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**Committee of Experts on International
Cooperation in Tax Matters
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Geneva, 18-21 October 2022

Item 3(e) of the provisional agenda

Transfer Pricing

Co-Coordinator's Report

Summary

Since its formation at the twenty-third Session, the Transfer Pricing Subcommittee has been working on drafting interstitial guidance in the area of primary products and pharmaceuticals, domestic anti-avoidance rules, transfer pricing implications of CO2 certificates, transfer pricing aspects of the COVID-19 pandemic / economic downturns, dispute avoidance and resolution in the area of transfer pricing as well as a toolkit in conducting efficient and effective transfer pricing risk assessments and audits.

The Subcommittee's Co-coordinators are hereby providing a short progress report on the work undertaken and are seeking *comments and guidance* from the Committee on their work.

Background information

1. At its twenty-third Session, the Committee of Experts on International Cooperation in Tax Matters (the Committee) established the [Transfer Pricing Subcommittee](#) as a multi-stakeholder body. At the twenty-fourth Session, the Subcommittee sought guidance and approval from the Committee on its proposed [work program](#). The proposed work program consisted of seven work streams: (a) industry/sector guidance for primary products; (b) industry/sector guidance for the pharmaceutical industry; (c) a toolkit on transfer pricing risk assessment and audits; (d) national anti-abuse rules for transfer pricing; (e) carbon dioxide (CO₂) certificates; (f) COVID-19/ economic downturns; and (g) dispute avoidance and resolution. With an understanding that there would be further information provided on the issue of national anti-abuse rules at the twenty-fifth Session, the Committee approved the workplan of the Subcommittee.
2. Since the twenty-fourth Session, the Transfer Pricing Subcommittee held several meetings to advance their work. Between May and July 2022, the drafting groups met individually with the Co-Coordinator as well as with resource persons from other Subcommittees / Working Groups (UN Model Convention, Environmental Taxation Issues, Dispute Resolution and Avoidance) to further refine the scope of their guidance and ensure alignment with the work and scope undertaken by other Subcommittees of the UN Tax Committee. On 6 to 8 September 2022, a virtual meeting of the Transfer Pricing Subcommittee took place. This meeting gave Subcommittee participants the chance to engage with each other in advancing their work and to provide comments and input into all work streams. Resource persons from other Subcommittees / Working Groups attended the meeting as well.

Progress report

3. In line with the Subcommittee's mandate, the Co-coordinators want to inform the Committee in the following on the progress of the work undertaken by the Subcommittee and are seeking comments and guidance from the Committee on their work.
4. **Industry / sector guidance for primary products**
 - Progress has been made by the TP Subcommittee to advance the work stream on industry guidance on primary products (e.g., agriculture), reflected in the development of a preliminary outline, which was circulated and discussed during the September 2022 Subcommittee meeting.
 - The outline, that is aligned with the UN Transfer Pricing Manual (2021), covers transfer pricing aspects of primary products in the extraction (primary) production stage of global value chains where raw materials (primary products) are acquired (e.g., the planting and harvesting of crops, the planting and harvesting of trees). The industry will be analyzed using case studies of the soybean and coffee industry as they represent important sources of revenue and employment in developing countries. The guidance will also cover the transfer pricing aspects of intangibles for research and development in seeds and pesticides.

- The drafting group has received valuable inputs and comments from Subcommittee participants and is currently analyzing and incorporating the feedback received.

5. Industry / sector guidance for the pharmaceutical industry

- Progress has been made by the TP Subcommittee to advance the work stream on industry guidance for the pharmaceutical industry, reflected in the development of a preliminary outline, which was circulated and discussed during the September 2022 Subcommittee meeting.
- The outline, that is aligned with the UN Transfer Pricing Manual (2021), covers a description of the value chain of the industry. It also includes an overview of the particularities of the industry, most notably governmental regulations, price controls and parallel imports. Based on this background information, recommendations regarding the delineation of transactions, transfer pricing methods and comparables / benchmarking will be discussed. Thereafter, common transfer pricing risks are covered followed by good practices in auditing. Lastly, a section is devoted to the influence that the COVID-19 pandemic had on the industry (co-operation between third parties, governmental contracting).
- The drafting group has received valuable inputs and comments from Subcommittee participants as well as observers and is currently analyzing and incorporating the feedback received.

