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AH/DN

Dear Mr Andrus

### **Draft Handbook on Transfer Pricing Risk Assessment**

BDO welcomes the opportunity to comment on the OECD's Draft Handbook on Risk Assessment (the "Request") and the efforts undertaken by the Steering Committee of the OECD Forum on Transfer Pricing to seek outside consultation. In general we support the OECD's aims with this Handbook and its efforts to create a practical and transparent environment in which to address transfer pricing issues.

In preparing this letter we have received comments from BDO firms in our global transfer pricing network which we have incorporated into this letter.

### **A helpful additional tool**

In overview, we welcome the Draft Handbook on Transfer Pricing Risk Assessment ("the Handbook") as a means to better focus the time and resources of both business and tax authorities on the transfer pricing areas with the greatest potential impact. Successful implementation of the practices contained in the Handbook should give increased comfort to business in the preparation of transfer pricing policy support. It should also enable the avoidance of lengthy information gathering by tax authorities, often perceived as 'fishing expeditions' by businesses, reducing associated compliance costs and engendering greater trust.

In particular, this is made possible by the inclusion of greater transparency over likely triggers for a full enquiry together with the staged process which pushes detailed information gathering and discussion of issues only to those cases where it is necessary. While it is a balance to provide greater specification without so much detail that the guidance becomes unworkable, the more clarity that can be provided by the Handbook, the more effectively business will be able to prepare their supporting documentation.

We also consider the concept of proportionality and materiality to be helpful for all parties. Many multinational enterprises have limited resources, especially in periods of investment in expansion, and the need to provide fully documented support for all transactions regardless of size and cash tax risk can be highly burdensome (although this is not to be confused for the implementation of an arm's length transfer pricing policy, which is required). Effective real time engagement (paragraph 156) is to be encouraged as complementary to this.

## Areas of further focus

We have identified the following points as areas the OECD may wish to examine as part of its further considerations in this area.

- The Handbook works on the assumption of the full availability of information to the taxpayer. While this will usually be the case for headquarter entities, it may not always be so for local subsidiaries. The Handbook might provide guidance for tax authorities on how this is best addressed, including how to accommodate the impact of this difficulty on considerations of compliance (paragraph 45).
- As discussed, the Handbook is supportive of the use of thresholds and the principle of proportionality (for both business and territory). The OECD may wish to consider linking this explicitly with the current references to materiality (in paragraphs 25 and 27). In using these terms, guidance may be helpful on how materiality should be defined or set by tax authorities.
- There is a risk that these thresholds may be implemented in a binary way: there either is risk and the requirement to submit to a full transfer pricing audit, or there isn't. The Handbook might usefully encourage this principle to be carried over into the audit itself so that those multinational enterprises with less resources or those only just in breach of thresholds might be required to provide similarly proportionate support (at proportionate cost) rather than automatically experience a fully comprehensive audit. Discussions as part of real time engagement may help this to work in practice.

The cost-benefit analysis proposed (paragraph 48) is also supportive, as is the concept of 'appropriate consideration' in paragraph 46 of the White Paper on Transfer Pricing Documentation.

- The application of thresholds and the interpretation of risk more widely can be subjective. The Handbook might provide guidance to tax authorities on how consistency could be achieved in this area, for example by publishing or otherwise sharing the thresholds used together with the assessment methodology applied by examiners. This will build trust and, again, enable the appropriate focus of resources. There is an argument that this begins to overlap with aspects of the OECD's work on Safe Harbours in Transfer Pricing; this need not go that far although explicit guidance on how tax authorities might apply the Handbook alongside the use of safe harbours could be beneficial.
- It is acknowledged that fiscs will apply guidelines such as those in the Handbook in ways which carry differing emphasis. The sharing of approaches between tax authorities alongside other proposed co-operation (such as information sharing, paragraph 127), supported by guidance in the Handbook, may help manage expectations and prevent information requirements at the risk assessment stage defaulting to the level of the tax authority which imposes the most stringent interpretation (and thereby potentially negating much of the intended benefit).
- Associated with these points, the suggested process for the risk assessment in Chapter 5 of the Handbook is helpful. This may usefully be expanded with examples. Consideration might also be given whether guidance on potential avenues of appeal for taxpayers (either as part of a process of real time engagement or separately from it).

- Support in the Handbook for wider co-operation would also be beneficial. Acknowledging that some territories fall outside the OECD's sphere of influence, explicit consideration of synergies or differences with similar guidance published by the United Nations would further increase clarity and comfort to businesses in preparation of information for transactions which cross these boundaries.

## Conclusion

We support the OECD's efforts to set out a clear and consistent framework for the management of transfer pricing risk by both business and taxing authorities. However we would support further consideration and potential refinement of the Handbook to ensure that its practical implementation is proportionate for all sizes of multinational enterprise, not just those with the greatest size, complexity and resources. Similarly, further guidance for tax authorities would be supportive to prevent the weighting of expectations towards the fisc with the most demanding interpretation of this risk assessment process.

We would like to thank the OECD again for this opportunity to comment and should be happy to expand on these points and contribute further to later stages of this review if required.

For clarification of any aspects of this response sent on behalf of the BDO transfer pricing network, please contact:

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Yours sincerely

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For and on behalf of BDO LLP