

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

Conference Programme (as of 9th June 2009)

MONDAY, 21 SEPTEMBER 2009

09:00 - 09:30 **Registration**

09:30 - 10:00 **Opening of the Meeting**

Opening Speech:

Angel Gurría, Secretary-General of the OECD

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 Model Tax Convention**
Plenary Session

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**

12:30 - 14:30 **Lunch: a buffet lunch will be offered to all participants in the OECD Château de la Muette**

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

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

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

16:30 - 18:00 Transfer Pricing in a Downturn Economy

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

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, OECD Château de la Muette



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TUESDAY MORNING, 22 SEPTEMBER 2009

9:30 – 10:45 **Transfer Pricing and Customs** *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
Joseph Rock, Group Executive - Technical Enablement - LBC, South African Revenue Service, South Africa

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** *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 Silberstein, Head of the Transfer Pricing Unit, OECD CTPA

10:45 – 11:15 **Coffee Break**



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11:15 – 12:30 **Recent Developments in the Areas of Transfer Pricing and Treaties** *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**

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

