



Paris, 16 September 2005

OECD Discussion Draft of the Report on the Attribution of Profits to a Permanent Establishment - Part IV (Insurance) Issued June 27, 2005

Dear Jeffrey,

This letter provides comments to the Discussion Draft of the Report on the Attribution of Profits to a Permanent Establishment - Part IV (Insurance) focusing particularly on the questions raised in the draft. We commend the OECD's efforts to draft a thoughtful analysis of the issues regarding attribution of profits to a permanent establishment of an insurance company.

We have coordinated these comments with our insurance members, some of whom will likely be commenting through one or more submissions by one or more industry associations and insurance companies. We strongly support the view of the insurance members that insufficient discussion has occurred between WP 6 and the insurance industry and that the OECD's timetable for completing Parts I-IV necessitates some form of discussion when Working Party No. 6 ("WP6") meets in November 2005.

We also refer to our 11 October 2004 letter discussing the practical issues raised by the OECD work on attributing profits to permanent establishments (PEs). These practical issues include the need for illustrative examples and the difficulties of implementation without significant lead time.

I. FACTUAL ACCURACY OF THE MOST IMPORTANT FUNCTIONS OF THE MODERN INSURANCE INDUSTRY

BIAC generally concurs with the industry analysis included in the Part IV draft. BIAC endorses the view that ultimately a facts and circumstances analysis is the most appropriate approach to reviewing the profit-generating activities. Consequently, BIAC suggests that Part IV explicitly state that Section B is not a definitive analysis of the insurance industry.

BIAC suggests that in line with the principles of paragraph 1.27 of the Guidelines, WP6 recognize that the insurance industry, like other industries, faces business cycles that may affect an insurer's surplus and the attribution of income over time. Again, such a factor should be considered part of the facts and circumstances analysis required to appropriately perform a functional analysis.

Generally, there is inadequate recognition in Part IV that underwriting may be a loss-making activity. This is also true for reinsurance. There should not be an assumption in Paragraph 19 that ceding commission will always produce a profit to the ceding entity.

Below are specific textual comments.

1.1. Product management/Product development

The last sentence of paragraph 25 should be deleted. Product development for customers also occurs in reinsurance. Please refer to "Reinsurance: Fundamentals and New

Challenges,” 4th Ed. By Ruth Gastel CPCU, Insurance Information Institute, Chapter 13 (Putting Together a Securitized Catastrophe Risk Transaction by Eherhard Muller, Hannover Re).

1.2. Sales and marketing

In section B-2.b) addressing sales and marketing, it should be noted that customer relationship management for global clients may be done principally in the location of the global client's headquarters or the insurer's headquarters, although supplemental contracts may be entered in multiple locations. See below Section 2.1.

Regarding the question after paragraph 223, BIAC believes that the draft Part IV analysis should include structurers for some complex insurance products, such as multi-national program business. While product development personnel (particularly, actuaries and underwriters) provide some of the analysis for “more complex” products, there are often senior managers who design the structure of a global program and how the relevant parts interact. Furthermore, because such programs have changing needs, these structurers tailor the program to the changing needs of the clients. The compensation of such managers should be based on a facts and circumstances analysis.

1.3. Risks and risk management functions

BIAC suggests a new section be inserted before B-2.c) to address overall risk prioritization and capital allocation. Paragraph 36 should be significantly modified and moved here as an introduction basically stating that there are various risks with the two most important being insurance risk and investment risk. Paragraph 37 should also be moved here.

Management of insurance risk includes a number of specific functions performed over a policy's life. First, senior management's strategy and risk assessment as reflected in its capital allocations sets a financial framework for underwriting management to then set policies to which all contracts should adhere. In the context of BIAC's overall reservations with the methodology and assumptions in KERT (delineated in the aforementioned 11 October 2004 BIAC comments), we would grant that this activity in the underwriting process could be characterized as a relevant factor in a functional analysis of the insurance business.

Applying these strategic policies, which depend on the actual underwriting authority limits, an underwriter will make the decision whether to write a policy, the limits of the policy and the types of risks that should be excluded from the policy. Through the policy's life, the insurance risk is then managed by one or more persons responsible for that risk, making decisions, including whether to reduce the risk through reinsurance. While such management could be at an entity level, more commonly in global insurance firms, such risk would be managed on a centralized and aggregated (*i.e.*, pooled) basis. Because insurance risk management is the core risk of the insurance business, this function is not outsourced.

