United Nations E/C.18/2006/2/Add.1

Economic and Social Council

Distr.: General
16 October 2006

Original: English

Committee of Experts on International Cooperation in Tax Matters
Second session
Geneva, 30 October-3 November 2006

Supplementary Note to Treaty Abuse and Treaty Shopping (E/C.18/2006/2)*

*The present paper was prepared by the subcommittee on treaty abuses and treaty shopping (Coordinator: Mr. Kyung Geun Lee) of the Committee of Experts on International Cooperation in Tax Matters.

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I. Comments from Mr. Armando Lara Yaffar (Mexico)

Treaty shopping transactions deviate the main objectives of tax treaties by allowing people who are not entitled to the benefits of the conventions, to be illegitimately benefited by those international instruments.
This document sets some examples of abusive transactions that can take place when countries do not provide anti abusive provisions either in their domestic legislation or in the double taxation agreements they conclude with other parties.

Case 1: Relocation of the place of effective management

- “AM SUB” is a company of country X, and it is owned by “AM PA”, its parent company which is resident of country Y.
- “AM SUB” owns an intangible.
- “AM SUB” is splitted into two companies, “AM SUB 1” and “AM SUB2”.
- “AM SUB1” keeps the intangible and establishes its place of effective management in Country Y. According to the Convention between Country Y and Country X, AM SUB 1 will be considered a resident of Country Y for tax purposes.

By being a resident of Country Y, it will be able to pay off the intangible value, at its market value with no further requirements.
Additionally, and according to Country Y’s participation exemption provisions, ACO 1 could be sold by “AM PA” without paying any tax, and thus, the alienation of the intangible property would also be tax exempt.

Case 2: Alienation of shares without having any tax effects

- Company “A”, resident of country X, has a participation of 100% of the capital stock in “B”.
- “B” is a company resident of Country Y.
- “A” wants to sell all its participation in “B” to “C”.
- “C” is a company resident of Country Y.

The treaty between Country X and Country Y states that gains from the alienation of shares that represent a participation of more than 25% of the capital of a company resident in one of the States may be taxed in that State. However, the tax so charged shall not exceed 20% of the taxable gains.

If “A” sells all its participation in “B”, the profits derived from such alienation would be subject to a 20% withholding tax. To avoid such taxation, “A” performs several sales not exceeding the 25% participation limit referred to in the Convention, until it reaches the desired 100%.

Country X tax capital gains as ordinary income. However, income derived from the alienation of a qualified participation is exempt.

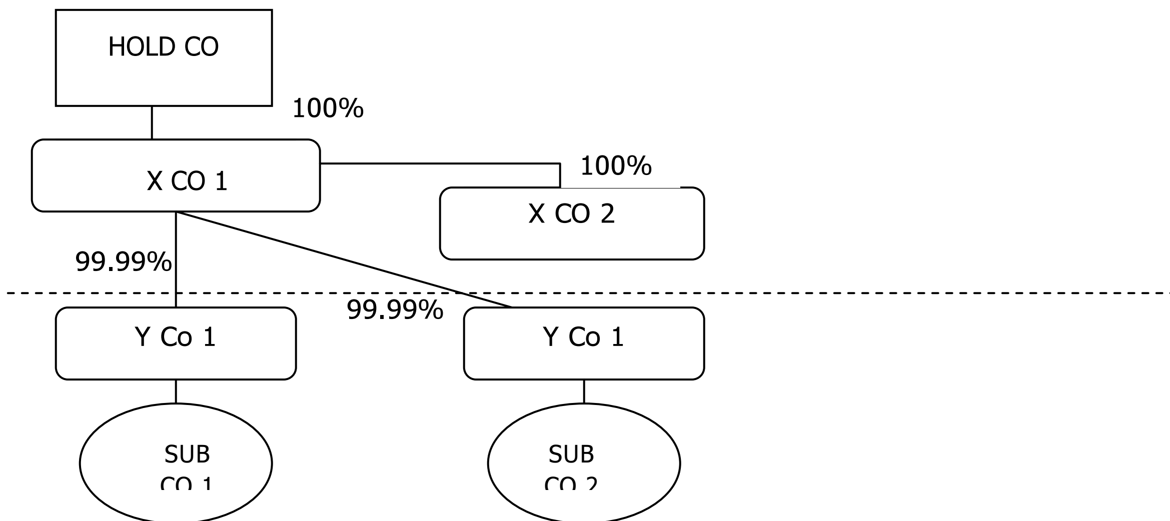
The exemption participation scheme, in addition to the restriction set forth in the Convention, results an attractive strategy to those companies residents of Y that want to sell their shares without paying tax. Moreover, when the shareholders residents of X alienate enterprises in Country Y, they can do so without paying taxes in none of the Contracting States.

