

 50th

Anniversary of the OECD
Model Tax Convention

Speech by Mme Christine Lagarde
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**50th anniversary of the OECD Model Tax
Convention**

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Mr. Secretary-General,

Ladies and Gentlemen,

France shares with Belgium the privilege of being party to the oldest tax convention still in force: the Convention for regulating relations between the registration authorities of France and Belgium, signed in Lille in the name of the Kingdoms of France and of Belgium on 12 August 1843, which has just celebrated its 165th birthday.

But with this notable exception, it has to be said that all of the 114 tax conventions signed by France over the last fifty years and still in force, have a single source of inspiration: the **OECD Model Tax Convention, the 50th anniversary of which we are celebrating today**. Taxes do not often give cause for celebration, so we should make the most of the occasion!

(I) Fifty years to build an unparalleled reference model

This Model, in its current form, started life in 1958, at a time when this Organisation was still called the OEEC. Few texts without direct legal force have spawned so much positive law : this Model has served as the basis for some 3 000 tax conventions in force today throughout the world.

It is not used by the OECD alone but has extended its influence far beyond, a source of inspiration for UN texts amongst others. Today, no negotiations about tax conventions can take place anywhere in the world without « the little blue book » appearing all round the table. If you will allow me this slightly risky comparison, it is to taxation what the UN « blue berets » are to things military: a justice of the peace. In fact, negotiators really only negotiate clauses that depart from the Model. The burden of proof, if I may call it so, lies on the party diverging from it, while provisions taken from the Model are adopted without any need for discussion.

In this way, the OECD Model Tax Convention and its Commentaries have made it possible to construct a **body of veritable international tax law**, comprehensive and detailed, which forms the basis for common analysis of the taxation aspects of international transactions for all tax experts throughout the world. To all those of you who contribute or who have contributed to the construction of this Model, I should like to express my admiration for all the work that has been done, and the pride France takes in having, through its representatives on the Fiscal Affairs Committee, helped achieve this excellent result.

(II) The keys of success

This success story owes nothing to chance.

The strength of the Model lies first of all in its **capacity to lay down clear and precise rules**. No matter that it is sometimes called « soft law » -- a correct description from a strictly legal standpoint –

there is nothing « soft » about this Model. It is based on clear principles and considered decisions which strike a subtle balance between the taxation of transnational income in the place where it is earned and the place where the beneficiary resides. An ambiguous text, open to varying interpretation, would without doubt have been easier to draft in an Organisation governed by the rule of consensus. But it would certainly not then have enjoyed the same success since tax law cannot be done with approximation. The talent and skill of the members of the Committee on Fiscal Affairs has proved to be, through the use of reservations in particular, the ability to combine the art of consensus with clarity of decision, the sole source of legal certainty for those working in the field.

The Model has also proven its ability to evolve in line with a changing world, adapting to developments in the nature of trade, technology and

legal forms of exercising economic activities. Unlike some aspects of civil or criminal law, tax rules, whether national or international, do not exist in a vacuum: they are living law, dealing strictly with reality, obliged constantly to adapt to an ever-changing economic environment. For example, in 1991, the general review approach was abandoned in favour of regular updates. Recently, in the 2008 version, an *arbitration* clause was added to the Model, a pledge of legal certainty and of the effectiveness of the procedures for resolving disputes.

Another very important key to the success of the Model is that **the Committee on Fiscal Affairs has been transparent in its work.** As everyone can see, in the exercise of their own national functions, the law is better understood, better applied and more relevant when it is not drafted in secrecy. The Committee on Fiscal Affairs has encouraged

dialogue with countries which, though not Members of the OECD, use the Model. South Africa, China, Chile and Russia have joined the Organisation as observers. Thanks to dialogue with various professional organisations, for example BIAC, and the participation of professionals in the work of the Groups of reflection, the OECD has been able to keep in touch with international tax firms and experts. I should like to thank them for their participation as their input is invaluable to policy-makers.

(III) Challenges for the future

But despite the successes that have been achieved and the recognition afforded the work that has been done, we should not forget that **this edifice remains fragile**. In a world in constant upheaval, the drafting of common standards is akin to the labour of Sisyphus : a fragile construction that has ever to be begun afresh.

In such a context, the skill is in preserving founding principles while at the same time adapting to new requirements. Those working on the Model today must be able to meet **three major challenges:**

First of all, succeed in **achieving enlargement without dilution.** As soon as the OECD Model became a reference world-wide, stretching far beyond the borders of the Organisation, enlargement and contacts with non-Member countries became an absolute necessity. And yet, the desire to accommodate their concerns must not lead the OECD to renounce the principles which have proved its strength. The subtle balance between taxation at source and taxation at the place of residence cannot be altered without weakening the whole edifice. The temptation to reach consensus must not lead to a multiplication of alternative versions rather than making use of reservations : the Model must remain exactly that, a model, and not turn into a patchwork

of clauses to be assembled in different combinations to suit different users. The Model must also succeed in finding the way to a **balance, always a delicate one, between eliminating double taxation and combating double exoneration.** We cannot tolerate our tax treaties being turned into tools for tax avoidance. And yet tax havens, regimes that are excessively favourable to non-residents, the mobility of capital and the inevitable differences in legal systems and formats together offer tax experts limitless opportunities to find ways of avoiding taxes, the multiplication of which ends up by upsetting the budgetary balance of States and threatening their fiscal sovereignty. But at the same time, care must be taken to ensure that the legitimate fight against abuses does not lead to the introduction of measures that are prejudicial to international investors with the risk of creating new tax barriers to the development of trade and the mobility of persons. Lastly, the

OECD must **help its Member countries to ensure their network of conventions remains dynamic.**

Changing the Model does not in itself change treaties, which alone have the status of positive law.

For many States which today have built up a large network of tax treaties, it is impossible to change 50,

80 or 100 of them all at once. But in a globalized world in which international transactions have taken

on considerable importance, we cannot allow discrepancies to creep in between, on the one hand,

economic realities and rapidly evolving national tax laws and, on the other hand, tax conventions which

have an average lifespan of thirty years ! Luckily, there are innovative ways of adapting our treaties

more quickly, such as signing a series of targeted amendments when the OECD validates a new

provision. The OECD must encourage this.

Mr. Secretary-General, Ladies and Gentlemen, it is from the gardens of this very château de La Muette

that, on 21 November 1783, the first hot air balloon in history took off, piloted by Pilâtre de Rozier and the Marquis of Arlandes. Today, it is 50 birthday balloons which are being let off, and I hope they will soar high into the sky.

You can count on the goodwill of France to help and support you in your work.

Thank you.