Subcommittee on Article 9:
21st Session Update

Ingela Willfors and Stig Sollund
2 Mandate

- Article 9 and the arm’s length principle;
- Consistent with relevant Commentaries of the UN Model Convention;
- Realities and needs of developing countries;
- Experience of developing countries and issues and options of most practical relevance to them;
- Aware of work in other fora;
- OECD/G20 Action Plan on BEPS;
- Special situation of the least developed countries;
- Seeking the last of the “final approvals” at the 21st Session.
- Main Paper is CRP.40
- Also CRP.40 Add.1 (China and Kenya Country Positions)
The Transfer Pricing Manual’s Approach

– Highly important for avoiding international double taxation ... that a common understanding prevails on how the arm’s length principle should be applied;
– ... and that the two Model Conventions provide a common framework for preventing and resolving transfer pricing disputes;
– With that aim in mind the Committee has developed the United Nations Practical Manual on Transfer Pricing for Developing Countries:
  – Which pays special attention to the experience of developing countries;
  – Reflects the realities for such countries at their relevant stages of capacity development;
  – And seeks consistency with the guidance provided by the OECD Transfer Pricing Guidelines.
Value Added by the Subcommittee Work

- A multi-disciplinary, multi-stakeholder approach:
- With special reference to developing country experience, priorities, capabilities:
- The areas of focus;
- The examples;
- The feedback loop with UN capacity building work.
Members and Meetings

- 27 members (of which 7 are members of Committee of Experts);
- Several drafting groups;
- Subcommittee meetings since 19th Session:
  - Nairobi, December 2019;
  - Vienna, February 2020;
- No meetings since – state of workplan and COVID-19.
Key Workstreams

- Financial Transactions;
- Transactional Profit Split Method;
- Centralised Procurement Functions;
- Comparability Issues;
- Update and Revision on Specific Chapters;
- General Update;
- Relationship between Transfer Pricing and Customs Valuation;
- Part D Country Practices (does not purport to represent Committee views, so left to countries to draft).
– **Documents for a second consideration and approval**:  
  – **Part A: Transfer Pricing in a Global Environment** revised to reflect, in particular, the nature and impact of new business models in a digitalized environment. *(Attachment A)*;  
  – **Chapter B.1: Introduction** revised to improve focus and avoid unnecessary overlaps and repetitions. *(Attachment B.1)*;  
  – **Revised Chapter B.4.2.7: Relationship Between Transfer Pricing and Customs Valuation.** Updates for new version of World Customs Organization guidance and clarifies relationship *(Attachment B.3)*;
Documents for a **second consideration and approval**

- Chapter B.4.2.10.1-7: Additional targeted and focused guidance on Centralized Sales Functions. *(Attachment B.5)*;

- Chapter B.8 on Financial Transactions (examples only)
  - (In the attachments referred to as B.9, but to be fully renumbered) reflecting and making more practical and understandable the guidance already approved by the Committee (to B.9.3.) or for which a final approval is sought at the 20th Session (B.9.4). *(Attachment B.7)*; and

- Revised Chapter C.6 (formally C.4): Dispute Avoidance and Resolution. *(Attachment C)*. Updated and streamlined.
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13 Part D (Country Practices) and Next Steps

– Finalize Country Practices (Part D) – in printed Manual or link to an online page – Committee Decision required;
– NB Part D contributions do not purport to be Committee approved;
– Attachments D.1 (South Africa); D.2 (Mexico); and (in CRP.40 Add.1): D.3 (China); D.4 (Kenya);
– India – awaited; Brazil – unchanged;
– Draft Foreword attached for information (Attachment E);
– Subcommittee meeting?
– Editing work;
– Seeking electronic and paper publication in English (initially) at 22nd and final Session of this Membership;
– Secretariat will be seeking Spanish and French translations ASAP.