Regarding reinsurance, in paragraph 38, the text from “The value of ...” should be deleted or significantly modified. Such deleted text adds very little to the functional analysis, underplays its importance to the risk shifting calculus, ignores the preceding two sentences in the paragraph and repeats text in paragraph 20. BIAC also suggests that the phrase “consolidated basis” in Par. 38 should be changed to “entity basis.”

Asset management is the management of the investment portfolio of the insurer. Section B-2.h) should contain additional language emphasizing the first sentence of paragraph 42, as it is not unlike the responsibilities borne by the manager of a portfolio in the global trading business. After the global stock market downturns in 2000, resulting in extreme pressure on the surplus of many insurers, asset management for insurance companies is fundamentally grounded in long-term asset allocation. The second and third sentences of paragraph 42 should be reworded. They address short-term tactical asset allocation that tries to achieve a higher return during short-term market conditions within the framework of the long-term asset allocation strategy. Regarding security selection, it should be that both regulatory requirements and regulatory surplus calculations significantly impact the asset allocations

and asset selection thus reducing in many instances the ability to strategically manage the reserves. The risk appetite and capital allocation policies of senior management also affect asset selection and thus the overall return. Such policies are also impacted by the financial strength of the insurer.

While an important element of the overall result, asset management is not unique to the insurance industry. Some or many sub-functions of prudent asset management may be centralized or outsourced and market based transfer pricing models for these activities are readily available.

Sub-section b of paragraph 53 should be moved after current sub-section c to emphasize that both underwriting risk and risk management and reinsurance address insurance risk, which is the business risk unique to the insurance industry. This ordering should be followed in the first sentence of paragraph 54.

In paragraph 55, BIAC sees no need to specifically list risks related to life insurance as it does not directly affect how to apply the authorised OECD approach. The mortality, longevity and segregated funds risk could be moved to sub-section a of paragraph 53. The other risks associated with life insurance risks are investment risks.

II. IMPACT OF REGULATION, PARTICULARLY HOST COUNTRY REGULATION

2.1. Importance of a License

Regulation plays an even more significant part in insurance operations than noted in draft Part IV. This subsection addresses the importance of a license. To sell insurance in a territory, a company must generally have a license to do so. In fact, insurance regulations and the local regulatory environment are critical factors in determining the manner in which to conduct insurance operations. Thus the statement at paragraph 3 that “many companies are exploring the use of electronic and faxed communications, or the internet, to issue policies cross-border without establishing physical PEs” has little factual basis.

The importance of an insurance license is one reason why there is inter-branch and inter-company reinsurance. A global customer, such as a global car manufacturer, generally will interface with a global general insurance company in the manufacturer’s home country or the insurer’s head office. Because the manufacturer has operations in various countries, insurance policies must be written in these countries. These foreign country policies must be written by licensed insurers in those countries. The insurer’s local, licensed entity will provide the insurance, but will then reinsure to another insurer for the insurance risk management reasons discussed in Section 3 below.

If the insurance group does not have its own entity with a license in a foreign country, at the insurer’s request, a third party insurer may write the insurance and reinsure to the insurer. These are the “fronting services” described in paragraph 13 and are fairly common in the entire insurance market place.

2.2. Importance of Surplus

Because of the paucity of governmental safety nets for individual insureds, as compared to those supplied to bank depositors or securities industry customers, surplus requirements in the insurance industry have high regulatory importance. Additional importance arises because the insurance claim implies that the insured has already suffered an adverse insurance event; thus, the failure of the insurer to pay means that the insured has received the further blow of another adverse economic event. Below Section 5 discusses some of the risks that are addressed through surplus.

Unlike PEs in other industries, because of the policy concerns discussed in the preceding paragraph, insurance PEs are often required by regulators to have surplus contributed or attributed to them. Draft Part IV recognizes that host countries may require surplus for a PE

of an enterprise to operate and that sometimes assets to match the insurance liabilities are required to be placed in trust or by some other segregated mechanism sited in the host State territory. As discussed in Section 9 below, the capital requirements currently in place in the insurance industry should be enough to elevate a quasi-thin capitalisation approach from a safe harbour for surplus allocation to an approved OECD approach, irrespective of what the OECD deems is the proper capital allocation for purposes of Parts II and III.

2.3. Importance of Other Regulatory Requirements

As noted in Section 1.3, regulations also affect investments, particularly the maximum allocation of investments to certain investment categories and the maximum amount of foreign currency exposure. Although regulators have in some cases relaxed restrictions, there are still many limits on asset allocations. These regulations will affect the amount of expected return that may be earned from investment management functions.

