

Paris, 30 September 2013

Mr. Joe Andrus  
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OECD  
Paris

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**Re: comments on the Revised Discussion Draft on Transfer Pricing Aspects of Intangibles**

Dear Mr. Andrus,

We are pleased to present the input of Charles River Associates on the revised discussion draft. Our input focuses on two specific topics, for which we suggest the OECD includes specific direction in relation to intangibles:

- include a sub-section dedicated to “Country of Origin Premiums” to be included within the new wording in section D of chapter I; and
- develop specific guiding principles in relation to application of chapter VI to Small and Medium Enterprises (“SMEs”).

Country of Origin Premiums

The revised draft includes a section proposed to be inserted in Chapter I, following paragraph 1.79, regarding location savings and other local market features (partially moving some wording that was originally included in section A.4. of the June 2012 Draft).

We consider that an additional sub-section dedicated to “Country of Origin Premiums” should be added after this section to reflect another important factor that is showing a growing importance as a value driver.

Our suggestion is based on the observation that certain products and services may be sold at premium prices also due to a special quality and/or exclusivity image associated with the Country of origin. Some examples, to mention only a few, could be: German cars, French perfumes, or Brazilian coffee.

This extra-value that consumers globally associate with certain Countries for certain products appears to be growingly important in various industries, including, for example, in the luxury and fashion industry and the automotive industry.

In addition to the fact that it may drive significant extra values (as a result of the still growing importance of global trade), an important reason to address this topic is that a thorough analysis would be required in order to address its complexities and interaction with other elements included in the OECD draft, in particular in those cases where it is considered that the value attributable to a distribution subsidiary of the MNE should be influenced by existing location savings or other market features: in fact, ignoring this aspect in such cases could bring to overestimate the value attributed to the distribution function by not accounting for a value that derives from the Country of origin.

As outlined above, the analysis of “Country of Origin Premiums” would often be associated with that related to local market features and therefore a paragraph dedicated to Country of origin premiums could fit well as (new) section D7, before “Assembled Workforce”.

#### Small and Medium Enterprises

The crucial role of SMEs as “the Backbone of the Economy” and in promoting inclusive growth is more and more recognized and has been largely debated at the 2013 OECD Forum.

In our experience, SMEs are less equipped to comply with transfer pricing regulations and documentation requirements when compared to large MNEs. Compared to large MNEs, the main difficulties relate to the fact that many SMEs cannot afford to devote similar resources and budget to:

- performing comprehensive transfer pricing studies, and
- obtaining specialized advisory services if so required.

The OECD Transfer Pricing Guidelines already recognize the difficulties that can arise for SMEs and recommend reasonableness and pragmatic approaches, in particular in paragraphs 3.80 and 3.83 discussing compliance issues of the comparability analysis. Also, on the subject of documentation, the recently released OECD White Paper on Transfer Pricing Documentation recommends that Country documentation practices should reflect materiality thresholds, taking into account the size and nature of the local economy, the importance of the MNE in

that economy, and the size and nature of local operating entities, as well as the overall size and nature of the MNE group.

A recent report of the EU Joint Transfer Pricing Forum regarding “SMEs and Transfer Pricing”<sup>1</sup> provides a useful analysis about the issues faced by SMEs and recommends to Member States approaches based on proportionality, simplification, and pragmatism.

However, both the OECD guidelines and the EU report represent mere recommendations, not establishing any specific guidance applying to SMEs nor establishing a conventional definition of SMEs. Based on our experience, we do not consider it likely that tax administrations will uniformly adopt simplifying approaches when dealing with SMEs in the absence of specific guidelines.

While the issues described above are not strictly confined to intangibles, it is actually in the area of intangibles that SMEs often face the highest uncertainties.

Our suggestion is therefore that the OECD develops specific guiding principles in relation to application of chapter VI to SMEs. A further study of the intangibles issues specific to SMEs may be performed with the objectives to:

1. Developing a definition of SMEs, that would promote certainty to which entities and groups the specific guiding principles in relation to application of chapter VI will apply; the above mentioned EUJTPF report suggests criteria based on: balance sheet value, turnover, numbers of employees and individual or cumulative transaction values (all to be measured on a consolidated basis, i.e. at group level); we suggest an additional possible criteria, represented by the time since when the SME started to operate cross-border (e.g. oversimplified rules for the first three years).
2. Recommend materiality thresholds similar to those within the documentation white paper.
3. Promote accessibility for SMEs to tax authorities’ guidance and support (or even education) on transfer pricing.

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[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf/2012/2012-09\\_com516\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2012/2012-09_com516_en.pdf)

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We appreciate the opportunity to provide input to this project and we are available for any clarification or consultation on the subject

With best regards,

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