Public Discussion Draft

BEPS ACTION 6: PREVENTING THE GRANTING OF TREATY BENEFITS IN INAPPROPRIATE CIRCUMSTANCES

14 March 2014 – 9 April 2014

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PREVENTING THE GRANTING OF TREATY BENEFITS IN INAPPROPRIATE CIRCUMSTANCES

BEPS Action 6

INTRODUCTION

1. At the request of the G20, the OECD published its Action Plan on Base Erosion and Profit Shifting (Action Plan)[1] in July 2013. The BEPS Action Plan includes 15 actions to address BEPS in a comprehensive manner and sets deadlines to implement these actions.

2. The Action Plan identifies treaty abuse, and in particular treaty shopping, as one of the most important sources of BEPS concerns. Action 6 (Prevent Treaty Abuse) describes the work to be undertaken in this area. The relevant part of the Action Plan reads as follows:

> **Existing domestic and international tax rules should be modified in order to more closely align the allocation of income with the economic activity that generates that income:**
>
> ***Treaty abuse is one of the most important sources of BEPS concerns***. The Commentary on Article 1 of the OECD Model Tax Convention already includes a number of examples of provisions that could be used to address treaty-shopping situations as well as other cases of treaty abuse, which may give rise to double non-taxation. Tight treaty anti-abuse clauses coupled with the exercise of taxing rights under domestic laws will contribute to restore source taxation in a number of cases.
>
> ***Action 6***
> **Prevent treaty abuse**
>
> *Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances. Work will also be done to clarify that tax treaties are not intended to be used to generate double non-taxation and to identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country. The work will be co-ordinated with the work on hybrids.*

3. This report is the result of the work carried on in the three different areas identified by Action 6:

- A. Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances.
- B. Clarify that tax treaties are not intended to be used to generate double non-taxation.
- C. Identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country.

1. Available at http://www.oecd.org/ctp/BEPSActionPlan.pdf.

4. The conclusions of the work in these three different areas of work correspond respectively to Sections A, B and C of this report. All changes that are proposed to the existing text of the Model Tax Convention appear in ***bold italics*** for additions and ~~strikethrough~~ for deletions.

A. TREATY PROVISIONS AND/OR DOMESTIC RULES TO PREVENT THE GRANTING

That in-depth study resulted in the 1986 reports on *Double Taxation and the Use of Base companies* and *Double Taxation and the Use of Conduit Companies*,[4] the issue of treaty shopping being primarily dealt with in the latter.

In 1992, as a result of the report on *Double Taxation and the Use of Conduit Companies*, various examples of provisions dealing with different aspects of treaty shopping were added to the section on ³Improper Use of the Convention´ in the Commentary on Art. 1. These included the alternative provisions currently found in paragraphs 13-19 of the Commentary on Article 1 under the heading ³Conduit company cases´.

In 2003, as a result of the report *Restricting the Entitlement to Treaty Benefits*[5] *(*which was prepared as a follow-up to the 1998 Report *Harmful Tax Competition: an Emerging Global Issue)*[6], new paragraphs intended to clarify the meaning of ³beneficial owner´ in some conduit situations were added to the Commentary on Art. 10, 11 and 12 and the section on ³Improper Use of the Convention´ was substantially extended to include additional examples of anti-abuse rules, including a comprehensive limitation-on-benefits provision based on the provision found in the 1996 US Model[7] as well as a purpose-based anti-abuse provision based on UK practice and applicable to Art. 10, 11, 12 and 21.[8]

Finally, the on-going work on the clarification of the ³beneficial owner´ concept has allowed the OECD to examine the limits of using that concept as a tool to address various treaty-shopping situations. As indicated in proposed paragraph 12.5 of the Commentary on Art. 10, which was included in the latest discussion GUDIW RQ WKH PHDQLQJ[9] RI ³EH

Second, it is recommended to include in tax treaties a specific anti-abuse rule based on the limitation-on-benefits provisions included in treaties concluded by the United States and a few other countries. Such a specific rule will address a large number of treaty shopping situations based on the legal nature, ownership in, and general activities of, residents of a Contracting State (this recommendation is included in subsection *i)* below).

