

# Transfer Pricing and Treaties in a Changing World, 21-22 September 2009

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## Conference Programme

### MONDAY 21 SEPTEMBER 2009

**08:00-09:30**      *Welcome breakfast sponsored by CRA The Ballentine Barbera Group*

**09:00-09:30**      **Registration**

**09:30-10:00**      **Welcome and Introduction:**  
*Jeffrey Owens, Director, OECD Centre for Tax Policy and Administration*

### **10:00-12:30**      **Adjustments and Corresponding Adjustments: The Role of Articles 7, 9 and 25 of the** *Plenary Session*      **Model Tax Convention (Main Conference Room)**

*This session will compare the treaty limitations related to possible adjustments (including secondary adjustments) by a tax administration to the profits of a subsidiary and to those of a branch of a foreign company and will examine to what extent the State of residence of the foreign company is obliged to make a corresponding downward adjustment.*

**Chair:**

*Marlies de Ruiter, Former Chair of Working Party No. 6, and Deputy Director, Customs and Consumer Taxes Directorate, Ministry of Finance, The Netherlands*

**Speakers:**

*Mary Bennett, Head of Tax Treaty & Transfer Pricing Division, OECD CTPA*  
*Manfred Naumann, Head of Division, International Taxation, Federal Ministry of Finance, Germany*  
*Stig Sollund, Director General, Tax Law Department, Ministry of Finance, Norway*  
*Janice McCart, Partner, Blakes, Cassels & Graydon LLP, Canada*  
*Robert Green, Of Counsel, Skadden, United States*

**11:00-11:30**      *Coffee break sponsored by CRA The Ballentine Barbera Group*

**12:30-14:30**      *Lunch sponsored by KPMG*

### **14:30-16:00**      **Information Powers and Transfer Pricing: Documentation Requirements, Exchange** *Parallel Session 1A*      **of Information and Burden of Proof Issues (Main Conference Room)**

*In order to effectively enforce transfer pricing legislation, tax administrations need access to information that goes beyond that generally required in non-transfer pricing tax audits. Panellists will discuss in particular the implementation of transfer pricing documentation requirements and the use of exchange of information clauses in transfer pricing audits, as well as related burden of proof and penalty issues. The focus of the session will be on how to find the right balance between, on the one hand, enabling effective enforcement of transfer pricing legislation by tax authorities and, on the other hand, keeping the compliance burden reasonable and providing reasonable certainty to taxpayers who make documentation efforts.*

**Chair:**

*Feng Lizeng, Deputy Division Director, International Taxation Department, State Administration of Taxation, China*

**Speakers:**

*Sabine Wahl, Mouvement des Entreprises de France (MEDEF), France*  
*Guglielmo Maisto, Maisto e Associati, Italy*  
*Michelle Levac, Transfer Pricing Specialist, International Tax Division, Canada Revenue Agency, Canada*

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#### 14:30-16:00 **Deductibility of Interest in Related Party Situations (Room 12)** *Parallel Session 1B*

*This session will focus on treaty issues related to interest deductions in a related-party context. This will include an examination of the treaty aspects of recent changes to thin capitalisation rules; issues related to the allocation of interest for the purpose of relief of double taxation on foreign PE income and cross-border dividends; the use of tax treaties to facilitate double dip financing arrangements and cross-border arbitrage with respect to the interest deduction.*

**Chair:**

Chai Sui Fun, *Assistant Commissioner, Tax Policy and International Tax Division, Inland Revenue Authority of Singapore, Singapore*

**Speakers:**

William Morris, *Senior International Tax Counsel and Director, European Tax Policy, General Electric, United Kingdom*

Robert Culbertson, *Tax Partner, Paul, Hastings, Janofsky & Walker LLP, United States*

Carmel Peters, *Policy Manager, Inland Revenue Department, New Zealand*

**16:00-16:30** *Coffee break sponsored by CRA The Ballentine Barbera Group*

#### 16:30 - 18:00 **Transfer Pricing in a Downturn Economy (Room 12)** *Parallel Session 2A*

*This session will address a number of transfer pricing issues that typically arise in a downturn economy, such as the treatment of loss-making situations; the treatment of restructuring costs (termination costs, severance payments, write-off of assets); the transfer pricing analysis of changes in the risk profile of local operations and of the consequences of those changes on the allocation of the profit/loss potential within a multinational enterprise (e.g. the conversion of full-risk activities into low-risk activities, and the conversion of low-risk activities into full-risk activities).*

**Chair:**

David Ernack, *Chair of Working Party No. 6's Special Session on Business Restructuring, and Associate International Tax Counsel, Department of the Treasury, United States*

