

July 15, 2011

Dear Jeffrey,

BIAC very much appreciates the opportunity to provide comments to the OECD Discussion Draft – Clarification of the meaning “Beneficial Owner” in the OECD Model Tax Convention (the Discussion Draft).

BIAC Members have reviewed the Discussion Draft with interest and have raised a number of concerns, most importantly that the current draft OECD proposal creates uncertainty, as opposed to greater clarity that the OECD hoped to provide. In addition, BIAC members have expressed that the proposed OECD language in the Discussion Draft could even be viewed as a broadening or redefinition of the beneficial ownership concept.

BIAC Member comments raise a number of additional points as follows:

- Concern regarding how to clarify judgment whether the recipient of a dividend/interest/royalty has the full right to use and enjoy a payment where the recipient is obligated to pass the payment to another person. Examples could be helpful in providing such clarification;
- Question concerning the beneficial right for capital gains;
- Concern that the current Discussion Draft may be understood to have application to the derivatives market, or to cash management functions such as dividend sweeping or transfer pricing, in which case the Discussion Draft may be misconstrued in such a way to cause confusion;
- Concern that OECD efforts are prescriptive without achieving the intended clarity and may potentially lead to overregulation of this concept;
- Concerns that the concept of beneficial ownership is confounded with and used as an anti-abuse rule, which does not increase clarity and certainty.

Furthermore, we are also made aware of the work to which BIAC Members in the financial services industry are engaging in the preparation of comments in this vein through their financial sector associations.

In this context, BIAC respectfully urges in your consideration of the various comments submitted by business, that the OECD Discussion Draft regarding clarification of the beneficial ownership concept is not finalized until there is sufficient opportunity for further OECD consultation and dialogue with representatives of the business community, in the form of a consultation or other appropriate engagement process.

Business representatives would be more than willing to sit down with representatives of the OECD CFA Working Party 1 to further elaborate on the possible substantive concerns around the relevant concepts in this project and on the implications of this work for financial instruments and financial markets.

We appreciate your consideration of this concern, and look forward to engagement with OECD on this important project.

Sincerely yours,



Chris Lenon
Chairman
BIAC Committee on Taxation and Fiscal Affairs

Mr. Jeffrey Owens
Director
Centre for Tax policy and Administration
OECD

Cc: Tadahiro Asami, Secretary General, BIAC