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**Committee of Experts on International  
Cooperation in Tax Matters**

**Twenty-fourth session**

4-7 April and 11-12 April 2022

Item 3 (e) of the provisional agenda

**Transfer Pricing**

**Co-Coordinator's Report**

*Summary*

At its 23rd Session in October 2021, the UN Committee of Experts on International Cooperation in Tax Matters established the Transfer Pricing Subcommittee with the mandate to reflect on the needs of developing countries and to identify and consider where transfer pricing guidance by the Tax Committee is most useful.

The Subcommittee consulted former participants of capacity development workshops and, based on the feedback received, devised its proposed program of work consisting of interstitial publications on industry guidance in the area of primary products and pharmaceuticals, toolkits in conducting efficient and effective transfer pricing risk assessments and audits, domestic anti-avoidance rules, transfer pricing implications of CO2 certificates, transfer pricing aspects of the COVID-19 pandemic and economic downturns more generally as well as dispute avoidance and resolution in the area of transfer pricing.

The Subcommittee seeks **guidance** and **approval** from the Committee on the proposed work programme set out in paragraphs 5 through 11

## **Background and Subcommittee Mandate**

1. At its 23rd Session, the Committee of Experts on International Cooperation in Tax Matters (the Committee) considered note E/C.18/2021/CRP.24 containing background information on the previous work undertaken in the area of transfer pricing. The paper also presented potential topics to be considered by the Committee in relation to transfer pricing.
2. There was strong support in the Committee for continuing the successful work on transfer pricing. Accordingly, the Committee established the Transfer Pricing Subcommittee as a multi-stakeholder body with the following mandate:

The Subcommittee is mandated to consider, report on and propose guidance on transfer pricing issues, on the basis:

- That it reflects article 9 of the United Nations Model Convention, and the arm's length principle embodied in it, and be consistent with relevant commentaries of the United Nations Model Convention
- That the Subcommittee identify and consider the transfer pricing topics where guidance from the Committees was the most useful
- That it reflects the realities for, and the needs of, developing countries, at their relevant stages of capacity development
- That it gives due consideration to relevant work in other forums, including the Inclusive Framework on Base Erosion and Profit Shifting, and may consult broadly.

The Subcommittee shall report on its work at each session.

3. Several Committee members supported the prioritizing of interstitial guidance over an update of the United Nations Practical Manual on Transfer Pricing for Developing Countries (the UN Manual). Interstitial guidance would allow the Subcommittee to focus on key urgent topics. It was also noted that developing countries, especially the least developed, should be consulted on what they considered to be priority topics

## **Overview of Subcommittee's Proposed Work Plan**

4. The first meeting of the Transfer Pricing Subcommittee (the Subcommittee) was held on 3, 4 and 7 March 2022. In preparing the meeting, the Co-Coordiators, with the help of the Secretariat, circulated a questionnaire to former participants of transfer pricing capacity development workshops. Based on answers to the questionnaire, the Co-Coordiators proposed priority topics for the work of the Subcommittee. The Subcommittee discussed the proposed topics and crystalized what they would entail. At this point, the proposal of the Subcommittee is to focus on seven work streams at this point, with the possibility to add further work at a later stage. In a first step, it is proposed that the work streams would result in interstitial guidance with the option to

integrate them into the UN Manual at a later stage should the Committee wish to do so. It was also discussed to, as much as possible, include reference to the Manual in the guidance produced. Any future update of the Manual should likewise include references to the interstitial guidance in relevant sections of the Manual. A broad outline of the proposed topics can be found below for consideration by the Committee.

*Industry / sector guidance for primary products*

5. The work stream on industry guidance on primary products (e.g., agriculture) would contain a description of the value chain of this industry, especially at an international level, including frequently applied business models and contractual terms, as well as an explanation of how functions, risks and assets are commonly arranged. Guidance would distinguish between different sub-sectors, depending on their specific characteristics, such as food (perishable or not), forestry and fishing, among others. Increasing environmental regulation would also be considered given their influence on the industry. With the information gathered, good practices and special guidance would be drafted, for the application of a transfer pricing regime to this industry / sector, including recommendations related to the delineation of the transaction, methods, comparable operations, and potential sources of information. Constant cross references to the UN TP Manual (2021) would complete the guidance to be understood as the UN Manual's application to a specific industry.

*Industry / sector guidance for the pharmaceutical industry*

6. This work stream on guidance for the pharmaceutical industry would contain a description of the value chain of the industry and an explanation of how functions, risks and assets are commonly arranged. It would also include an overview of the particularities of the industry, most notably governmental regulations and parallel imports. Based on this background information, recommendations regarding the delineation of transactions, transfer pricing methods, potential sources of information and comparables will be discussed including the challenge to benchmark routine entities in relevant market jurisdictions. Thereafter, common transfer pricing risks would be identified followed by good practices in auditing and containing this risk. Lastly, a section would be devoted to potential changes to the industry stemming from the COVID-19 pandemic (co-operation between third parties, governmental contracting). Constant cross references to the UN TP Manual (2021) would complete the guidance to be understood as a UN Manual's application to a specific industry.

