

**Unclassified**



Organisation de Coopération et de Développement Economiques  
Organisation for Economic Co-operation and Development

**English - Or. English**

**DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS  
COMMITTEE ON FISCAL AFFAIRS**

**Unclassified**

**Working Party No. 6 on the Taxation of Multinational Enterprises**

**CONSULTATION WITH BUSINESS ON THE OECD DISCUSSION DRAFT ON THE ATTRIBUTION  
OF PROFITS TO PERMANENT ESTABLISHMENTS (PARTS I & II)**

**Agenda for the Meeting**

*This Meeting is to be held on Thursday 11 and Friday 12 April 2002, starting with registration at 09.00 and continuing on Friday 12 April until 18.00, at the Headquarters of OECD, Paris, in Salle 1*

Contact persons: John Neighbour, Tel; 33 (0)1 45 24 96 37, email: john.neighbour@oecd.org  
Caroline Silberztein, Tel: 33(0)1 45 24 14 94, caroline.silberztein@oecd.org  
Fax: 33(0)1 45 24 18 84

**English - Or. English**

## **Introduction - Aim of the consultation.**

1. At its meeting on 30/31 January 2001, the Committee on Fiscal Affairs (CFA) approved for de-restriction and publication the Discussion Draft on Attributing Profit to Permanent Establishments, Parts I and II (hereinafter referred to as “the Discussion Draft”) (DAFFE/CFA(2001)28/CONF). This Draft was published on the OECD website from 8 February 2001 and comments invited from the public by 1 July 2001. Following requests from interested parties the deadline was extended to 4 September 2001.

2. Twenty-five responses have been received from the business community, banking associations and advisory firms, reflecting a diversity of interest and views. Because of the variety of positions expressed and also considering the complexity of issues at point, the CFA believes that bringing people together to participate in an open discussion will make it possible to clarify the objectives and concerns of both governments and private sector.

## **Format**

3. The consultation will be organised by Working Party No. 6 as a two-day meeting. The focus will be on discussing the comments on the issues raised by Parts I and II of the Discussion Draft. Given the comments received, most of the consultation will be devoted to the banking issues in Part II, especially issues related to capital allocation and the booking of loans. It has not been possible to discuss all the points raised in the comments received so we will focus on the areas where it is felt that further clarification and debate is of most use. Comments received on other important issues, such as internal services, will be thoroughly analysed by the Working Party but they will not be the subject of a discussion during the public consultation, as the written comments are believed to be sufficiently clear.

4. The agenda has been divided into a number of sessions, with an indication of whether they mostly relate to Part I or Part II, in order for the participants to be able to appropriately arrange their representation throughout the two days (see agenda attached).

5. It is suggested that the sessions be alternatively chaired by a government representative and a participant from the private sector .

6. OECD speakers will briefly introduce each of the technical issues. Identified commentators from the private sector will then be asked to formally present their views. The floor will then be open and a debate involving all participants will be actively encouraged.

7. Three case studies will be examined with the objective of bringing out practical implications of functional analysis, recognition of dealings and characterisation of dealings:

~ Case A, relating to general situation (Part I): Attributing assets : the “place of use” test. Recognition and characterisation of dealings. Special considerations for intangible assets:

Example: A Permanent Establishment is engaged in Research and Development activities leading to the development of intangible property rights. How should dealings be recognised and characterised? (Contract Research? Cost Contribution Arrangement? Economic ownership of the intangible.);

~ Case B, in the context of bank PEs (Part II): Attributing financial assets: importance of the sales/trading function. Example: A loan booking jurisdiction is not in line with functional analysis.

~ Case C, in the context of bank PEs (Part II): Recognition and characterisation of dealings: other banking issues. Risk management and risk transfer.

### **Participation**

8. The consultation will bring together representatives of governments and representatives of the business sector from organisations that have shown interest in the report. We expect the consultation to be attended by 20 to 30 private organisations.

### **Documentation**

9. The Discussion Draft and most of the comments received are published on the OECD web site ([www.oecd.org/daf/ctpa/tp](http://www.oecd.org/daf/ctpa/tp)) and are freely accessible. The Discussion Draft is available in English and in French. Most of the public comments are available in English only.

