

- (13) In the case of an arbitration proceeding concerning the taxation of the business profits of an enterprise with respect to which the competent authorities of the Contracting States have been unable to reach an agreement on whether a permanent establishment exists; the proposed resolutions separately address the question of whether a permanent establishment exists, and the amount of profit attributable to that permanent establishment.
- (14) The arbitration board shall adopt as its determination one of the proposed resolutions submitted by the competent authorities of the Contracting States for each adjustment or similar issue and any threshold questions, and such determination will not include a rationale or any other explanation of the determination. If the determination is in respect of a case described in paragraph (13), the arbitration board first determines whether a permanent establishment exists, and, if it does, then shall adopt one of the proposed resolutions with respect to the profit attributable to the permanent establishment.
- (15) In making its determination, the arbitration board shall apply, as necessary: (1) the provisions of the Convention, as amended; (2) the applicable law of the Contracting States; and (3) any OECD Commentary, Guidelines or Reports regarding relevant analogous provisions of the OECD Model Tax Convention.
- (16) The arbitration board shall deliver a determination in writing to the competent authorities of the Contracting States within 6 months of the appointment of the chair. The determination of the arbitration board will not have precedential value with respect to the application of the Convention in any other case.
- (17) Each concerned person shall, within 45 days of receiving the determination of the board from the competent authority to which the case was first presented, notify, in writing, that competent authority whether that concerned person accepts the determination of the board. If any concerned person fails to so notify the relevant competent authority within this period, the determination of the board is not considered to have been accepted. Where the determination of the board is not accepted, the case may not subsequently be the subject of an arbitration proceeding. Notwithstanding the above, in the event that the case is pending in litigation or appeal, the determination of the arbitration board is deemed not to be accepted by the presenter of the case if any concerned person who is a party to the litigation or appeal does not advise the relevant court or administrative tribunal, within the 45-day period, of its intention to withdraw from consideration all issues resolved in the arbitration proceeding. If, in accordance with this paragraph, the determination of the arbitration board is not accepted, the case shall not be eligible for any further consideration by the competent authorities under Article 23 (Mutual Agreement Procedure) of the Convention.