

OECD's Current Tax Agenda

APRIL 2011



Table of contents

Message from the Secretary-General of the Organisation for Economic Co-operation and Development	1
The OECD: What is it?	4
The Committee on Fiscal Affairs	7
The Centre for Tax Policy and Administration	12

HOT TOPICS

Tax Reforms to Improve Economic Performance	17
The Role of Tax for Development	20
Offshore Voluntary Disclosure	25
Multilateral Convention on Mutual Administrative Assistance in Tax Matters	30
Green Growth and Climate Change: Taxation and Tradable Permits ...	33
Value Added Taxes: Could Do Better?	38
Addressing Tax Risks from Bank Losses	42
Strengthening the Role of Taxation in the Fight Against Corruption and Financial Crime	43
Tax Relief and Compliance Enhancement (TRACE)	51

CORE ISSUES

Tax Conventions and Related Questions	57
Tax Policy Analysis and Statistics	65
Taxation of Multinational Enterprises	75
Consumption Taxes	80
International Tax Co-operation	83
Tax Administration	92
Transparency and Exchange of Information for Tax Purposes	102
Developing a Global Partnership	109
Network on Fiscal Relations across Levels of Governments	113
International Tax Dialogue	117

CTPA Management Team

Want to Know More?

.....	120
.....	121

Taxation of Multinational Enterprises

CORE ISSUES

The Transfer Pricing Guidelines

Commercial transactions between different parts of a multinational group may not be subject to the same market forces shaping relations between two independent firms. Transfer prices – payments from one part of a multinational enterprise for goods or services provided by another – may diverge from market prices, with consequences for the division of tax revenues between governments.

The standard, accepted worldwide, for multinational enterprises to price the cross-border transfer of goods, intangibles and services among related



The panel on Information and Transfer Pricing : Document Requirements, Exchange of Information and Burden of Proof Issues, part of the Conference on Transfer Pricing and Treaties in a Changing World, which attracted over 700 delegates from 100 economies on 21-22 September 2009. *Left to right:* Guglielmo Maisto, Maisto e Associati, Italy; Sabine Wahl, Mouvement des Entreprises de France (MEDEF), France; Feng Lizeng, Deputy Division Director, International Taxation Department, State Administration of Taxation, China; Michelle Levac, Canada Revenue Agency, Canada.

enterprises is the arm's length principle set out in Article 9 of the OECD Model Tax Convention and described in the OECD's 1995 Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (the Guidelines). The Guidelines are not immovable: flexibility and adaptability are crucial to their success. They are therefore continuously reviewed and updated as needed.

Implementing and Updating the Guidelines: New Guidance on Comparability and Profit Methods

Effective monitoring is key to achieving consistent application of the Guidelines. Monitoring involves examining how far member countries' legislation, regulations and administrative practices are consistent with the Guidelines, and identifying areas where the Guidelines may require amendments or additions.

“Globally, more parent companies identified transfer pricing as the most important tax issue they faced than any other issue. ... In addition to its current level of importance, 74% of parent respondents believe that transfer pricing will be “absolutely critical” or “very important” to their organizations over the next two years.”

Ernst & Young 2007 – 2008 Global Transfer Pricing Survey, Global Transfer Pricing Trends, Practices and Analyses (survey of 850 MNEs from 24 countries).

Two related priority areas were the subject of monitoring in recent years which resulted in a major revision to Chapters I-III of the Guidelines in 2010: comparability issues encountered when applying the transfer pricing methods authorised by the Guidelines, and the application of transactional profit methods, *i.e.* the transactional profit split methods and the transactional net margin method.

One of the pillars on which the arm's length principle is based is the need to conduct a comparability analysis in order to compare conditions made or imposed between associated enterprises and those which would be made between independent enterprises, and to calculate the

profits that would have accrued to the enterprise at arm's length. The new Chapter III of the Guidelines reaffirms the central importance of comparability analyses and provides detailed guidance on how to perform them.

The 2010 update to the Guidelines also took into account the experience acquired with the use of profit methods since the Guidelines were first published in 1995, and it removed their status as methods of “last resort”, indicating instead that the transfer pricing method selected should be “the most appropriate to the circumstances of the case”. The update also contains significant new guidance on the application of transactional profit methods, addressing aspects of the application of the profit split method, *e.g.* determining the combined profit to be split and how to split it, and analyzing issues that arise in applying the transactional net margin method, *e.g.* the standard of comparability, and the selection and determination of the net margin indicator.

