

Sent by email to: taxtreaties@oecd.org

14 December 2012

Tax Treaties, Transfer Pricing and Financial Transactions Division
OECD/CTPA
2 rue André Pascal
75116 Paris
France

Dear Sir/Madam,

AFME comments on the revised proposals concerning the meaning of beneficial owner in articles 10, 11 and 12 of the OECD Model Tax Convention

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the OECD's revised proposals. AFME represents a broad range of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks and other financial institutions.

AFME responded to the April 2011 consultation on this topic in our letter of 15th July 2011, noting in particular the possibility that the April 2011 draft commentary was capable of varied interpretation, which might create uncertainty in relation to transactions undertaken in the financial sector.

We have reviewed the revised proposals which were issued in October 2012. We are pleased that the OECD has sought to address the concerns raised with regard to transactions undertaken in the financial sector.

In particular we would like to note the proposed changes in paragraph 12.4 of the Commentary on Article 10. We consider that the proposed changes have reduced the uncertainty which we noted in relation to the previous draft, as have the explanations given in the revised proposals document. It could be said that there is nonetheless still an element of uncertainty in the revised wording, because of the need to distinguish between "related" and "unrelated" obligations. In that regard we think it is important that the reference to obligations "as a party to financial transactions" is retained in the list of examples of unrelated obligations set out in the fourth sentence of paragraph 12.4, in order to demonstrate that the types of arrangement referred to in our previous letter do not affect beneficial ownership of dividends or interest. Indeed there would be some benefit to extending the list of examples or explaining further what is meant by financial transactions in this context.

We would be very happy to discuss any aspect of the proposals and would be pleased to contribute further as the work develops.

Yours sincerely,



Richard Middleton
Managing Director, Tax

Association for Financial Markets in Europe