6. Toolkits to assist developing country tax administrations in conducting efficient and effective transfer pricing risk assessments and audits

- Progress has been made by the TP Subcommittee to advance the toolkit to assist developing country tax administration in conducting efficient and effective transfer pricing risk assessments and audits, reflected in the development of an outline, which has been discussed and agreed upon with the Working Group on Dispute Avoidance and Resolution. The workplan was circulated and discussed during the September 2022 Subcommittee meeting.
- The toolkit focuses on an audit road map, starting from effective risk assessment (e.g. sources of data, risk flags, development of risk assessment products, etc) through to case selection and conduct of a TP audit (e.g. information gathering, including use of EOI, and functional analysis interviews; preparation of position papers, quality assurance processes etc).
- Based on various inputs received from the TP Subcommittee, work on this topic will continue to be advanced until early 2023, with the aim to present the draft guidance to the Tax Committee during the twenty-sixth Session.

7. Transfer pricing domestic anti-abuse rules

- In view of the ambitious work program of the Subcommittee and after consultation with the Co-coordinators of the Subcommittee on the UN Model Tax Convention, it was decided to currently prioritize other work streams.

8. Transfer pricing aspects of CO2 certificates

- Progress has been made by the TP Subcommittee to advance the work stream on transfer pricing implications of CO2 certificates, reflected in the development of a work plan, which has been discussed and agreed upon with the Subcommittee on Environmental Taxation Issues. The workplan was circulated and discussed during the September 2022 Subcommittee meeting.
- The work encompasses a description of the regulatory framework, carbon credits and the supply chain required to generate carbon credits including the assets used, risks involved, and functions performed.
- Based on various inputs received from the TP Subcommittee as well as public comments, work on this topic will continue to be advanced until early 2023, with the aim to present the draft guidance to the Tax Committee during the twenty-sixth Session.

9. Transfer pricing aspects of COVID-19 / economic downturn

- Progress has been made by the TP Subcommittee to advance the work stream on transfer pricing aspects of the COVID-19 pandemic and economic downturns, reflected in the development of preliminary draft guidance, which was circulated and discussed during the September 2022 Subcommittee meeting.
- During the meeting, TP Subcommittee participants have provided valuable input and comments, which the drafting group is currently analyzing and incorporating into their draft.
- Performing a transfer pricing analysis that is prone to distortions during COVID-19 and/or economic downturns – such as the accurate delineation and recognition of controlled transactions, choosing the most appropriate TP method and its application as well as comparability adjustments – was covered as part of the discussion draft/discussions. Other topics such as standardization, simplification and compliance matters were considered, and are currently developed by the drafting group.
- Based on various inputs received from the TP Subcommittee as well as public comments, work on this topic would continue to be advanced until early 2023, with an aim to present the draft guidance to the tax committee during the twenty-sixth Session.

10. Dispute avoidance and resolution in transfer pricing matters

- Progress has been made by the TP Subcommittee to advance the work stream on dispute avoidance and resolution, reflected in the development of a workplan, which has been discussed and agreed upon with the Working Group on Dispute Avoidance and Resolution. The workplan was circulated and discussed during the September 2022 Subcommittee meeting.
- The workplan includes practical challenges in Mutual Agreement Procedure cases that are not yet addressed in existing UN Tax Committee guidance as well as dispute avoidance mechanisms (e.g. APAs, Joint Audits or risk control mechanisms, like the International Compliance Assurance Programme (ICAP)) with a focus on experiences and concerns of developing countries. A further aspect will be the perceived lack of trust both between Competent Authorities and between tax authorities and taxpayers.
- During the meeting, TP Subcommittee participants provided valuable input and comments, which the drafting group is currently analyzing and incorporating into their report.

Organization of work

11. The Subcommittee continues to be aware of the ambitious work plan ahead of them and has prioritized some work streams over others. It plans to submit items for consideration by the Committee as they are ready starting at the twenty-sixth Session of the Committee. The work is performed by smaller drafting groups that benefit immensely from the generous input of expertise and time of representatives from international organizations, the business community, governmental representatives and academics.