

Paris, 15 October 2007

Dear Mr. Ciocca,

The business community is uniformly concerned about the direction and tenor of the OECD Project on Business Restructurings (the Project). In the spirit of our ongoing general support of OECD undertakings in the area of fiscal affairs, it is important for the business community to set forth for your attention the reasons for this concern.

The OECD has a long tradition of addressing and removing tax obstacles to cross-border trade and investment. This important work serves to increase economic efficiency and promote the welfare of all citizens. The OECD has historically played a key role in mitigating negative features of national tax regimes that hinder international trade and economic development. It has done this through, among other means, the development of standards and tools that articulate best practices for breaking down tax barriers to cross-border trade and through the building of consensus among its Member States for well considered international tax policy. The OECD mission of promoting free trade and capital movements is as critical as ever in today's global markets.

In this context, the Project is generating significant attention and uniform concern from the business community regarding both its substantive tax features and its policy deliberation process. While the Project's existence and mandate are published, what is known by business about the Project remains minimal. This limited knowledge is in itself a cause for concern, and we believe that this stems from insufficient consultation with business regarding the Project. The limited information available also creates much speculation concerning the motives for and the direction of the Project. At this time we believe that it would be most appropriate to review both the policy perspectives being raised and the consultation process for the Project.

On the Project's substance, we understand from public statements that a number of OECD Member States view business restructurings as being primarily tax motivated whenever they have an unfavourable effect on domestic tax receipts or budget assumptions. For them, the Project appears to be seen as a means of rectifying this problem. Another premise is that existing transfer pricing principles cannot address the substance of restructurings.

We have serious objections to these premises. First, as a factual matter, we believe that the idea that all or even most business restructurings are primarily tax motivated is erroneous. Second, with regard to policy implementation, we support the current OECD tools for international tax-policy (e.g., OECD 1995 Transfer Pricing Guidelines) as being objective and comprehensive outcomes of balanced, well-considered consultations between governments and business. As such, these tools (and specifically the Guidelines), are a sufficient framework for examining business restructurings.

There are also specific concerns by businesses in the European Union regarding inconsistency between the apparent approach in the Project and the economic development objectives of their respective governments, as declared in the Lisbon objectives. The internal market in Europe calls for necessary reductions of tax-induced obstacles – not an increase. This has also been expressed clearly in a number of rulings by the European Court of Justice. For example, exit taxes are not in accordance with the EC Treaty and are certainly not in the interest of governments trying to achieve the Lisbon objectives. It is therefore of paramount interest that any decision on tax coordination undertaken at the OECD be compatible with the obligations of Member States in the European Union.

Given the above, we urge (i) that the Project in its current format cease, and (ii) that, given the number and nature of the fundamental issues at hand, a transparent and inclusive consultation process be undertaken immediately to put this set of issues on a more productive and policy-oriented path.

With this in mind, we suggest to organise a consultation including a representative group from business, government, and the OECD Secretariat, aiming to create a dialogue that is transparent and broadly inclusive on this subject.

We would suggest holding this meeting at your earliest convenience and in advance of any Project drafting.

Over time we have appreciated and benefited from the efforts of the OECD Secretariat to engage business on issues generally. Going forward in this spirit, with continued engagement such as the proposed consultation, we believe both government and business alike would benefit. This would express our joint commitment to put this project on a strong footing for international tax policy.

Yours sincerely,



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