

William Morris
Chair, BIAC Tax Committee
13/15, Chaussée de la Muette, 75016 Paris
France

Tax Treaties, Transfer Pricing and Financial Transactions Division

Organisation for Economic Cooperation and Development
2 rue André-Pascal
75775, Paris, Cedex 16
France

Submitted by email: [TransferPricing@oecd.org]

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SCOPING OF THE FUTURE REVISION OF CHAPTER IV (ADMINISTRATIVE APPROACHES) OF THE TRANSFER PRICING GUIDELINES

Dear Colleagues,

Business at OECD (BIAC) is pleased to have an opportunity to comment on the OECD's public consultation document titled *Scoping of the Future Revision of Chapter IV (administrative approaches) of the Transfer Pricing Guidelines* ("TPG") ("TPG Ch. IV Scoping Request") issued 09 May 2018. We welcome the opportunity to comment and believe pragmatic administrative approaches will benefit tax authorities in both developed and developing countries through the preservation of scarce audit resources by streamlining dispute resolution and avoiding disputes altogether.

Our general comments on scoping potential Chapter IV changes per the parameters of the TPG Ch. IV Scoping Request are as follows:

- The main objective of Chapter IV of the TPG should be increasing prevention of tax disputes (whether upon audit or otherwise), efficient use of resources, and increased transparency for taxpayers and tax administrations. Therefore, the preference should be for countries to adopt cooperative compliance, which in our experience has been very useful. In this space, we view the ICAP programme as a great initial step. Several of our members are currently involved in ICAP and will continue to volunteer for opportunities to increase trust and transparency between taxpayer and tax administration. Further, joint audits – bringing together multiple tax administrations and the taxpayer – represent another, helpful option in this area. When business and governments openly work together, our experience is that all parties benefit by avoiding costly, drawn-out individual audits, which are an inefficient use of government and business resources and often lead to double taxation.
- Administrative simplifications are also very useful in reducing TP tax disputes and saving resources. The aim of the TPG should be multilateral implementation of consistent rules that not only reduce disputes within a country, but also reduce the potential for conflicting rules across jurisdictions.
- Generally, in the interest of avoiding additional TP disputes, we believe an improvement of existing practices and guidelines that commonly work is preferred over the introduction of new mechanisms. Procedures outlined should be as simple as possible with short timelines,

because clear rules and expedited timelines provide efficiency for taxpayer and tax administration as they avoid unnecessary delays in audits and preserve important resources for other work.

- Over the last few years during the Base Erosion and Profit Shifting (“BEPS”) project, the OECD released initiatives and guidelines that have increased the compliance burden (e.g., Action 13) while others have increased the potential for double taxation (e.g., Actions 4, 6, 7 etc.). Any revisions to the TPG should take into account both the increased information and data available to tax administrations, while also clarifying procedures to minimize the potential for double taxation. The TPG should provide “best practices” for dealing with additional information gathered, notably the country-by-country report (“CbCR”), to effectively allocate resources – notably risk assessment tools and other helpful approaches. The OECD should encourage proper risk assessment and related tools, as such results in more focused and effective TP audits and potentially less overall disputes.
- As different tax authorities take different approaches regarding transaction comparables, the OECD could reduce the number of cross-border TP disputes by providing clarity and guidelines as to what constitutes an acceptable comparable.
- We fully support the objectives of Action 14 and look forward to the OECD’s ongoing peer review of Inclusive Framework (“IF”) countries. However, some of our members are concerned that tax administrations may shift resources from existing advanced pricing agreement (“APA”) functions to mutual agreement procedure (“MAP”). Considering the circumstances and resources, our members still believe that APAs can be a mutually beneficial option for tax administrations and business by avoiding disputes in the first place with nearly full transparency. In light of implementing certain BEPS measures, e.g., the multilateral instrument, and the related resource constraint, we believe additional resources should be assigned to these measures rather than reallocating resources away from useful existing procedures and programs like APAs. For those jurisdictions that do not have sufficient resources, fee-based or other revenue measures should be considered to fund the program.
- The OECD should ensure access to MAP and prevent measures that discourage the programme (e.g., requiring a taxpayer to forego rights to local appeal processes, pay taxes in full before entering MAP, etc.). Further, to increase participation, certain complex matters that currently involve significant resources and effort should be added to MAP. For example, secondary adjustments are often complicated and result in double taxation, and inclusion in MAP would encourage and further the aims of MAP.
- APA programmes will be more effective if they operate efficiently and quickly. For example, guidelines should be outlined to fast-track the approval process on an APA renewal if certain aspects have not changed. Similarly, if there has been no change to a transaction, APAs should be rolled back to cover years open for audit – increasing their impact per the effort incurred.
- Lastly, we encourage any additional commentary in the TPGs that suggests practicality and consistency in approach by jurisdictions. Often TP disputes are prolonged and represent a significant burden on both the tax administration and taxpayer in defense. As previously mentioned, APAs can be used as a potential option to avoid a dispute, whereas MAP and binding arbitration may reduce time incurred and resources used. As such, we suggest, when scoping best practices related to Action 14, that expedience and regular clearing of

cases be recommended (in line with current peer review feedback as part of the Action 14 monitoring).

As the OECD is the pre-eminent standard setting organization for international taxation, we also encourage the OECD to involve other, non-member jurisdictions (e.g., Brazil, India, and China), as a part of the IF in the scoping and drafting process to ensure true multilateral implementation and uniform adoption of the rules. Further, *Business at OECD* would welcome additional involvement in the developing and drafting of such rules once parameters are scoped.

Sincerely,



Will Morris

Chair BIAC Tax Committee