



Distr.: General  
11 October 2010

Original: English

---

**Committee of Experts on International Cooperation  
in Tax Matters**

**Sixth Session**

Geneva, 18-22 October 2010

Item 3 (d) of the provisional agenda:

**Practical Manual on Transfer Pricing**

**PRACTICAL MANUAL ON TRANSFER PRICING FOR DEVELOPING COUNTRIES\***

*Summary*

**The Subcommittee on Transfer Pricing – Practical Issues** was constituted by the Committee of Experts on International Cooperation in Tax Matters at its annual session in 2009 and was mandated to:

“develop a practical manual on transfer pricing, based on the following principles:

- a) That it reflects the operation of Article 9 of the United Nations Model Convention, and the Arm’s Length Principle embodied in it, and is consistent with relevant Commentaries of the U.N. Model.
- b) That it reflects the realities for developing countries, at their relevant stages of capacity development.
- c) That special attention should be paid to the experience of other developing countries.
- d) That it draws upon the work being done in other fora.

This paper represents an intermediate report by the Coordinator of the Subcommittee, Mr Stig Sollund, as requested by the Committee at its 2009 annual session.

\* This report should not be taken as necessarily representing the views of the United Nations.

## **PRACTICAL MANUAL ON TRANSFER PRICING FOR DEVELOPING COUNTRIES**

### **Preface**

1. The Subcommittee on Transfer Pricing – Practical Issues was constituted by the Committee of Experts on International Cooperation in Tax Matters at its annual session in 2009 and was mandated to:

“develop a practical manual on transfer pricing, based on the following principles:

- a) That it reflects the operation of Article 9 of the United Nations Model Convention, and the Arm’s Length Principle embodied in it, and is consistent with relevant Commentaries of the U.N. Model.
- b) That it reflects the realities for developing countries, at their relevant stages of capacity development.
- c) That special attention should be paid to the experience of other developing countries.
- d) That it draws upon the work being done in other fora.

The aim of the Subcommittee shall be to present a complete draft manual for adoption to the 2011 annual session. An intermediate report showing substantial progress should be provided to the Committee in 2010.”

### **Malaysia Meeting**

2. The Subcommittee met in Kuala Lumpur, Malaysia on 16-17 June 2010, a meeting which was kindly hosted by the Inland Revenue Board of Malaysia. Participants were Stig Sollund (Norway - Coordinator); Mansor Hassan (Malaysia); Keiji Aoyama (Japan) (all of the UN Tax Committee); Carmen van Niekerk (South Africa); Julius Bamidele (Nigeria); Harry Roodbeen (Netherlands); Toshio Miyatake (Adachi, Henderson, Miyatake & Fujita, Japan); Kyung Geun Lee (Yulchon Lawyers, Korea), Monique Van Herksen (Ernst and Young,, Netherlands); Jolanda Schenk (Shell, Netherlands); TP Ostwal (Ostwal and Associates, India) and Michael Kobetsky (Australian National University). Marcos Valadao (Brazil) and Amr El-Monayer (Egypt) were unable to attend. The strong participation in this meeting<sup>1</sup> was very helpful in taking the work forward.

3. On the second day of the meeting, a representative of the OECD was invited to update the subcommittee on the related OECD work, and took questions. It was agreed that each organisation would keep the other updated on developments, to avoid unnecessary duplication while recognising the respective mandates of each.

4. The Subcommittee considered first papers on the draft Practical Manual on Transfer Pricing for Developing Countries, grouped under the first 4 proposed Chapters:

---

<sup>1</sup> Mr Sanjay Kumar Mishra (India) was not at that stage a Subcommittee member, but has since been invited to join the Subcommittee.

- Chapter 1 - Introduction to Transfer Pricing;
- Chapter 2 - Establishing Transfer Pricing Capability in a Tax Administration;
- Chapter 3 - The Legal, Economic and Business Framework (later agreed split into 2 chapters, one on the Business Environment, and one on the General Legal Environment); and
- Chapter 4: Transfer Pricing Methods.

5. A timetable was developed for developing and sharing new versions of the drafts discussed at the meeting with a view to soliciting wider comment on the drafts before the sixth annual session of the Committee.

6. The Subcommittee considered that the next priorities in terms of Chapters after the current drafts had been finalised would be:

- Comparability (including Functional Analysis);
- Documentation;
- Audits, including Risk Assessment; and
- Dispute Resolution and Avoidance.

7. The Secretariat would also develop a proposed Table of Contents based on the previous Secretariat Paper, the discussion at the 2009 Annual Session of the Committee and discussion at this first Subcommittee meeting.

8. It was also agreed that it was not within the Subcommittee's mandate to address formulary apportionment, but it was recognised that there was however, broad scope to consider profit methods, safe harbours and presumptions in the framework of the mandate.

9. It was agreed that the style adopted should be clear, and speak to those with only limited proficiency in English, and that footnotes should be limited to those essential for referencing key documents and giving proper recognition to specific sources cited.

### **Progress since Malaysia and Future Work**

10. While there has been further development of all Chapters since the Malaysia meeting, progress has been slower than expected, due to the commitments of the Members of the subcommittee and the difficulty of resolving drafting issues by electronic means. It has also proven challenging to obtain the preferred levels of direct developing country input into the work; including examples drawn from developing countries at various stages of the transfer pricing "journey" and greater feedback from experts from such countries on the drafts.

11. The chapters will need, in their final form, to have a more integrated style, and should make greater use of practical examples and visuals. If funding was available, the strategic use of a

consultant, working with the drafters, would be a useful way of ensuring the mandate of the Committee could be met as quickly and effectively as possible.

12. The current drafts are being made available as working drafts for comment (for approximately 3 weeks after the annual session) on the UN website at: <http://www.un.org/esa/ffd/tax/sixthsession/index.htm>

13. These drafts represent the considered work of particular drafting groups within the Subcommittee, but at this stage do not necessarily reflect the final views of the Subcommittee. Some suggestions made within the Subcommittee on particular drafts have not been incorporated at this stage, as they will need further discussion and consideration following broader consultations.

14. It is hoped that with the recent new capacity available to the Secretariat, and with an initial focus on completing and “rolling-out” these chapters, combined with a further meeting of the subcommittee will allow at least the five current chapters to be finalised by the written procedure before the annual session in 2010, and with significant progress on further chapters by 2011. While completion of the Manual as a whole is more likely to be in 2012 than in 2011 in view of the factors noted, a gradual rollout of chapters for comment and then as completed parts of the Manual will ensure the benefits of this work begin to flow to developing countries from 2011.

\* \* \* \* \*