III. COMMERCIAL RATIONALE FOR INTER-BRANCH REINSURANCE

There are many reasons why inter-branch reinsurance should be respected as a “dealing” for tax purposes. In above Section 2.1 we explained one commercial reason for inter-branch reinsurance – the need to interface with global clients. Insurance occurs if risk transfer occurs or if risk pooling occurs. While typically both transfer and pooling occur, one or the other may be sufficient.

Interbranch reinsurance is analogous to insurance in a mutual association under certain facts and circumstances. Under such an arrangement, a group of “insureds” agree to pool each of their risks into a common insured pool out of which claims are paid. The insured obtains insurance because of the effects of risk pooling not risk transfer. Similarly for interbranch reinsurance, a specifically regulated local set of insured risks may have its exposure lowered if it is pooled with other risks within the same legal entity.

Specifically, the principal commercial purpose of inter-branch reinsurance transactions is the centralization of risk management. Centralization of risk management provides four key benefits. First, it provides operational efficiencies by concentrating much (ideally all) of the reinsurance back office and front office personnel in one location. Operational efficiencies means lower cost because of 1) fewer people and fewer systems to maintain and 2) fewer operational errors because the personnel are experts and because of system enhancements.

Second, pricing is improved. The insurer or reinsurer wants a central interface to the third party reinsurer with a large and diverse portfolio mix (the pooling effect) so that the cost of reinsurance can be minimized. If local risks were ceded separately, because they were less diversified, the risk would be perceived as greater, and the pricing of the cover with the reinsurer would likely be higher.

Third, inter-branch or inter-company reinsurance allows insurance risk to be managed on a portfolio basis similar to the way that investment risk is managed by asset managers and credit risk is now managed by lending institutions. On a branch basis, because the risk is more concentrated in a location, less risk can be prudently taken. If, however, the risk is pooled with the risks of other locations, the concentration risk is reduced, reducing the volatility or stress risk of a major insurance event concentrated in one region (for example, the tsunami of 26 December 2004 or the terrorism events of September 11, 2001 in the U.S.).

Fourth, inter-branch reinsurance helps to manage risk, because it avoids the situation that a local reinsurance buying program clashes with the reinsurance programme purchased by the enterprise as a whole.

Centralized risk management of insurance through inter-branch or inter-company transaction is the same principle that is used by most global businesses to manage their major financial risks. For example, in global trading, an investment bank may book its interest rate

derivatives and foreign exchange derivatives in one global location. Whenever another trading book in another location requires an interest rate derivatives transaction or a foreign exchange transaction, rather than approach the marketplace, it will trade (inter-branch or inter-company) with the central books that trade interest rate derivatives or foreign exchange products. Similarly, in many non-financial services companies, a centralized treasury function now provides other group entities (branches or companies) with hedges for interest rate or currency risk.

Our explanation of the reasons for inter-branch reinsurance should enable WP6 to delete or significantly modify the last sentence in paragraph 20 and delete Section C. Also, regarding Section C, see below Section 7.

IV. USE OF CATASTROPHE (“CAT”) BONDS

The securitization of home mortgages, commercial mortgages and various receivables allows banks and other finance companies to transfer the credit and interest rate risk in underlying debt instruments to other investors, such as pension plans, insurance companies and the other asset managers. For legal, institutional and financial accounting reasons, such credit-driven securitizations ordinarily use special purposes vehicles (“SPVs”).

The purpose of CAT bonds is similar to the purpose of securitized debt products. CAT bonds enable insurance companies to transfer insurance risk to other investors. SPVs are used for the same legal and financial accounting reasons as in credit-driven securitizations.

The securitization of credit risks has produced a mammoth marketplace that is universally viewed as an outstanding success of financial engineering that has reduced funding costs and systemic risk. While the securitization of insurance risks will never approach the size of credit-driven securitizations, CAT bonds offer the same potential societal benefits of reducing insurance costs and systemic risk by spreading insurance risk beyond insurance companies to intermediaries that are also capable to bear portions of these restructured risks.

V. RISKS REQUIRING SURPLUS

The primary risk requiring surplus under the surplus calculations of the various insurance industry regulators is insurance risk net of insurance risk transferred through reinsurance or an alternative risk transfer method, such as CAT bonds, and how prudently reserved the insurer is for such risks. Because the insurance claims will be paid through investments or reinsurance, these assets need to be supported by surplus in case the value of the assets is less than reported at the time that the assets are needed.

