

## *Table of Contents*

Preface .....	11
Glossary .....	17

### *Chapter I*

#### **The Arm's Length Principle**

A.	Introduction .....	25
B.	Statement of the arm's length principle.....	27
	i) Article 9 of the OECD Model Tax Convention .....	27
	ii) Maintaining the arm's length principle as the international consensus .....	29
C.	Guidance for applying the arm's length principle .....	30
	i) Comparability analysis.....	30
	a) Reason for examining comparability .....	30
	b) Factors determining comparability .....	32
	1. Characteristics of property or services.....	32
	2. Functional analysis .....	32
	3. Contractual terms.....	35
	4. Economic circumstances.....	35
	5. Business strategies .....	36
	ii) Recognition of the actual transactions undertaken.....	38
	iii) Evaluation of separate and combined transactions .....	40
	iv) Use of an arm's length range.....	41
	v) Use of multiple year data .....	42
	vi) Losses.....	43
	vii) The effect of government policies .....	44
	viii) Intentional set-offs .....	46
	ix) Use of customs valuations.....	48
	x) Use of transfer pricing methods .....	48

*Chapter II***Traditional Transaction Methods**

A.	Introduction .....	51
B.	Relationship to Article 9 .....	51
C.	Types of traditional transaction methods .....	52
i)	Comparable uncontrolled price method.....	52
ii)	Resale price method.....	55
iii)	Cost plus method.....	60
D.	Relationship to other methods .....	65

*Chapter III***Other Methods**

A.	Introduction .....	67
B.	Transactional profit methods .....	67
i)	Profit split method.....	68
a)	In general .....	68
b)	Strengths and weaknesses .....	69
c)	Guidance for application .....	70
ii)	Transactional net margin method.....	74
a)	In general .....	74
b)	Strengths and weaknesses .....	75
c)	Guidance for application .....	77
1.	The comparability standard to be applied to the transactional net margin method.....	77
2.	Other guidance.....	79
iii)	Conclusions on transactional profit methods .....	81
C.	A non-arm's-length approach: global formulary apportionment.....	84
i)	Background and description of method .....	84
ii)	Comparison with the arm's length principle.....	85
iii)	Rejection of non-arm's-length methods .....	88

*Chapter IV***Administrative Approaches to Avoiding  
and Resolving Transfer Pricing Disputes**

A.	Introduction .....	89
B.	Transfer pricing compliance practices .....	90
i)	Examination practices .....	91
ii)	Burden of proof .....	92
iii)	Penalties .....	94
C.	Corresponding adjustments and the mutual agreement procedure: Articles 9 and 25 of the OECD Model Tax Convention .....	97
i)	The mutual agreement procedure .....	97
ii)	Corresponding adjustments: Paragraph 2 of Article 9 .....	98
iii)	Concerns with the procedures .....	101
iv)	Recommendations to address concerns .....	103
a)	Time limits .....	103
b)	Duration of mutual agreement proceedings .....	105
c)	Taxpayer participation .....	106
d)	Publication of applicable procedures .....	107
e)	Problems concerning collection of tax deficiencies and accrual of interest .....	108
v)	Secondary adjustments .....	109
D.	Simultaneous Tax Examinations .....	113
i)	Definition and background .....	113
ii)	Legal basis for simultaneous tax examinations .....	114
iii)	Simultaneous tax examinations and transfer pricing .....	115
iv)	Recommendation on the use of simultaneous tax examinations ....	117
E.	Safe harbours .....	118
i)	Introduction .....	118
ii)	Definition and concept of safe harbours .....	118
iii)	Factors supporting use of safe harbours .....	119
a)	Compliance relief .....	119
b)	Certainty .....	120
c)	Administrative simplicity .....	120
iv)	Problems presented by use of safe harbours .....	120
a)	Risk of double taxation and mutual agreement procedure difficulties .....	122

b)	Possibility of opening avenues for tax planning .....	124
c)	Equity and uniformity issues.....	125
v)	Recommendations on use of safe harbours.....	125
F.	Advance pricing arrangements .....	126
i)	Definition and concept of advance pricing arrangements.....	126
ii)	Possible approaches for legal and administrative rules governing advance pricing arrangements.....	130
iii)	Advantages of advance pricing arrangements.....	131
iv)	Disadvantages relating to advance pricing arrangements .....	133
v)	Recommendations.....	136
a)	In general.....	136
b)	Coverage of an arrangement.....	137
c)	Unilateral versus bilateral (multilateral) arrangements .....	137
d)	Equitable access to APAs for all taxpayers .....	137
e)	Developing working agreements between competent authorities and improved procedures.....	138
G.	Arbitration .....	138

### *Chapter V*

#### **Documentation**

A.	Introduction .....	141
B.	Guidance on documentation rules and procedures .....	142
C.	Useful information for determining transfer pricing.....	145
D.	Summary of Recommendations on Documentation .....	148

### *Chapter VI*

#### **Special Considerations for Intangible Property**

A.	Introduction .....	151
B.	Commercial intangibles .....	152
i)	In general .....	152
ii)	Examples: patents and trademarks .....	154

C.	Applying the arm's length principle.....	155
i)	In general .....	155
ii)	Identifying arrangements made for the transfer of intangible property .....	156
iii)	Calculation of an arm's length consideration .....	158
iv)	Arm's length pricing when valuation is highly uncertain at the time of the transaction .....	161
D.	Marketing activities undertaken by enterprises not owning trademarks or trade names .....	163

### *Chapter VII*

#### **Special Considerations for Intra-Group Services**

A.	Introduction .....	165
B.	Main issues .....	166
i)	Determining whether intra-group services have been rendered.....	166
ii)	Determining an arm's length charge .....	170
a)	In general.....	170
b)	Identifying actual arrangements for charging for intra-group services .....	171
c)	Calculating the arm's length consideration .....	173
C.	Some examples of intra-group services .....	176

### *Chapter VIII*

#### **Cost Contribution Arrangements**

A.	Introduction .....	179
B.	Concept of a CCA.....	180
i)	In general .....	180
ii)	Relationship to other chapters.....	181
iii)	Types of CCAs.....	181
C.	Applying the arm's length principle.....	182
i)	In general .....	182
ii)	Determining participants.....	183

iii)	The amount of each participant’s contribution .....	183
iv)	Determining whether the allocation is appropriate .....	185
v)	The tax treatment of contributions and balancing payments.....	186
D.	Tax consequences if a CCA is not arm’s length .....	187
i)	Adjustment of contributions.....	188
ii)	Disregarding part or all of the terms of a CCA.....	188
E.	CCA entry, withdrawal, or termination .....	189
F.	Recommendations for structuring and documenting CCAs .....	191
<i>Appendix: Recommendation of the Council on the Determination of the</i>		
<i>Transfer Pricing Between Associated Enterprises [C(95)126/Final].....</i>		<i>195</i>
<i>List of Annexes .....</i>		<i>199</i>
Annex to the OECD Transfer Pricing Guidelines: Guidelines for Monitoring Procedures on the OECD Transfer Pricing Guidelines and the Involvement of the Business Community .....		201
Annex to Chapter III: Example to Illustrate the Application of the Residual Profit Split Method.....		207
Annex to Chapter IV: Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure ("MAP APAs") .....		211
Annex to Chapter VI: Examples to Illustrate the Transfer Pricing Guidelines on Intangible Property and Uncertain Valuation .....		241