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February 28, 2014

VIA E-MAIL

U.N. Department of Economic and Social Affairs
Financing for Development Office
2 U.N. Plaza (DC2-21)
New York, NY 10017
Attention: Ms. Ilka Ritter

Re: Treaty Policy Working Group Comments on the *United Nations Practical Manual on Transfer Pricing for Developing Countries*

Dear Ms. Ritter:

We are writing in response to the invitation of Stig Sollund, Coordinator of the Subcommittee on Article 9 – Associated Enterprises, to share the comments and recommendations of the Treaty Policy Working Group on the *United Nations Practical Manual on Transfer Pricing for Developing Countries*.

The Treaty Policy Working Group (TPWG) is an informal association of large global companies based throughout the world that represents a broad spectrum of industry sectors, including beverages, chemicals, consumer products, electronics, energy, financial services, IT systems, media, publishing, retail, software, and telecommunications. TPWG members have been working together since 2005 to analyze and address tax policy and administration concerns regarding transfer pricing and other issues under discussion in international organizations, including both the UN and the OECD.

We understand that the mandate of the new Subcommittee is to continue to develop the Manual to provide developing countries with practical advice on how to address transfer pricing issues under the arm's length principle of Article 9 of the United Nations Model Convention. The Manual is now to be expanded to include additional chapters on intra-group services, management fees, and intangibles and to address, at the Subcommittee's discretion, "other points that arise." The Subcommittee has invited input on this new program in advance of the commencement of its work.

We applaud the work of the Subcommittee and welcome the opportunity to provide comments at this time.

General Comments

The ability of companies to conduct cross-border trade and investment depends on a clear, administrable, and broad international consensus that provides adequate

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certainty regarding the applicable tax treatment in the jurisdictions where we operate and avoids double taxation. As demonstrated by their engagement at the UN and the OECD and their tax treaty networks, both developing and industrialized economies also view an international consensus promoting cross-border trade and investment as beneficial to economic development. Consensus is especially important in the transfer pricing area, with its high risk of controversy and double taxation.

With its broad membership, the UN is in an ideal position to assist all stakeholders in achieving these mutually beneficial goals. We believe the Subcommittee's work in particular can play a major role in improving the understanding and application of the arm's length principle around the world for the mutual benefit of tax administrations and taxpayers. Such guidance benefits both tax administrations and businesses by providing certainty and minimizing disputes, and guidance that is practical can further reduce costs for all.

It will be important to maximize the consistency of the UN practical guidance on transfer pricing and other international guidance. To this end, we urge the UN to continue its close cooperation with other international forums.

We would also like to share the following initial thoughts with the Subcommittee on its specifically mandated areas of work:

Services

Consistent international principles on the transfer pricing of intra-group services are particularly needed, as such services have grown with the globalization or regionalization of operations and are now often the focus of transfer pricing adjustments and controversies. It is also in the self-interest of emerging and developing countries not to create tax barriers to inbound or outbound intra-group services, whether they are primarily service providers or recipients of technical assistance that promotes foreign direct investment.

To maximize the impact of its work, we urge the Subcommittee to give serious consideration to the development of practical measures to minimize tax administration and compliance burdens. These could include, for example, the design of recommended safe-harbor regimes for low-value services, and bilateral or multilateral agreements to provide standard mark-ups for routine services, where appropriate.

The transfer pricing treatment of intra-group services should, however, be coordinated with other current UN work on the taxation of services, to ensure that the same transaction is not subject to multiple layers of taxation.

Management Fees

Although there is usually relatively little tax at issue, management fees are also often the focus of transfer pricing adjustments and controversies. It would be very helpful for the UN to develop a broad international consensus on the treatment of intra-group management fee charges. This would benefit both tax administrations and businesses by providing certainty and minimizing the incidence and cost of controversies.

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The objectives of such an initiative should be twofold:

- To reach a reasonable standard that satisfies the legitimate needs of tax authorities, while not being unreasonably burdensome from the perspective of taxpayers, given the amounts of tax at stake; and
- To ensure that management fee costs may be deducted fully either by the service recipient or by the service provider, as the case may be, to avoid creating double taxation.

We encourage the UN to take the lead in developing a standard transfer pricing documentation package for management fees. To be effective and efficient, the package would need to specify the following:

- A clear identification of the nature of services and an indication of which costs should be borne by the shareholder and which by its affiliates;
- Acceptable allocation keys;
- Cost base;
- Mark-up rates; and
- An explanation of what supporting documentation is needed and is acceptable.

The UN might usefully draw upon the EC Guidelines on low-value added services (COM (2011)16 final) for inspiration in this connection.

Management fees should not, however, be singled out as inherently objectionable solely because they reduce the paying entity's tax liability. Not every cross-border payment should be assumed to constitute objectionable base erosion, at least not under UN or OECD treaty provisions providing for net-basis taxation of business profits.

Intangibles

It would, likewise, be very helpful to have internationally agreed guidance on the transfer pricing treatment of transactions involving intangible assets. The lack of such consensus at present has generated a multitude of controversies, often with very substantial tax assessments.

It will be important for the guidance to be clear and consistent, if it is to have a beneficial effect rather than a detrimental one. Agreement on what constitutes an intangible asset and how the comparability analysis and valuation principles are applied to transactions involving intangible assets will be particularly important. To maximize consistency, we urge the Subcommittee to coordinate its efforts closely with the extensive work currently undertaken by OECD and G20 members on transfer pricing issues relating to intangible assets.

Consultation

TPWG members are pleased to have the opportunity to offer input to the Subcommittee before its work proceeds. However, it is difficult to comment in a meaningful and detailed manner on such general

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topics. We would, therefore, welcome the opportunity to comment in additional details on specific issues identified by or proposals or drafts produced by the Subcommittee as its work proceeds.

As a general matter, we believe that the UN's efforts to provide practical guidance to developing countries in this area would benefit from more extensive and structured consultation processes with all governments, sectors of the business community, and other relevant stakeholders. This would ensure that the Subcommittee's deliberations are fully informed as they proceed, thereby increasing the efficiency and effectiveness of its work. We respectfully suggest that the Subcommittee also consider designing a mechanism to monitor the application of its guidance in practice, to ensure that it is serving its intended purpose and is being interpreted as intended.

* * *

The Treaty Policy Working Group hopes that these comments will be helpful to the Subcommittee in its deliberations on these important issues. We would welcome the opportunity for further dialogue and additional input as the work progresses to the consideration of specific issues and the preparation of draft materials.

Sincerely yours,



Carol A. Dunahoo



Gary D. Sprague

On behalf of the Treaty Policy Working Group

cc: Mr. Stig Sollund, Coordinator, UN Subcommittee on Article 9 – Associated Enterprises
Mr. Michael Lennard, Secretary, UN Tax Committee