaged in the active conduct of a business in, at least four States, and the businesses carried on in each of the four States (or four groupings of States) generate at least 10 per cent of the gross income of the group;
- (c) the businesses of the multinational corporate group that are carried on in any one State other than the Contracting State of residence of such company generate less than 50 per cent of the gross income of the group;
- (d) no more than 25 per cent of such company's gross income is derived from the other Contracting State;
- (e) such company is subject to the same income taxation rules in its Contracting State of residence as persons described in paragraph 3 of this Article; and

PARAGRAPH 5 CONTINUED

WORDING DIFFERS

- (f) less than 50 per cent of such company's gross income, and less than 50 per cent of the tested group's gross income, is paid or accrued, directly or indirectly, in the form of payments that are deductible for purposes of the taxes covered by this Convention in the company's Contracting State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property or payments in respect of financial obligations to a bank that is not a connected person with respect to such company, and in the case of a tested group, not including intra-group transactions) to persons that are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph (a), (b), (c) or (e) of paragraph 2. If the requirements of subparagraph (b), (c) or (d) of this paragraph are not fulfilled for the relevant taxable period, they shall be deemed to be fulfilled if the required ratios are met when averaging the gross income of the preceding four taxable periods.

2017 OECD MODEL

PARAGRAPH 6

[Provision that allows the competent authority of a Contracting State to grant **certain treaty** benefits to a person where benefits would otherwise be denied under paragraph 1].

PARAGRAPH 7

[Definitions applicable for the purposes of paragraphs 1 to 7].

2021 UN MODEL

WORDING DIFFERS

If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 of this Article, nor entitled to benefits under paragraph 3, 4 or 5, the competent authority of the Contracting State in which benefits are denied under the previous provisions of this Article may, nevertheless, grant the benefits of this Convention, or benefits with respect to a specific item of income or capital, taking into account the object and purpose of this Convention, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under this Convention. The competent authority of the Contracting State to which a request has been made, under this paragraph, by a resident of the other State, shall consult with the competent authority of that other State before either granting or denying the request.

WORDING DIFFERS

For the purposes of this and the previous paragraphs of this Article:

- (a) the term “recognised stock exchange” means:
 - (i) [list of stock exchanges agreed to at the time of signature]; and
 - (ii) any other stock exchange agreed upon by the competent authorities of the Contracting States;
- (b) with respect to entities that are not companies, the term “shares” means interests that are comparable to shares;
- (c) the term “principal class of shares” means the ordinary or common shares of the company or entity, provided that such class of shares represents the majority of the aggregate vote and value of the company or entity. If no single class of ordinary or common shares represents the majority of the aggregate vote and value of the company or entity, the “principal class of shares” are those classes that in the aggregate represent a majority of the aggregate vote and value;
- (d) two persons shall be “connected persons” if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company’s shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company’s shares) in each person. In any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 7 CONTINUED

WORDING DIFFERS

(e) the term “equivalent beneficiary” means:

- (i) a resident of any State, provided that: (A) the resident is entitled to all the benefits of a comprehensive convention for the avoidance of double taxation between that State and the Contracting State from which the benefits of this Convention are sought, under provisions substantially similar to subparagraph (a), (b), (c) or (e) of paragraph 2 or, when the benefit being sought is with respect to interest or dividends paid by a member of the resident's multinational corporate group, the resident is entitled to benefits under provisions substantially similar to paragraph 5 of this Article in such convention, provided that, if such convention does not contain a detailed limitation on benefits article, such convention shall be applied as if the provisions of subparagraphs (a), (b), (c) and (e) of paragraph 2 (including the definitions relevant to the application of the tests in such subparagraphs) were contained in such convention;

PARAGRAPH 7 CONTINUED

WORDING DIFFERS

- and (B) (1) with respect to income referred to in Article 10, 11, 12, 12A or 12B if the resident had received such income directly, the resident would be entitled under such Convention, a provision of domestic law or any international agreement, to a rate of tax with respect to such income for which benefits are being sought under this Convention that is less than or equal to the rate applicable under this Convention. Regarding a company seeking, under paragraph 4, the benefits of Article 10 with respect to dividends, for purposes of this subclause: (I) if the resident is an individual, and the company is engaged in the active conduct of a business in its Contracting State of residence that is substantial in relation, and similar or complementary, to the business that generated the earnings from which the dividend is paid, such individual shall be treated as if he or she were a company. Activities conducted by a person that is a connected person with respect to the company seeking benefits shall be deemed to be conducted by such company. Whether a business activity is substantial shall be determined based on all the facts and circumstances;

