

Recommendation for the UN Subcommittee on Article 9 – Associated Enterprises concerning the UN Practical Manual on Transfer Pricing

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This submission was prepared by a technical team from the World Bank Group (WBG) Investment Climate department that works with developing countries throughout the world implementing transfer pricing frameworks and building transfer pricing capacity in a manner that recognizes the dual importance of domestic revenue mobilization and maintenance of an attractive investment climate. These comments reflect the views of the authors only and do not necessarily reflect the views of the WBG or its member countries.

Dear Mr Sollund

Copy:

Michael Lennard

United Nations Committee of Experts of International Cooperation in Tax Matters
Subcommittee on Article 9 – Associated Enterprises

UN Practical Manual on Transfer Pricing: Recommendation to address the issue of dealing with the lack of comparable information in developing countries

Recognizing that the implementation and administration of an effective transfer pricing regime is an important challenge for developing countries, we take this opportunity to applaud the United Nations Committee of Experts on International Cooperation in Tax Matters on the recent publication of its “Practical Manual on Transfer Pricing for Developing Countries”, and in response to the recent call for input into the first round of updates to the Manual, we set out below our recommendation to the subcommittee concerning the update to the Manual.

As you would be aware the lack of comparable information is a challenge for all countries involved in transfer pricing, and is an issue of particular significance for developing countries. In our work with developing countries on transfer pricing, availability of domestic comparables is one of the major concerns during the policy development stage and a major, if not the major, challenge faced during application of transfer pricing legislation by tax administrations and taxpayers alike.

The severity of the issue is illustrated by the lack of the minimum information necessary to apply the arm’s length principle for the year 2009 found in the Bureau van Dijk Orbis database (currently the most comprehensive source of global company data) for the vast majority of the 26 countries in Eastern Europe and Central Asia analyzed.¹ In 10 of the 26 countries there are less than 100 records that meet the minimum standard for potential application of the arm’s length principle (i.e. independent and containing revenue and net profit information), and this is before any further comparability criteria are

¹ Loeprick, Cooper, Christ, “*The Devil is in the Detail: Transfer Pricing, the Arm’s Length Principle and the Availability of Comparable Information in Emerging Economies*” (working title, forthcoming), 2014

applied (industry, functional profile, size etc.). Whilst the above concerns Eastern Europe and Central Asian economies, the situation in other regions, and in particular in Africa, is similar, if not worse.

Number of records with revenue and net profit data that are independent	Countries
< 100	Albania, Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, FYR Macedonia, Moldova, Montenegro, Tajikistan
100-1,000	Kazakhstan, Croatia
1,000-5,000	Serbia (<2,000), Lithuania (<2,000), Slovak Republic, Bosnia, Turkey, Slovenia
5,000-10,000	Latvia, Hungary
10,000-100,000	Estonia, Poland, Czech Republic, Bulgaria
100,000 +	Romania, Russian Federation

Source: Authors, based on analysis of Bureau van Dijk Orbis database for 2009 year.

The lack of comparable information presents a fundamental challenge to the practical application of transfer pricing legislation in developing countries, a challenge that is further compounded by the lack of guidance (internationally and at the country level) on the application of the arm's length principle in the absence of domestic comparable information – i.e. on the use of foreign comparables and/or application of the arm's length principle in the absence of comparables. As regards the former, it is noted that various references to the use of foreign (or non-domestic) comparables are made in the Manual, and in particular in the chapter on South Africa's practice, however the guidance provided is not sufficient to guide policy makers and practitioners in data scarce economies.

Therefore, recognizing that the lack of comparable information presents a major, if not the major, challenge faced in developing countries as regards the implementation and application of transfer pricing rules, it is our recommendation that this issue be addressed in subsequent updates to the Manual as a matter of priority.

Kind Regards,

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