

INFORMATION NOTE

US BUSINESS ENGAGES OECD ON INTERNATIONAL TAX ISSUES

Double taxation, unresolved tax disputes, uncertainty in the application of international tax rules, heavy compliance burdens, all can act as barriers to the expansion of cross-border trade and investment. These risks, combined with today's more competitive fiscal environment, have led to international tax considerations being an increasingly important focus of the tax debate in many OECD countries.

The OECD's Committee on Fiscal Affairs, working with business, has for many years developed globally acceptable international tax norms to address these issues, including mechanisms to monitor their application and to resolve disputes when they arise.

The OECD, in cooperation with the USCIB, BIAC, IFA - USA, NFTC, OFII¹ and other institutions, organized in Washington on the 13-14 January 2005, an International Tax Conference to discuss the above issues and related OECD initiatives. Attending the conference were senior tax executives from over 50 companies, representatives from the US legislative and executive branches and key participants from the OECD's groups dealing with these issues.

The conference was opened by the US Ambassador to the OECD, the Honorable Constance. A. Morella, who noted ".....the OECD has played a unique role in providing a framework for discussions of international tax issues and we welcome the involvement of US business in these discussions. This meeting provides a unique opportunity to strengthen this relationship".

The discussion focused on two policy issues:

- i) The definition of and attribution of profits to a Permanent Establishment (PE). The PE concept plays a fundamental role in tax treaties and determines, to a large extent, which country has the right to tax the income of multinational enterprises. To deal with changing business models, the OECD has, in recent years, provided a number of clarifications to the PE concept. Participants discussed these clarifications and proposed modifications to the interpretation of the PE concept put forward in the OECD Model Convention. There was also a constructive discussion of recent proposals by the OECD (see www.OECD.org) on the application of Article 7 - the business profits article – of the OECD Model. The OECD will continue its dialogue with business as it moves to finalize its proposals.

1. USCIB – United States Council for International Business; BIAC – Business and Industry Advisory Committee to the OECD; IFA – International Fiscal Association; NFTC- National Foreign Trade Council; OFII-Organisation of International Investment

- ii) Resolving International Tax Disputes As global trade and investment increases, the possibility of cross-border tax disputes also increases. Left unresolved, these disputes can result in double taxation and a corresponding impediment to the free flow of goods and services. Both governments and business participants emphasized the need for effective procedures to resolve such disputes when they arise. The mutual agreement procedure (“MAP”) provided for in tax treaties has been the traditional mechanism to resolve these disputes. The MAP has worked reasonably well in the past, but participants acknowledged that the increase in both the number of cross border disputes, as well as the complexity of the cases involved, now make it urgent to examine ways of improving the effectiveness of the MAP, including consideration of mediation and arbitration procedures, which might be used to supplement the operation of the MAP.

Participants welcomed the opportunity to discuss the draft (Improving the Process for Resolving International Tax Disputes) released by the OECD in the summer of 2004. They supported the OECD decision to develop a “Manual on Effective Mutual Agreement Procedures” (MEMAP). Business participants noted the OECD’s intention to pursue proposals for a mandatory *submission* of unresolved MAP cases to some form of supplementary dispute resolution mechanism and welcomed the proposal to examine the feasibility of implementing mandatory *resolution* of unresolved MAP cases for use by countries which wished to provide for a binding resolution of all cases. The US participants at this meeting showed a strong willingness to work with the OECD to finalize these proposals as quickly as possible. Jeffrey Owens, who leads the OECD tax work, concluded that “the discussions at this meeting will provide a useful input into our ongoing work in this area and our intention is to finalize this work by the end of 2006”.

To encourage a wider debate on these two issues, all the documents prepared for the conference are available on the website which can be accessed from <http://www.uscib.org>. Further information can also be obtained from the OECD’s Washington Centre, Public Affairs Officer, Laura Creswell, (laura.creswell@oecd.org) telephone, (202) 822-3873.