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## The Role of the OECD Model Convention and the OECD Commentaries

Prof. Dr. Michael Lang  
Institute for Austrian and International Tax Law  
Vienna University of Economics and Business Administration

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## Practical Relevance of OECD Model

- OECD Member Countries
- Non-OECD Countries
- UN Model

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## The Development of the OECD Model Convention

- 1948 OEEC
- 1956 Fiscal Committee
- 1963 OECD Model Convention
- 1971 Committee on Fiscal Affairs
- 1977 OECD Model Convention
- 1992 Loose Leaf

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## Relevant Documents

- OECD Model Convention
- OECD Commentaries
- Reports
- Minutes Available

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## Interpretation Rules

- Vienna Convention on the Law of Treaties (VCLT)
- Art 32 VCLT: Supplementary means of Interpretation
- Including preparatory work and circumstances of conclusion
- Confirm, or ambiguous or obscure, or manifestly absurd or unreasonable


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## Interpretation Rules

- Art 31 par 1 VCLT: Ordinary meaning – good faith – context – light of its object and purpose
- Art 31 par 2 VCLT: Context
- Art 31 par 4: Special Meaning

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## Interpretation Rules

- Bilateral treaty in line with OECD Model
- Material of the legislative process


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## Recent Version of OECD Model and Commentary

- Changes of OECD Model Convention
- Changes of OECD Commentaries
- Position of OECD
- Art 31 par 1, 2 and 4, Art 32 VCLT
- Art 31 par 3 VCLT: Subsequent agreement
- Subsequent practice


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## Subsequent Agreements

- Mutual agreements?
- Distinguishing between subsequent agreements (Art 31 par 3 VCLT) and changes of the treaty
- Distinguishing between different areas of law


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## Subsequent practice

- OECD Commentary as such is no practice
- Subsequent practice established by the Ministry?
- Subsequent practice established by local tax authorities and courts


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## Recent Version of OECD Model and Commentary

- Tax treaty negotiators cannot foresee future developments
- Legality principle
- Separation of powers

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## Conclusion

- OECD Model Convention and OECD Commentaries existing at the time of negotiation: relevant
- OECD Model Convention and OECD Commentaries existing at the time of negotiation: not relevant

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