

Committee of Experts on International Cooperation in Tax Matters

Update of the Transfer Pricing Manual
Report on the editorial process

Approval of the update

- On 13 October 2016 the Committee of Experts approved the update by the Subcommittee
- Subject to editing and correction of errors and inconsistencies
- The update include
 - New chapters on Services, intangibles, cost contribution arrangements and business restructurings
 - Revision taking account of G20/OECD BEPS reports
 - New four part format

Update process

- Written comments from Committee and Public/stakeholders by end October
- Editorial comments and suggestions, not on substance
- Co-ordinator of subcommittee to review and consider in co-operation with Secretariat and editor Hafiz Chodhury
- Where needed, consult with lead and key drafters of chapters

Consistency checks

- One Committee member commented on
- Alternate use of expression «low value adding» and «low margin» services in new chapter on services; and
- Alternate use of «full fledged» and fully fledged» in business restructuring chapter.
- Decision: consistent use of «low value adding» and «fully fledged»

Comment on «sixth method» addition in chapter on transfer pricing methods

- Text arrived at in subcommittee result of difficult discussions
- Fine tuned balance between view not to include in methods chapter and inclusion with informative references to domestic law practices in Latin American countries and caution about disadvantages (incl. risk of double taxation)
- Suggestion to amend statement about clear criteria when applying a «(lack of) substance test
- Some members of subcommittee strongly opposed to change text because perceived as changing substance and shifting balance of compromise text.
- Coordinator's recommendation: Not to change

Comments from Treaty Policy Working Group (Carol A. Dunahoo and Gary D. Sprague)

- General comments:
 - Be even more ambitious in future work in guidance on e.g. intra group services and interest rate issues
 - Further simplification in practical guidance to developing countries
 - Use of Country-by Country report in documentation; local filing, confidentiality etc.
 - Penalties for non compliant documentation where arm's length norm is not breached
 - Clearer statement about the role of Part on country practices

Treaty Policy Working Group cont.

- Specific suggestions for chapter on transfer pricing in domestic law:
 - On safe harbour rules, recognize the role of such rules for simplification purposes
 - Disagreement with statement regarding what «thin capitalization» means
 - On value of APA's for business, replace word «depend» by «rely»
 - Problem of time differences leading to double taxation

Final editing and future work

- Final editorial reading before launch and printing
- Further improvements and future work is up to new membership of Committee
- Suggestions from commentators will be brought to the attention of new membership who will decide on mandate of new subcommittee, if any
- My advice: Put emphasis on enhanced practicability and developing country participation and experience.
- Use feedback from workshops on practical use of the UN TP Manual