ICC INTERNATIONAL CHAMBER OF COMMERCE
The world business organization
Commission on TAXATION

ICC Comments on the Draft 2017 Update to the OECD Model Tax Convention

The International Chamber of Commerce (ICC) appreciates the opportunity to comment on the draft contents of the 2017 update to the OECD Model Tax Convention.

ICC particularly welcomes the opportunity to provide input on the Commentary of Article 5 of the Convention which relates to the definition of a Permanent Establishment (PE) for taxation purposes. CC fully supports the amendment to the Commentary of this Article, which specifies that the treatment of a foreign enterprise in terms of Value Added Tax (VAT)/Goods and Service Tax (GST) is, in itself, immaterial in the determination of a permanent establishment as outlined in the Convention. It holds true that a company registering for VAT or GST, and thereby operating as an uncompensated tax collector, should not be negatively impacted in the context of income taxes.

ICC believes that it would be beneficial to include in the Commentary a cross-reference to the VAT/GST Guidelines and with BEPS Action item 1 Final Report, which affirms that a registration for VAT/GST purposes does not constitute a PE for direct purposes.[1] Similarly we would recommend that when the VAT/GST Guidelines are next updated that a cross-reference be included to the new paragraph in the Model Convention Commentary. It is our view that these cross-references would provide for greater alignment, harmonization and clarity when addressing issues overlapping with other areas of taxation.

Furthermore, ICC respectfully recommends providing further clarification in the draft text of the Commentary in order to highlight that registration for VAT/GST falls within the scope of treatment under VAT/GST. Please find below a proposed addition to the current text

> "In many States, a foreign enterprise may be allowed or required to register for the purposes of a value added tax or goods and services tax (VAT/GST) regardless of whether it has in that State a fixed place of business through which its business is wholly or partly carried on or whether it is deemed to have a permanent establishment in that State under paragraph 5 of Article 5. By itself, however, treatment under VAT/GST is irrelevant for the purposes of the interpretation and application of the definition of permanent establishment in the Convention; when applying that definition, one should not, therefore, draw any inference from the treatment of a foreign enterprise for VAT/GST purposes***,*** *including from the fact that a foreign enterprise has registered for VAT/GST purposes*."

ICC recognizes that this proposal is predominantly for the purpose of increased clarification, and reiterates its strong support for the inclusion of this new paragraph to the Commentary on Article 5 of the OECD Model Tax Convention.

[1] The reference in the VAT Guidelines is in footnote 24 and the reference in Action 1 Final Report is in paragraph 337 on page 127.

Submitted to OECD on 10 August 2017

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ICC is the world business organization, whose mission is to promote open trade and investment and help business meet the challenges and opportunities of an increasingly integrated world economy.

Founded in 1919, and with interests spanning every sector of private enterprise, ICC's global network comprises over 6 million companies, chambers of commerce and business associations in more than 130 countries. ICC members work through national committees in their countries to address business concerns and convey ICC views to their respective governments.

The fundamental mission of ICC is to promote open international trade and investment and help business meet the challenges and opportunities of globalization. ICC conveys international business views and priorities through active engagement with the United Nations, the World Trade Organization, the Organisation for Economic Co-Operation and Development (OECD), the G20 and other intergovernmental forums.

The ICC Commission on Taxation promotes transparent and non-discriminatory treatment of foreign investment and earnings that eliminates tax obstacles to cross-border trade and investment. The Commission is composed of more than 150 tax experts from companies and business associations in approximately 40 countries from different regions of the world and all economic sectors. It analyses developments in international fiscal policy and legislation and puts forward business views on government and intergovernmental projects affecting taxation. Observers include representatives of the International Fiscal Association (IFA), International Bar Association (IBA), Business and Industry Advisory Committee to the OECD (BIAC), Business Europe and the United Nations Committee of Experts on International Cooperation in Tax Matters.

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