Case 3: Capital gains

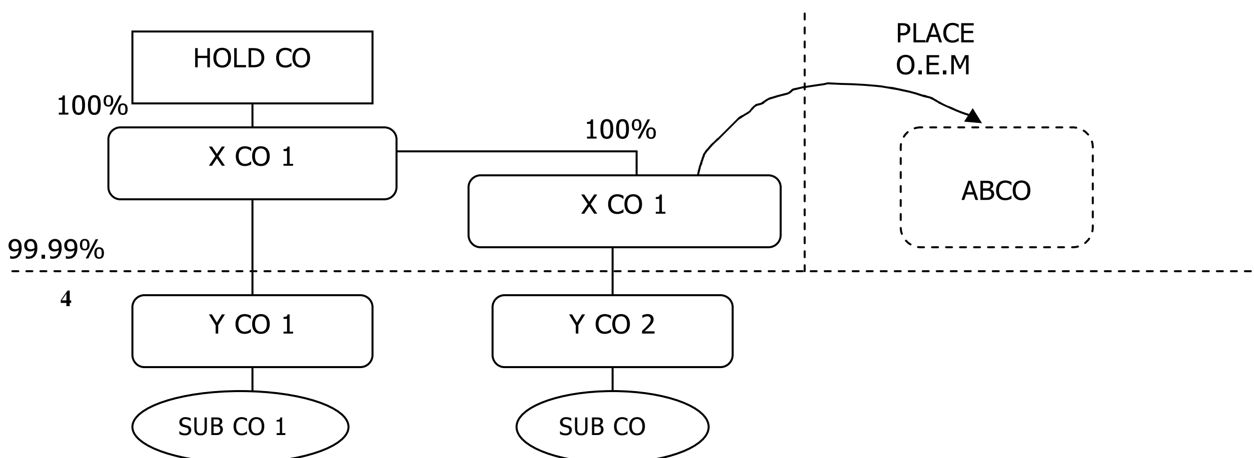
- XCo 1 is a resident of country X
- XCo 1 is completely owned by a holding company (Hold Co) resident of country X
- XCo 1 owns the following companies:
  - XCo 2 (resident of country X)
  - YCo 1 (resident of country Y)
  - YCo2(resident of country Y)

YCo 1 and YCo 2, both have subsidiaries residents of country Y, Sub Co 1 and Sub Co 2, respectively.

