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**Committee of Experts on International  
Cooperation in Tax Matters  
Twenty-seventh session**

17-20 October 2023

Item 3(e) of the provisional agenda

**Transfer Pricing**

**Co-Coordinator's Report**

*Summary*

Since its formation at the Twenty-third Session, the Subcommittee on Transfer Pricing has been working on drafting interstitial guidance in six workstreams: (a) transfer pricing during the COVID-19 economic downturn; (b) transfer pricing compliance assurance; (c) transfer pricing of carbon offsets and credits; (d) industry/sector guidance for primary products; (e) industry/sector guidance for the pharmaceutical industry; and (f) dispute avoidance and resolution.

The Subcommittee's Co-Coordinators are hereby: providing a short progress report on the work undertaken; *presenting for approval* the papers produced in workstreams (a), (b) and (c); *presenting for first consideration* the papers produced in workstreams (d) and (e); and seeking *comments and guidance* on a proposed approach to workstream (f).

## Background information

1. At its Twenty-third Session, the Committee of Experts on International Cooperation in Tax Matters (the Committee) established the [Subcommittee on Transfer Pricing](#) as a multi-stakeholder body. At the Twenty-fifth Session, the Subcommittee sought guidance and approval from the Committee on its proposed work program. The work program consists of six workstreams that have previously been approved by the Committee: (a) transfer pricing during the COVID-19 economic downturn; (b) transfer pricing compliance assurance; (c) transfer pricing of carbon offsets and credits; (d) industry/sector guidance for primary products; (e) industry/sector guidance for the pharmaceutical industry; and (f) dispute avoidance and resolution.
2. Since the Twenty-sixth Session, the Subcommittee on Transfer Pricing has held several meetings to advance its work. The Subcommittee met virtually on 12 and 13 June as well as 5 and 6 September 2023 to discuss the work undertaken by the smaller drafting group.
3. In advancing their work, the Subcommittee also coordinated with others, most notably the Subcommittee on Environmental Taxation and the Working Group on Dispute Resolution and Avoidance on the topics where the issues dealt with by the Subcommittees overlap. These consultations should not be taken as necessarily implying that all participants in the two Subcommittees are in agreement on every aspect of the annexes to this paper.

## Progress report

4. The Subcommittee's Co-Coordinator are hereby providing a progress report on the work undertaken and *presenting for approval* the papers produced in workstreams (a) transfer pricing during the COVID-19 economic downturn; (b) transfer pricing compliance assurance and (c) transfer pricing of carbon offsets and credits. The Co-Coordinator are also *presenting for first consideration* the papers produced in work streams (d) industry/sector guidance for primary products, (e) industry/sector guidance for the pharmaceutical industry and are *seeking comments and guidance* from the Committee on a proposed approach to workstream (f) on dispute avoidance and resolution.

## Transfer pricing during the COVID-19 economic downturn

5. Progress has been made by the Subcommittee to further advance the work in this workstream, taking into account the comments and feedback received at the Twenty-sixth Session. Further detail has been added on the accurate delineation and recognition of actual transactions (section 3.1) in the context of contractual terms to highlight that where the conduct of the parties is inconsistent with the written contract, the parties conduct should prevail and to provide additional guidance on force majeure clauses. In the section considering common issues with the selection of the most appropriate TP method (section 3.2), further details have been added on updating datasets for COVID-19 data, the use of multiple year data in the context of the COVID-19 pandemic, and the need to take into account geographic variation in the impact of the COVID-19 pandemic when using comparables from broader geographic locations. Finally, the updated paper includes a

comparative table in section 4.1 detailing additional guidance in respect of APAs published by various jurisdictions in response to the COVID-19 pandemic.

6. The paper, which is attached to this note as *Annex A, is presented for approval by the Committee.*

#### **Transfer pricing compliance assurance – an end-to-end toolkit**

7. Progress has been made by the Subcommittee to further advance the work in this workstream, taking into account the comments and feedback received at the Twenty-sixth Session. Several infographics were included to replace text-based commentary and provide a clearer representation of certain key guidance topics, including in respect of: (1) the transfer pricing end-to-end compliance reassurance process; (2) a magnitude/likelihood matrix; (3) the transfer pricing risk assessment process; and (4) the audit/examination process. Additional guidance was included on developing a transfer pricing compliance assurance programme (section 2.3), in respect of the potential use of safe harbours, and on population level and individual transfer pricing assessments (section 2.4), in respect of the use of an iterative approach to risk-based case selection. Further guidance was also included on sources of information (section 3.2) on the care required on the use of information available to tax authority which was not originally collected for audit purposes and the use of APA information. In the context of a detailed risk assessment (section 3.3), guidance was added on the need for quantitative risk analysis to consider taxpayer results from a number of years. In the road map for transfer pricing audit (section 4), a table was added which contains a sample of eight questions for auditors to ask to understand a taxpayer's operation if the taxpayer is charged for intra-group services.

8. The paper, which is attached to this note as *Annex B, is presented for approval by the Committee.*

#### **Transfer pricing of carbon offsets and credits**

9. Progress has been made by the Subcommittee to further advance the work in this workstream, taking into account the comments and feedback received at the Twenty-sixth Session. The principal changes to the paper were to provide practical guidance on pertinent aspects to consider from a transfer pricing perspective while performing a transfer pricing analysis of transactions involving carbon credits / offsets. Each of the examples detailed in section 5a now includes a list of typical transactions which may be suitable for transfer pricing analysis, along with identification of the typical risks borne, and assets used in each transaction. A paragraph was added on the changes that developing countries might want to anticipate in relation to their transfer pricing regulation to ensure proper treatment of carbon credits or offsets.

10. The paper, which is attached to this note as *Annex C, is presented for approval by the Committee.*

### **Industry / sector guidance for agricultural products**

11. Progress has been made by the Subcommittee to advance the work in this workstream, reflected in the development of *a paper for first consideration by the Committee, which is attached to this note as Annex D.*

### **Industry / sector guidance for the pharmaceutical industry**

12. Progress has been made by the Subcommittee to advance the work in this workstream, reflected in the development of *a paper for first consideration by the Committee, which is attached to this note as Annex E.*

### **Dispute avoidance and resolution in transfer pricing**

13. Progress has been made by the Subcommittee to advance the work in this workstream in liaison with the Working Group on Dispute Resolution and Avoidance. The work will focus on (1) identifying current issues with respect to bilateral Advance Pricing Agreements (BAPA) in developing countries, (2) including resource constraints and a lack of trust between taxpayers and tax authorities, and (3) outline pragmatic approaches for how to deal with them.

### **Next steps and organization of work**

14. The Subcommittee is grateful for the chance to receive feedback on the respective workstreams. It plans to submit the papers in workstreams (d) industry/sector guidance for primary products and (e) industry/sector guidance for the pharmaceutical industry (presented for first consideration during this Session) for final approval at the Twenty-eight Session, after considering comments made and guidance provided at this Session. In addition, the Subcommittee plans to submit to the Twenty-eighth Session, for first consideration, the paper in workstream (f) on dispute avoidance and resolution.

15. The drafting is performed by smaller groups that benefit immensely from the generous input of expertise and time of representatives from international organizations, the business community, governmental representatives, and academics.