

Dear Sir/Madam:

**BRIEF REMARKS**

OECD Model Tax Convention: revised discussion draft on the definition of “permanent establishment”

First of all, Repsol would like to welcome the OECD Committee of Fiscal Affairs’ efforts to provide guidance and clarification in relation to the concept of Permanent Establishments in the Model Tax Convention.

For Repsol, as an international integrated oil and gas company, operating in almost 40 countries across five continents, the meaning of Permanent Establishment is a relevant tax issue. In this respect, Repsol has actively participated with the OECD Committee on Fiscal Affairs since it released for public comment the discussion draft on the definition of Permanent Establishment. Repsol has already sent its comments on the discussion draft, which were discussed at the meeting held in September 2012. Repsol is grateful for this new opportunity to refine our opinion regarding the Interpretation and application of Article 5 of the OECD Model Tax Convention.

In particular, we would like to recommend minor amendments to the following paragraphs:

A) The inclusion of 3.1 paragraph:

*“It is also important to note that the way in which business is carried on evolves over the years so that the facts and arrangements applicable at one point in time may no longer be relevant after a change in the way that the business activities are carried on in a given State”*

In this case we would add “**vice-versa**” at the end of this sentence.

B) The example included in paragraph 4.2:

*“Where an enterprise has an exclusive legal right to use a particular location which is used only for carrying on that enterprise’s own business activities (e.g. where it has legal possession of that location) that location is clearly at the disposal of the enterprise.*

We would suggest the follow small amendment to the text:

*“Where an enterprise has ~~an~~ exclusive legal rights to use a particular location ~~or~~ locations ~~which is~~ used only for carrying on that enterprise’s own business activities (e.g. where it has legal possession of that location) that location ~~or~~ locations ~~is are~~ clearly at the disposal of the enterprise.*

C) We think that the example included in paragraph 6.1. is appropriate.

- D) We would include “force majeure” in paragraph 6.6 as an example of a circumstance to considered a place of business as a permanent establishment even if this business has exists for a short period of time in a location:

*“A place of business can also constitute a permanent establishment from its inception even though it existed, in practice, for a very short period of time, if as a consequence of special circumstances (e.g. death of the taxpayer, investment failure, **force majeure**)*

- E) We think that the example included in paragraph 32.1 clarifies the concept of “authority to conclude contracts in the name of the enterprise”:

*“For example, in some countries an enterprise would be bound, in certain cases, by a contract concluded with a third party by a person acting on behalf of the enterprise even if the person did not formally disclose that it was acting for the enterprise and the name of the enterprise was not referred to in the contract”*

We would welcome any feedback on the comments made.

Yours faithfully,

Susana Bokobo

Álvaro de Juan