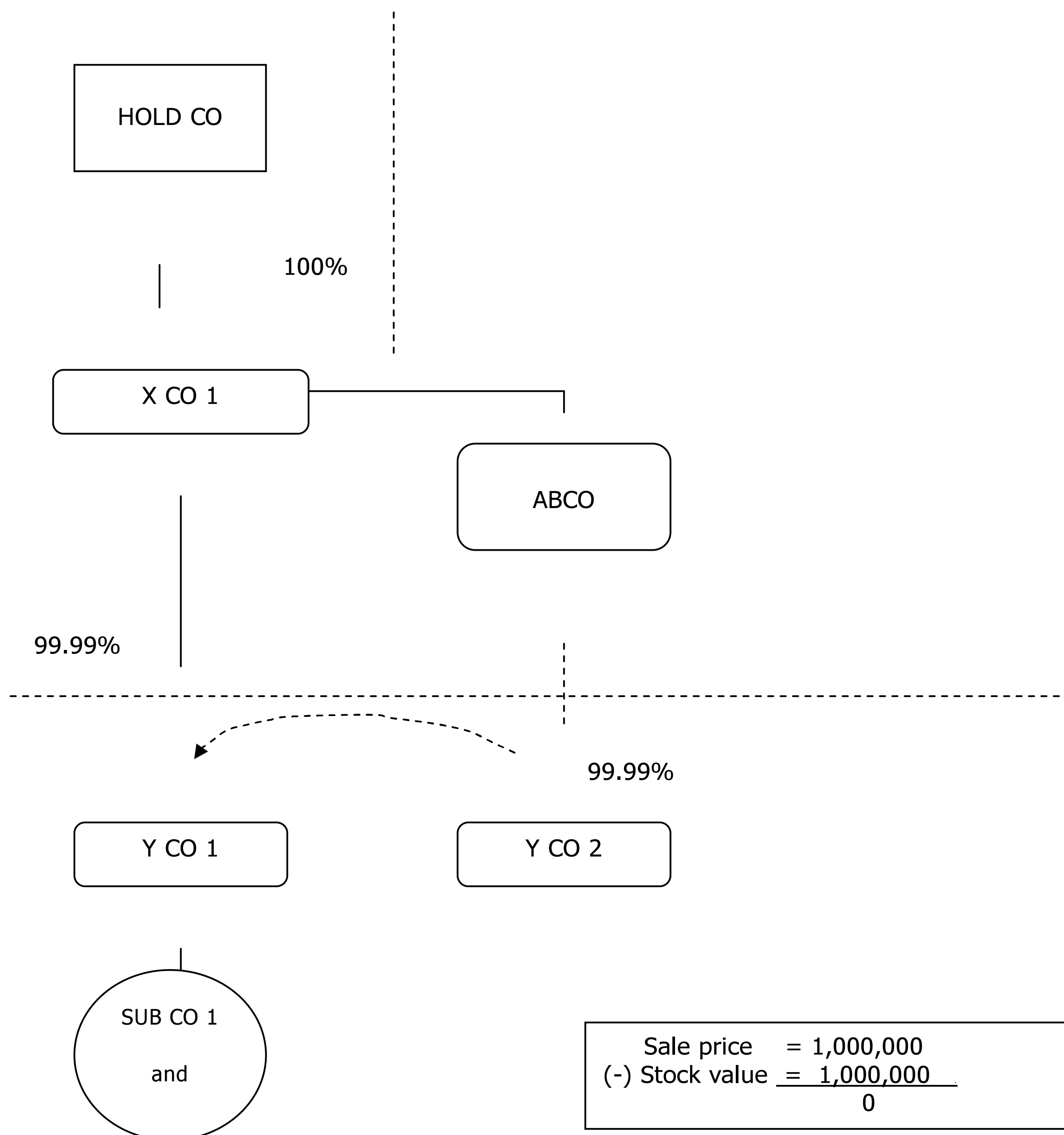
1. X Co 1 sells all its participation in Y Co 1 to X Co 2. According to the tax treaty between country X and country Y, this transaction is tax exempt.



2. XCo 2 / LLC / ABCo, placing its place of effective management in Country A.



3. In order to consolidate the group, AB Co sells the stocks to Y Co 1 at its market value. According to Article 9 between the tax treaty between country Y and country A this transaction is tax exempt as well.



The parties involved in this scheme are taking advantage of the tax treaties in order to avoid paying taxes derived from the stock alienation. They are not paying taxes in Country X, Y or A.

The concept of residence is manipulated in both treaties (X-Y and Y-A)

II. Comments from Mr. Zhiyong Zhang (China)

Provisions to be clarified in the UN Model and its Commentarty for the avoidance of treaty abuse

From our working experience as tax administrators in the People's Republic of China, to avoid improper use of the convention, it is necessary to revise or to clarify the following provisions of the UN Model and its Commentary.

1. Paragraph 3 (a) of Article 5

The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than six months within any twelve-month period.

The above paragraph is unique in the UN Model. The OECD Model does not have such a paragraph. Since service PE is time-based, rather than activity-based like agency PE, taxpayers can circumvent the time threshold for the existence of a permanent establishment through contract splitting. The Commentary does not provide clues as to what a State can do to combat contract splitting. In addition, the term "connected project" needs to be clarified in the Commentary. What are the criteria of connection between one project and another? The Commentary does not have any clue either. Taxpayers, with contracting splitting, can argue that the projects are disconnected.

To solve the above problem, we notice that an Indian court designed a disjunctive test, which tries to see, in case one part of the contract being excluded, whether the other part would survive. If one part stands unaffected in the absence of the other, it is a case of two separate contracts. If both parts fall in the event of failure of one, it is a composite, or in another term, connected contract. Maybe, the UN Model should consider enrich its Commentary on the service-PE provision in order to avoid any further improper use thereof.

2. Paragraph 4 of Article 13

Gains from the alienation of shares of the capital stock of a company, or of an interest in a partnership, trust or estate, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State. In particular:

(1)Nothing contained in this paragraph shall apply to a company, partnership, trust or estate, other than a company, partnership, trust or estate engaged in the business of management of immovable properties, the property of which consists directly or indirectly principally of immovable property used by such company, partnership, trust

or estate in its business activities.

