

COMMENTS FROM THE FRENCH BANKING FEDERATION RELATING TO THE ACTION 7 OF THE BEPS PUBLIC DISCUSSION DRAFT ON “ADDITIONAL GUIDANCE ON THE ATTRIBUTION OF PROFITS TO PERMANENT ESTABLISHMENTS”

The FBF, as the voice of the French banking sector representing the interests of over 400 banks operating in France, encompassing large and small, wholesale and retail, local and cross-border financial institutions, is pleased to provide comments on the OECD Discussion draft entitled “BEPS action 7 : Additional Guidance on the Attribution of Profits to Permanent Establishments”. It is crucial for us to have the opportunity to provide our comments as well as our input, particularly given the complexity of certain issues under this discussion. We thank the OECD for the consultative process underway and call for a continued interaction with the private sector so that the voice of business is duly taken into account.

Preliminary remarks

It is essential that the rules to determine the profits attributable to the branches especially transfer prices rules be applied to branches as applied to a separate entity especially in order to fully recognize the transactions between the head office and its branches.

Other remarks

Indeed, for regulatory reasons, banks rely on permanent establishments or branches in very different ways to most companies. In particular for regulatory capital reasons, banks often use permanent establishments of a single legal entity in many countries. For example within the EU, regulatory permissions mean that a permanent establishment of a bank can rely on the permissions granted to it by the home country regulator to operate across the EU through permanent establishments.

Non-banking groups would be more likely to establish subsidiaries for these purposes as the same regulatory requirements do not exist. Therefore, the rules described in the draft are irrelevant for banks given their activities and their structural and operational organizations.

We are surprised at the methodology adopted which takes examples to identify principles when it would be have been more effective and safe to proceed in reverse order. The major principles should be proposed to cover all situations. Indeed the use by the tax authorities of the examples is a real concern. These examples should in no case be considered as economic model as they are somewhat basic and cover limited scenarios.

Especially, the guidance should made it clear that they far more complexed cases which would require a different approach than the ones described in the draft.