

From: Lauren Eden
To: Taxcommittee
Subject: RE: CALL FOR PUBLIC COMMENTS - 23rd Session of the Committee of Experts on International Cooperation in Tax Matters
Date: Tuesday, 14 September, 2021 1:46:29 PM

Dear UN Tax Committee:

Congratulations to the members of the new UN Tax Committee and thank you for the invitation to provide some written comments on draft agenda item 5. My comments are with respect to item 5(e) Transfer Pricing.

The OECD's work on Pillars 1 and 2, regardless of the outcome, has moved a long way away from its original focus in the 2015 Action Item 1 of the BEPS initiative on taxing the profits of digital multinationals and digital transactions. As a result, these problems still remain and will grow only more urgent as the "going digital" MNEs adopt more digital processes and global value chains, and sell more digital goods and services.

One way forward, which I have been recommending for some time now, is that both the OECD Transfer Pricing Guidelines and the UN Transfer Pricing Manual should add a chapter that is focused specifically on the transfer pricing of digital transactions (for goods, services and intangibles) and two-sided and multi-sided platforms (e.g., e-commerce platforms, cloud computing). The last UN Tax Committee added 12B applying withholding taxes to automated digital services to the UN model tax convention. The transfer pricing aspects, however, still remain for analysis and inclusion in the UN Transfer Pricing Manual.

My recommendation is that the UN Tax Committee convene a specialized group of transfer pricing economists and lawyers together with a group of experts in digital transactions and business models, to jointly develop a chapter on "Transfer Pricing of Digital Transactions", which would be added to the UN Transfer Pricing Manual. The chapter would parallel earlier TPM chapters on transfer pricing of goods, services, intangibles, and financial transactions.

Having such a chapter added to the UN TP Manual would improve tax certainty and reduce the number of transfer pricing disputes. Such a chapter would also be more sensitive to the needs of all UN members (developed and developing) rather than focusing on developed economies. Historically too, the UN TPM has followed the OECD's TP Guidelines, with each chapter in the TPM echoing earlier chapters in the TPG. Perhaps this time the UN could take the lead and develop such a chapter before the OECD.

I believe the need for such a chapter is imperative as we move further into a world of the 21st century multinationals and digital business models.

Respectfully submitted by:

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