(2) *For the purposes of this paragraph, "principally" in relation to ownership of immovable property means the value of such immovable property exceeding 50 per cent of the aggregate value of all assets owned by the company, partnership, trust or estate.*

In practice, the 50% value threshold for determining whether immovable property is the principal asset of an entity for the purpose of determining source taxation is abused through the prospective dilution of the value of such property before the transfer of an interest in the entity in order to avoid source-country taxation. It seems advisable to add something in the Commentary to combat dilution.

3. Paragraph 5 of Article 13

Gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of at least 25 per cent in a company which is a resident of a Contracting State may be taxed in that State.

In practice, the participation threshold is abused through stepping transactions and time-splitting sales to avoid source-country taxation. Since the above provision is unique in the UN Model and its Commentary, it seems necessary either to redraft the provision or to add something in the Commentary to clarify the provision. Mexico usually adopts a twelve-month time range to protect the source country taxation.

In addition, neither the provision nor the Commentary contains anything regarding whether "participation" was meant to be direct or indirect. This causes trouble in application.

To solve the problem, paragraph 5 of Article 13 may be redrafted as follows.

Gains derived by a resident of a Contracting State from the alienation of stock, participation, or other rights in the capital of a company or other legal person which is a resident of the other Contracting State may be taxed in that other Contracting State if the recipient of the gain, during the 12 month period preceding such alienation, had a participation, directly or indirectly, of at least 25 percent in the capital of that company or other legal person.

4. Paragraph 2 of Article 10

The 10 per cent and 25 per cent shareholding thresholds in paragraph 2 of Article 10, of the UN Model and the OECD Model respectively, for source-country dividend withholding tax, may in practice invite abuse by taxpayers, who increase their shareholding percentage prior to dividend distribution in order to qualify for the reduced rate of withholding tax.

5. Articles 10, 11 and 12

For passive income articles, there exists wide possibility for conduit arrangements. To combat conduit arrangement, it is advisable for the UN Commentary to have something similar to paragraph 21.4 of the OECD Model commentary on Article 1. In addition, the style of anti-conduit arrangement used in the United States is also very valuable and could be reflected in the UN Model commentaries.

The US style of anti-conduit arrangement is to define the term “conduit arrangement” in Article 3 as follows.

k) the term "conduit arrangement" means a transaction or series of transactions:

(i) which is structured in such a way that a resident of a Contracting State entitled to the benefits of this Agreement receives an item of income arising in the other Contracting State but that resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting State and who, if it received that item of income direct from the other Contracting State, would not be entitled under an Agreement for the avoidance of double taxation between the State in which that other person is resident and the Contracting State in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favorable than, those available under this Agreement to a resident of a Contracting State; and

(ii) *which has as its main purpose, or one of its main purposes, obtaining such increased benefits as are available under this Agreement.*

Then the following paragraph is added in the passive income articles.

“The provisions of this paragraph shall not apply in respect of any dividend (interest, royalties) paid under, or as a part of, a conduit arrangement.”

In addition, the commentary on the limitation of benefit in the OECD Model could also be reflected in the UN Model.

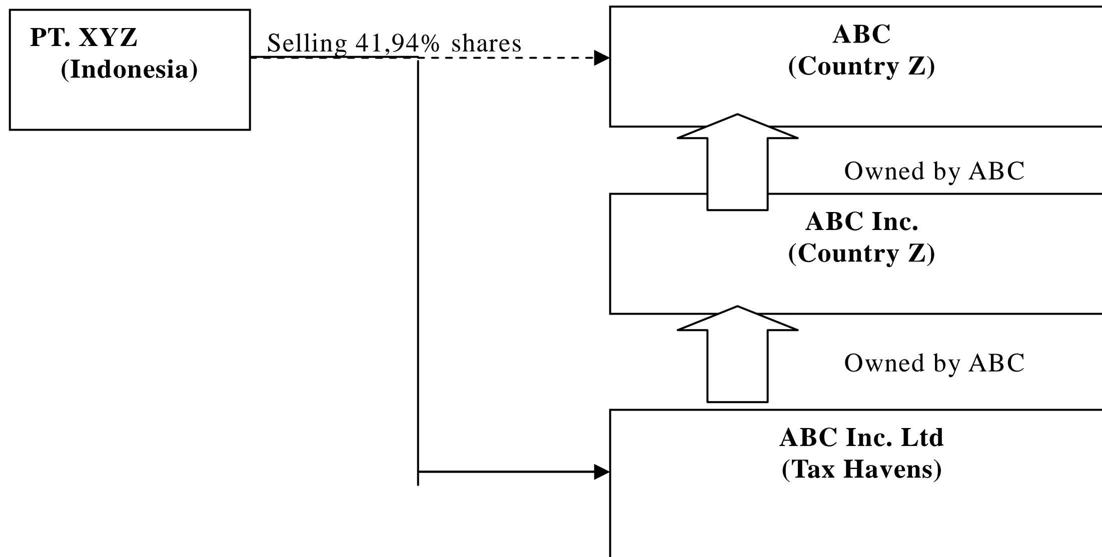
III. Comments from Indonesia

Case of Indonesia : Treaty abuse.

