EVERSHEDS BIANCHINI

Rome, August 20, 2013

Steering Committee of
the OECD Global Forum on Transfer Pricing
OECD
2, Rue Andrè Pascal
75116 Paris
France

By email: TransferPricing@oecd.org

COMMENTS ON THE TRANSFER PRICING RISK ASSESSMENT DRAFT HANDBOOK

We would like to thank the Committee for the time and effort that has dedicated to this particular matter.

We are delighted to be able to submit to you our comments on the handbook. The numbering below reflects the numbering in the Handbook.

Comment on paragraph 42

42. "[...] Accordingly, it is not sufficient to only consider the tax rate in the country of the recipient, but also to consider whether that recipient might simply be a useful conduit for shifting income to a low tax environment".

Our view is that here the Handbook is adopting an approach which could have a very negative impact on a tax payer who may not be aware of the transfer pricing policy that was applied to a transaction in which he did not take part.

In other words, the Tax Authority could subject a company to an investigation/assessment in relation to a transfer pricing issue between one of its customers/suppliers and a third party if that customer/supplier is a conduit.

We would recommend adding that in some jurisdictions, the Tax Authority may be not allowed to investigate/assess the transactions to which the tax payer did not take part, between two parties different from the taxpayer especially if the party based in a low-tax jurisdiction is not directly or indirectly controlled by the taxpayer[1].

Comment on paragraphs 47 and 74

47. Low compliance levels may not be particularly alarming if the size of related party transactions is ***low*** *[...].*

74. ***Excessive*** *royalties, management fees, and insurance premiums paid to related parties can be used to erode the local company tax base.*

[1] Or, in other words, if CFC rules are not applicable to the company being investigated/assessed.

Eversheds Bianchini
Studio Legale
Via Privata Maria Teresa 4
20123 Milano
Italia
T +39 02 89 287 1
F +39 02 58 303 818
milano@eversheds.it

Via Pompeo Magno 1
00192 Roma
Italia
T +39 06 32 258 44
F +39 06 32 010 12
roma@eversheds.it

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Codice Fiscale e Partita Iva 02299020152

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The comments in the aforesaid paragraphs seem generic and unlikely to be of help for a Tax Authority. It might be useful to try to set out the meaning of “low” and “excessive”, i.e. maybe if royalties, management fees, etc. are compared as a percentage of turnover or taxable income. A *rule of thumb* may be easier to follow.

Comment on paragraph 62

62. […] Losses or low profits over a period of years ***can*** *therefore indicate transfer pricing risk.*

In this section the Handbook provides an assumption which may not be accurate. Evidence of this can be seen in the economic crisis affecting businesses around the world since 2008, causing companies to record significant losses for several years with certain sectors affected more than others (i.e. medical care, construction etc.). We recommend amending “can” with “may eventually” and removing “therefore”.

Comment on paragraph 81

81. […]Therefore, if a taxpayer that is a member of a group enters into a cost contribution arrangement with other group members with no clear expectation of a future income stream that is commensurate with its obligation to share costs, then income allocation among the participants will be inconsistent with the arm’s length principle.

This section may cause confusion: future profits are unlikely to be estimated with certainty and often continuing adjustments of allocations are required. The fact that future income is not clearly forecast does not necessarily lead to inconsistency with the arm’s length principle in the allocation of income when it is realized.

We thank you once again for this opportunity. Please feel free to contact us if you have any queries regarding the above.

Marco Melisse and Sebastiano Sciliberto
Tax Partners
Eversheds Bianchini

Eversheds Bianchini
Studio Legale
Via Albricci 10
20122 Milano
Italia
T +39 02 89 287 1
F +39 02 58 303 818
milano@eversheds.it

Via Pompeo Magno 1
00192 Roma
Italia
T +39 06 32 258 44
F +39 06 32 010 12
roma@eversheds.it

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