CBI
THE VOICE OF BUSINESS

CBI COMMENTS ON THE OECD DRAFT HANDBOOK ON TRANSFER PRICING RISK ASSESSMENT

1 The CBI welcomes the opportunity to comment on the Draft Handbook on Transfer Pricing Risk Assessment.

2 As the UK's leading business organisation, the CBI speaks for some 240,000 businesses that together employ around a third of the private sector workforce, covering the full spectrum of business interests both by sector and by size.

COMMENTS

3 The CBI welcomes the development of a handbook to guide tax administrations in conducting transfer pricing risk assessments. It will be helpful to business if the occurrence of inappropriate and unfocussed transfer pricing audits can be eliminated.

4 The draft guidance is generally useful, but there are some key points that the CBI would wish to reinforce:

a. The role of the taxpayer. The draft acknowledges that some tax administrations share risk assessments with the affected taxpayer (147). The CBI would like to see stronger recommendations that risk assessments are shared with the taxpayer before conclusions are reached. The information available to a government will inevitably be indicative only, and its application to a particular taxpayer will be speculative to some extent, with the result that wrong conclusions can be drawn. The CBI would like to see the handbook specifically recommending that the taxpayer is consulted during the risk assessment process.

b. Dedicated, experienced personnel. The draft does not reach a conclusion about the question of whether a transfer pricing risk assessment requires dedicated personnel with substantial experience (18, 140, 141). This is a unsatisfactory outcome. If the proposition is for risk assessment to be used to target areas of highest risk in a systematic, consistent way, then it is essential that an experienced team should be involved.

c. Risk assessment during the audit. There is some acknowledgement that risk assessment should be a continuing process, and should not stop at the commencement of an audit, but should guide the audit (142). The CBI recommends that the draft more clearly states that risk assessment principles should guide the audit, with the result that if it is discovered that the issues thought to be high risk are not so, the audit should quickly be closed. Once started, audits are difficult to close, and it would be helpful of the handbook makes the point that if the audit discovers that the premise on which it is based is false, then the audit has succeeded in investigating potential non-compliance and should be closed.

d. Implications for low risk. There is little discussion about the implications for taxpayers of a "not high" risk assessment. Transfer pricing documentation is a high burden for businesses, and there can be benefits to taxpayers if the level of documentation required to be prepared can be

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modified according to risk status. The point is relevant here, and also to the White Paper on Transfer Pricing Documentation released on 30 July 2013.

e. Some specific points. It is disappointing that intra-group service transactions are identified as "one of the most frequently occurring transfer pricing issues" without further analysis of whether they should be (70). It is also puzzling that the statement is made, it seems uniquely in the draft to this category of transaction, that intra-group service transactions are "often not fully documented" (73). Such statements are likely to encourage the perception that intra-group services are high risk. The prevalence of enquiries on head office services is a frustration for businesses, and the CBI recommends that the handbook gives further consideration to evaluating risk arising from such arrangements. The reference to procurement companies operating outside the country where manufacturing takes place (75) is unhelpful; procurement companies are usually located close to the sources of materials and components in order to fulfil their function.