OUTLINE

Firm XYZ in Indonesia is planning to divestate 41,94% of its share and to sell them to firm **ABC** (located in Country Z). **ABC** is buying shares through other company controlled by firm **ABC Inc. which also owned by a** *special purpose vehicle (SPV) namely* **ABC Inc. Ltd**, located in a Tax Havens country.

(Please see diagram below):



In the scheme above, one question could be raised: Why did not firm ABC buy it directly, but using an SPV located in Tax Haven country instead ?

To understanding what is going on one must compare tax treaty agreements between Indonesia-Country Z than that of Indonesia-Tax Haven country.

Analytical consideration :

Suppose Firm XYZ (Indonesia) sells its shares directly to ABC Inc Ltd, according to Indonesia-Tax Havens' treaty agreement, the capital gain proceeds of such transaction will be taxable in Indonesia. When the price of shares increases, the ABC Inc Ltd will get the profit which will be exempted from income tax according to Tax Haven country's domestic law, provided those shares were sold to ABC Inc in Country Z.

ABC, ABC Inc and ABC Inc Ltd are companies from the same group that could manage the selling price of shares from Tax Haven to Country Z. Assuming of a higher tax rate on Capital Gain in Country Z, then ABC will prefer to buy shares from Tax Haven with low prices rather than buying shares directly from Indonesia.

In addition, the difference in tax rate on dividend according to Indonesia-Tax Haven and Indonesia-Country Z treaty agreements will encourage ABC to have a second benefit. The reduced rate given to Tax Haven will cause Indonesia to suffer more losses than 5% in term of taxes, considering the discrepancy of dividend tax rates between those tax treaties.

Putting into matrix , the scheme could be seen as follows :

Remarks	Treaty Indonesia-Country Z	Treaty Indonesia-Tax Haven	Discrepancy
Capital Gain	Domicile Country (taxable) at current market price	Domicile Country (non taxable) at current market price	Shares Price increase
Dividend	Shares ≥ 25% = rate10% Others= rate 15%	Shares ≥ 20% = rate 5% Others= rate 10%	5% by using Tax Haven Treaty rate

IV. Comments from Mr. McIntyre

At the December 2005 meeting of the Committee of Experts on International Cooperation in Tax Matters, the committee appointed a subcommittee to consider changes in the text and commentary of the UN Model Convention dealing with international tax evasion and avoidance through treaty mechanisms (tax treaty abuses). The subcommittee includes: Mr. Lee (Republic of Korea), chair; Mr. Silitonga (Indonesia); Mr. Lara Yaffar (Mexico); Mr. Zhang (China); Prof. Garcia Prats (Observer, Universitat de Valencia); and Mr. Sasseville (Observer, OECD).
Comments were invited from outside observers and particularly from independent academics, such as myself, who have worked with the former Expert Group for many years. In response to that invitation, I offer the following comments.

1. Overall Strategy

It is well understood that tax treaties are widely abused and have been abused widely for decades. The reasons are multiple, but here is a short list of some major reasons:
(1) Many tax treaties require the source state to cede jurisdiction to tax items of income with no mechanism in place for guaranteeing that the residence state will tax those items of income. The result, from the very design of tax treaties, is that international tax avoidance or evasion is promoted.
(2) Most treaties have no mechanisms in place for limiting treaty shopping, and most countries make no effort to police treaty shopping. And the few countries that do attempt to prevent treaty shopping have been ineffective, due to the lack of information flows and the complexity of the anti-treaty shopping rules.
(3) Tax treaties encourage taxpayers to use affiliated companies for tax avoidance reasons. They do this in several ways.
First, Article 5 of the typical treaty provides that a corporation engaged in business in a source state will not be treated as creating a PE for a related corporation in that state merely because of their joint ownership interests. That rule, although perhaps defensible if read narrowly, has been read very broadly, to the point that a related corporation generally will not be treated as a PE of a related company even if the two companies are engaged in extensive business dealings with each other and are both engaged in a joint enterprise in the source state.
Second, Article 9 of the typical treaty has enshrined the arm’s length method as the exclusive method of allocating income among related persons, despite the major flaws in that method.
Third, treaties use an artificial method for determining the residence of a corporation, relying on certain ceremonial events to determine its place of management or allowing residence to be determined by place of incorporation.
Fourth, tax treaties have failed to keep up with the ability of the tax avoidance and evasion industry to design various hybrid entities to avoid or evade taxes.
(4) Most courts, some tax administrations, and virtually all MNEs tend to interpret treaties in a wooden and excessively narrow manner when that reading is helpful to the taxpayer.
In many cases, little effort is made to interpret treaties in light of their purposes, despite language in the Vienna Convention on the Law of Treaties that requires a purposeful approach to treaty interpretation. This wooden approach is not inevitable, however, as the courts of a few countries have shown.
(5) Treaties generally do not have rules requiring taxpayers to take consistent positions in