10. Case studies will be distributed to all participants in advance to the meeting.

### **Practical arrangements**

11. The meeting will be held in English and French with interpretation available.

12. For any information on the logistics please contact:

Ms. Liz Ward, Fiscal Affairs  
OECD, 2, rue André Pascal  
75775 Paris Cedex 16  
Telephone: (33-1) 45 24 18 79 / Telefax: (33-1) 45 24 18 84  
E-Mail: [Liz.ward@oecd.org](mailto:Liz.ward@oecd.org)

13. Any information on the topics to be discussed can be obtained from:

Mr. John Neighbour,  
Head of Division, Tax Treaty, Transfer Pricing & Financial Transactions (TTP) Division  
E-Mail: [john.neighbour@oecd.org](mailto:john.neighbour@oecd.org) / Telephone: (33 1) 45 24 96 37

Ms Caroline Silberztein , Head of Transfer Pricing Unit  
E-mail: [caroline.silberztein@oecd.org](mailto:caroline.silberztein@oecd.org) / Telephone (33 1) 45 24 14 94

**THURSDAY, 11 APRIL 2002**

*Morning session*

*Chair: Ms. Patricia Brown (OECD)*

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**09.00 – 09.30                      REGISTRATION**

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**09.30 – 10.00                      OPENING OF THE MEETING**

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Welcoming address. The Discussion Draft and the consultation process

- ~ Jeffrey Owens, Head of Centre for Tax Policy and Administration, OECD
- ~ David Grecian, Chairman, Working Party No.6
- ~ Richard Hammer, Chairman, BIAC Fiscal Committee

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**10.00 – 11:00                      PART I AND PART II  
APPLYING THE TRANSFER PRICING GUIDELINES TO A PERMANENT  
ESTABLISHMENT (PE)**

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Difference between a Permanent Establishment and a subsidiary. Principles underlying the Working Hypothesis

- ~ Introduction by the OECD (Secretariat , John Neighbour)

Applying the Working Hypothesis to enterprises operating through Permanent Establishments (PEs). The ‘functionally separate entity’ approach.

**Presentation by**

**On Behalf of**

Eric Tomsett

International Chamber of Commerce UK

Robert Couzin

Ad-hoc Group of Canadian Tax Professionals

- ~ Floor open for discussion.

11.00 – 12:30

**PART I**  
**FUNCTIONAL ANALYSIS, RECOGNITION OF DEALINGS,  
CHARACTERISATION OF DEALINGS:**

Case Study A - DAFPE/CFA/WP6(2002)6

Attributing assets : the “place of use” test. Recognition and characterisation of dealings. Special considerations for intangible assets.

Example : A Permanent Establishment is engaged in Research and Development activities leading to the development of intangible property rights. How should dealings be recognised and characterised? (Contract Research? Cost Contribution Arrangement? Economic ownership of the intangible.)

~ Presentation by OECD (Alain Castonguay, Canada )

| <b>Presentation by</b> | <b>On Behalf of</b> |
|------------------------|---------------------|
| Joseph L Andrus        | ECTSG               |
| Chris Faiferlick       | Ernst & Young       |
| Woo Taik Kim           | IFA Korea           |

~ Floor open for discussion.

**Break**

*THURSDAY, 11 APRIL 2002*

*Afternoon session*

*Chair: Mr Ian Harrison (LIBA)*

**14.00 – 14.30**

**PART II**  
**APPLYING THE WORKING HYPOTHESIS TO PERMANENT ESTABLISHMENTS OF BANKS**

Overview of the concept : Attributing functions, risks and assets to the PE and attributing sufficient “free capital” to support the functions, risks and assets attributed

- ~ Introduction by OECD (Gerald Silverstein, USA )
- ~ Floor open for discussion.

**14.30 – 16.00**

**PART II**  
**FUNCTIONAL ANALYSIS, RECOGNITION OF DEALINGS, CHARACTERISATION OF DEALINGS IN THE CONTEXT OF BANK PERMANENT ESTABLISHMENTS**

Case Study B - DAFPE/CFA/WP6(2002)7

Attributing financial assets: importance of the sales/trading function.

Example where loan booking jurisdiction is not in line with functional analysis.

- ~ Presentation by OECD (Secretariat, John Neighbour)

**Presentation by**

**On Behalf of**

Bob T Clair

KPMG

- ~ Floor open for discussion.

**PART II**  
**16.00 – 17.30 CAPITAL ALLOCATION AND FUNDING THE OPERATIONS OF BANK  
PERMANENT ESTABLISHMENTS**

Evaluating risk and risk weighting of assets

~ Introduction by OECD (Edwin Visser, Netherlands)

**Presentation by**

**On Behalf of**

Yaron Reich

Institute of International Bankers

Mark Foellmi

Swiss Bankers' Association

~ Floor open for discussion.