Third, in order to address other forms of treaty abuse, including treaty shopping situations that

A) its principal class of shares is primarily traded on one or more recognized stock exchanges located in the Contracting State of which the company is a resident; or

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State of which it is a resident; or

ii) at least 50 percent of the aggregate voting power and value of the shares (and at least 50 percent of any disproportionate class of shares) in the company is owned directly or indirectly by five or fewer companies entitled to benefits under subdivision i) of this subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;

d) a person, other than an individual, that

i) was constituted and is operated exclusively for religious, charitable, scientific,

taxation of the same item of income if it had been received directly by the shareholders of the company that received that item of income. Since many States do not effectively tax dividends received by a

ii)

In this example, whilst RCo is claiming the benefits of the R-S treaty with respect to loans that were entered for valid commercial reasons, if the facts of the case show that one of the main purposes of TCo in transferring its loan to RCo was for RCo to obtain the benefit of the State R-S treaty, then the provision would apply to deny that benefit as that benefit would result indirectly from the transfer of the loan.

28. 7KH WHUPV ³DUUDQJHPHQW RU WUDQVDFWLRQ´ VKRXOG EH understanding, scheme, transaction or series of transactions, whether or not they are legally enforceable. In particular they include the creation, assignment, acquisition or transfer of the income itself, or of the property or right in respect of which the income accrues. These terms also encompass arrangements concerning the establishment, acquisition or maintenance of a person who derives the income, including the qualification of that person as a resident of one of the Contracting States, and include steps that persons PD\ WDNH WKHPVHOYHV LQ RUGHU WR HVWDEOLVK UHVLGHQFH steps are taken to ensure that meetings of the board of directors of a company are P LL L Abâ À P• P U W.rä €

33. Comments are invited on examples that could be included in the Commentary in order to illustrate cases in which paragraph 6 would apply as well as cases where it would not apply. During the

(discounted at the rate at which TCo could borrow from RCo). In this example, in the absence of other facts and circumstances showing otherwise, it would be reasonable to conclude that one of the main purposes for the arrangement under which RCo acquired the usufruct of the preferred shares issued by SCo was to obtain the benefit of the 5% limitation applicable to the source taxation of dividends provided for by the State R-State S tax convention and it would be contrary to the object and purpose of the tax convention to grant the benefit of that limitation under this treaty shopping arrangement.	profits to its investors and pays taxes in State R on income not distributed during the year. In making its decision to invest in shares of corporations in State S, RCo considered the existence of a benefit under State R-State S tax convention on dividends, but this alone would not be sufficient to trigger the application of paragraph 6. The intent of tax treaties is to provide benefits to encourage cross-border investment and, therefore, to determine whether or not paragraph 6 applies to an investment, it is necessary to consider the context in which the investment was made. In this H[DPSOH XQOHVV 5&R¶V LQY arrangement or relates to another transaction undertaken for a main purpose of obtaining the benefit of the Convention, it would not be reasonable to deny the benefit of the State R-State S tax treaty to RCo.

b) Other situations where a person seeks to circumvent treaty limitations

34. Apart from the requirement that a person be a resident of a Contracting State, other conditions must be satisfied in order to obtain the benefit of certain provisions of tax treaties. In certain cases, it may be possible to enter into transactions for the purposes of satisfying these conditions in circumstances where it would be inappropriate to grant the relevant treaty benefits. Although the general anti-abuse rule in subsection *ii*) above will be useful in addressing such situations, targeted specific treaty anti-abuse rules generally provide greater certainty for both taxpayers and tax administrations. Such rules are already found in some Articles of the Model Tax Convention (see, for example, Art. 13(4) and 17(2)). In addition, the Commentary suggests the inclusion of other anti-abuse provisions in certain circumstances (see, for example, paragraphs 16 and 17 of the Commentary on Art. 10). Other anti-abuse provisions are found in bilateral treaties concluded by OECD and non-OECD countries.

35. The following are examples of situations with respect to which specific treaty anti-abuse rules may be helpful and proposals for changes intended to address some of these situations.

i) Splitting-up of contracts

36. Paragraph 18 of the Commentary on Article 5 indicates that “[t]he twelve-month threshold [*of Art. 5(3)*] has given rise to abuses; it has sometimes been found that enterprises (mainly contractors or subcontractors working on the continental shelf or engaged in activities connected with the exploration and exploitation of the continental shelf) divided their contracts up into several parts, each covering a period less than twelve months and attributed to a different company which was, however, owned by the same group.”

