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Pascal Saint-Amans
Director, CTPA
OECD
2, rue Andre Pascal
75775 Paris
FRANCE



Chartered
Institute of
Taxation
Excellence in Taxation

via e-mail: pascal.saint-amans@oecd.org

Dear Mr Saint-Amans

Clarification of the meaning of 'beneficial owner' in the OECD Model Tax Convention

We refer to the revised proposals on the topic of beneficial ownership published on 19 October 2012. This contains some modifications to the earlier public discussion draft published on 29 April 2011 which aimed to clarify the meaning of 'beneficial owner' in the OECD Model Tax Convention.

As we said in our response to the earlier discussion draft (letter dated 15 July 2011 which is attached), we agree with your underlying objective in trying to address a problem that has arisen in some countries: namely, that the expression is being used for purposes beyond that for which it was intended and this, as a result, puts more weight on the expression than it can bear. However, the proposed amendments still do not give certainty. We remain of the view that they, in fact, make the position rather less clear than it is now.

In particular, there remains much uncertainty around the circumstances in which the beneficial owner test is failed by virtue of the recipient's obligations to pass the payment on (paragraph 12.4). The revised proposals introduce some additional comments that 'unrelated payments' do not affect the beneficial owner's position regarding the income received; but these comments simply raise a further question as to when a payment is related or unrelated.

It appears that this concept of unrelated payments is intended to be important as it is used several times in the proposed text.

Without any definition the concept is far from clear. There is a wide range of criteria by which a payment might be related including, for example, same counterparty to the transactions, same time of execution of transactions, same subject matter or same reference currency/asset; same or similar interest rates or rates of return, same duration of transactions, same amount or quantum or contracts, etc.

We suggest that the OECD should define this term.

Yours sincerely

ARTILLERY HOUSE
11-19 ARTILLERY ROW
LONDON SW1P 1RT

REGISTERED AS A CHARITY NO 1037771

Tel: +44 (0)844 251 0830
Fax: +44 (0)844 579 6701
E-mail: technical@tax.org.uk
Web: www.tax.org.uk



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Ian Menzies-Conacher
Chairman, International Taxes Sub-Committee

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