

The example below is being cited only for illustrative purposes to provide capacity-building support to developing countries and is not necessarily endorsed by the PCT, the four partner organizations, their respective managements, or the organizations' member countries, unless specifically indicated otherwise within the materials themselves.

### Example of sunset provision

As noted in the OECD report "Tax Sparing: a Reconsideration"<sup>1</sup> and the UN Manual for the Negotiation of Bilateral Tax Treaties<sup>2</sup>, one area where sunset clauses are recommended is with respect to tax-sparing provisions. The following provision is from Article 23, paragraph 1, of the 1995 Germany-India tax treaty and requires Germany, for a period of 12 years (sunset clause) to provide a credit for a tax of 10 percent (the rate provided in Article 11) on payments of interest, even if India has reduced or eliminated the source State taxation of such interest:

"b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German tax payable in respect of the following items of income arising in the Republic of India and the items of capital situated there the Indian tax paid under the laws of the Republic of India and in accordance with this Agreement on:

- i) dividends not dealt with in sub-paragraph a);
- ii) interest;
- iii) royalties and fees for technical services;
- iv) income in the meaning of paragraph 4 of Article 13;
- v) directors' fees;
- vi) income of artistes and sportspersons

c) For the purpose of credit referred to in letter ii) of sub-paragraph b) the Indian tax shall be deemed to be 10 per cent of the gross amount of the interest, if the Indian tax is reduced to a lower rate or totally waived according to domestic law, irrespective of the amount of tax actually paid.

d) The provisions of sub-paragraph c) shall apply for the first 12 fiscal years for which this Agreement is effective."

<sup>1</sup> OECD (2019) "Tax Sparing: a Reconsideration", in Model Tax Convention on Income and on Capital 2017 (Full Version), OECD Publishing, Paris. Available to read online: [https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version\\_54682700-en#page3](https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version_54682700-en#page3)

<sup>2</sup> See paragraph 615 of the UN Manual. Available online here: <https://www.un.org/esa/ffd/wp-content/uploads/2019/06/manual-bilateral-tax-treaties-update-2019.pdf#page=29>