37. The paragraph provides that although such abuses may be addressed by legislative or judicial anti-avoidance rules, countries may deal with them through bilateral solutions. Whilst it was suggested that an alternative provision could be added to paragraph 18 for that purpose,[10] it was concluded that

10. See, for example, the alternative provision suggested in paragraph 42.45 of the Commentary on Article 5 which deals with the splitting-up of contracts in order to circumvent the alternative provision found in paragraph 42.23.

transactions aimed at circumventing the permanent establishment threshold should be examined as part of the work on Action 7 (Prevent the artificial avoidance of PE status).

ii) Hiring-out of labour cases

38. Hiring-out of labour cases, where the taxpayer attempts to obtain inappropriately the benefits of the exemption from source taxation provided for in Art. 15(2), are dealt with in paragraphs 8.1 to 8.28 of the Commentary on Article 15. It was concluded that the guidance already found in these paragraphs, and in particular the alternative provision found in paragraph 8.3 of that Commentary, dealt adequately with this type of treaty abuse.

iii) Transactions intended to avoid dividend characterisation

39. In some cases, transactions may be entered into for the purpose of avoiding domestic law rules that characterise a certain item of income as dividend and to benefit from a treaty characterisation of that income (*e.g.* as capital gain) that prevents source taxation.

40. As part of its work on hybrid mismatch arrangements, Working Party 1 has examined whether the treaty definitions of dividends and interest could be amended, as is done in some treaties, in order to permit the application of domestic law rules that characterise an item of income as such. As this proposal is closely related to the issue of hybrid mismatch arrangements, it was concluded that it should be examined as part of the work on the treaty aspects of Action 2 (Hybrid Mismatches) of the BEPS Action Plan.

iv) Dividend transfer transactions

41. In these transactions, a taxpayer entitled to the 15% portfolio rate of Art. 10(2)*b*) seeks to obtain the 5% direct dividend rate of Art. 10(2)*a*) or the 0% rate that some bilateral conventions provide for dividends paid to pension funds (see paragraph 69 of the Commentary on Article 18).

42. Paragraphs 16 and 17 of the Commentary on Article 10 deal with transactions through which a taxpayer tries to access the lower rate of 5% applicable to dividends:

> 16. Subparagraph *a)* of paragraph 2 does not require that the company receiving the dividends must have owned at least 25 per cent of the capital for a relatively long time before the date of the distribution. This means that all that counts regarding the holding is the situation prevailing at the time material for the coming into existence of the liability to the tax to which paragraph 2 applies, *i.e.* in most cases the situation existing at the time when the dividends become legally available to the shareholders. The primary reason for this resides in the desire to have a provision which is applicable as broadly as possible. To require the parent company to have possessed the minimum holding for a certain time before the distribution of the profits could involve extensive inquiries. Internal laws of certain OECD member countries provide for a minimum period during which the recipient company must have held the shares to qualify for exemption or relief in respect of dividends received. In view of this, Contracting States may include a similar condition in their conventions.
>
> 17. The reduction envisaged in subparagraph *a)* of paragraph 2 should not be granted in cases of

provided that this holding was not acquired primarily for the purpose of taking advantage of this provision.

43. It was concluded that in order to deal with such transactions, a minimum shareholding period should be included in subparagraph *a*) of Art. 10(2), which should therefore be amended to read as follows:

> ***a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which held directly at least 25 per cent of the capital of the company paying the dividends throughout a [ ] month period that included the time of the payment of the dividend;***

Comments are invited as to the length of the period of time that should be included in the above provision.

44. It was also concluded that additional anti-abuse rules should be included in Article 10 to deal with cases where certain intermediary entities established in the State of source are used to take advantage of the treaty provisions that lower the source taxation of dividends.

45. For example, paragraph 67.4 of the Commentary on Article 10 includes an alternative provision that may be included to prevent access to

> the 5% rate in the case of dividends paid by a domestic REIT to a non-resident portfolio investor, and
>
> both the 5% and the 15% rates in the case of dividends paid by a domestic REIT to a non-resident investor who holds directly or indirectly more than 10% of the REIT ¶ capital.

