

Key changes to the OECD Model Tax Convention, 2025 & India's reservations

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Pursuant to [Taxsutra News Flash](#) dated 19 November 2025, here is a list of key changes and India's reservations on those changes as introduced by OECD in the 2025 update to the Model Tax Convention as approved by the Committee on Fiscal Affairs and by the OECD Council.

Key changes

1. Changes to Article 25:

- OECD introduces a new paragraph 6 of Article 25 which pertains to Mutual Agreement Procedure.
- The newly inserted paragraph 6 confirms the role of competent authorities in determining whether a matter falls within the scope of a tax treaty for purposes of the dispute resolution mechanisms provided under the General Agreement on Trade in Services (GATS).
- As far as India's position on Article 25 and its commentary is concerned, India reserves the right to modify paragraph 6 to exclude the reference to "any other procedure agreed to by both Contracting States".

2. Changes to the Commentary on Article 5:

- Article 5 of OECD Model Convention pertains to determination of Permanent Establishment.
- Changes to Commentary on Article 5 clarifies the circumstances in which an individual's home could constitute a "place of business" of the enterprise for which the individual works.
- These changes are an evolution of existing principles and ensure the Commentary reflects modern working arrangements, providing additional certainty as to when a fixed place of business permanent establishment will, and will not, be created by an individual working from a home or other relevant place.
- OECD, provides an alternative (optional) provision on activities in connection with the exploration and exploitation of extractible natural resources, together with related commentary, in the form of a lower permanent establishment threshold, which would be crossed after a non-resident enterprise had operated in a State for more than a bilaterally agreed time period.
- Reservations of India - (i) India reserves the right to add to paragraph 2 an additional subparagraph in order to cover a warehouse in relation to a person supplying storage facilities for others, (ii) India reserves the right to provide that an insurance enterprise of a Contracting State shall, except with respect to re-insurance (other than in the case of India), 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 other than an agent of an independent status to whom paragraph 6 applies, (iii) India does not agree with the words "the twelve month test applies to each individual site or project" found in paragraph 51 of the Commentary. India considers that a series of consecutive short term sites or projects operated by a contractor would give rise to the existence of a permanent establishment in the country concerned, (iv) India does not agree with the interpretation given in paragraph 97; India is of the view that the mere fact that a person has attended or participated in negotiations in a State between an enterprise and a client, can in certain circumstances, be sufficient, by itself, to conclude that the person has exercised in that State an authority to conclude contracts in the name of the enterprise. India is also of the view that a person, who is authorised to negotiate the essential elements of the contract, and not necessarily all the elements and details of the contract, on behalf of a foreign resident, can be said to exercise the authority to conclude contracts, (v) India does not agree with the conditions, including time threshold and commercial reason, detailed in paragraph 44.1 to 44.21 of the Commentary on Article 5 for regarding an individual's home where activities related to the business of an enterprise are carried out, a place of business of the enterprise. India considers that in such a case, individual's home can be considered as being at the disposal of the enterprise, and it constitutes a place of business of the enterprise for the purpose of application of Article 5.

3. Changes to the Commentary on Article 9:

This Article deals with adjustments to profits that may be made for tax purposes where transactions have been entered into between associated enterprises (AEs).

OECD made changes in response to a taxpayer's query raised in the context of Working Party's work on the transfer pricing aspects of financial transactions (as per Chapter X of the Transfer Pricing Guidelines), clarifying the application of Article 9, especially as it relates to domestic laws on interest deductibility, such as those recommended in the final report on BEPS Action 4.

India has not agreed to the OECD Transfer Pricing Guidelines, and hence reserves the right to deviate from them in accordance with the provisions in its domestic laws.

Changes to the Commentary on Article 11:

- Article 11 is concerned with the taxation of Interest.
- On changes to the commentary on Article 13, India reserves the right to consider as interest the income derived from financial leasing and factoring contracts

4. Changes to the Commentary on Article 13:

- This Article of the OECD Model Convention pertains to taxation of capital gains.
- On changes to the commentary on Article 13, India reserves the right to tax gains from the direct and indirect alienation of shares or rights in a company, or of comparable interests, such as interests in a partnership or trust, that is a resident of India.

5. Changes to the Commentary on Article 25:

- OECD specifies that considering the amended version of paragraph 6, Contracting States should keep in mind the formulation of the tax provisions, if any, already included in the relevant bilateral or multilateral trade and investment agreement or agreements, and the consequences of such a provision with respect to the non-discrimination obligations provided in those other agreements, as well as the extent to which the particular trade or investment agreement already provides satisfactory coordination, both from a substantive and a procedural point of view, between the agreement and any tax convention or conventions in force between the parties to that trade or investment agreement.
- In case some contracting States may prefer a more limited definition of "falls within the scope of this Convention" that refers to a covered tax as defined in Article 2 such a definition would protect the application of the GATS Article XVII national treatment obligations to taxes that are not Article 2 "covered taxes", as one of the Contracting States could bring a matter related to such taxes to the Council for Trade in Services without the other Contracting State's agreement.
- These changes are intended to ensure optionality is preserved in all dispute resolution mechanisms for non-adopting jurisdictions.
- India and few other countries reserve the right not to include paragraph 5 in their conventions.

5. Changes to the Commentary on Article 26:

- This Article deals with exchange of information between different tax administrations.
- OECD apprises that the reciprocal assistance between tax administrations is feasible only if each administration is assured that the other administration will treat with proper confidence the information which it will receive in the course of their co-operation.
- The confidentiality rules also apply to reflective non-taxpayer specific information, however such reflective non-taxpayer specific information may be disclosed to third parties if the information does not, directly or indirectly, reveal the identity of one or more taxpayers and the sending and receiving States have consulted with each other and it is concluded that the disclosure and use of such information would not impair tax administration in either the sending or the receiving State.