

I am writing to provide comments on the above document dated 19 October 2012.

As PwC has played an active role in the compilation of the detailed response from BIAC to the above OECD document, our views on the detail of the proposals (including the specific points of drafting where they can be made), have been channelled into that response. We do not repeat the various specific points here.

However, we do consider that it is appropriate to make the following high-level points:-

1. A number of the changes proposed in the Discussion Draft do seem to have the affect of widening the substantive scope of the PE rules. If that is intended, it would clearly be preferable to change the terms of the Article itself and/or make express the intended changes to be delivered so that the position is entirely clear.
2. At a practical level, and following from the point made above, the effect of a number of the changes proposed seems very likely to make the application of the Article 5 PE rules much less certain and this inevitably makes compliance by tax payers more difficult. It is hard to see how the objective of clarifying the PE rule can be achieved in the absence of clear definitions and tests and precise/clear explanations.
3. Of a special concern to us are the proposed changes relating to the issues "main contract or who sub-contracts all aspects of a contract" (Issue 8) and "meaning of 'to conclude contracting the name of the enterprise' " (Issue 19). We believe it likely that that the changes proposed in both these areas are very likely to lead to confusion and increased disputes between tax payers and tax authorities. This is on the basis that the changes are likely to be interpreted by tax authorities as widening appreciably the scope of the PE rules. Given the fundamental nature of the issues raised by these particular proposals, we do not believe it is possible to remedy the situation through drafting amendments. In our view, the likely disruption these changes would cause outweighs any benefit of including the text currently proposed. Therefore, we would advise dropping these two specific amendments from the changes to be made to Article 5.

We would of course be very pleased to discuss these comments should that be useful.

With kind regards
For PwC

Richard Collier