46. Another example, found in U.S. treaty practice, is a provision that denies the 5% rate in the case of dividends paid to a non-resident company by a U.S. Regulated Investment Company (RIC) even if that non-resident company holds more than 10% of the shares of the RIC. As shown by that example, a specific anti-abuse rule might be drafted to address situations where a non-resident company makes indirect portfolio investments into domestic companies through a domestic investment company that is not taxed on dividends it receives from such other domestic companies. Comments are invited as to the potential issues that such a rule could create.

v) Transactions that circumvent the application of Art. 13(4)

47. Art. 13(4) allows the Contracting State in which immovable property is situated to tax capital gains realised by a resident of the other State on shares of companies that derive more than 50% of their value from such immovable property.

48. Paragraph 28.5 of the Commentary on Article 13 already provides that States may want to consider extending the provision to cover not only gains from shares but also gains from the alienation of interests in other entities, such as partnerships or trusts, which would address one form of abuse. It was agreed that Art. 13(4) should be amended to include such wording.

49. There might also be cases, however, where assets are contributed to an entity shortly before the sale of the shares or other interests in that entity in order to dilute the proportion of the value of these shares or interests that is derived from immovable property situated in one Contracting State. In order to address such cases, it was agreed that Art. 13(4) should be amended to refer to situations where shares or similar interests derive their value primarily from immovable property at any time during a certain period as opposed to at the time of the alienation only.

vi) Tie-breaker rule for determining the treaty residence of dual-resident persons other than individuals

50. One of the key limitations on the granting of treaty benefits is the requirement that a person be a resident of a Contracting State for the purposes of the relevant tax treaty. Under Art. 4(1) of the OECD Model Tax Convention, the treaty residence of a person is dependent on the domestic tax laws of each Contracting State, which may result in a person being resident of each State. In such cases, Art. 4(2) determines a single treaty residence in the case of individuals. Art. 4(3), which does the same for persons other than individuals, provides that the dual-resident person "shall be deemed to be a resident only of the State in which its place of effective management is situated".

51. When this rule was originally included in the 1963 Draft Convention, the OECD Fiscal Committee expressed the view that "it may be rare in practice for a company, etc. to be subject to tax as a resident in more than one State"[11] but because that was possible, "special rules as to the preference" were needed.

52. The 2008 Update to the OECD Model Tax Convention introduced an alternative version of Art. 4(3) (see paragraphs 24 and 24.1 of the Commentary on Article 4) according to which the competent authorities of the Contracting States shall, having regard to a number of relevant factors, endeavour to determine by mutual agreement the State of which the person is a resident for the purpose of the Convention. When that alternative was discussed, the view of many countries was that cases where a company is a dual-resident often involve tax avoidance arrangements. For that reason, it is proposed that the current rule found in Art. 4(3) be replaced by the alternative found in the Commentary, which allows a case-by-case solution of these cases.

53. The following are the changes that are proposed for that purpose:

Replace paragraph 3 of Article 4 of the Model Tax Convention by the following:

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident

concerned through the mechanism provided for under paragraph 1 of Article 25, the request should be made within three years from the first notification to that person that its taxation is not in accordance with the Convention since it is considered to be a resident of both Contracting States. Since the facts on which a decision will be based may change over time, the competent authorities that reach a decision under that provision should clarify which period of time is covered by that decision.

a) in the case of royalties, the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the enterprise through the permanent establishment; or

b) in the case of any other income, the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct of a trade or business carried on in the third State through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise ¶ own account, unless these activities are banking or securities activities carried on by a bank or registered securities dealer).

2. Cases where a person tries to abuse the provisions of domestic tax law using treaty benefits

57. Many tax avoidance risks that threaten the tax base are not caused by tax treaties but may be facilitated by treaties. In these cases, it is not sufficient to address the treaty issues: changes to domestic law are also required. Avoidance strategies that fall into this category include:

Thin capitalisation and other financing transactions that use tax deductions to lower borrowing costs;

Dual residence strategies (*e.g.* a company is resident for domestic tax purposes but non-resident for treaty purposes);

Transfer mispricing;

Arbitrage transactions that take advantage of mismatches found in the domestic law of one State and that are

- related to the characterization of income (*e.g.* by transforming business profits into capital gain) or payments (*e.g.* by transforming dividends into interest);
- related to the treatment of taxpayers (*e.g.* by transferring income to tax-exempt entities or entities that have accumulated tax losses; by transferring income from non-residents to residents);
- related to timing differences (*e.g.* by delaying taxation or advancing deductions).

