

Tax Treaties and How They Affect You the Individual

Common OECD Model Convention Treaty Articles in Plain English

January 30, 2010

by: Marc J. Strohl, CPA
Protax Consulting Services Inc.
www.protaxconsulting.com

The goal of this article is to provide a comprehensive checklist of information for the individual to consider prior to filing a tax return. This article is not designed to teach you the technical competence required to perform self compliance; however it will certainly arm you with the knowledge to determine if your US tax preparer knows all that they should know to provide you with technically competent professional services.

Income Tax Treaties:

The US, and various other countries have negotiated income tax treaties based upon preset international models, one being the OECD Model Tax Convention. One purpose of the tax treaties is to avoid double taxation when the tax laws of two or more countries create a double tax punitive situation. For the purposes of US nonresident and US resident aliens alike the following income tax treaty articles have been highlighted as relevant to possibly providing you relief:

- Article IV- Residence- will seek to determine where an individual is tax resident if they are found to be tax resident of two or more countries under these respective countries domestic tax laws, commonly referred to as the “treaty tie-breaker rules”.
- Article VI- Income from Real Property- typically real property is real-estate, so this article would cover in part rental income or losses. As below the country of source maintains the first right of taxation the possibility of double taxation here is probable. Most income tax treaties under Article VI will not avoid this matter, so the application of the catch-all article XXIV is required.
- Article X- Dividends- seeks to reduce the US 30% flat tax lower as per specific treaty country.
- Article XI- Interest- seeks to reduce the US 30% flat tax lower as per specific treaty country.
- Article XIII- Gains- covering capital gains from the disposition of assets- seeks to reduce the US 30% flat tax lower as per specific treaty country. In many cases there is a catch-all provision that capital gains remain taxable ONLY in the alienator’s state of residence.
- Article XIV- Independent Personal Services- seeks to address the taxation of income from self-employed persons.
- Article XV- Dependent Personal Services- seeks to address the taxation of income of employees. In many treaties if the compensation is: paid and borne by a foreign employer and the employee is not physically present in the US for more than 183 days, the compensation shall only be taxable in the employees state of residence. In the case of foreign nationals here in the US, taxation would not be in the US.
- Article XVI- Artistes and Athletes- seeks to address the taxation of income from such persons.
- Article XXII- Other Income- - seeks to address the taxation of all other income not addressed elsewhere.

- Article XXIV- Elimination of Double Taxation- seeks to invoke what is sometimes already incorporated in to pre-existing domestic tax law, the foreign tax credit. This article is a catch-all that prevents double taxation with respect to income not addressed above.
- Article XXVII- Exchange of Information- is an agreement in principle to allow the respective taxation authorities of all treaty countries to share information to help avoid tax evasion and to allow for the smooth application of domestic tax laws.

Other General Facts to Consider:

- A general tax presumption is that the country of income source retains the first right of taxation. However treaties usually seek to have that income taxed in the country of residence and not source to avoid a double filing compliance obligation.
- Typically in the case of US persons- citizens and green card holders- the US has conveniently slipped in to most income treaties in various articles however usually, under Miscellaneous Rules, a provision to enable them to continue to tax their people as if the income tax treaty did not exist. This is typically referred to as a “Savings Clause”. So US persons should consult us separately as to which income tax treaty articles may or may not apply to them.

Marc J. Strohl, CPA is a Principal at Protax Consulting Services Inc.
He may be reached at: Tel: (212) 714-9070, x. 100, Fax: (212) 714-6654,
Email: mstrohl@protaxconsulting.com
Web site: www.protaxconsulting.com