

Tax Treaties  
Transfer Pricing and Financial Transactions Division  
OECD/CTPA

[taxtreaties@oecd.org](mailto:taxtreaties@oecd.org)

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AstraZeneca UK Limited  
1 Francis Crick Avenue  
Cambridge Biomedical Campus  
Cambridge, CB2 0AA  
United Kingdom  
T: +44 (0) 20 3749 5000

[astrazeneca.com](http://astrazeneca.com)

## **Proposed changes to Commentaries in OECD Model Tax Convention on Article 9 and on related articles**

AstraZeneca welcomes the opportunity to comment on the public discussion document in relation to the proposed changes to the Commentaries in the OECD Model Tax Convention. This letter sets out our comments on the proposed changes.

### **Article 9**

We welcome the emphasis in the changes to the Commentary on Article 9 that there should not be any re-writing of the accounts of associated enterprises if the transactions between such enterprises have taken place on normal open market commercial terms on an arm's length basis. This provides certainty to multinationals that the accounts will be accepted by the tax authorities in the Contracting State.

The proposed changes to paragraph 3 of the Commentary on Article 9 put more emphasis on the characteristics of the loan to determine whether an interest payment is arm's length and whether it is correct to accurately delineate the transaction as a loan instead of another type of transaction such as a contribution to equity capital. is consistent with the OECD Transfer Pricing Guidance on Financial Transactions released on 11 February 2020.

It is unclear however, how the changes to the commentary to Article 9 in relation to loans will provide additional clarity to multinationals. The proposed wording states that *"The State making a determination as to the extent to which the purported loan is regarded as a loan will do so taking into account factors discussed in its domestic laws (including judicial doctrine), or in the OECD Transfer Pricing Guidelines"*. The fact that the emphasis remains on a domestic interpretation is likely to result in differing approaches between tax administrations, tax disputes and potentially economic double taxation. We would prefer to see language which facilitates a consensus on the application of the Transfer Pricing Guidance on Financial Transactions amongst OECD member countries.

### **Article 25**

AstraZeneca welcomes the additional proposed commentary to Article 25 to confirm that OECD members states should permit access to the Mutual Agreement Procedure ('MAP') for transfer pricing cases. Transfer pricing cases are inevitably complex and open to interpretation and allowing multinationals the right to access MAP as a matter of course is important in eliminating any economic double taxation suffered as a result of a tax dispute.

We would request that the commentary additionally places more emphasis on OECD member states using their best efforts to resolve a MAP case in a reasonable timeframe and if this is not possible, agree to achieving an outcome through binding arbitration. Implementing mandatory binding arbitration with an independent panel to monitor progress could be helpful and would be in line with the Pillar One blueprint.

Yours faithfully

Catherine Harlow  
Head of Transfer Pricing