



Position Paper

Ref. BUSINESSEUROPE TAX POLICY GROUP
Contact : Mr. Krister Andersson, Chairman

15 September 2010

To:

Michelle Levac
Chair, Working Party No. 6 of the Committee on Fiscal Affairs
OECD Centre for Tax Policy and Administration
2, rue André Pascal
75775 Paris Cedex 16
France

Dear Michelle,

BUSINESSEUROPE is pleased to provide the following general input on the scoping of an OECD project on the Transfer Pricing Aspects of Intangibles.

The treatment of intangible property within global businesses is a very important topic that raises many difficult tax issues from a transfer pricing aspect. BUSINESSEUROPE supports and compliments the OECD for initiating a project to reach a common and better understanding on how to recognise and treat intangibles for transfer pricing purposes.

To promote growth in our economies companies need predictability and further guidance in this complicated area. Consequently, the need for consensus and equal application of transfer pricing rules in relation to intangible property in the Member States and beyond is of utmost importance. In this respect, BUSINESSEUROPE would like to emphasize the need for designing guidelines that has a chance of gaining acceptance not only within the OECD but also in developing countries outside the OECD. Furthermore, BUSINESSEUROPE would like to highlight the importance of appropriately considering any EU-law implications within the project.

In defining the scope of the project, BUSINESSEUROPE would like to highlight the following general areas as being of particular importance:

- Identification of intangibles that constitute compensable assets for Transfer Pricing purposes
- Guidance on factors that determines the right to compensation of intangibles (e.g. economic v. legal ownership)
- Guidance on how to evaluate intangibles in relation to other assets and functions in establishing appropriate remuneration levels, e.g. when conducting benchmark studies (notably how to consider the lack of intangibles in the hands of a routine Service Provider)
- Guidance on appropriate valuation methods when transferring compensable intangibles
- Recognition of any EU-law implications on the identified focus areas.



BUSINESSEUROPE would like to stress that the purpose of the project must be to eliminate international double taxation in a timely manner. Governments have a responsibility to ensure that tax rules applied do not act as a hindrance to a free flow of investment and trade. Given the severe budgetary situation in many countries in the aftermath of the financial crisis, temptations to impose burdensome rules or interpretations of what constitutes appropriate prices for the transfer of intangibles must be resisted. This is furthermore important in order to gain the needed full support not only from OECD-countries but also from other countries.

BUSINESSEUROPE is happy to continue a constructive dialogue with the OECD on this topic.

On behalf of the BUSINESSEUROPE Tax Policy Group

15 September, 2010

Krister Andersson
Chairman

BUSINESSEUROPE is the main horizontal business organisation at EU level. Through its 40 member federations, BUSINESSEUROPE represents 20 million companies from 34 countries.