the two Contracting States when claiming a treaty benefit.
(6) Treaties, including model treaties and commentaries, typically have not kept up with new business and investment methods or with new techniques for international tax evasion and avoidance.
(7) The holders of model tax treaties have sometimes sought to counter treaty abuses by inserting language in the commentaries to the model treaties. Those commentaries are afforded little or no weight by the courts of some countries. Given the widespread practice of treaty shopping, the overall effect of the commentaries in combating tax avoidance and evasion has been fairly small.

Any effective strategy for limiting abuse of treaties needs to address the root causes of the abuses. In my comments, I shall suggest techniques for dealing with abuses that would respond, to the extent feasible, with the causes of treaty abuse outlined above.
In particular, I believe an effective strategy for combating treaty abuse should contain the following elements:
(1) A clear understanding that no country relinquishes source jurisdiction by default or by interpretation. Any relinquishment of source jurisdiction should be by explicit provision in a treaty, not by some aggressive inferences drawn from ambiguous language in a treaty.
(2) The relevant commentaries on the model treaty upon which the bilateral treaty was based should be made relevant to the interpretation of the treaty by explicit language in the treaty itself.
(3) The treaty should contain a strongly worded anti-avoidance rule that would allow substance to prevail over form in determining whether a taxpayer is entitled to treaty relief.
(4) The treaty should specifically authorize, with appropriate safeguards, the Contracting States to use their domestic legislation to combat treaty abuses.
(5) Contracting States should be encouraged to provide for shared taxation of income from cross-border transactions in most cases. The opportunities for tax avoidance and evasion are reduced significantly if both the source state and the residence state have an interest in an accurate reporting of income by the taxpayer.
(6) When treaty abuses are well-known and the techniques for dealing with those abuses are well understood, a model tax convention should be amended to address the abuse with a specific provision. Member states should be encouraged strongly to update their treaties through a protocol or otherwise to include newly developed anti-avoidance provisions in all of their bilateral treaties.

2. Treaty Interpretation

I recommend that the UN Model Convention be amended to include in Article 1 some explicit instructions to courts and tax administrations on how a treaty based on the UN Model Tax Convention should be interpreted. The text of the existing Article 1 should be moved to Article 2, with Article 2 labeled as “Persons and Taxes Covered”. In particular, I recommend that Article 1 be amended as follows:

Article 1
Interpretation of this Convention

1. This Convention shall be interpreted by the competent authorities and instruments of government of the Contracting States in light of its two purposes. Those purposes are (1) to encourage productive economic activity and investment by reducing the risk of double taxation and (2) to eliminate opportunities for taxpayers to evade or avoid taxes otherwise due.

2. By entering into this Convention, the Contracting States agree on the following interpretive principles:

(a) A Contracting State does not intend to relinquish its right to tax income arising within its territory under this Convention unless it has explicitly expressed that intent in this Convention.

(b) In determining whether a taxpayer is entitled to a claimed treaty benefit, substance should prevail over form. A Contracting State, at its discretion, may decline to provide a benefit otherwise provided under this Convention if either the transaction (or set of related transactions) giving rise to a claim for that benefit lacks economic substance, or the transaction (or set of related transactions) was not motivated by a *bona fide* business or investment purpose.

(i) A transaction or set of related transactions shall not be considered to have a *bona fide* business or investment purpose if one of the substantial purposes for entering into the transaction or set of related transactions was the avoidance or evasion of taxes.

(ii) A transaction or set of related transactions shall be considered to lack economic substance:

(A) If the reasonably anticipated financial gain from the transaction or set of related transactions, aside from tax benefits, is zero or less; or

(B) If the reasonably anticipated financial gain from the transaction or set of related transactions, aside from tax benefits, is trivial relative to the capital invested, risks incurred, or services performed.

