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May 6, 2011

BY E-MAIL

Jeffrey Owens
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Re: Clarification of the Meaning of "Beneficial Owner" in the OECD Model Tax Convention

Dear Mr. Owens,

I write to make one observation on the Discussion Draft for the above-titled document, relating to new language that appears in clauses 12.4 (dividends), 10.2 (interest) and 4.3 (royalties). In each case, the clause ends with words to the following effect: "the use and enjoyment of [a dividend, the interest, royalties] must be distinguished from the legal ownership, as well as the use and enjoyment, of the [shares, debt-claim, right or property] on which/with respect to which the [dividend, interest, royalties] is/are paid."

I suggest that this clause be deleted from the commentary. The language specifically sanction As you are aware, U.S. tax law has never permitted this practice; a U.S. taxpayer cannot assign the "fruits" of property (e.g., interest on a debt-claim) separately from the ownership of the "tree" or underlying property (e.g. the debt-claim itself). If he attempts to do so, he will remain taxable on the income assigned. This principle is certainly embedded in any tax treaty that the U.S. is party to, and should be fundamental to any sound tax policy.

It is true that the tax systems of many other countries do not prohibit the assignment of income. This unfortunately leads inevitably to conflict of laws issues. When such issues are present, they need to be deal with by the treaty negotiators, and not pre-judged by language in the OECD commentary.

Respectfully submitted,

Kimberly S. Blanchard