



30 December 2008

Mr Jeffrey Owens
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Ref.: DTA/HvD/PW/MB

Dear Mr Owens,

**Re.: Discussion draft on a new Article 7 (Business Profits) of the
OECD Model Tax Convention**

We would like to thank you again for the excellent overview of OECD tax projects during the meeting of the FEE Direct Tax Working Party on 30 May 2008 in the FEE¹ offices in Brussels, leading to very stimulating discussions. The outstanding presentation encouraged us to continue following the OECD work with keen interest.

We now welcome the opportunity to comment upon the Discussion draft on a new Article 7 (Business Profits) of the OECD Model Tax Convention.

¹ FEE (Fédération des Experts Comptables Européens – Federation of European Accountants) represents 43 professional institutes of accountants and auditors from 32 countries, including all of the 27 EU Member States. With a combined membership of more than 500.000 professional accountants, FEE works in the public interest to contribute to a more efficient, transparent, and sustainable European economy.



We appreciate that the new Article 7 could generally contribute to clarify the methodology for determining the profits attributable to a permanent establishment (e.g. a branch) through which a resident of one country carries on business in the other country.

Some of the subjects raised in the Discussion draft might potentially benefit from further explanation or analysis.

The Discussion draft suggests to delete paragraph 3 of article 7 that was dealing with the deduction of expenses which are incurred for the purposes of the permanent establishment. The reasons for this deletion are basically explained in part 2 – Commentary on the new article 7 (no. 34 to 36, page 13, 14) saying that with the new wording of paragraph 2 the previous paragraph 3 could be misleading.

According to the explanation (no. 36, page 14), the new paragraph 2 requires the recognition and arm's length pricing of the dealings through which one part of the enterprise performs functions for the benefit of the permanent establishment. This explanation could be understood as a general reference to the arm's length principle, changing the perspective regarding the deduction of expenses for permanent establishments. From our point of view, the explanation in the commentary might benefit from further clarification if this point were to be specifically mentioned.

Regarding Part 3 - Consequential changes to other parts of the Model Tax Convention, it might be helpful to analyse and explain in greater detail whether these changes are indeed consequential. For example, the changes in the Commentary on Article 15, paragraph 7 (no. 18, page 30) regarding the taxation of employees might go beyond the pure need of coherence within the model.

We would be pleased to discuss any aspect of this letter you may wish to raise with us and to contribute to any further work to be carried out by the Commission in this regard.

Yours sincerely,

Hans van Damme
President