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

7. This work stream would aim to provide a toolkit or toolkits to assist developing country tax administrations in conducting efficient and effective transfer pricing risk assessments and audits. It is envisaged that the toolkit(s) could provide step-by-step guidance to assist tax administrations with the planning, execution and resolution of transfer pricing risk assessments and examinations:
  - In particular the toolkit(s) will provide information on processes to be carried out by a tax administration, 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).
  - In addition to increasing effectiveness and efficiency, the toolkit(s) may help harmonizing the way tax administrations perform risk assessments and examinations, which should in turn, result in a more consistent application of the arm's length principle, helping to minimize disputes and double taxation; as well as reducing administrative and compliance costs.
  - The work stream would need to link to existing / other guidance, including on dispute prevention/ resolution in order to be comprehensive, and to prevent duplication. It could also act as a 'sourcebook' to link to examples of good practice in tax administrations around the world.

*Transfer Pricing Domestic Anti-Abuse Rules*

8. This workstream would entail a "desktop" research and targeted follow-up to gain an overview over existing transfer pricing domestic anti-abuse rules, their effectiveness and efficiency. A report on the analysis of domestic transfer pricing anti-avoidance provisions would be drafted. This report would include:
  - A background of the analyzed transfer pricing anti-avoidance provisions undertaken – the scope and parameters;
  - An analysis of selected relevant rules;
  - Their potential interaction with treaty provisions; and
  - A general evaluation providing insights into the challenges and issues connected with their implementation for countries in differing situations.

Developing countries considering the introduction of domestic transfer pricing anti-avoidance rules will be able to benefit from this paper, for a better-informed decision-making process.

*CO2 certificates*

9. The purpose of this work stream is to elaborate on the supply chain that is required to generate carbon credits and the transfer thereof to serve as emission offset. Understanding the functions performed, assets used, and risks incurred with respect to the transactions involved will assist with accurately delineating the relevant transactions for transfer pricing purposes.

This work stream intends to look at Certificates or Emission Reduction (CERs) generated from a Clean Development Mechanism (CDM) project activity in developing countries but would also discuss Emission Reduction Units (ERUs) resulting from projects registered under the Joint Implementation (JI) mechanism. Both CERs and ERUs are tradeable units representing one tonne of carbon dioxide-equivalent of emissions abatement or sequestration.

The guidance produce would entail a description of the regulatory framework, a description of CERs and ERUs followed by a description of the supply chain required to generate CERs/ERUs.

Any work performed would be coordinated with the Environmental Taxation Subcommittee.

*COVID-19 / economic downturn*

10. A work stream on economic downturns, as evidenced by the COVID-19 pandemics, focuses on the significant issues for MNEs as well as governments resulting from economic downturns. Among these issues, economic downturns have a relevant impact on the application of transfer pricing rules and the functioning of the arm's length principle. Current guidance on this topic is still scarce. Therefore, this work stream aims at analyzing the impact of economic downturns on transfer pricing and identifying possible practical solutions for developing countries.

*Dispute avoidance and resolution*

11. The Transfer Pricing Subcommittee proposes to focus on dispute avoidance and resolution in another work stream. In this context, it will discuss risk control mechanisms (such as ICAP), joint audits and advance pricing agreements to avoid and prevent transfer pricing disputes in collaboration with the drafting group working on toolkits (see subs. 7) and with a focus on their appropriateness for developing countries. For these mechanisms as well as for the resolution of transfer pricing disputes, the Subcommittee will, in collaboration with the Small Group on Dispute Avoidance and Resolution, analyze whether further specific guidance for disputes regarding issues on transfer pricing or the allocation of profits to permanent establishments is needed and in what form the Committee should publish it. It will also discuss practical challenges

in the application of dispute resolution mechanisms and reflect upon possible future work of the Committee.

### **Organization of Work**

12. The Subcommittee is aware that this is an ambitious program of work. It plans to submit items for consideration by the Committee as they are ready. To achieve that goal, the Subcommittee expects to have, on average, two meetings per year. The work is proposed to be 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.

### **Issues for Decision by the Committee**

13. The Committee is asked to discuss and to approve the Subcommittee's proposed work program set out in paragraphs 5 through 11.

### **Proposed Work Plan and the Sustainable Development Goals**

14. At its 23rd Session, the Committee agreed to discuss taxation and the Sustainable Development Goals as a reoccurring topic during its sessions. It also agreed that subcommittees should reflect on the links between their work and the SDGs. The Transfer Pricing Subcommittee is aware of its role in promoting sustainable development and recognizes that fair and effective tax systems with robust transfer pricing rules support both revenue and trade and investment for development. By publishing interstitial guidance which, in turn, will be used during capacity development workshops, the work undertaken contributes to achieving the SDGs. This will particularly contribute to SDG 16 (Peace, Justice and Strong Institutions) by helping develop effective, accountable and transparent institutions and SDG 17 (Global Partnerships for the Goals, with targets related to finance, technology, capacity building, trade and systemic issues) in terms of strengthening domestic resource mobilization and international cooperation on tax matters. The proposed work on CO2 certificates would additionally contribute to SDG 13 (Climate Action) by publishing transfer pricing guidance in this area.

