UN Model Update 2011

Rome

30 January 2013

Permanent Establishments

- Threshold differences between the two Models result in the 2011 UN Model preserving more taxing rights to source countries compared to the 2010 OECD Model

Permanent Establishments

- The 2011 UN Model retains a “services permanent establishment” provision in article 5(3)(b), while the 2010 OECD Model has no similar rule
- Under the 2011 UN Model, a PE exists if a non-resident enterprise “furnishes” services through employees in the source country for more than 183 days in any 12-month period in respect of “the same or a connected project”

Permanent Establishments

- The Commentary on Article 5 of the 2011 UN Model has been substantially updated in many ways (often in line with the OECD Commentary, including by addressing issues where negotiating parties wish to delete article 14 and rely on articles 5 and 7 instead
- The Commentary now includes a full alternative provision for these parties which also deals with services performed by individuals
- Threshold test for individuals is not the same as the OECD alternative as there is no income test.

Permanent Establishments

- Remainder of the paragraphs remain the same with the threshold test of 6 months or 183 days being the norm.
- Differences remain with regard to “delivery” in respect of both paragraph 4 and the dependent agent provision.

Business Profits

- Avoids the difficulty of assuming hypothetical flows within a single legal body and having to give deductions for notional flows, without having the right to tax those flows

- Avoids the complexity of the OECD Article – a broader concern that developing countries tend to disproportionately suffer from complex "solutions" to perceived problems

Business Profits

- Main differences in approach
  - General recognition of internal services at arm's length prices
  - Recognition of internal royalties
  - Recognition of internal interest dealings outside the financial sector
  - Deletion of Articles 7(4) and (5)
- Focus remains on ex A7]î2,75 T,Dñ •%TT2 1i1.to 3.tal/TT1T1T1T1Tc

International Transport

- OECD uses the term “ancillary” as opposed to “auxiliary” in the UN Commentary. There is possibly not a great difference between the terms
- However, many examples in the UN Commentary are the same or similar to the OECD approach
- Issue to be discussed by the new Committee.