(iii) A taxpayer does not have the right to repudiate the form it has chosen for conducting its own transactions or the transactions of related persons or other persons under common control.

(c) Domestic legislation adopted by a Contracting State in good faith to prevent the use of this Convention to avoid or evade taxes will not be considered to contravene this Convention merely because the legislation disproportionately affects residents of the other Contracting State.

(d) Except as explicitly specified in this Convention or in the instruments accompanying its ratification:

(i) This Convention shall be interpreted in accordance with the commentary to the model tax convention prepared under the aegis of the United Nations, as it may be amended in the future.

(ii) An interpretation by a Contracting State of a provision included both in this Convention and in that model tax convention shall not be considered to
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contravene this Convention if that interpretation has been endorsed by that commentary.

(iii) An amendment to that commentary made after the ratification of this Convention shall not be taken into account by the Competent Authorities and

instruments of government of the Contracting States in interpreting this
Convention if the Competent Authority of one of those states has given
written notice, within the year following the adoption of that amendment, of
an intent not to be bound by it.
3. The right of a taxpayer to claim a benefit under this Convention is premised on
the taxpayer acting in good faith. A taxpayer is deemed not to have acted in good faith
if the taxpayer characterizes a transaction for purposes of this Convention in one
Contracting State in a way that is fundamentally inconsistent with the position taken
in the other Contracting State.

3. Combating Treaty Abuses Through Detailed Substantive Rules

An appropriate legal framework, such as the one suggested in section 2, above, is a
prerequisite for dealing effectively with treaty abuses. In addition, it is important to adopt, in
the model tax convention and the commentary, some specific provisions to deal with known
abuses. I offer some general guidance here without getting into details. In some cases, the
OECD has provided some detailed rules that could serve as a starting point for the
subcommittee.
a. *Entity Isolation*. Taxpayers should not be permitted to use the ability of corporations to
multiply endlessly to avoid or evade taxes. One popular tax planning technique, called entity
isolation, is to put nexus-attracting assets and activities in a corporation that earns little
income and to use that entity to shelter the more substantial income of a related legal entity. I
have suggested ways of preventing the use of related legal entities to avoid the PE rules in
comments submitted to the subcommittee, chaired by Mr. Sollund (Norway), that has been
assigned the task of addressing that issue. Those comments are attached.
b. *Withholding Rate Reductions*. The UN Model Convention suggests that the withholding
rates in the Contracting States should be reduced, but it declines to offer specific advice on
what the treaty rates should be. I think at least some guidance should be given to developing
countries, in the commentary and, in some cases, in the model convention itself. In particular,
I suggest that the commentary offer the following advice:
(1) Developing countries should be urged not to accept a zero rate of withholding
on any category of investment income. Obviously, a developing country has a revenue
interest in not accepting a zero rate, and most developing countries do not accept a
zero rate for that reason. Still, it is useful to note reasons, aside from revenue
concerns, in support of that position. Without a positive rate, the information flows on
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investment income tend to disappear. In addition, some dishonest taxpayers will feel
free to fabricate transaction to minimize their taxes after they have determined what
course of action would have been optimal for that purpose. They cannot do that freely
if the fabricated transactions would expose them to a withholding-tax liability.
The tax revenue from investment income ought to be shared in some reasonable
fashion between developed and developing countries. That position was taken in the
first model treaty prepared by the Fiscal Committee of the League of Nations in the
1920s and has been the position of the developing countries since that time. A zero
rate never results in fair sharing. As a practical matter, many developed countries do
not tax the investment income of their residents. A zero rate in the source state,
therefore, often results in international tax avoidance.
(2) A developing country should not reduce its withholding rate on interest and
royalties paid to a related person below 15% and in most cases should use a rate of at
least 25%. Low rates on deductible payments to related persons encourage earnings

