

Mr Jeffrey Owens
Director
OECD Centre for Tax Policy and Administration (CTPA)
2, Rue Andre Pascal
75016 Paris
France

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Dear Mr Owens

Revised OECD Discussion Draft of a New Article 7 (Business Profits) of the Model Tax Convention and related Commentary changes

This letter sets out comments of PricewaterhouseCoopers on the OECD's revised Discussion Draft of a new Article 7 (Business Profits) of the OECD Model Tax Convention and of related Commentary changes.

We have not in our comments sought to revisit the principles of the approach reflected in the new Article 7 given that these have been heavily debated already.

In relation to the revised Discussion Draft released on 24th of November 2009, we commend the OECD for being responsive to the various concerns raised on the previously--released version of Article 7 - and especially in connection with the double-taxation relief issues connected with the fundamental changes now reflected in Article 7(3) which provides a corresponding adjustment mechanism similar to that of Article 9(2). We believe that the revised Article 7(3) represents a material improvement to the text of the new version of Article 7.

We remain, however, somewhat concerned about the various documentation requirements in the discussion draft.

The role and importance of documentation is made very clear (for example, in para. 23). We believe it is helpful that the Commentary has now been amended (para. 24) to clarify that it is not intended to apply a more burdensome documentation requirement than applies in an Article 9 context. Notwithstanding this clarification, however, there seems to be an implication in the Commentary that the documentation has a uniquely important role where dealings between different parts of the same entity are concerned and that such dealings should always be covered by documentation. In particular, the guidance is somewhat general and unclear but potentially suggests the documentation requirement is broad in scope. We remain somewhat concerned that, as a practical matter, this will (1) lead to a proliferation of the relevant documentation requirements and (2) that the requirement may in some circumstances be difficult to comply with – e.g. in the case of multiple transactions between the branch and the head office, as might occur in the financial sector. For that reason, we consider it would be helpful if the requirement for documentation in the Commentary may be tempered and, in any event, we would suggest this is

an area which would benefit from review in due course, based on the experience in practice of operating the documentation requirements.

Yours sincerely

R S Collier