



August 8, 2017

VIA EMAIL

Jefferson VanderWolk
Tax Treaties, Transfer Pricing and Financial Transactions Division
OECD/CTPA
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RE: 2017 Draft OECD Model Tax Convention

Dear Mr. VanderWolk,

USCIB¹ appreciates the opportunity to comment on the limited parts of the OECD Model Convention that were not previously subject to comment.

We strongly support the inclusion of the new paragraph to the Commentary on Article 5 that indicates that treatment of the foreign enterprise under VAT/GST is, by itself, irrelevant for the purposes of the application and interpretation of the permanent establishment definition in the Convention.

The proper application of VAT rules is facilitated by companies registering for VAT. In the context of VAT, companies are functioning as uncompensated tax collectors, so registering for VAT or GST should not have any negative implications for income taxes.

USCIB has two suggestions for improving the draft language. First, the Commentary should cross-reference a similar provision in the VAT Guidelines and the language in the Action 1 Final Report.² These cross-references would be helpful in dealing with the “silos” that sometimes cause confusion on issues of overlap between different types of taxes.

Second, USCIB believes the draft language could be usefully clarified by the addition of the language inserted below in bold italics.

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

¹ USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing leading international business organizations, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

² 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. It would also be useful when the VAT Guidelines are next updated to cross-reference the new paragraph in the Model Convention Commentary.

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.***

USCIB believes that this addition would be helpful since it is not entirely clear that registration for VAT/GST purposes would be “treatment under VAT/GST”. This addition would complete the link between the first sentence of the paragraph and the second sentence of the paragraph.

Sincerely,

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