

原文	仮訳
<p>RECOMMENDATION OF THE COUNCIL ON TAX MEASURES FOR FURTHER COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS</p> <p>“THE COUNCIL</p> <p>[...]</p> <p>I. RECOMMENDS that:</p> <p>(i) Member countries and other Parties to the OECD Anti-Bribery Convention explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner. Such disallowance should be established by law or by any other binding means which carry the same effect, such as:</p> <ul style="list-style-type: none"> - prohibiting tax deductibility of bribes to foreign public officials; - prohibiting tax deductibility of all bribes or expenditures incurred in furtherance of corrupt conduct in contravention of the criminal law or any other laws of the Party to the Anti-Bribery Convention. <p>Denial of tax deductibility is not contingent on the opening of an investigation by the law enforcement authorities or of court proceedings.</p> <p>(ii) Each member country and other Party to the OECD Anti-Bribery Convention review, on an ongoing basis, the effectiveness of its legal, administrative and policy frameworks as well as practices for disallowing tax deductibility of bribes to foreign public officials. These reviews should assess whether adequate guidance is provided to taxpayers and tax authorities as to the types of expenses that are deemed to constitute bribes to foreign public officials, and whether such bribes are effectively detected by tax authorities.</p>	<p>国際商取引における外国公務員への贈賄に更なる対抗をするための税の措置に関する理事会勧告</p> <p>理事会は、</p> <p>(中略)</p> <p>I. 以下の点を勧告し、</p> <p>(i) 加盟国及び OECD 贈賄防止条約締約国は、租税上の目的において、効果的に、外国公務員に対する賄賂の税控除を明示的に否認する。当該否認は、以下のように、法令又はそれと同様の効果をもたらすその他の強制的な手段によって、規定されなければならない。</p> <ul style="list-style-type: none"> - 外国公務員に対する賄賂の税控除の禁止 - すべての賄賂又は贈賄防止条約締約国の刑事法令又はその他の法令に反する腐敗行為を助長する支出の税控除の禁止 <p>税控除の否認は、法執行当局による捜査又は裁判手続の開始を条件としない。</p> <p>(ii) 加盟各国及び OECD 贈賄防止条約締約各国は、外国公務員に対する賄賂の税控除の否認のための法令上、執行上及び政策上の枠組み及び実施についての実効性を継続的に審査する。当該審査においては、外国公務員に対する賄賂に該当すると考えられる支出の類型に関し適切な指針が納税者及び税務当局に提供されたかどうか、並びに、当該賄賂が税務当局によって効果的に発見されたかどうかの評価されなければならない。</p>

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<p>(iii) Member countries and other Parties to the OECD Anti-Bribery Convention consider to include in their bilateral tax treaties, the optional language of paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention, which allows “the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing)” and reads as follows:</p> <p>“Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.”</p> <p>II. further RECOMMENDS Member countries and other Parties to the OECD Anti-Bribery Convention, in accordance with their legal systems, to establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities.</p> <p>III. INVITES non-members that are not yet Parties to the OECD Anti-Bribery Convention to apply this Recommendation to the fullest extent possible.</p> <p>IV. INSTRUCTS the Committee on Fiscal Affairs together with the Committee on International Investment and Multinational Enterprises to monitor the implementation of the Recommendation and to promote it in the context of contacts with non-members and to report to Council as appropriate.</p>	<p>iii) 加盟国及び OECD 贈賄防止条約締約国は、「一定の優先度の高い事項（例えば、資金洗浄、腐敗、テロ資金供与への対抗）につき、税務当局が税に関する情報を他の法執行当局及び司法当局と共有すること」を認める、OECD モデル条約 26 条コメンタリーのパラ 12.3 における以下の代替的規定を二国間租税条約に加えることを検討する。</p> <p>「上記にかかわらず、当該情報が両締約国の法令に基づき他の目的のために使用することができ、かつ、情報を提供した締約国の権限のある当局がそのような使用を許可する場合には、一方の締約国が受領した情報を当該他の目的において使用することができる。」</p> <p>II. 加盟国及び OECD 贈賄防止条約締約国が、自国の法制度に従って、税務当局が職務の遂行上把握した外国公務員への贈賄の疑いを国内における適当な法執行当局に通報することを促すための、効果的な法令上及び執行上の枠組みを確立し、かつ、その指針を提供することを更に勧告し、</p> <p>III. OECD 贈賄防止条約の締約国ではない非加盟国に対して、最大限可能な範囲で本勧告を適用することを勧め、</p> <p>IV. OECD 租税委員会に対して、国際投資・多国籍企業委員会とともに、勧告の実施について監視し、非加盟国と接触する機会に勧告を推進し、必要に応じて理事会に報告することを指示する。</p>



Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions

ANTI-CORRUPTION

25 May 2009 - C(2009)64

THE COUNCIL,

Having regard to Article 5, b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

Having regard to the Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Officials [C(96)27/FINAL] (hereafter the "1996 Recommendation"), to which the present Recommendation succeeds;

Having regard to the Revised Recommendation of the Council on Bribery in International Business Transactions [C(97)123/FINAL];

Having regard to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions to which all OECD Members and eight non-Members are Parties, as at the time of the adoption of this Recommendation (hereafter the "OECD Anti-Bribery Convention");

Having regard to the Commentaries on the OECD Anti-Bribery Convention;

Having regard to the Recommendation of the Council concerning the Model Tax Convention on Income and on Capital (hereafter the "OECD Model Tax Convention") [C(97)195/FINAL];

Welcoming the United Nations Convention Against Corruption to which most parties to the OECD Anti-Bribery Convention are State parties, and in particular Article 12.4, which provides that "Each State Party shall disallow the tax deductibility of expenses that constitute bribes"

Considering that the 1996 Recommendation has had an important impact both within and outside the OECD, and that significant steps have already been taken by governments, the private sector and non-governmental agencies to combat the bribery of foreign public officials, but that the problem still continues to be widespread and necessitates strengthened measures;

Considering that explicit legislation disallowing the deductibility of bribes increases the overall awareness within the business community of the illegality of bribery of foreign public officials and within the tax administration of the need to detect and disallow deductions for payments of bribes to foreign public officials; and

Considering that sharing information by tax authorities with other law enforcement authorities can be an important tool for the detection and investigation of transnational bribery offences;

On the proposal of the Committee on Fiscal Affairs and the Investment Committee;

I. RECOMMENDS that:

(i) Member countries and other Parties to the OECD Anti-Bribery Convention explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner. Such disallowance should be established by law or by any other binding means which carry the same effect, such as:

- prohibiting tax deductibility of bribes to foreign public officials;
- prohibiting tax deductibility of all bribes or expenditures incurred in furtherance of corrupt conduct in contravention of the criminal law or any other laws of the Party to the Anti-Bribery Convention.

Denial of tax deductibility is not contingent on the opening of an investigation by the law enforcement authorities or of court proceedings.

(ii) Each Member country and other Party to the OECD Anti-Bribery Convention review, on an ongoing basis, the effectiveness of its legal, administrative and policy frameworks as well as practices for disallowing tax deductibility of bribes to foreign public officials. These reviews should assess whether adequate guidance is provided to taxpayers and tax authorities as to the types of expenses that are deemed to constitute bribes to foreign public officials, and whether such bribes are effectively detected by tax authorities.

(iii) Member countries and other Parties to the OECD Anti-Bribery Convention consider to include in their bilateral tax treaties, the optional language of paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention, which allows *"the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing)"* and reads as follows:

"Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use."

II. further RECOMMENDS Member countries and other Parties to the OECD Anti-Bribery Convention, in accordance with their legal systems, to establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities.

III. INVITES non-Members that are not yet Parties to the OECD Anti-Bribery Convention to apply this Recommendation to the fullest extent possible.

IV. INSTRUCTS the Committee on Fiscal Affairs together with the Investment Committee to monitor the implementation of the Recommendation and to promote it in the context of contacts with non-Members and to report to Council as appropriate.

Reservation by New Zealand (amended on 5 June 2009)

New Zealand: on Part II further RECOMMENDS

New Zealand reserves its position on the proposal that the Council of OECD should recommend "Member countries and other Parties to the OECD Anti-Bribery Convention, in accordance with their legal systems, to establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities."

New Zealand has long-standing stringent taxpayer confidentiality rules that do not allow the Inland Revenue Department to exchange any information on the items covered by the proposed recommendation with domestic law enforcement authorities. It would not, therefore, seem possible for New Zealand to follow this recommendation without a substantial change in its policy settings and legislation.

This policy is under active review, with a view to modification.