



**REPORT BY THE
TECHNICAL ADVISORY GROUP ON
MONITORING THE APPLICATION OF EXISTING
TREATY NORMS FOR THE TAXATION OF
BUSINESS PROFITS
(BUSINESS PROFITS TAG)**

December 2000

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Introduction

1. The general mandate of the Business Profits Technical Advisory Group (BP TAG) is to “examine how the current treaty rules for the taxation of business profits apply in the context of electronic commerce and examine proposals for alternative rules.” To this end, the TAG has identified a number of relevant issues and developed a work programme, described below.

Composition of the TAG

2. The BP TAG met three times, in September 1999, July 2000 and December 2000. Membership consists of Member country Delegates of Working Party No. 1 and Working Party No. 6, representatives from non-member economies and representatives from business and industry. The three Co-Chairs are Ron Haigh (OECD Member countries), Ron van de Merwe (non-member countries) and John Clark (business representatives).

3. The following people participated in the activities of the TAG and attended one or more of its meetings.

Full Name	Company/Organisation
Mr. John CLARK <i>(Business Co-Chair of the TAG)</i>	British Telecom
Mr. Ron HAIGH <i>(Member Government Co-Chair of the TAG)</i>	Inland Revenue, United Kingdom
Mr. Ron VAN DER MERWE <i>(Non-member Government Co-Chair of the TAG)</i>	South Africa Revenue Service
Government representatives	
Ms. Ariane PICKERING	Australian Taxation Office
Mr. Alain CASTONGUAY	Department of Finance, Canada
Mr. Wolfgang BÜTTNER / Mr. Helmut KRABBE	Bundesministerium der Finanzen, Germany
Mr. Brendan MCCORMACK	Office of the Revenue Commissioners, Ireland
Mr. Kenichiro ASAGAMI	National Tax Administration, Japan
Ms. Silvia FROHOFER	Swiss Federal Tax Administration
Mr. Michael MUNDACA	United States Treasury
Mr. Talmon DE FREITAS / Ms. Iraci KAHAN	Ministry of Finance, Brazil
Mr. Shubin MU	State Administration of Taxation, China
Mr. A. BALASUBRAMANIAN	Ministry of Finance, India
Mr. Vijay MATHUR	Central Board of Direct Taxes, India

Business representatives	
Ms. Carol CAYO	Vertex Inc., United States
Mr. Matthias GEURTS	Bundesverband Deutscher Banken, Germany
Mr. Paul HUMPHREYS	AMP, Australia
Mr. Dan KOSTENBAUDER	Hewlett-Packard Company, United States
Mr. David OLIVE	Fujitsu Corporation, United States
Mr. Torbjörn PERSSON	Volkswagen AG, Germany
Ms. Heidrun ZIRFAS	Volkswagen AG, Germany
Mr. Pieter RIJKELS	EDS Belgium
Mr. William SAMPLE	Microsoft Corporation, United States

Work Programme of the TAG

4. The work programme developed by the BP TAG contains six main elements:

- 1) Consideration of how the current treaty rules for the taxation of business profits apply in the context of electronic commerce. Emphasis is placed in particular on four issues:
 - a) The “place of effective management”.
 - b) The concept of a Permanent Establishment (PE).
 - c) The attribution of profit to a server PE.
 - d) Transfer pricing.
- 2) A consideration of the pros and cons of applying the existing treaty rules taking into account anticipated developments in electronic commerce.
- 3) Development of criteria to facilitate the evaluation of existing treaty rules in the context of electronic commerce.
- 4) An assessment of whether, and if so, how the current treaty rules should be clarified in the light of electronic commerce.
- 5) Identification of alternatives to the current treaty rules for determining the taxing rights of source and residence countries and to the current treaty rules for the allocation of profit between the taxing jurisdictions.
- 6) An assessment of the alternatives to the current rules on the basis of the evaluation criteria.

5. The BP TAG is in the process of finalising two discussion papers that will be posted on the public EDG (electronic discussion group) and OECD website. It is also expected that the discussion papers will be finalised in time to be included in the publication to be released by the Committee in Fiscal Affairs (CFA) in February 2001 reporting progress on implementing the Ottawa Framework Conditions on taxation and electronic commerce. The first is a discussion paper on the allocation of profit to a PE involved in electronic commerce transactions. This identifies issues connected with applying the arm’s length principle in Article 7(2) of the OECD Model Convention in order to allocate profit to a server PE

carrying out an e-tailing function. The second paper is a discussion paper on the application of the “place of effective management” tie-breaker rule in an electronic commerce environment. The paper identifies possible limitations of the tie-breaker rule in Article 4 of the OECD Model Convention, which determines the residence for treaty purposes of a “dual resident” person, in the context of current and future developments in electronic commerce. These papers provide a comprehensive analysis of the issues involved and invite comment from interested parties. These papers between them address the issues raised in items 1(a) and 1(c) above.

6. The TAG is currently working on drafts of a paper on the pros and cons of the current treaty rules in the context of electronic commerce. This paper builds on the preliminary conclusions contained in the two finalised discussion papers. Work on this paper involves a consideration of current treaty rules and an identification of possible alternatives. This addresses issues raised in items 2, 4 and 5 above and provides a foundation for future work contained in 3 and 6 above.

Future work of the TAG

7. If the mandate of the BP TAG is extended, it is envisaged that work would continue in four main areas:

- The first would be to continue the work on the allocation of profit to a server PE and the “place of effective management” concept in the tie-breaker rule in the light of comments received on the discussion papers.
- The second would be to evaluate the adequacy of the current treaty rules in the electronic commerce context, taking into account possible alternatives, and then, if it is considered necessary, consider how present rules could be clarified or modified.
- The third would be to address the transfer pricing issue at 1(d) above, *i.e.* the allocation of income between associated enterprises engaging in electronic commerce. This work would be informed by feedback sought from business on what are seen as the priority issues.
- The fourth would be to monitor developments in electronic commerce that impact on the treaty rules related to the taxation of business profits.