2017 OECD MODEL

PARAGRAPH 7 CONTINUED

2021 UN MODEL

WORDING DIFFERS

and (II) if the resident is a company (including an individual treated as a company), to determine whether the resident is entitled to a rate of tax that is less than or equal to the rate applicable under this Convention, the resident's indirect holding of the capital of the company paying the dividends shall be treated as a direct holding; or (2) with respect to an item of income referred to in Article 7, 13 or 21 of this Convention, the resident is entitled to benefits under such Convention that are at least as favourable as the benefits that are being sought under this Convention; and (C) notwithstanding that a resident may satisfy the requirements of clauses (A) and (B) of this subdivision, where the item of income has been derived through an entity that is treated as fiscally transparent under the laws of the Contracting State of residence of the company seeking benefits, if the item of income would not be treated as the income of the resident under a provision analogous to paragraph 2 of Article 1 had the resident, and not the company seeking benefits under paragraph 4 of this Article, itself owned the entity through which the income was derived by the company, such resident shall not be considered an equivalent beneficiary with respect to the item of income;

PARAGRAPH 7 CONTINUED

WORDING DIFFERS

- (ii) a resident of the same Contracting State as the company seeking benefits under paragraph 4 of this Article that is entitled to all the benefits of this Convention by reason of subparagraph (a), (b), (c) or (e) of paragraph 2 or, when the benefit being sought is with respect to interest or dividends paid by a member of the resident's multinational corporate group, the resident is entitled to benefits under paragraph 5, provided that, in the case of a resident described in paragraph 5, if the resident had received such interest or dividends directly, the resident would be entitled to a rate of tax with respect to such income that is less than or equal to the rate applicable under this Convention to the company seeking benefits under paragraph 4; or
- (iii) a resident of the Contracting State from which the benefits of this Convention are sought that is entitled to all the benefits of this Convention by reason of subparagraph (a), (b),
- (c) or (e) of paragraph 2, provided that all such residents' ownership of the aggregate vote and value of the shares (and any disproportionate class of shares) of the company seeking benefits under paragraph 4 does not exceed 25 per cent of the total vote and value of the shares (and any disproportionate class of shares) of the company;

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 7 CONTINUED

WORDING DIFFERS

- (f) the term “disproportionate class of shares” means any class of shares of a company or entity resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other Contracting State by particular assets or activities of the company;
- (g) a company’s or entity’s “primary place of management and control” is in the Contracting State of which it is a resident only if:
 - (i) the executive officers and senior management employees of the company or entity exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company or entity and its direct and indirect subsidiaries, and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions, in that Contracting State than in any other State; and
 - (ii) such executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision-making for the company or entity and its direct and indirect subsidiaries, and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions, than the officers or employees of any other company or entity;
- (h) the term “qualifying intermediate owner” means an intermediate owner that is either:

2017 OECD MODEL

PARAGRAPH 7 CONTINUED

2021 UN MODEL

WORDING DIFFERS

- (i) a resident of a State that has in effect with the Contracting State from which a benefit under this Convention is being sought a comprehensive convention for the avoidance of double taxation; or
- (ii) a resident of the same Contracting State as the company applying the test under subparagraph (d) or (f) of paragraph 2 or paragraph 4 to determine whether it is eligible for benefits under the Convention;
- (i) the term “tested group” means the resident of a Contracting State that is applying the test under subparagraph (d) or (f) of paragraph 2 or under paragraph 4 or 5 to determine whether it is eligible for benefits under the Convention (the “tested resident”), and any company or permanent establishment that:
 - (i) participates as a member with the tested resident in a tax consolidation, fiscal unity or similar regime that requires members of the group to share profits or losses; or
 - (ii) shares losses with the tested resident pursuant to a group relief or other loss sharing regime in the relevant taxable period; and

PARAGRAPH 7 CONTINUED

WORDING DIFFERS

- (j) the term “gross income” means gross receipts as determined in the person’s Contracting State of residence for the taxable period that includes the time when the benefit would be accorded, except that where a person is engaged in a business that includes the manufacture, production or sale of goods, “gross income” means such gross receipts reduced by the cost of goods sold, and where a person is engaged in a business of providing non-financial services, “gross income” means such gross receipts reduced by the direct costs of generating such receipts, provided that:
 - (i) except when relevant for determining benefits under Article 10 of this Convention, gross income shall not include the portion of any dividends that are effectively exempt from tax in the person’s Contracting State of residence, whether through deductions or otherwise; and
 - (ii) except with respect to the portion of any dividend that is taxable, a tested group’s gross income shall not take into account transactions between companies within the tested group.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 8

IDENTICAL IN BOTH MODELS, SET ONCE

(a) Where

- (i) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction, and
 - (ii) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned State, the benefits of this Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than the lower of [rate to be determined bilaterally] of the amount of that item of income and 60 per cent of the tax that would be imposed in the first-mentioned State on that item of income if that permanent establishment were situated in the first-mentioned State. In such a case any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other State, notwithstanding any other provisions of the Convention.
- (b) The preceding provisions of this paragraph shall not apply if the income derived from the other State emanates from, or is incidental to, the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

