COUNCIL

REVISED RECOMMENDATION OF THE COUNCIL ON THE DETERMINATION OF TRANSFER PRICING BETWEEN ASSOCIATED ENTERPRISES

(adopted by the Council at its 907th session on 24 July 1997 [C/M(97)18/PROV])

Cancels & replaces the same document: distributed 19-Sep-1997
THE COUNCIL,

Having regard to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the Declaration of 21st June, 1976 adopted by the Governments of OECD Member Countries on International Investment and Multinational Enterprises and the Guidelines annexed thereto [C(76)99(Final) as amended];


Having regard to the fundamental need for co-operation among tax administrations in order to remove the obstacles that international double taxation presents to the free movement of goods, services and capital between Member countries;

Considering that transactions between associated enterprises may take place under conditions differing from those taking place between independent enterprises;

Considering that the prices of such transactions between associated enterprises (usually referred to as transfer pricing) should, nevertheless, for tax purposes be in conformity with those which would be charged between independent enterprises (usually referred to as arm's length pricing) as provided in Article 9 (paragraph 1) of the OECD Model Tax Convention on Income and on Capital;

Considering that problems with regard to transfer pricing in international transactions assume special importance in view of the substantial volume of such transactions;

Considering the need to achieve consistency in the approaches of tax administrations, on the one hand, and of associated enterprises, on the other hand, in the determination of the income and expenses of a company that is part of a Multinational Enterprise Group that should be taken in to account within a jurisdiction.

I. RECOMMENDS to the Governments of Member countries:

I.1. that their tax administrations follow, when reviewing, and if necessary, adjusting transfer pricing between associated enterprises for the purposes of determining taxable income, the guidance in the 1995 Report, as amended -- considering the integrity of the Report and the interaction of the different chapters -- for arriving at arm's length pricing for transactions between associated enterprises;

I.2. that tax administrations should encourage taxpayers to follow the guidance in the 1995 Report, as amended and to that end that they give the 1995 Report as amended publicity in their country and have it translated, where necessary, into their national language(s);

I.3. that they develop further co-operation between their tax administrations, on a bilateral or multilateral basis, in matters pertaining to transfer pricing.
II. INVITES the Governments of Member countries:

II.1. to notify the Committee on Fiscal Affairs of any modifications to the text of any laws or regulations that are relevant to the determination of transfer pricing or of the introduction of new laws or regulations.

III. INSTRUCTS the Committee on Fiscal Affairs:

III.1. to pursue its work on issues pertinent to transfer pricing and to issue the additions to the guidelines referred to in the 1995 Report as amended;

III.2. to monitor the implementation of the 1995 Report as amended, in co-operation with the tax authorities of Member countries and with the participation of the business community and to recommend to the Council to amend and update, if necessary, the 1995 Report as amended, in the light of this monitoring;

III.3. to report periodically to the Council on the results of its work in these matters together with any relevant proposals for improved international co-operation;

III.4. to develop its dialogue with non-Member countries, consistently with the policy of the Organisation, with the aim of assisting them to become familiar with the 1995 Report as amended, and where appropriate encourage them to associate themselves with the 1995 Report as amended.