

Tax treaties dataset coding book

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This document gives a guide to the treaty provisions coded in the dataset, the coding rules followed, and the interpretation of some common non-standard wording. The dataset provides a simplified summary of certain parts of a treaty that may not fully reflect the detailed content. Always check the original treaty text.

Types of treaty

- **Original.** A new bilateral treaty, including the impact of any amending protocols that were signed at the same time as the treaty itself, but excluding any subsequent amendments.
- **Pre-independence.** An Original treaty signed before the date of a country came into being, as a result of independence or secession.
- **Amended by protocol.** An original treaty that has been amended at a later date by protocol. Where a treaty has been amended more than once, each amended version is recorded separately. In many cases the clauses recorded in this dataset are not affected, but the protocol is still listed.
- **Amended by MLI.** An original treaty that has been amended by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.
- **Multilateral.** A treaty between three or more countries that resembles a bilateral tax treaty in form and content. Only a handful of such treaties exist.

Types of treaty status

- **In force.** A treaty that came into legal force in or before the year during which the dataset was last updated.
- **Terminated.** A treaty that ceased to have legal force in or before the year during which the dataset was last updated.
- **Superseded.** The original text of a treaty that is still in force but has been amended, by protocol or through the MLI, such amendments having come into force in or before the year during which the dataset was last updated.
- **Not in force.** A treaty that had been signed, but had yet to come into force in or before the year during which the dataset was last updated.

General coding principles

- Each provision is coded in a purposive way. If within a treaty there is language that differs from the text of the UN model but would have the same or similar effect as a UN provision, it is coded as if the UN provision were present. This code book gives guidance for the most common variations.
- Where treaty provisions are asymmetrical, they have been coded focusing on the taxing rights of the least developed country, as measured using GNI per capita on the date of signature.
- Original treaties have been coded separately from subsequent amendments by protocol, which can also be found in the dataset. The exception is where an amending protocol and

original treaty were signed simultaneously: here the amended version is coded and labelled as Original.

Art. 5(3)(a): Construction PE length in months

The minimum length of time that a building site, a construction, assembly or installation project carried on by a business from a Contracting State must be present in a country in order to qualify as a permanent establishment.

UN: 6 months / OECD: 12 months

- Where building, construction, assembly and installation are treated differently, use value for building and construction

Art. 5(3)(a) Supervisory activities included in PE

Supervisory activities in connection with a building site, a construction, assembly or installation project can in themselves constitute a permanent establishment.

UN model: yes / OECD model: no

Art. 5(3)(b) Service PE length in months

The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose can in itself constitute a permanent establishment provided they continue for more than a certain length of time.

UN: yes, 6 months / OECD: no

- Most non-standard forms of wording accepted

Art. 5(4)(a) Delivery facilities excluded from PE

The use of facilities solely for the purpose of delivery of goods or merchandise belonging to an enterprise is excluded from the definition of permanent establishment.

UN: no / OECD: yes

- 'Occasional delivery' coded as 'no'
- If 5(4)(a) is missing altogether, coded as 'no'

Art. 5(4)(b) Delivery stock excluded from PE

The maintenance of a stock of goods or merchandise belonging to an enterprise solely for the purpose of delivery is excluded from the definition of permanent establishment.

UN: no / OECD: yes

- Occasional delivery' coded as 'no'
- If 5(4)(a) is missing altogether, coded as 'no'

Art. 5(5)(b) Agent maintaining a stock included in PE

A permanent establishment can arise if a person acting on behalf of an enterprise habitually maintains a stock of goods or merchandise from which that person regularly delivers goods or merchandise on behalf of the enterprise.

UN: yes / OECD: no

- If 5(5) is missing altogether, coded as 'no'

Art. 5(6) Insurance broker included in PE

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.

UN: yes / OECD: no

- If insurance is carved out from article 7, this should be coded as 'yes' here

Art. 5(7) Dependent agent extension to PE

Paragraphs 5(5) and 5(6) can still apply to a person who acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, if that person carries on business as an independent agent.

