

Distr.: Restricted
20 October 2008

ENGLISH ONLY

**Economic and Social Council
Committee of Experts on International Cooperation
in Tax Matters**

Fourth session

Geneva, 20-24 October 2008

Item 4 (f) of the provisional agenda

Discussion of substantive issues related to international cooperation in tax matters

Revision of the United Nations Manual for the Negotiation of

Bilateral Tax Treaties between Developed and Developing Countries

**Revision of the United Nations Manual for the Negotiation of
Bilateral Tax Treaties between Developed and Developing Countries***

Note by the coordinator of the working group

Addendum

Article 5 – PERMANENT ESTABLISHMENT

* The present paper was prepared by Professor Jon Bischel, a member the working group on Revision of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (Coordinator: Professor Brunetti). The views and opinions expressed are those of the authors and do not necessarily represent those of the United Nations.

The UN Model expands the scope of its Articles 5(5) and 5(7) in two respects. An addition is made to 5(5) which results in permanent establishment status where a dependent agent maintains a regular stock of goods from which the dependent agent makes regular deliveries and additional sales related activities are conducted in the source state on behalf of the foreign enterprise which have contributed to the sale of such goods. A further addition is made to 5(7) (Article 5(6) of the OECD Model) which has the effect of restricting the category independent agent. Under the provision, an agent will not be considered independent if its activities are devoted wholly or almost wholly on behalf of an enterprise. However, it is as yet unclear what standard would be employed to determine whether the agent's activities are devoted wholly or almost wholly on behalf of an enterprise.

Article 5(6) of the UN Model does not have a counterpart in the OECD Model. It provides that the collection of premiums or insurance of risks, except re-insurance transactions, in the other State by an insurance company of a Contracting State will be deemed to the agency permanent establishment unless the activities are performed through an independent agent.

OECD Model Article 5(7) and UN Model Article 6(8) both provide that the existence of a subsidiary company in a treaty country does not of itself constitute that subsidiary a permanent establishment of its parent company. However, it should be noted that a subsidiary company may constitute a permanent establishment of its parent if the subsidiary satisfies the dependent agent requirements under Article 5(5).
