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14 September 2012

Comments on the OECD Safe Harbours Draft of June 6, 2012

Dear Mr. Andrus,

We are pleased for the opportunity to submit our comments on the Safe Harbours Draft. We have also had the opportunity to read through the letter of comments submitted by USCIB dated August 28, 2012, as published on their web home page. As we share all comments therein, including the praise for the positive shift in the Draft about safe harbours, we will focus our comments below on unilateral safe harbours, which the Draft discusses somehow in a negative tone.

Bilateral (or multilateral) agreements clearly allow for the optimal compromise between certainty, compliance simplicity, risk management and fair allocation of taxing rights. The sample MOUs attached to the Draft do illustrate all significant benefits of bilateral approaches.

Statistics and professional experience show, however, that unilateral rulings, agreements and APAs, if compared to bilateral ones, do provide benefits in that they are less time-consuming and simpler to manage.

MNEs face different level of risks depending on each Country's tax policy on business investments, inbound or outbound. Some Countries do have a stable tax environment, others face continuous reforms and amendments affecting stability and certainty on investments. Revenue authorities and auditors have different attitudes or even different budgetary objectives and constraints from time to time. Tax laws of certain Countries allow the Revenue to collect taxes provisionally, wholly or partially, on the basis of tax assessments before any judicial review by exposing MNEs to major cash flow constraints. Other Countries do not provide for that.

MNEs may also have developed different relationships with the tax authorities' of a given Country with a business-friendly approach or focusing on capital import objectives compared to others. Some MNEs may also have transactions suitable for safe harbours between subsidiaries of Countries with comparable levels of effective tax rates, others between a low-tax company and a high-tax one. Tax life in the daily practice gives a whole range of experiences.

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In some of the above scenarios, particularly if the relevant Countries have different attitudes, different effective tax rates and/or unbalanced taxing powers in the relationship with taxpayers, a unilateral safe harbour may be the most practical and beneficial instrument both to MNEs and tax authorities to achieve certainty, respectively, on tax burden and collections.

We will therefore hope that the WP6 discussions on the Draft will lead to a revision that will highlight the benefits of bilateral and multilateral safe harbours without negative emphasis on the unilateral ones, which may prove beneficial to MNEs and tax authorities equally in quite a range of scenarios.

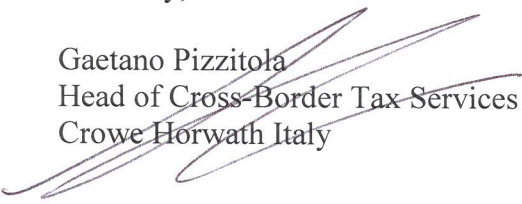
As transfer pricing is not an exact science, any unilateral safe harbour, if based on arm's length principles and ranges, should not lead to major exposure of double taxation or non-taxation by, thus, achieving an effective balance between certainty, compliance simplicity, risk management, and tax revenues collection.

We trust that any resolution that WP6 will be making on the revision of the safe harbours Draft will be guided by consensus on the overarching goal of simplification for all stakeholders. Safe harbours would be an instrument of simplification at times in which legitimate requests of many Countries to get a thorough understanding of the transfer pricing policy applied by MNEs have caused an increasingly burdensome level of transfer pricing documentation compliance in most Countries on top of all further reporting compliance about intragroup transactions (as requested for accounting purposes, FIN 48-type documentation, etc., as generally applicable to all MNEs.)

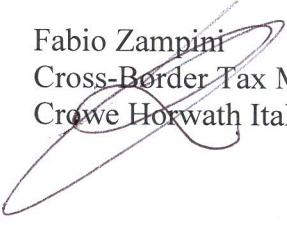
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Thank you again for the opportunity to participate in the discussion on the subject matter.

Sincerely,



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