

European Business Initiative on Taxation (EBIT)

Comments on: “OECD Model Tax Convention: Revised proposals concerning the meaning of “beneficial owner” in Articles 10, 11 and 12”.

At the time of writing this submission, EBIT Members included: AIRBUS, BP, CATERPILLAR, EADS, GE, DEUTSCHE LUFTHANSA, INFORMA, MTU, NUTRECO, REED ELSEVIER, ROLLS-ROYCE, SAMSUNG ELECTRONICS and TUPPERWARE.

EBIT comments on: "OECD Model Tax Convention: Revised proposals concerning the meaning of "beneficial owner" in Articles 10, 11 and 12".

Mr. Pascal Saint-Amans
Director Centre for Tax Policy and Administration
OECD
2, rue André Pascal
75016 Paris
FRANCE

Brussels, 14 December 2012

Dear Pascal,

EBIT wishes to thank the OECD for the opportunity to give drafting comments only on the revised discussion draft entitled: "OECD Model Tax Convention: Revised proposals concerning the meaning of "beneficial owner" in Articles 10, 11 and 12".

Paragraph 12.1

EBIT welcomes the suggestion in the revised discussion draft with regard to domestic law beneficial ownership tests to delete the last sentence of Paragraph 12.1 on Article 10 regarding dividends, which is repeated in Paragraph 9.1 on Article 11 regarding interest, and Paragraph 4 on Article 12 regarding royalties. At the same time, in view of the aim of giving maximum clarity by the OECD's Commentary, EBIT strongly recommends that a specific statement be added to this paragraph that the intended and preferred approach is an autonomous treaty interpretation of the term "beneficial ownership".

Paragraph 12.4

EBIT is concerned that the original draft text of this paragraph has largely been retained by the Working Party in its revised draft, in particular the references to "facts and circumstances" and "in substance", and that this has not resulted in any real further clarification of the guidance. Our strong preference is therefore for the paragraph to be removed or at best, be rephrased since the now proposed "related"/"unrelated" test in relation to on-payments and how this test should be assessed or applied remains unclear -and therefore problematic for business- given the possible unintended effects this could have.

EBIT trusts that the above comments are helpful and will be taken into account in finalising your Commentary on Articles 10, 11 and 12 of the OECD Model Tax Convention concerning the meaning of the term "beneficial owner".

Yours sincerely,

The European Business Initiative on Taxation – December 2012

For further information on EBIT, please contact its Secretariat via Bob van der Made, Tel: + 31 (0) 6 130 96 296; Email: bob.van.der.made@nl.pwc.com).

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