Regarding investment assets, similar to the banking industry’s “Basel I” and to-be-implemented “Basel II” and the capital requirements of broker/dealers, the riskier the asset, the greater the surplus requirement. For example, equities will have a higher surplus requirement than AAA OECD government bonds. Regarding reinsurance, the largest risk the cedent faces is the credit risk that the reinsurer will not satisfy its contractual obligations.

Finally, other risks such as operational risk -- while not unique to the insurance industry -- may also require surplus.

VI. DEPENDENT AGENT PEs

BIAC and the banking, investment banking and non-financial services industries have expressed dismay at the inclusion in Parts I-III of significant amounts of text on dependent agent PEs and the unverified assumption that many such dependent agent PEs exist. See our letter of 11 October 2004, as well as further materials to be delivered soon.

BIAC's concerns in this regard apply fully to the current draft language in Part IV. Specifically, BIAC's insurance industry members question the accuracy of paragraph 116 that "it is a fact that some of the functions associated with an insurance business are commonly undertaken by dependent agents within the meaning of Article 5(5)." This statement is made without any supporting analysis, *i.e.*, how such a subsidiary is under the control and direction of the related entity principal or that the subsidiary is economically dependent on the principal. Similarly, no enforcement-based tax administration substantiation has been cited to support the prevalence of or trend towards dependent agent PEs, particularly in the insurance industry.

Rather BIAC believes that the facts lead to the exact opposite conclusion. Insurance-based subsidiaries have been operating for many years with very little if any enforcement action by the members of the OECD tax administrations suggesting that a related separate legal entity creates a PE for another member of the multinational group. As especially discussed in above Section 2.1, because of the high degree of insurance regulation, one insurer cannot write an insurance contract in another insurer's books, thus supporting the view that one member is not a dependent agent PE for the other.

Almost all of the text in paragraphs 116-124 repeats text of Part I; thus, BIAC suggests that these paragraphs should be completely or almost completely be eliminated particularly given the lack of specific application to the insurance industry. BIAC advises that in the re-drafting of Part I, any remaining substantive dependent agent PE text be included there but only after the commentary to Article 5 has been finalized at the OECD. Thus, at most, a reminder paragraph in Parts II, III and IV might refer to the Part I section on dependent agent PEs.

VII. SECTION C

The whole of Section C and Paragraph 89 should be removed. Parts I, II, and III focused on the activities of enterprises in branch form and did not attempt to modify the OECD Transfer Pricing Guidelines for Multinational National Enterprises. The authorised OECD approach is based on application of Article 9 principles to Article 7 situations. WP6 should not attempt to modify Article 9 through Part IV.

Parts II and III recognized that there were inherent conditions of operating in a single legal enterprise that required some modification of the separate legal entity approach to PEs. To extend the analysis in Part IV as applied to PEs to subsidiaries may likely lead to confusion and improper application of the arm's length standard for intercompany transactions among related insurance entities.

BIAC respectfully disagrees that tax motivated transactions such as those described in Par. 67 occur with sufficient regularity to warrant such a discussion. Nevertheless, Part IV is not the appropriate venue to raise such concerns nor is it the proper mechanism to address such perceived abuses. The OECD tax administrations already have appropriate tax enforcement mechanisms to address improper transfers of income. That WP6 would write such provocative concerns about alleged tax motivated reinsurance transactions in a draft report was surprising and extremely unfair to the insurance industry. BIAC believes that Section C is completely inappropriate for inclusion in Parts II, III and IV.

With respect to the comments regarding harmful tax competition, BIAC suggests that more appropriate venues exist to handle such perceived abuses. Again, proper allocation of income under Article 9 or Article 7 will depend on a functional analysis of the functions performed, risks assumed, and assets employed within a multinational organization. The resulting allocation, based in part on how a taxpayer legitimately sets up its operations, will be the same irrespective of the tax rates in the effected countries.

VIII. "KERT"

As noted above, BIAC has previously raised concerns about the suggested role of KERT as a diagnostic tool. BIAC has been advised that WP6 may be revisiting the role of the KERT determination. In this regard, in connection with paragraphs 75-95 of Part IV, BIAC believes that the project can be advanced by having direct dialogue between the insurance industry and WP6 both through face-to-face dialogue and written comments as soon as possible. BIAC, however, has included below a few overriding general comments of great importance to the insurance industry.

BIAC believes the draft generally provides appropriate descriptions of the most important functions of an insurance business. We believe the functions enumerated generally comprise the business process for the three segments of the industry (life, P & C, and reinsurance) and agree that the relative importance of each function will vary considerably from one category to the next and among different businesses.