Arbitrage transactions that take advantage of mismatches between the domestic laws of two States and that are

- related to the characterization of income;
- related to the characterization of entities;
- related to timing differences.

Transactions that abuse relief of double taxation mechanisms (by producing income that is not taxable in the State of source but must be exempted by the State of residence or by abusing foreign tax credit mechanisms).

58. Many of these transactions will be addressed through the work on other aspects of the Action Plan, in particular Action 2 (Neutralise the effects of hybrid mismatch arrangements), Action 3 (Strengthen CFC rules), Action 4 (Limit base erosion via interest deductions and other financial payments) and Actions 8, 9 and 10 dealing with Transfer Pricing.

59. The main objective of the work aimed at preventing the granting of treaty benefits with respect to these transactions is to ensure that treaties do not prevent the application of specific domestic law provisions that would prevent these transactions.[12] Granting the benefits of these treaty provisions in such cases would be inappropriate to the extent that the result would be the avoidance of domestic tax. Such cases include situations where it is argued that

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12. Under the principles of public international law, as codified in Articles 26 and 27 of the *Vienna Convention on the Law of Treaties* (VCLT), if the application of a domestic anti-abuse rule has the effect of allowing a State that is party to a tax treaty to tax an item of income that that State is not allowed to tax under the provisions of the treaty, the application of the domestic anti-abuse rule would conflict with the provisions of the treaty and these treaty provisions should prevail.

Provisions of a tax treaty prevent the application of a domestic GAAR;

Art. 24(4) and Art. 24(5) prevent the application of domestic thin-capitalisation rules;

Art. 7 and/or Art. 10(5) prevent the application of CFC rules;

Art. 13(5) prevents the application of exit or departure taxes;

Art. 24(5) prevents the application of domestic rules that restrict tax consolidation to resident entities;

Art. 13(5) prevents the application of dividend stripping rules targeted at transactions designed to transform dividends into treaty-exempt capital gains;

Art. 13(5) prevents the application of domestic assignment of income rules (such as grantor trust rules).

60. The Commentary already addresses a number of these issues. For instance, it deals expressly with

controlled foreign companies rules (see also paragraph 14 of the Commentary on Article 7, which deals with the same issue).

69. It was concluded that the principle reflected in paragraph 6.1 of the Commentary on Article 1 should be applicable to the vast majority of the provisions of the Model Tax Convention in order to prevent interpretations intended to circumvent the application of a Contracting State's domestic anti-abuse rules (as illustrated by the example of controlled foreign companies rules). This corresponds to the practice long followed by the United States in its tax treaties, where a so-called "saving clause"[13] confirms the Contracting States' right to tax their residents (and citizens, in the case, of the United States) notwithstanding the provisions of the treaty except those, such as the rules on relief of double taxation, that are clearly intended to apply to residents.

70. The following are the changes to the Model Tax Convention that are proposed for that purpose:

Add the following paragraph 3 to Article 1 of the Model Tax Convention:

> ***3. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 3 of Article 7, paragraph 2 of Article 9 and Articles 19, 20, 23, 24 and 25 and 28.***

Add the following paragraphs 26.17 to 26.21 to the Commentary on Article 1 (other consequential changes to the Commentary would be required):

> ***26.17 Whilst some provisions of the Convention (e.g. Articles 23 A and 23 B) are clearly intended to affect how a Contracting State taxes its own residents, the object of the majority of the provisions of the Convention is to restrict the right of a Contracting State to tax the residents of the other Contracting State. In some limited cases, however, it has been argued that some provisions could be interpreted as limiting a Contracting State's right to tax its own residents in cases where this was not intended (see, for example, paragraph 23 above, which addresses the case of controlled foreign companies provisions).***

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13. The saving clause and its exceptions read as follows in the US Model:

