

Tax Treaties, Transfer Pricing and
Financial Transactions Division
OECD/CTPA

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By email: taxtreaties@oecd.org

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Dear Sirs or Madams,

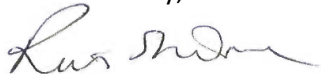
Proposed changes to commentaries in the OECD Model Tax Convention on Article 9 and on related articles.

We welcome this opportunity to comment on the proposed changes to commentaries in the OECD Model Tax Convention on Article 9 and on related articles.

We agree to have our comments posted on the OECD website.

We would like to thank you for the opportunity and hope our comments are helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ruth Steedman".

Ruth Steedman

Enc.

Additional Contributors:

- Martin Brooks
- Chris Liu
- Jonathan Pilcher

Enclosure

Proposed changes to commentaries in the OECD Model Tax Convention on Article 9 and on related articles.

We are grateful for the opportunity to comment on the proposed changes to the OECD Model Tax Convention (MTC).

Our main concern is that the apparent change in emphasis in the revised commentary to domestic law provisions creates the potential for more countries to place greater emphasis on domestic law to make adjustments for which transfer pricing rules should more properly be applied and which the double tax treaty will have little or no application. A recent example is that of the UK's Diverted Profits Tax which essentially seeks to make transfer pricing adjustments but was said to be outwith the scope of double taxation treaties.

These changes to the commentary seem to be closely linked to the report Transfer Pricing Guidance on Financial Transactions (TPG) published on 11 February 2020. Part of this guidance raised similar concerns for us i.e;

"This guidance is not intended to prevent countries from implementing approaches to address the balance of debt and equity funding of an entity and interest deductibility under domestic legislation, nor does it seek to mandate accurate delineation under Chapter 1 as the only approach for determining whether purported debt should be respected as debt." –

The combined effect of these changes seems to potentially increase the scope for unrelieved double taxation by increasing the difficulty of Competent Authorities reaching agreement through the MAP. We therefore request that this apparent change in emphasis is something that needs to be considered before finalising the revised commentary.

FTI CONSULTING LLP