UN: yes / OECD: no

- Coded 'yes' where the wording requires that the conditions between the agent and enterprise differ from arm's length, or that the enterprise have a controlling interest in the agent.
- If 5(7) is missing altogether, left blank

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Art. 7(1)(b&c) Limited force of attraction

Profits from sales of goods or merchandise of the same or similar kind as those sold through a permanent establishment, or from other business activities of the same or similar kind as those effected through that permanent establishment, can be taxed, rather than merely the profits attributed to the permanent establishment itself.

UN: yes / OECD: no

- If paragraph (b) is present but not paragraph (c), coded "yes"

- If there is a requirement that the PE is involved in the sale, coded “no”
- Other major variations, left blank

Art. 7(3) No deduction for payments to head office

In determining the profits of the permanent establishment, no 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.

UN: yes / OECD: no

- In case of a caveat merely that deductions must be in accordance with domestic law, coded “no”

Art. 8(2) Shared taxing right over shipping

Profits of an enterprise of a Contracting State from the operation of ships in international traffic arising in the other Contracting State may be taxed in that other State if they are more than casual. (They may be reduced by an agreed percentage).

UN: optional / OECD: no

- Where the source taxing right is limited to transportation between ports of one contracting state and a third country, coded “yes”
- Where the source taxing right is limited to transportation within one of the contracting states, coded “no”

Art. 10(2)(a) Qualifying dividend WHT rate

Dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, but the tax so charged shall not exceed a specified percentage of the gross amount of the dividends. This entry records the maximum tax rate where the beneficial owner is a company which holds a certain percentage of the capital of the company paying the dividends.

UN: unspecified / OECD: 5%

- If the lowest rate is available on the basis of a minimum monetary amount of investment rather than (or in addition to) a percentage, that rate is coded here.
- If the lowest rate is available to a potentially significant number of investors on the basis of objective criteria, for example ‘industrial undertakings’ defined by reference to certain sectors, that rate is coded here.
- If the lowest rate is only available to companies on an approved list, that rate is not coded here.

Art. 10(2)(a) Threshold for qualified dividends

Dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, but the tax so charged shall not exceed a specified percentage of the gross amount of the dividends. This entry records the percentage of the capital of the company paying the dividends that the recipient must hold in order to qualify for the lower rate specified in this article.

UN: unspecified / OECD: 15%

- If the lowest rate is available on the basis of a minimum monetary amount of investment rather than a percentage, this field is left blank.
- If the same rate applies to all dividends, this field is left blank.

Art. 10(2)(b) Portfolio dividend WHT rate

Dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, but the tax so charged shall not exceed a specified percentage of the gross amount of the dividends. This entry records the maximum tax rate where the beneficial owner is a company which holds less than a certain percentage of the capital of the company paying the dividends.

UN: unspecified / OECD: 15%

Art. 11(2) Interest WHT rate

Interest may be taxed in the Contracting State in which it arises, but the tax so charged shall not exceed a specified percentage of the gross amount of the interest. This entry records the general treaty rate applying to most types of interest.

UN: unspecified / OECD: 10%

- If multiple rates are given, it is the rate for lenders who do not qualify for any of the specific rates

Art. 11(2) Interest WHT rate (financial institutions)

Interest may be taxed in the Contracting State in which it arises, but the tax so charged shall not exceed a specified percentage of the gross amount of the interest. This entry records the rate applying specifically to interest on loans made by banks / financial institutions. (In the UN and OECD models all interest is treated in the same way).

UN: unspecified / OECD: 10%

- Lower rates are coded here whenever the lender is a financial institution: qualifying criteria may include a minimum loan term or a specific type of borrower
- Exemptions from taxation for state-owned lenders and/or borrowers are not coded here

Art. 12(2) Royalties WHT rate

Royalties may be taxed in the Contracting State in which they arise, but the tax so charged shall not exceed a specified percentage of the gross amount of the royalties. This entry records the general rate applying to most types of royalties.

UN: yes, unspecified / OECD: no

- If no general rate is given (rates are specified for each component of the royalty definition) this is the rate with the widest applicability once copyright payments and the use of equipment are excluded.
- If a general rate is given, but in practice a specific rate applies to all or most of the types of royalty in the definition, the latter is coded here.

