


Organisation for Economic Co-operation and Development

## OECD Work on Improving Tax Relief Procedures for Cross-Border Portfolio Investors


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## Role of the OECD

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- One of the OECD's core missions is to promote economic growth through the development of international trade and investment.
  - In the tax area, a key aspect of that goal is to:
    - minimise tax obstacles to cross-border activities,
    - by, in particular, eliminating double taxation on income earned by residents of one country from sources in another country.

## OECD Model Tax Convention



- The OECD Model Tax Convention is the template for thousands of bilateral tax treaties between countries around the globe.
- These treaties contain provisions aimed at reducing high source country withholding taxes on cross-border income from investments in securities.
- The objective is to prevent those taxes from distorting investment choices between domestic and foreign securities.

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## OECD Tax Work



- In addition to Model Convention, responsible for other guidance, frequently relating to implementation:
  - Commentaries to the Model Convention, which are interpretations of the provisions;
  - Transfer Pricing Guidelines;
  - Various reports, such as on dispute resolution and best practices notes on tax administration.

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## OECD Tax Work



- OECD operates on the basis of consensus:
  - Cannot direct a country to do anything;
  - Make recommendations, hope they are persuasive.
- Role of Secretariat is technical – analysis, addressing concerns, helping to forge consensus.

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## From Theory to Practice



- The treaty provisions must work not only in theory but also in practice.
- Have recently refocused our efforts on the implementation of treaties.
- Rules for applying tax treaty benefits to cross-border portfolio income streams have not kept up with recent developments.

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## From Theory to Practice



- Vast majority of publicly traded securities now held through a complex network of domestic and foreign intermediaries.
- However, few countries recognize this multi-tiered holding environment in their withholding tax collection and relief procedures.
- Many systems based on implicit assumption of direct relationship between issuer and investor.

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## From Theory to Practice



- Result: it may be difficult or impossible for a portfolio investor to make an effective claim for treaty relief because of the reality of intermediated financial structures.
- Corporations that hold direct stakes in foreign subsidiaries will make sure they get benefits.
- Same administrative costs may be prohibitive for smaller investors.

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## OECD Project on Portfolio Investment



- OECD project is looking at the difficulties that face all portfolio investors when they attempt to claim treaty benefits.
- Convened an informal consultative group consisting of both government and business representatives.
- Includes representatives of countries where the investment is located, where the intermediaries are located, and where the investor is located.

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## OECD Project on Portfolio Investment



- Also added the more complicated question of when a collective investment vehicle will qualify for treaty benefits.
- Issue is whether a CIV will be treated as an intermediary or the beneficial owner (ultimate investor) for purposes of claiming benefits.
- Work on technical issues involving CIVs is well advanced.

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## Business Proposals to the OECD Group



- Not surprisingly, very much like the G30/ISSA Model:
  - Relief at source the preferred method for treaty claims;
  - Pooled claims for benefits;
  - Investor self-declaration; no certificate of residence requirement;
  - Investor-specific information to remain with intermediary with the customer relationship

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## Initial Government Concerns



- Generally relate to compliance issues.
- G30/ISSA proposal assigns oversight responsibilities to local tax authorities.
- Very difficult for source countries to give up oversight.
- Also want to receive investor-specific information at some point in order to determine whether further inquiry is necessary.

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## Going Forward



- ICG will complete first stage of work, which involves development of “best practices”, by end of 2008.
- Report will go to Committee on Fiscal Affairs in January 2009, which will decide on any future work.
- European Commission is on similar timeframe for follow-up to FISCO report.

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## Possible Future Work



- Development of standardised forms, procedures, agreements, etc.
- Technical assistance to countries who are proceeding with implementation.

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