New Guidance on the Attribution of Profits to Permanent Establishments

Structures involving permanent establishments (PEs) have long been used by multinational enterprises (MNEs) in the financial sector, primarily by banks, and are increasingly created by business models now used outside the financial sector. The Guidelines address the application of the arm's length principle to transactions between associated enterprises that are actually separate enterprises (*e.g.* subsidiaries). The 2008 Report on the Attribution of Profits to Permanent Establishments, which was issued after a multi-year project involving extensive consultation with business, outlined how this principle should apply to allocate an enterprise's profits between its permanent establishment in one country and its operations in another country (*e.g.* the home office). The report covers general considerations, as well as special considerations for banks, global trading of financial instruments, and insurance. The conclusions of the Report were incorporated into the Model Tax Convention in a two-step process: first, through amended Commentary to the pre-existing Article 7 (Business Profits) which was included in the 2008 update to the Model Tax Convention, and secondly through a new text for Article 7 and accompanying Commentary which was included in the 2010 update. An updated version of the Report was released in July 2010 to conform the Report's cross-references to Article 7 and the Guidelines to the new 2010 versions of each.

Business Restructurings

“Business restructuring is a highly important topic and ... BIAAC commends the excellent work that is set out in the Discussion Draft. The document reflects deep and detailed thinking about how the principles and terms of the OECD Transfer Pricing Guidelines (TP Guidelines) and the OECD Model Tax Convention on Income and on Capital apply to restructurings. It also reflects an understanding that restructurings are important global commercial events. BIAAC specifically commends the Discussion Draft for its articulation of the fundamental principles that will now and in the future help clarify and resolve issues relative to restructurings.”

BIAAC comment on September 2008 Discussion Draft on the Transfer Pricing Aspects of Business Restructuring.

Business restructurings by multinational enterprises have been a widespread phenomenon in recent years. They are typically aimed at rationalizing supply chains and maximising synergies, and they involve the cross-border redeployment of functions, assets and/or risks between associated enterprises, which affects the profit and loss potential in each country.

Restructurings may involve cross-border transfers of valuable intangibles. They typically consist of the conversion of full-fledged distributors into limited risk distributors or commissionaires for a related party that may operate as a principal; the conversion of full-fledged manufacturers into contract manufacturers or toll-manufacturers for a related party that may operate as a principal; and the rationalisation and/or specialisation of operations. These restructurings raise difficult transfer pricing issues, which caused the CFA to decide in 2005 to develop guidance on these issues.

This work, which began with a roundtable discussion with business in 2005 and included the issuance of a public discussion draft in 2008, ultimately led to the addition of a new Chapter IX to the Guidelines in 2010. Chapter IX includes a detailed discussion of the transfer pricing aspects of risk bearing and risk transfers, including the extent to which contractual allocations of risks are to be respected, the role of comparables, and the role of the notions of “control over the risk” and of “financial capacity to assume the risk”. It also includes a discussion of the circumstances where, at arm’s length, the restructuring would be compensated.

The new Chapter IX also clarifies that the arm’s length principle and the Guidelines should apply in the same way to transactions that result from a restructuring and transactions that are structured as such from the start, subject of course to the situations being otherwise comparable. It provides an example of application of the guidance to the implementation of a central purchasing function.

Finally, guidance was added on the exceptional circumstances where a tax administration may not recognise, for transfer pricing purposes, the transactions as structured by the taxpayer.

Future Work

The OECD’s future transfer pricing work will focus on two main projects. The first one, which will get underway in 2011 and for which public comment on its scope was sought in 2010, will be an examination of the transfer pricing aspects of intangibles (see www.oecd.org/ctp/tp/intangibles). The project is expected to lead to a revision of the existing guidance in Chapters VI and VIII of the Guidelines and to deal with issues such as: definitional issues; economic versus legal ownership; characterisation of transfers of intangibles; and valuation issues. With this new project, the OECD intends to tackle one of the most complex and controversial areas of transfer pricing today.

The OECD also intends to increase its monitoring activities in order to promote a more consistent application of the Guidelines in member countries, thus pursuing its efforts to prevent transfer pricing disputes and eliminate double taxation.

At the same time, the OECD is launching a review of transfer pricing administration techniques that may be implemented by countries to optimise the use of taxpayers’ and tax administrations’ resources, including tax administrations’ risk assessment strategies.

Key Events

- Annual International Meeting on Transfer Pricing, 3-4 November 2011, Paris.
- Global Forum on Tax Treaties & Transfer Pricing, 23-24 September 2010, Paris.
- Consultation with Business on the Scoping of a New Project on the Transfer Pricing Aspects of Intangibles, 9 November 2010, Paris.