> 4. Except to the extent provided in paragraph 5, this Convention shall not affect the taxation by a Contracting State of its residents (as determined under Article 4 (Resident)) and its citizens. Notwithstanding the other provisions of this Convention, a former citizen or former long-term resident of a Contracting State may be taxed in accordance with the laws of that Contracting State.
>
> 5. The provisions of paragraph 4 shall not affect:
>
> a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraph 7 of Article 13 (Gains), subparagraph b) of paragraph 1, paragraphs 2, 3 and 6 of Article 17 (Pensions, Social Security, Annuities, Alimony, and Child Support), paragraph 3 of Article 18 (Pension Funds), and Articles 23 (Relief From Double Taxation), 24 (Non-Discrimination), and 25

determine a single State of residence for the purposes of the Convention. Thus, paragraph 3 does not apply to an individual or legal person who is a resident of one of the Contracting States under the laws of that State but who, for the purposes of the Convention, is deemed to be a resident only of the other Contracting State.

B. CLARIFICATION THAT TAX TREATIES ARE NOT INTENDED TO BE USED TO GENERATE DOUBLE NON-TAXATION

71. The second part of the work mandated by Action 6 was to [3]

PREAMBLE TO THE CONVENTION

(State A) and (State B),

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States)

Have agreed as follows:

76. The clear statement of the intention of the signatories to a tax treaty that appears in the above preamble will be relevant to the interpretation and application of the provisions of that treaty. According to the basic rule of interpretation of treaties in Art. 31(1) of the *Vienna Convention on the Law of Treaties* (VCLT), "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty ***in their context*** and in the light of ***its object and purpose***" [emphasis added]. Art. 31(2)[14] VCLT confirms that, for the purpose of this basic rule, the context of the treaty includes its preamble.[15]

77. The above changes to the Title and Preamble should be supplemented by the following changes to the Introduction to the Model Tax Convention:

Replace paragraphs 2 and 3 of the Introduction by the following:

2. It has long been recognized among the Member countries of the Organisation for Economic Co-operation and Development that it is desirable to clarify, standardize, and

should conform to this Model Convention as interpreted by the Commentaries thereon and

C. TAX POLICY CONSIDERATIONS THAT, IN GENERAL, COUNTRIES SHOULD CONSIDER BEFORE DECIDING TO ENTER INTO A TAX TREATY WITH ANOTHER COUNTRY

78. The third part of the work mandated by Action 6 was "to identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country".

79. It was agreed that having a clearer articulation of the policy considerations that, in general, countries should consider before deciding to enter into a tax treaty could make it easier for countries to justify their decisions not to enter into tax treaties with certain low or no-tax jurisdictions. It was also recognized, however, that there are also many non-tax factors that can lead to the conclusion of a tax treaty and that each country has a sovereign right to decide to enter into tax treaties with any jurisdiction with which it decides to do so.

80. In the course of the work on this aspect of Action 6, it was decided that the results of that work should reflect the fact that many of the tax policy considerations relevant to the conclusion of a tax treaty are also relevant to the question of whether to modify (or, ultimately, terminate) a treaty previously concluded in the event that a change of circumstances (such as changes to the domestic law of a treaty partner) raises BEPS concerns related to that treaty.

81. The following are the changes that are proposed to the Introduction of the OECD Model Tax Convention as a result of the work on this aspect of Action 6:

Insert the following paragraphs and new heading immediately after paragraph 15 in the Introduction to the OECD Model Convention (existing section C of the Introduction would become section D):

C. Tax policy considerations that are relevant to the decision of whether to enter into a tax treaty or amend an existing treaty

15.1 In 1997, the OECD Council adopted a recommendation that the Governments of member countries pursue their efforts to conclude bilateral tax treaties with those member countries, and where appropriate with non-member countries, with which they have not yet entered into such conventions. Whilst the question of whether or not to enter into a tax treaty with another country is for each State to decide on the basis of different factors, which include both tax and non-tax considerations, tax policy considerations will generally play a key role in that decision. The following paragraphs describe some of these tax policy considerations, which are relevant not only to the question of whether a treaty should be concluded with a State but also to the question of whether a State should seek to modify or replace an existing treaty or even, as a last resort, terminate a treaty (taking into account the fact that termination of a treaty often has a negative impact on large number of taxpayers who are not concerned by the situations that result in the termination of the treaty).

15.2 Since a main objective of tax treaties is the avoidance of double taxation in order to reduce tax obstacles to cross-border services, trade and investment, the existence of risks of double