

## **Clarification of the Meaning of 'Beneficial Owner' in the OECD Model Tax Convention**

### **Discussion Draft - Response from the Society of Trust and Estate Practitioners**

The Society of Trust and Estate Practitioners (STEP) is the worldwide professional body for practitioners in the fields of trusts and estates, executorship and related issues. STEP members help families secure their financial future and protect the interests of vulnerable relatives. STEP promotes the highest professional standards through education and training leading to widely respected professional qualifications. STEP has over 18,000 members around the world, with branches in 9 EU member states, North America and Australasia as well as a range of international financial centres.

STEP welcomes the opportunity to comment on the Centre for Tax Policy and Administration's revised proposals concerning the meaning of 'beneficial owner'. STEP's July response to the original consultation in this area highlighted that STEP has argued for some time that the definition of 'beneficial ownership' was problematic in the context of trusts and that a broader review of the concept in the trust context would be welcome. STEP's detailed comments on the Discussion Draft issued on 29th April nevertheless focused on two issues. First, the particular issues regarding the meaning of 'beneficial owner' in the case of trustees raised by paragraph 12.1 and the associated footnote. Second, the issues raised by paragraph 12.4 regarding the treatment of recipients of a dividend who do not have the full right to use and enjoy that dividend.

Regarding the broader issues related to the definition of beneficial ownership in the context of trusts, we note the comment of the Working Party that any general examination of the treaty issues related trust was beyond the scope of the current exercise. Nevertheless we would hope that at some point the Centre for Tax Policy and Administration will find the opportunity to look more broadly at the position of trusts and trustees under the Model Tax Convention.

Looking at the more detailed issues raised in our July submission, we agreed with the broad thrust of Footnote 1 to paragraph 12.1 and would comment that the slightly revised drafting in the latest proposals assist clarity. We noted in July, however, that it would be helpful to clarify the meaning of "a given period" and we still feel that this would be useful in terms of avoiding potential ambiguity. We would also again highlight the lack of consideration for the circumstances in which the trust itself (rather than the trustee) is regarded as a separate taxpayer and subject to tax on the dividends accumulating in the trust.

Moreover the re-drafting of 12.1 and 12.4, when taken together, only serves to highlight the tension that has always existed between these two paragraphs. It might well be useful to make specific reference in 12.4 to the 'special case' outlined in 12.1 Footnote 1 of a trustee who receives dividends over a given period but does not distribute them and is regarded as the beneficial owner in spite of the fact that the trustees right to use and enjoy the dividend is constrained.

**STEP**

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