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Subject: Comments on the Tax Treaty Treatment of Services: Proposed Commentary Changes

This e-mail is to provide you with our comments on the Discussion Draft of December 8, 2006.

First, we wonder if the additional provisions for PE in regard to rendition of service should be introduced in the Commentary or as treaty text. Our concern is that the additional provisions should be separate and independent of the definition of PE applied to the service provided in connection with a building site or construction or installation project. In this regard, the last sentence of the proposed Para 42.28 needs to be revised in order to treat a service PE in equal stand with the so-called construction PE.

We set forth the following comments on specific paragraphs.

Para. 42.12, the last sentence: we propose to include "such as allocation of overhead or indirect expenses" after "books and records." In modern world, an enterprise tends to incur more indirect expenses than direct material or labor expenses, and the requirement of books and records brings issues on indirect expenses in computing PE attributable profits.

Para. 42.18, the last sentence: we propose to include a phrase "or the fact that the result of the service is used within the State" after "for services." Some State may assert that the place where the result is used is one of the determining factors under the income source rule.

Para. 42.22, the last sentence: we propose to add a sentence to the effect that "the quantum of time factor should be preferred than the test of engaging in activities repetitively or continuously over a certain time span."

Para. 42.28: we suggest that the additional provisions for the service PE should not prevail over the existing provisions for the building site or construction or installation project. The current text of this paragraph may cause a majority of States to reconsider the already established PE notion under Article 5, Paragraph 3.

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The example given in Para. 42.39: The example and its interpretation seem to be in contradiction with the present Para 18. Under the approach of a coherent as whole commercially or geographically, the test may be conducted from the perspective of a service provider or recipient. We cannot think of a situation of tax advice and training service in the area other than two unconnected projects when customer is the same. It appears to be more realistic that tax relates to a wider sphere of business environment, and the entity that provides tax advice may not be providing training services totally different from such tax and, for example, the Biochemistry's research training.

On hiring local employees in Para. 42.41: there are several alternative situations for hiring local employees. As it refers to "employee" as opposed to an outsourced personnel, we believe that such hiring should affect both tests of PE's presence due to the stay period as well as the period in which actual services are performed. The last sentence in particular needs to be expanded.

Para. 42.45, last sentence: we recommend that the word "expenses" is replaced with "direct and indirect expenses."

We appreciate your good, continuous work in developing the model treaty and the commentary thereof.

Regards, Woo Taik Kim

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