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Dear Mr Owens

OECD Discussion Draft of the Report on the Attribution of Profits to a Permanent Establishment – Part IV (Insurance) Issued 27 June 2005.

On behalf of the Association of British Insurers, we are pleased to respond to the request for comments on the OECD Discussion Draft of the Report on the Attribution of Profits to a Permanent Establishment - Part IV (Insurance).

The Association of British Insurers (ABI) represents about 400 UK insurers accounting for some 95% of the business transacted by UK insurance companies. The UK insurance industry is one of the UK's most important. It is the largest insurance market in Europe and the third largest in the world accounting for approximately 10% of total worldwide premium income. The attribution of profits to permanent establishments is important to our many members who for a variety of commercial reasons have branches.

As a member of the COMITÉ EUROPÉEN DES ASSURANCES ("CEA"), our membership, and thus organization, has participated in drafting the submitted CEA paper. We and our members support the points communicated in the CEA paper and would welcome an opportunity to provide more specific feedback during an industry meeting with the OECD.

Our organization supports the goal of the CEA, to help the OECD strive to adopt principles that are simple, easy to administer and reflect sound tax policy, all with an objective of mitigating double taxation.

In addition to the CEA comments submitted, we would like to emphasize that our main concern is that a significant amount of further work is required before fiscal authorities and taxpayers can satisfy themselves that the proposed guidelines achieve their aim. A very tight deadline for final completion of January 2007 has been set. However currently not only insurance issues but also fundamental questions such the definition of what is a key entrepreneurial risk-taking function (KERT) are still outstanding. We would urge that sufficient time is allowed for full

consideration of the issues even if this means that the final document is further delayed We would however like to highlight the following issues:

The working hypothesis

We support the hypothetical distinct and separate enterprise approach as set out in Part I of the OECD Discussion Draft. We are however concerned that there has not been comprehensive testing with the insurance industry to establish how the working hypothesis should apply to insurance. Until such testing is carried out it is not possible to state with certainty how, if it is appropriate, it should be applied for insurance. Further, as there is currently no global framework for insurance regulation including capital requirements there is a need for detailed guidance to be available to reduce disputes and to provide clarity on practical issues. In this regard we believe that the OECD should take note of the current developments in the European Union on capital requirements (the Solvency II project) and the introduction of the lead supervisor concept which we believe will provide a risk-based model for the improved supervision of insurance groups across national boundaries.

Factual and functional analysis

We agree that a factual and functional analysis should be used to identify attributable profits. We are however concerned that such an approach should not result in undue complexity and cost. We therefore support the suggestion that insurers should be allowed to use regulatory returns to calculate attributable profit as a safe harbour.

We also fully support the CEA in asking that a factual and functional analysis should:

- Recognise that arrangements with PEs can produce a loss as well as a profit.
- Should take full account of the part played by those setting business strategies in the profitability of the insurance business.
- Accept that the list of functions in the Paper is not prescriptive and that other functions might have an important role in arriving at the profitability of the insurance business.

Other matters

- Agency PEs

We agree with others that there is too much emphasis on dependent PEs in the current draft Paper.

- Insurers operating through subsidiaries.

We support the CEA in its concern at the inclusion of insurance subsidiaries in guidelines on the attribution of profits to PEs. Such guidance should be in the

separate OECD transfer pricing guidelines. We agree therefore that this section should be deleted.

- Credit standing of PE

We share the CEA concerns at the assertion that the creditworthiness of a PE will be the same as the enterprise as a whole.

- Attribution of assets

Asset allocation should take full account of local regulatory requirements as well as any special features such as tax that affects where they are located.

- Attribution of capital

Any allocation of capital should not result in an allocation of more than 100% of the capital of the business as a whole.

- Investment management

We support the CEA view that compensation for investment management should be on an arms length basis.

- Internal reinsurance

We agree with the CEA's analysis as to the need to take account of internal reinsurance when attributing profit to PEs.

We would welcome the opportunity to be involved in further discussions to assist taking this very important issue forward.

Yours sincerely,

Leigh Francis
Taxation Manager

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