cc: Mary Bennett

FEDERATION
BANCAIRE
FRANCAISE

The Deputy director general

February 23, 2007

Dear Mr. Owens,

In response to the public invitation to comment on the OECD Model article 5 commentary changes, the French Banking Federation would like to express its position.

According to the provisions of the OECD tax treaty model (article 5), the profits from services performed in the territory of a contracting State by an enterprise of the other contracting state are not taxable in the first mentioned State if they are not attributable to a permanent establishment.

OECD lays stress on the importance to circumscribe the circumstances in which States that did not agree with this principle of exclusive residence taxation could, in a bilateral treaty, provide that profits from services performed by a foreign enterprise could be taxed by them even if not attributable to a permanent establishment, and emphasizes the fact that the new comments do not at all represent an extension of the PE definition.

However, it appears difficult not to see these new circumstances in which services could be taxed at source in the absence of a PE (in its current meaning) as an extension of the PE definition. Moreover, we would like to point out that the framework of these new comments is clearly too vague. As a consequence, French banks fear that this extension of the PE definition increases double taxation risks – due to a conflict of interpretation between the two Member States regarding the existence of a locally taxable services.

Because of the legal uncertainty generated, French banks completely disagree with these proposed commentary changes.

Should you need any explanation regarding our position, do not hesitate to contact the tax team, whether Pierre Reynier (tax director) at preynier@fbf.fr or Emmanuelle Chomette at echomette@fbf.fr

Yours sincerely,

Pierre de Lauzun

Mr. Jeffrey Owen
Director, CTPA – OECD
2, rue André Pascal
75775 Paris

18, rue La Fayette 75440 Paris cedex 09 • Tél. : 01 48 00 52 52 • Fax : 01 42 46 76 40 • Minitel : 3617 AFB1 • www.fbf.fr
A Bruxelles : rue de Trèves, 45 • B-1040 Bruxelles • Tél. : 32 2 280 16 10 • Fax : 32 2 280 30 11