stripping. In addition, developing countries should reserve the right to limit the deduction for royalty and interest payments in cases that appear abusive.
(3) Developing countries should clearly reserve the right to deal with tax avoidance through the use of new financial instruments.
c. *Hybrid Entities*. The OECD has done some useful work on dealing with hybrid entities — entities that pose, for example, as a partnership in one Contracting State and as a corporation in the other Contracting State. At a minimum, the UN Commentary should provide that a Contracting State may treat a hybrid entity for tax treaty purposes however it wishes as long as that treatment is consistent with at least one of the positions taken by the taxpayer with respect to that hybrid entity. In general, I think the UN Expert Committee should follow the lead of the OECD in dealing with hybrid entities.
d. *Troublesome OECD Initiatives*.
(1) *E-Commerce*. The OECD has adopted rules for taxing income from electronic commerce that effectively denies the source country the right to tax such income in most cases. This initiative is not in the interests of any countries, since it almost certainly will result in widespread tax avoidance and evasion. It is particularly troubling to the developing countries, which are likely to have an adverse balance of trade with respect to e-commerce. On this issue, the UN Commentary should explicitly uncouple the UN Model Convention from the OECD initiative on ecommerce.
(2) *Taxation of Bank Branches*. The OECD, under intense pressure from the international banking community, has been developing rules that would allow a branch of a bank to treat itself as if it were a separate legal entity for purposes of

applying the transfer pricing rules. It is highly unlikely that these rules will be workable or desirable in developing countries. Again, the UN Expert Committee should not follow the OECD lead on this matter.
e. *Transfer Pricing*. In 1995, the OECD came out with guidance on how tax departments and taxpayers should compute profits on inter-company transactions under the arm's-length method. For the most part, that guidance, along with subsequent amendments, has been very useful to developing countries. In particular, the misnamed Transactional Net Margin Method which is not really a transactional method at all, can be used by developing countries in difficult cases to achieve an arm's length result.
The big problem for a developing country in applying the arm's length method is the lack of contemporaneous documentation from taxpayers. It is important, therefore, that a developing country not be tied to any particular method when a taxpayer fails to provide contemporaneous documentation that establishes that it has complied with one of the approved arm's-length methodologies. I suggest that the commentary to Article 9 of the UN Model Tax Convention include a paragraph that makes clear that a taxpayer cannot claim the benefits of Article 9 unless it has provided substantial contemporaneous documentation of its pricing method and that pricing method is consistent with Article 9.
f. *Treaty Shopping*. The UN Expert Committee ought to develop a model article dealing with treaty shopping. Opportunities for treaty shopping are greatly reduced when the source country retains the right to tax and exercises that right. As a result, the typical tax treaty entered into by a developing country is less subject to treaty shopping abuse than most treaties between OECD countries.
The United States has been the leader in promoting an anti-treaty shopping article in tax treaties. That article is generally called a "Limitation on Benefits" article. Unfortunately, the U.S. approach has been to have detailed rules that are often avoided by skillful tax planners, leading to even more detailed rules. I think simpler rules that leave considerable discretion to the tax authorities are more likely to be effective.

g. *CFC Rules*. In recent years, several developing countries have adopted controlled foreign corporation (CFC) rules for dealing with tax avoidance and evasion through foreign entities. Those rules are common in developed countries. At a minimum, the UN Model Tax Convention should make clear that such rules are compatible with a country's treaty obligations and are a desirable feature of a country's domestic tax legislation. Rules also should be developed to deal with the potential double taxation of CFC income. A consideration of that issue, however, is outside the jurisdiction of this subcommittee.

h. *Income from Immovable Property*. Developing countries never should relinquish their right to tax income from immovable property or from the extraction of natural resources. Tax treaties have been interpreted, however, to limit source jurisdiction even over the extraction of natural resources. Companies involved in those industries tend to operate through many separate entities, some of which are held not to have a PE in the source country. The solution to this set of problems is to remove taxation of income from natural resources from Article 5 (the PE article) to Article 6 (Income from Immovable Property). Income classified as income from immovable property is taxable in the source state whether or not the taxpayer has a PE in that state.

I have addressed this issue in greater detail with respect to the taxation of fishing in comments provided to the subcommittee dealing with a revision of the PE rules. As noted above, those comments are attached. In brief, I recommend that the phrase "fishing places of every kind" be added to the list of property to be treated as immovable property.

i. *Other Income from Sale of Shares*. Article 13 of the UN Model Tax Convention generally provides that the rules governing the taxation of immovable property cannot be avoided through the use of holding companies. This rule is a useful complement to Article 6. Similar rules are provided in Article 13 to prevent certain business profits from escaping taxation.

My one problem with Article 13 is that it provides as a residual rule that gain from the sale of shares not dealt with elsewhere in that article may be taxed only in the country of residence. Such a residual rule is not a good idea, as it tends to promote international tax avoidance. At a minimum, the rule should apply only if the residence country actually imposes a tax on that income exempted in the source country. A better rule would be to provide for shared taxation in the source state and the residence state. Such an arrangement would improve the chances that the residence country would be able to get information about stock sales occurring in the source country.