2nd Workshop on Tax Base Protection for Developing Countries
Paris, France, 23 September 2014

QUESTIONS/ISSUES FOR DISCUSSION IN SMALL GROUPS

MORNING SESSION (11:45AM - 12:45PM)

GROUP 1 - Preventing the Artificial Avoidance of PE Status

Example 1

Situation A

- Non-resident Group of Companies entered into two different contracts re two different buildings (‘construction work’) with the same client for two different sites.
- Contracts are signed so that part of the work would be performed by the parent company (5 months per project), and another part of the work by two subsidiaries of the parent company (5 months per project each). The subsidiaries are parties to the contracts.

Note: Does it matter whether the parent/subsidiaries specialize in the work assigned? Would the outcome be different in case of contracts entered into for the provision of different services?

Situation B

- Same as above, but the non-resident parent company opens a ‘coordination office’ in the capital of the source country (projects are located in other cities), which is there for more than six months.

Example 2

Situation A

- A non-resident company (NR Co) (which is resident in low tax country R) has a subsidiary (S1) in source country S that sells products of NR Co in the local market in its own name but on behalf of NR Co (delivery takes places directly from NR Co to client, sales conditions are fixed by NR Co and S1 follows instructions of NR Co).
- S1 was a full-fledged distributor of the products before restructuring it into a limited risk distributor (remuneration based on cost-plus).

Situation B

- Same as in Situation A, but in addition to distribution functions, S1 processes raw materials in source country S and stores them in a warehouse of an independent company; products are owned by NR Co (remuneration cost-plus).
- S1 helps in the process of transporting the products from the warehouse to the client.

Situation C

Example 3

- A non-resident company (NR Co) (which is resident in low tax country R) operates a freezing vessel through a contract with a company (S Co) in source country S.
- All activities of NR Co (fishing, processing fish, freezing) take place in international waters, but its only client is located in country S.
- NR Co unloads fish always in the same port in country S (near client premises) and receives supplies from service providers there (to unload, repair ship etc.).
- One of the directors of NR Co lives in country S (same city of port), manages banks accounts

Example 2[3]

- Z, a resident of Country A, owes money to Y, a resident of Country B. Z enters into an arrangement with its creditors whereby part of the debt owed to Y is written off. Under the Country B tax law Y can deduct the amount of the debt that is written off. Under the Country A tax law Z is not required to report any income.
- If the reduction in the debt is looked at in isolation, there is a mismatch that gives rise to a cross-border tax benefit (deduction in Country B) with no pick up in Country A (no income). In many cases, such a scenario is not abusive, presuming that Z has unrelieved (or cancelled) losses in Country A. However, the mismatch can result in untaxed funds if from a tax perspective Z has managed to set off all of

GROUP 3 - Limiting Interest Deductions

Questions/Issues:

1) Under your country's tax law, is there is a limitation on the deduction of interest paid by business taxpayers?
   - If the answer is yes, how does a taxpayer determine the maximum amount of interest that can be deducted?
   - Does the limitation apply to interest paid to lenders within the same country as the borrower? Or, does the limitation apply only to interest paid to a lender in another country?

2)

3) Proposed LOB mechanisms