*FRIDAY, 12 APRIL 2002*

*Morning session  
Chair: Mr David Grecian (OECD)*

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**PART II**  
**9.30 – 13.00 CAPITAL ALLOCATION AND FUNDING THE OPERATIONS OF BANK  
PERMANENT ESTABLISHMENTS (continued)**

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Attributing ‘free capital’ to the Permanent Establishment: definition of capital to be allocated.  
Treatment of off balance sheet items; temporary surplus; distinction between Tier 1 and Tier 2 capital.

~ Introduction by OECD (Gilbert Ménard, Canada)

**Presentation by**

Ian Menzies-Conacher

**On Behalf of**

British Bankers’ Association

~ Floor open for discussion.

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Attributing ‘free capital’ to the Permanent Establishment:

□ Capital Allocation Approaches

~ Introduction by OECD (Hervé Gouzien, France)

▪ The “BIS ratio” method

**Presentation by**

Chris Fairferlick

Alan Wheable

**On Behalf of**

Ernst & Young

Canadian Bankers’ Association

~ Floor open for discussion.

▪ Other methods for Capital Allocation

**Presentation by**

Patrick Suet

**On Behalf of**

Fédération Bancaire Française

~ Floor open for discussion (offered to IIB immediately after FBF)

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□ Attributing ‘free capital’ to the Permanent Establishment: Alternatives to Capital Allocation

~ Introduction by OECD (Angelo Digeronimo, Switzerland )

- Thin capitalisation
- Quasi – thin capitalisation

**Presentation by**

**On Behalf of**

Giovanni Carpenzano

European Banking Federation

- Safe Harbour

**Presentation by**

**On Behalf of**

Ross Robins

Australian Bankers’ Association

~ Floor open for discussion (offered to IBSA immediately after ABA)

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**Break**

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*FRIDAY, 12 APRIL 2002*

*Afternoon session*

*Chair: Mr Richard Hammer, BIAC*

**PART II**

**14.30 – 16.00 RECOGNITION AND CHARACTERISATION OF DEALINGS**

Case Study C - DAFPE/CFA/WP6(2002)8

Recognition and characterisation of dealings: other banking issues. Risk management and risk transfer.

~ Presentation by OECD (Marlies de Ruyter, Netherlands)

**Presentation by**

**On Behalf of**

Jim Marshall

KPMG

Michael Barbour

Australian Bankers' Association

~ Floor open for discussion.

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Attributing a credit rating to bank Permanent Establishments.

~ Introduction by OECD (Damian Preshaw, Australia)

**Presentation by**

**On Behalf of**

Atsuhiko Ideno

Japanese Bankers' Association

~ Floor open for discussion

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Internal interest dealings

~ Introduction by OECD (Damian Preshaw, Australia)

**Presentation by**

**On Behalf of**

Chris Fairferlick

Ernst & Young

~ Floor open for discussion

**PART I AND PART II**  
**16.00 – 17.30 CAPITAL ALLOCATION AND FUNDING IN THE CONTEXT OF NON BANK  
FINANCIAL INSTITUTIONS AND NON FINANCIAL INSTITUTIONS**

Specific Issues for Non Bank Financial Institutions

~ Introduction by OECD (Mike Williams, UK)

| <b>Presentation by</b> | <b>On Behalf of</b>                          |
|------------------------|--|
| David Lynch            | International Banks & Securities Association |
| Irene Salvi            | Comité Européen des Assurances               |

~ Floor open for discussion.

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Specific Issues for Non Financial Institutions. In particular: internal interest dealings: fungibility approach versus tracing approach

~ Introduction by OECD (Roberto Schatan, Mexico)

| <b>Presentation by</b> | <b>On Behalf of</b>                                     |
|------------------------|---|
| Robert Sparks          | United States Council for International Business(USCIB) |
| Robert Couzin          | Ad-hoc Group of Canadian Tax Professionals              |

~ Floor open for discussion.

**PART I AND PART II**  
**17.30 – 18.00 CLOSING REMARKS**

~ Jeffrey Owens, Head of Centre for Tax Policy and Administration, OECD

~ David Grecian, Chairman, Working Party No.6

~ Richard Hammer, Chairman, BIAC Fiscal Committee