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Financing for Development Office
U.N. Dept. of Economic and Social Affairs
2 U.N. Plaza, Room DC2-2172
United Nations
New York, N.Y. 10017

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Dear Mr. Lennard,

I am writing concerning the proposal to modify the commentary on article 9 of the UN Model Convention. USCIB[1] is quite concerned with the proposed changes, partly because of the potential effect of those changes and partly because of the lack of process surrounding the development of both those changes and the UN Transfer Pricing Manual. This is relevant because the proposed chan" highly important for avoiding international double taxation of corporate

profits that a common understanding prevails on how the arm's length principle should be applied." Nevertheless, the proposal treats the UN's Transfer Pricing Manual as another source of "authoritative assistance" in the field of transfer pricing. The commentary mentions that the Manual "seeks broad consistency" with the OECD Transfer Pricing Guidelines. However, if true consistency

Broad consistency is not necessarily consistent at all. A broad consistency that permits countries to argue that their

OECD Transfer Pricing Guidelines. This was confirmed, for example, in the report of the sixth session of the

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[1] USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing leading international business organizations, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

committee of tax experts (paragraph 48, page 10) which provides that: "as clearly referenced in the mandate of the Subcommittee the manual would be based on the arm's length principle embodied in Article 9 of the Model, which also would require consistency with the OECD Transfer Pricing Guidelines, to which the United Nations commentaries make a reference." Indeed, the UN Manual itself notes, in its Foreword, that ^[c]onsistency with the OECD Transfer Pricing Gu] o] v • Z • v •}µPZšU • ‰Œ}À] (}Œ]v šZ ^µ }uu]šš accordance with the widespread reliance on those Guidelines by developing as well as developed countries.

The rationale that the Manual was only intended to provide practical guidance and not a second source of authoritative guidance was the principal reason given that it was not necessary to have an inclusive process in developing the Manual. (See the report of the eighth session of the committee of tax experts, paragraph 17, page 6.) The recognition of the Manual as a source of authoritative guidance rather than a practical manual is an attempt to retroactively change the status of the Manual, but a Manual intended to be used as a source of authoritative guidance should have required a more inclusive process than actually took place. This lack of transparency has been perpetuated by the fact that the proposed changes were developed and put forward for approval without any opportunity for input by stakeholders, including the many governalib7.62 449thout a sa0cb7.62 449thouhe ab

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position reflected in the OECD Transfer Pricing Guidelines), whether developing or developed, be given more weight? It seems inconsistent for G20 countries and other non-OECD countries that are now advocating for their views to be reflected in the OECD Transfer Pricing Guidelines to accept concessions from others participating in the development of those Guidelines and then undercut the very outcome of those negotiations by arguing elsewhere for positions that were rejected in that forum. If v Ç v } š] } v } (^ ( ] Œ v • • _ Z • Œ o À v] v] v š Œ