Art. 12(2) Royalties WHT rate (copyright payments)

Royalties may be taxed in the Contracting State in which they arise, but the tax so charged shall not exceed a specified percentage of the gross amount of the royalties. This entry records the specific rate applying to royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work. (In the UN and OECD models all royalties are treated in the same way).

UN: yes, unspecified / OECD: no

- Where the rate for literary, artistic or scientific work differs to that for cinema, radio and television, the first has been coded here.

Art. 12(2) Royalties WHT rate (use of equipment)

Royalties may be taxed in the Contracting State in which they arise, but the tax so charged shall not exceed a specified percentage of the gross amount of the royalties. This entry records the specific rate applying to royalties for the use of, or the right to use, industrial, commercial or scientific equipment. (In the UN and OECD models all royalties are treated in the same way).

UN: yes, unspecified / OECD: no

- If the definition of royalties excludes payments for the use of equipment (as in the OECD model) this is coded as zero.

Art. 12A Technical service fees WHT rate

Fees for technical services (for services of a managerial, technical or consultancy nature) may be taxed in the Contracting State in which they arise, but the tax so charged shall not exceed a specified percentage of the gross amount of the fees.

UN: yes, unspecified / OECD: no

- Coded here is the remuneration of any activity as a service, but not as a passive transfer or letting. For example, 'technical assistance' would be coded as present.
- Where fees for technical services are included within the definition of royalties includes, this is coded here in the same way as if a separate article existed.

Art. 13(4) Capital gains (land rich company)

Gains from the alienation of shares or comparable interests may be taxed in a Contracting State if these shares or comparable interests derived more than a certain percentage of their value from immovable property situated in that State.

UN: yes / OECD: yes

- Where 13(4) is omitted, but the article grants a general taxing right to the source country, coded “yes”

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Art. 13(5) Capital gains (other shares)

Gains from the alienation of shares in a company, or comparable interests, may be taxed in the Contracting State in which the company is a resident, if the alienator holds more than a certain percentage of the capital of that company or entity.

UN: yes / OECD: no

- Where 13(5) is omitted, but the article grants a general taxing right to the source country, coded “yes”

Art. 14 Independent personal services

Income in respect of professional services or other activities of an independent character can be taxed by a Contracting State if the person deriving them has a fixed base in that State, or stays in that State for a certain proportion of time within a 12-month period.

UN: yes / OECD: no

- If this article does not appear, but the PE definition has been expanded to incorporate it, this is coded as “yes”

Art. 16(2) Top-level managerial officials

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.

UN: yes / OECD: no

Art. 21(3) Source taxation of other income

Items of income of a resident of a Contracting State not dealt with elsewhere in the Convention and arising in the other Contracting State may also be taxed in that other State.

UN: yes / OECD: no

- Where the source taxing right in this article is limited to certain types of income, coded “no”

Art. 25B(5) Mandatory binding arbitration

Any issues arising from a case submitted to a competent authority under the mutual agreement procedure that are unresolved after a specified period of time shall in certain circumstances be submitted to arbitration, which shall be binding on both States.

UN: optional / OECD: yes

- Only forms of arbitration provision that are mandatory and binding on a state (having been initiated by the taxpayer, by the other state, or automatically on failure to agree at MAP) are coded as “yes”.

Art. 27 Assistance in tax collection

The Contracting States shall lend assistance to each other in the collection of revenue claims.. A revenue claim made by a Contracting State that meets the criteria set out in the article shall be collected by the 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.

UN: yes / OECD: yes

Art. 29 General anti-abuse rule

This codes according to the type of anti-abuse rule, as follows:

- Limitation on Benefits (LOB): a resident of a Contracting State is not entitled to the benefits of the convention unless they meet one or more categorical criteria.
- Principle Purpose Test (PPT): a benefit under this Convention shall not be granted if it is reasonable to conclude that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted in that benefit.
- LOB-PPT: LOB & PPT are both included.
- Other: a non-standard article that does not resemble an LOB or a PPT.
- Partial: a standalone anti-abuse provision that covers only a specified set of articles of the Convention

UN: both / OECD: LOB-PPT

- Specific anti-abuse rules applying to individual articles are not coded here
- Provisions specifying that nothing in the treaty should prevent the application of anti-avoidance rules in domestic law are not coded here.

Potentially introduced or modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)