**Speakers:**

Steeff Huibregste, *Global Partner, Transfer Pricing Associates, The Netherlands*

Roberto Schatan, *Ministry of Finance and Public Credit, Mexico*

Jean-Vincent Massoni, *Head of Transfer Pricing, BNP Paribas, France*

#### 16:30 - 18:00 **Attribution of Profits to Permanent Establishments: Designing a Modern Article 7** *Parallel Session 2B (Main Conference Room)*

*This session will deal with the last stage of the work that the OECD undertook more than 10 years ago with a view to clarifying and harmonizing the rules for the attribution of profits to permanent establishments, i.e. the drafting of a new Article 7 (Business Profits) that will allow the full application of the 2008 OECD "Report on the Attribution of Profits to Permanent Establishments". The session will focus on the main differences between the existing Article and the proposed new one.*

**Chair:**

T. P. Ostwal, *Partner, T.P. Ostwal & Associates, India*

**Speakers:**

Jacques Sasseville, *Head of the Tax Treaties Unit, OECD CTPA*

Philip Baker, *Q.C., United Kingdom*

Alain Castonguay, *Chief, Tax Treaties Section, Ministry of Finance, Canada*

Johann Müller, *International Tax Manager, A.P. Møller-Mærsk Group, Denmark*

**18:00** *Cocktail sponsored by Bingham McCutchen*

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## Conference Programme

### TUESDAY MORNING 22 SEPTEMBER 2009

08:45 – 09:30 *Welcome breakfast sponsored by IBFD*

#### 9:30 – 10:45 **Transfer Pricing and Customs (Room 12)**

*Parallel Session 3A*

*Valuations of cross-border related party transactions for transfer pricing and for customs duties purposes follow different sets of rules, thus creating additional compliance and enforcement costs. Furthermore, they can be subject to competing interests (the higher the value of a cross-border sales transaction, the higher the customs duties basis, but the lower the taxable profit reported in the country of import). Difficult questions arise in relation to the possible convergence of valuation rules, the acceptability for customs purposes of transfer pricing adjustments and vice versa, and more generally with respect to the coherence of a “whole of government” approach in that area. Many countries that have reduced or are in the process of reducing their customs duties are at the same time paying increasing attention to transfer pricing. On the other hand, in a downturn economy, customs duties that are assessed on transaction value (rather than on profits) become a bigger concern for those enterprises whose profits are reduced. Countries are also looking at ways of using scarce administrative resources more efficiently, e.g. by improving information flows between direct tax and customs administrations.*

**Chair:**

Ricardo Escobar, *Commissioner, Director of the Internal Revenue Service, Chile*

**Speakers:**

Ian Cremer, *Technical Officer, Tariff and Trade Affairs Directorate, World Customs Organisation*

Lee Corrick, *Assistant Director CT&VAT, Transfer Pricing Board, HMRC, United Kingdom*

Steven Wrappe, *Principal, Ernst & Young, United States*

Robert Sparks, *General Tax Counsel-International, Delphi Corporation, United States*

#### 9:30 – 10:45 **Treaty and Transfer Pricing Aspects of Intangibles Characterisation (Main Conference Room)**

*Parallel Session 3B*

*Intangible assets take a variety of forms, only some of which generate income that falls within the treaty definition of royalties. This session will explore various definitional issues in relation to intangibles and the treaty and transfer pricing issues that they typically raise.*

**Chair:**

Anita Kapur, *Joint Secretary, Department of Revenue, Ministry of Finance, India*

**Speakers:**

Isabel Verlinden, *Partner, PricewaterhouseCoopers, Belgium*

Carmine Rotondaro, *WW Tax Real Estate and Insurance Director, Gucci Group, Italy*

Steven Musher, *Associate Chief Counsel (International), Internal Revenue Service, United States*

Caroline Silberztein, *Head of the Transfer Pricing Unit, OECD CTPA*

10:45 – 11:15 *Coffee break sponsored by IBFD*

#### 11:15 – 12:30 **Recent Developments in the Areas of Transfer Pricing and Treaties (Main Conference Room)**

*Plenary Session*

*During this session, the panel will discuss a series of recent court decisions dealing with transfer pricing and treaty issues.*

**Chair:**

Andrew Dawson, *Chair of Working Party No. 1, and Head of Tax Treaty Team, H.M. Revenue & Customs, United Kingdom*

**Speakers:**

Kees van Raad, *Professor of Law, University of Leiden, the Netherlands*

Alan Granwell, *Partner, DLA Piper, United States*

#### 12:30 **Closing Remarks for the Part of the Conference Open to Business Participants (Main Conference Room)**

Jeffrey Owens, *Director, OECD Centre for Tax Policy and Administration*