

December 2012

CBI COMMENTS ON THE OECD REVISED PROPOSALS CONCERNING THE MEANING OF “BENEFICIAL OWNERSHIP”

- 1 The CBI welcomes the opportunity to comment on the revised proposals concerning the meaning of “beneficial owner” in Articles 10, 11 and 12 of the OECD Model Tax Convention (“Revised Proposals”).
- 2 As the UK’s leading business organisation, the CBI speaks for some 240,000 businesses that together employ around a third of the private sector workforce, covering the full spectrum of business interests both by sector and by size.

GENERAL

1. As requested by the Committee on Fiscal Affairs, the CBI has provided comments on the drafting of the Revised Proposals. However, we would also like to raise our concern regarding the definition of “related payments” and how it affects financial services sector. It is difficult to see how the concept of “related payments” would work in the financial services sector because of fungibility of money. Although the CBI has not provided any drafting suggestions on how to address this issue, we would be happy to discuss it in more detail to assist you with finding an appropriate solution to address the issue.

COMMENTS ON DRAFTING

2. If the "related payments" concept were to be retained, the CBI suggests below wording changes to be included in the Revised Proposals.
3. On page 2, A 12, line 7 of the Revised Proposals, “direct” should be changed to “directly”.
4. The CBI suggests including additional wording on page 6, E 12.4, after “[..]6.8 to 6.34 of the Commentary on Article 1” and after “[..]6.8 to 6.34 of the Commentary on Article 1” on page 19, paragraph 12.4:

“Whether a payment is unrelated to a receipt will depend on the relevant facts and circumstances. In addition to the contractual position i.e. whether there is any express contractual linkage of a payment to a receipt, relevant facts and circumstances are likely to include whether the time of execution of the payment and receipt are the same or very close and whether the amounts of the payment and receipt are the same or almost the same and whether the payment and receipt relate to the same subject matter or the same reference asset/currency.”



5. For the equivalent paragraphs in the Revised Proposals that relate to interest and royalties, the CBI suggests in addition to the wording in point '4' above, adding below wording on page 21, paragraph 10.2, after "[..]6.8 to 6.34 of the Commentary on Article 1" and after "[..]6.8 to 6.34 of the Commentary on Article 1" on page 24, paragraph 4.3:

"Whether a payment of interest (or royalty) is related to an interest (or royalty) receipt is also likely to depend on the identity (or otherwise) of the duration of the relevant loans (or licence agreements) and on whether the rates of interest (or royalty) are the same or very similar."