COMMENT LETTER

To	**OECD – Transfer Pricing Committee**
From	**Mr. T. P. Ostwal – Tax Consultant, India***
Date	01.10.2013
Subject	**Comment on the Revised Discussion draft on Intangibles**

Please find attached the comments on revised discussion draft on Intangibles in my personal capacity.

Revised Discussion Draft on Intangibles
Need of an hour: Change in the basic approach to be adopted at global level considering the evolving world of business and evolving forms of intangibles

The fast developing technology, new business models, e-commerce innovations and evolving business mechanics has not only changed the lifestyle of people all across the globe but also has resulted into significant impact on the concepts of taxation. It is been observed that new forms of intangibles do not find compatibility with the old concepts of taxation as technology is evolving faster than the principles of taxation. In other words, e-commerce and intangibles is a new wine in old bottle at least when it comes to taxation. The primary issues emerging as areas of concerns are:

a) **What is a transaction -** Can it be identified distinctly in all cases?

b) **Where is the source, residence, PE -**Transactions spread over the entire world as e-commerce means no more state, country, continent boundary as everyone is everywhere.

c) **Quantum of transactions is huge -** Millions of transactions are transacted in seconds and replication is easy and therefore, it becomes difficult to trace the transactions.

d) Valuation of intangibles has become burdensome with the sophisticated structures.

Determination of Arm's length price and value attribution of profit in a country on the basis of functions, assets and risks using traditional methodologies fail to provide a reasonable and scientific solution as new technology and e-commerce by definition brings something new and unique into widespread use, no comparability can be made. All these issues concerning taxability and continuous abuse of arm's length principle due to lack of information, clarity and decisive outcome has brought on focus importance of formulary apportionment method or unitary taxation method in the coming times.

Unitary Taxation Approach

The unitary taxation approach is based on the assumption that the income of an enterprise is earned by the enterprise group as a whole and it does not attempt to identify or quantify how much of it could be said to have been earned by any of the component parts. Income is apportioned by a formula using factors which quantify the actual geographical location of its activities i.e. the real economic activities in each place where they happen.

Unitary approach is based on the principle that tax should be paid according to where the activities generating the income take place, because taxes help to make those activities possible (providing education, infrastructure, etc). It places a sounder basis on the 'territorial principle', according to which profits are apportioned to the countries where the business activity takes place.

The apportionment is required to be done according to factors measuring real physical presence in attribution to entities devised by the fertile minds of experts.

For this purpose, primary emphasis is required on the country-by-country reporting approach wherein the multinational group should disclose the following information:

- The name of each country in which it operates.
- The names of all its subsidiaries and affiliates in each country in which it operates.
- The performance of each subsidiary and affiliate in every country in which it operates, without exception.
- The tax charge included in its accounts of each subsidiary and affiliate in each country in which it operates.
- Details of the cost and net book value of its fixed assets located in each country in which it operates.
- Details of its gross and net assets for each country in which it operates.

Country- by country reporting should also disclose if there is deliberate material mispricing of goods or services across international borders. (Criteria could be adapted to fit a formula under unitary taxation.) This approach of reporting is also extremely valuable in order to try to determine whether arm’s length principles are being complied with.