As discussed in above Section 1.3, there is not a unique decision at a single point in time, such as the entering into a policy by an underwriter, which determines the acceptance of an insurance risk that requires the allocation of all the surplus needed to support that insured risk over its life. The decision to accept insurance risk is a multifaceted functional activity that occurs before the underwriting transaction and often passed the time the policy expires. In general, when an insurance policy is entered into, the two functions for taking on the insurance risk are the persons responsible for the entity's overriding insurance underwriting guidelines and those underwriters applying the guidelines. As noted in draft Part IV's comments regarding travel insurance, if applying the guidelines is an automatic function, then such automatic underwriting is not a function that takes on insurance risk.

As discussed in above Section 1.3, one of the most important risk functions is insurance risk management. Depending on the systems and organizational structure of the insurer, the insurance risk created by a new policy will be communicated to personnel who are then responsible for managing the risk, including using tools such as reinsurance, CAT bonds or other alternative risk transfer methods. As discussed in above Section 2, the insurance risk management function can involve multiple people located in numerous jurisdictions at various points in time over the course of a policy's life, including risk bearing for any long-tail risk period during which premiums are no longer paid.

It is important to understand that the current definition used for "KERT" is particularly unsuitable for the long-lived insurance business. This is particularly true regarding underwriting guidelines function and the insurance risk manager. While the OECD has questioned the relevance of "strategic" input, underwriting guidelines are operating principles that must be followed daily. Thus, although the guidelines are not revised daily, their effect is significant on the daily underwriting analysis and decision-making of the single legal enterprise under which it operates. Similarly, following the creation of insurance risk, the long-term risk manager has day-to-day risk responsibility even though this is not manifested in daily transactions. Perhaps a global trading business actively manages risks "day-to-day," in documented daily hedges, but in the long-lived insurance business, risk cannot be so micro-managed.

Finally, the KERT model, in its present form does not include any methods to implement the approach, which BIAC understands may be due to the facts and circumstances nature of this approach. BIAC suggests that more practical guidance may be necessary to provide taxpayers with some clarity regarding the weighting of functional activity given that this is such a critical component of the KERT-based approach. However, in providing more specific rules, caution should be exercised to avoid producing results that don't adequately reflect the unique characteristics of a particular insurance enterprise.

IX. COMPENSATION OF ASSET MANAGEMENT FUNCTION

The asset management function should receive a return based on third party comparables for the type of investments being managed, the style of investment management and, if applicable, investment performance. The third party comparables should be only for the investment function, and, thus, if necessary, be stripped of any returns to compensate marketing or administration functions. These comments essentially echo paragraphs 214-15.

The calculation of the yield requires more in depth discussion. In particular, some assets may not be income bearing and this must be reflected in the allocation of the yield to each part of the enterprise.

X. ATTRIBUTION OF SURPLUS

10.1. Creditworthiness

BIAC welcomes the premise of paragraph 125 which acknowledges that in insurance “there may be cases where ... the creditworthiness or solvency margin of the PE may need to be determined on a ‘stand-alone’ basis” BIAC must note, however, that such stand-alone analysis will be frequent. Credit ratings are issued based on the mix of business, stratification of risk and available capital, and PEs within an insurance enterprise are not equal in all three elements. Rating agencies are able to differentiate between a PE and its HO and have readily available criteria on this matter

BIAC notes that at present there appears to be a contradiction between paragraph 86 and paragraph 125 on the question of separate PE creditworthiness, and as above we believe that it should be made clear that imputing a separate creditworthiness to an insurance PE is permissible. Unlike Parts II and III, the credit standing of the whole enterprise is not necessarily attributed to the PE as an inherent condition of its operations, a point BIAC suggests is important to both determining what may be the amount of surplus attributed to the PE and whether interbranch reinsurance is economically supportable.

10.2. Authorised OECD Approaches

BIAC believes that it would be desirable for the OECD to work towards the acceptance of a single capital allocation approach - either using a single allocation key or multiple allocation keys. Such an approach is critical to reducing tax controversy and the risk of double taxation. Despite the assurances made in revised Parts II and III, BIAC is concerned that local tax examiners will not provide relief from double taxation when one country’s capital allocation approach (such as thin capitalization) results in effective double taxation. The time and expense of seeking unilateral or bilateral Competent Authority relief is not a welcome solution and should not be designed into a consensus set of tax administration guidelines such as these.

