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**United States – New U.S.
Model Income Tax
Convention Issued by
Treasury**

by KPMG LLP's Washington
National Tax practice,
Washington, D.C. (KPMG LLP
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flash Alert

A Publication for Global Mobility and Tax Professionals by KPMG's Global Mobility Services Practice

The release of the new 2016 U.S. Model Income Tax Convention (the 2016 Model) marks the first time in almost a decade that the U.S. Department of the Treasury (the Treasury Department) has issued a revised version of its U.S. Model. Changes to the articles within the 2016 Model include minor technical updates but do not represent any substantive changes from the 2006 U.S. Model Income Tax Convention (the 2006 Model).

The Treasury Department released the 2016 Model on February 17, 2016.¹ The 2016 Model serves as the new baseline language the Treasury Department will use when negotiating income tax treaties to which the U.S. will be a party.²

Why This Matters

When engaging in cross-border business and the movement of labor, capital, and services across borders, income tax treaties come into play. They help eliminate double taxation and prevent non-taxation or reduced taxation by means of tax evasion or avoidance.

When the U.S. negotiates new tax treaties with other countries, it relies on the U.S. Model Convention as a starting point.

From a global mobility perspective, the terms of the 2016 Model may be seen as an indication – or marker – as to the potential benefits and limitations applicable to cross-border business and cross-border workers between the U.S. and the other country. However, the final, ratified treaty between the U.S. and the other country should be referred to concerning the actual provisions and their applicability.

Most Treaty Articles Remain Unchanged

The articles in the new 2016 Model contain some minor technical updates; but on the whole, the changes do not represent any substantive change as compared with the 2006 Model. More specifically, Article 4, *Resident*, that sets out the rules for determining whether an individual is a resident of the U.S. or the foreign jurisdiction for treaty purposes, and treaty articles that ordinarily provide benefits eliminating double taxation for individuals on international assignments, including Article 14, *Income from Employment*, and Article 23, *Relief from Double Taxation*, include little to no changes.

Definition of Pension Fund

The 2016 Model also includes a protocol to the model convention that more specifically defines the term “pension fund,” found in Article 3, *General Definitions*. The definition of the term pension fund in the protocol cites sections of the Internal Revenue Code and

Revenue Rulings to clarify the U.S. pension or retirement benefit plans that qualify as a pension fund for certain treaty benefits provided for in other articles of a tax treaty. The protocol also includes preliminary language for the other treaty party to provide its own specific definition of the pension or retirement schemes in the foreign jurisdiction that will qualify as a pension fund for income tax treaty purposes.

KPMG Note

By explicitly defining a pension fund, treaty negotiators will bring some clarity to the application of the pension article in an income tax treaty. It is noteworthy that on July 7, 2015, the United States and the Socialist Republic of Vietnam (Vietnam) signed an income tax treaty and a protocol that defines a pension fund for the purpose of applying the treaty. The U.S.-Vietnam income tax treaty and protocol are awaiting ratification and are not currently in force.

Revisions to Other Treaty Articles

The 2016 Model focuses primarily on updated provisions and certain policy changes in response to the G20-OECD Base Erosion and Profit Shifting initiative. Such revisions include: 1) changes to rules that would deny a reduction in taxes for payments between related-parties when the beneficial owner of the payment pays little or no tax pursuant to a “special tax regime” in another jurisdiction; 2) the reduction of treaty benefits for U.S. taxes on U.S. source dividends, interest, royalties, and certain guarantee fees paid by U.S. companies that “expatriate” or invert to foreign countries; and 3) an additional method for satisfying the requirements of Article 22, *Limitation on Benefits*, meant to inhibit the practice of “treaty shopping.”

Further, the 2016 Model introduces a new article, Article 28, *Subsequent Changes in Law*. The new article requires the treaty partners who signed the treaty to consult with one another upon a fundamental change in a party’s overall corporate tax system that draws into question the original intent and balance of the negotiated benefits included in the treaty.

Technical Explanation Forthcoming

Along with the release of the 2016 Model, the Treasury Department indicated that a detailed technical explanation of the 2016 Model will be released this spring.³ The technical explanation should provide more clarity as to the qualification and application of treaty benefits included in the 2016 Model.

Footnotes:

1 *United States Model Income Tax Convention* (February 17, 2016) (<https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/Treaty-US%20Model-2016.pdf>).

2 *Preamble to 2016 U.S. Model Income Tax Convention* (February 17, 2016) (<https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/Preamble-US%20Model-2016.pdf>).

3 See the Treasury’s February 17, 2016 press release at: <https://www.treasury.gov/press-center/press-releases/Pages/jl0356.aspx> .

Don't miss the latest article in *The Expatriate Administrator*, the online "insight & analysis" journal from KPMG's Global Mobility Services practice.

["What's Your Company's Plan When It Comes to Globally Mobile Employees with Equity Awards?"](#)

by Ed Gibbons, KPMG LLP (U.S.)

This article discusses the burdens on stakeholders to comply with mobility-related tax demands, what the concerns are around withholding and reporting when employees with equity-based compensation cross borders, and how to effectively mitigate risk and foster compliance in multiple jurisdictions.

The above information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230 as the content of this document is issued for general informational purposes only.

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