PARAGRAPH 8 CONTINUED

IDENTICAL IN BOTH MODELS, SET ONCE

- (c) If benefits under this Convention are denied pursuant to the preceding provisions of this paragraph with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of this paragraph (such as the existence of losses). The competent authority of the Contracting State to which a request has been made under the preceding sentence shall consult with the competent authority of the other Contracting State before either granting or denying the request

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 9

IDENTICAL IN BOTH MODELS, SET ONCE

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

KEY DIFFERENCES

The OECD Model leaves the detailed limitation on benefits rule in bracketed outline for bilateral drafting. The UN Model sets it out in full, including the qualified person, active business, derivative benefits and discretionary relief provisions, and defines the terms used.

PARAGRAPH	OECD 2017	UN 2021
1 AND 2 MORE	'... to a resident of a Contracting State who is a "qualified person" as defined in ...'	'... Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded ... Article 9 or Article 25) unless such resident is a "qualified person", as defined in ...'
2	OUTLINE ONLY	SET OUT IN FULL
3 AND 9 MORE	'... from, or is incidental to, that business).'	'... from, or is incidental to, that business. For purposes of this Article, the term "active conduct of a business" ... be deemed to be conducted by such resident.'
4 AND 4 MORE	'[Provision that provides treaty benefits to a person that is not a qualified person if at least more than an agreed proportion of that entity is owned by certain ...]'	'[A rule providing so-called derivative benefits. The question of how the derivative benefits paragraph should ...]'
5 AND 9 MORE	'... provides treaty benefits to a person that qualifies as a "headquarters company").'	'... businesses of the multinational corporate group that are carried on in any one State other than the Contracting State ... taxation rules in its Contracting State of residence as persons described in paragraph 3 of ...'
6 AND 9 MORE	'... to grant certain treaty benefits to a person where benefits would otherwise be denied under paragraph ...'	'... Convention, or benefits with respect to a specific item of income or capital, taking into account the object and ... one of its principal purposes the obtaining of benefits under this Convention. The competent authority ...'

CHAPTER VII

Final provisions

Territorial extension, entry into force and termination.

IN THIS CHAPTER

Territorial extension	OECD ARTICLE 30
Entry into force	OECD 31 / UN 30
Termination	OECD 32 / UN 31



OECD ARTICLE 30

Territorial extension

The OECD Model provides an optional Article by which the Convention may be extended to any State or territory whose international relations a Contracting State is responsible for. The UN Model has no corresponding Article.

2017 OECD MODEL

OECD PARAGRAPH 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.

OECD PARAGRAPH 2

Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 32 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.

KEY DIFFERENCES

An OECD Model Article with no UN equivalent. The UN Model proceeds directly from Article 29 to its final provisions.

Paragraphs 1, 2 appear in the OECD Model only.

2021 UN MODEL

No corresponding provision.

OECD ONLY

OECD ONLY

OECD ARTICLE 31 · UN ARTICLE 30

Entry into force

The Convention is ratified, the instruments of ratification exchanged, and its provisions have effect from dates each State inserts. The numbering diverges here: this is Article 31 of the OECD Model and Article 30 of the UN Model.

2017 OECD MODEL

2021 UN MODEL

PARAGRAPH 1

IDENTICAL IN BOTH MODELS, SET ONCE

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

PARAGRAPH 2

IDENTICAL IN BOTH MODELS, SET ONCE

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):

KEY DIFFERENCES

The provisions are in substance the same. The numbering differs because the OECD Model carries a territorial extension Article that the UN Model does not.

OECD ARTICLE 32 • UN ARTICLE 31

Termination

The Convention remains in force until terminated by a Contracting State on at least six months' notice before the end of a calendar year, given through diplomatic channels. This is Article 32 of the OECD Model and Article 31 of the UN Model.

2017 OECD MODEL

2021 UN MODEL

SINGLE PROVISION

IDENTICAL IN BOTH MODELS, SET ONCE

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):

KEY DIFFERENCES

The termination provisions are the same in substance. The instruction that entry into force, termination and the terminal clause be drafted to each State's constitutional procedure sits in both Models but in different places: the OECD Model puts it in a footnote to the terminal clause, the UN Model as an express bracketed note. Neither is treaty text and neither is reproduced here.

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The comparison ends where the negotiation begins.

Neither Model is law. Each bilateral convention in force takes what its two States agreed, and the differences set out in these pages are the points at which that agreement is usually contested. Read the treaty that governs the facts, then read the Commentary on the Model it followed.

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