Regarding a single allocation key, we agree with paragraph 154’s conclusion: “It is however clear that it is unlikely that a single allocation key could be found to allocate the surplus of a diversified insurance enterprise”, although we note that regulators are building more sophisticated risk capital models which may point the way towards a universally acceptable single capital allocation approach. BIAC supports an approach that a taxpayer’s allocation system based on its facts and circumstances should be given due consideration and accepted if not lacking in economic substance.

While there are many concerns with hybrid approaches, the most significant concern is removing any bias in any jurisdiction’s surplus computations. This can be done by depending upon the entity’s own internal insurance risk calculations. Surplus may then be allocated based on the relative levels of insurance risk within each PE.

Regarding surplus allocation, it is not possible for a single insurance enterprise to allocate capital to business lines and then to PEs within each business line. A significant reason for

this inability is that the insurance industry lacks a global capital framework similar to Basel I. This lack of a global capital framework in insurance has delayed the development of entity level capital models which could be reliably applied for tax purposes. Business level capital models are only now emerging but are not yet robustly used in most insurance companies to be a viable option to allocate surplus for income attribution purposes.

Accordingly, this means that the thin capitalisation approach and the quasi-thin capitalisation approaches are the most reliable methods to be currently useable in the insurance industry. BIAC believes that the quasi-thin capitalisation approach should not merely be a safe harbour, but an approved OECD approach. Paragraph 162 essentially repeats Paragraph 130 of Part I, which stated: “This approach is not an authorised OECD approach as it ignores important internal conditions of the authorised OECD approach as it ignores ... that the PE generally has the same creditworthiness as the enterprise as a whole.” As discussed in above Section 5.3, most insurance PEs have varying creditworthiness; therefore, in the insurance industry, uniformity in creditworthiness cannot be used to reject quasi-thin capitalisation as an approved OECD approach.

In our view, the most practical solution in most circumstances would be to utilise the local regulatory capital requirements (for an insurer operating as a stand alone legal entity) in the country in which the permanent establishment is situated. Should no such local regulations exist, then the regulations of the home country should be used. Of course, we echo the concerns of both WP6 and other industries that the method of allocating capital to a PE not result in a total allocation of capital to all PEs greater than the capital of the enterprise. Further, BIAC asks for unequivocal recognition that the method used in the host state will be followed in calculating home state tax, provided that the host state method is an OECD approved method. By unequivocal, BIAC requests arrangements among the OECD members be set up so that taxpayers are not forced to seek competent authority relief for differences arising in capital/surplus attribution to PEs.

XI. OTHER COMMENTS

11.1. Regulatory Compliance Function

In insurance and in other industries, BIAC considers all Head Office activities related to the enterprise as a whole and required for the continuation of the enterprise to be allocable to all PEs of the enterprise on a reasonable basis.

11.2. Part E

In principle, the insurance industry can accept that an authorized OECD approach providing unambiguous guidance and not creating the significant potential for controversy and mutual agreement procedures would render Article 7(4) redundant. Draft Part IV, however, does not provide such guidance. Until Part IV is finalized so that it provides unambiguous guidance, and a few years of enforcement have confirmed that the guidance is being implemented consistently, there is no point in eliminating an article that can reduce ambiguity and controversy.

11.3. Part F

BIAC and the insurance industry are reserving comment on Part F. The proposed change would affect industries other than the insurance industry. Therefore, a revised draft Part I, rather than draft Part IV, is the proper place for including such a proposal. Another reason to include the text in draft Part I is that any dependent agent PE would also be affected by Article 7(7) analysis. See above Section 6.

It may be expected that other industries will protest the raising of a significant new issue with such a short deadline. Significant implementation difficulties in tax administrations and in treaties could also be expected. The importance of investments to the global economy requires a thorough examination of any changes to existing tax treatment.

Therefore, changes to Article 7(7) should be reviewed following the completion of the work on Parts I-IV. If Article 7(7) is to be addressed in the final Part I, the completion of Parts I-IV may be delayed.

11.4. Elimination of Cross-references to Parts II and III

As discussed in above Section 6, BIAC believes that Parts II, III and IV should be separate, stand-alone documents addressing analysis and issues affecting the respective business line. As discussed in Section 6, a reference to a Part I principle can be made. Cross-references to Parts other than I, however, should be eliminated because each industry is factually and functionally unique.

XII. CONCLUSION

BIAC has provided detailed comments to draft Part IV in an effort to produce principles that recognize insurance industry regulatory requirements and produce administrable and sound tax policy. We look forward to further discussion regarding any of the above comments.

Yours Sincerely,



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