Key Publications

- Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 2010, ISBN 978-92-64-09033-0.
- Report on the Attribution of Profits to Permanent Establishments (Web report), July 2010.

Transfer Pricing on the Web

- www.oecd.org/ctp/tp
- Business restructuring: www.oecd.org/ctp/tp/br
- Comparability and profit methods: www.oecd.org/ctp/tp/cpm
- Intangibles: www.oecd.org/ctp/tp/intangibles
- Profits of permanent establishments : www.oecd.org/ctp/tp/pe

- **Did you know...** the 650 participants at the conference held at the OECD in September 2008 to celebrate the 50th Anniversary of the OECD Model Tax Convention overwhelmingly voted the OECD's 1995 Transfer Pricing Guidelines as the most important treaty development of the past 50 years?
- **Did you know...** that major non-OECD economies like China, India, South Africa, Russia, Indonesia and Singapore base their transfer pricing legislation on the OECD Guidelines?

Want to Know More?

Key Links

Consumption tax	www.oecd.org/ctp/ct
Dispute resolution	www.oecd.org/ctp/dr
Exchange of information	www.oecd.org/ctp/eoi
Harmful tax practices	www.oecd.org/ctp/htp
Global Forum on transparency and exchange of information for tax purposes	www.oecd.org/tax/transparency
OECD tax database	www.oecd.org/ctp/taxdatabase
Partnerships with non-OECD economies	www.oecd.org/tax/globalrelations
Tax administration	www.oecd.org/ctp/ta
Tax crimes and money laundering	www.oecd.org/ctp/taxcrimes
Tax evasion	www.oecd.org/tax/evasion
Tax policy analysis	www.oecd.org/ctp/tpa
Treaty Relief and Compliance Enhancement	www.oecd.org/tax/trace
Transfer pricing	www.oecd.org/ctp/tp
Tax treaties	www.oecd.org/ctp/tt
Tax treatment of bribes	www.oecd.org/ctp/ttb

Key Publications

- Revenue Statistics 1995-2009 (2010 edition)
- Taxation, Innovation and the Environment (2010)
- OECD Tax Policy Studies No.19: Choosing a Broad Base – Low Rate Approach to Taxation (2010)
- OECD Tax Policy Studies No. 20: Tax Policy Reform and Economic Growth (2010)
- Model Tax Convention on Income and Capital (2010)
- Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2010 update)

- Taxing Wages (2010)
- Consumption Tax Trends 2010: VAT/GST and Excise Rates, Trends and Administration Issues
- Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series 2010
- Global Forum on Transparency and Exchange of Information for Tax Purposes, 18 Peer Review Reports



Key Events in 2011

- Tax and Crime: A Whole-of-Government Approach in Fighting Financial Crime, Oslo, 21-23 March 2011
- Second Plenary Meeting of the informal Task Force on Tax and Development, Paris, 11-12 April 2011
- 11th Annual U.S. & Europe Tax Planning Strategies Conference, Paris, 14-15 April 2011
- Global Forum on Transparency and Exchange of Information for Tax Purposes, Bermuda, 31 May – 1 June 2011
- OECD-USCIB Tax Conference, Washington, 6-7 June 2011
- High Level Seminar: Current Issues in Transfer Pricing – Delhi, India, 13-14 June 2011
- OECD 50th Anniversary: High Level Tax Reform Conference, Paris, 30 June 2011
- 16th Annual Tax Treaty Meeting, Paris, 15-16 September 2011
- First Annual Transfer Pricing Meeting, Paris, 3-4 November 2011
- Fifth ITD Global Conference on Inequality, 5-7 December 2011
- Seventh Forum on Tax Administration, Argentina, 18-19 January 2012

Tax News Alerts

To receive the latest OECD tax news, register with our free e-mail alert service: www.oecd.org/OECDdirect

OECD*direct*

Tax Publications

Subscribe to our OECDiLibrary and statistics services:
www.oecdilibrary.org

OECD*iLibrary*

Order our publications

Order our publications through the OECD online bookshop at www.oecdbookshop.org, where you can browse titles on your screen before your buy.

OECD^{online}*bookshop*

Write to us:

OECD
Centre for Tax Policy and Administration
2, rue André Pascal
75775 Paris Cedex 16
FRANCE

The Centre for Tax Policy and Administration offers challenging and rewarding opportunities to economists, lawyers and tax administrators with experience in tax policy or tax administration issues of the type described in this brochure. Vacancies are posted on www.oecd.org/hrm/vacancies.