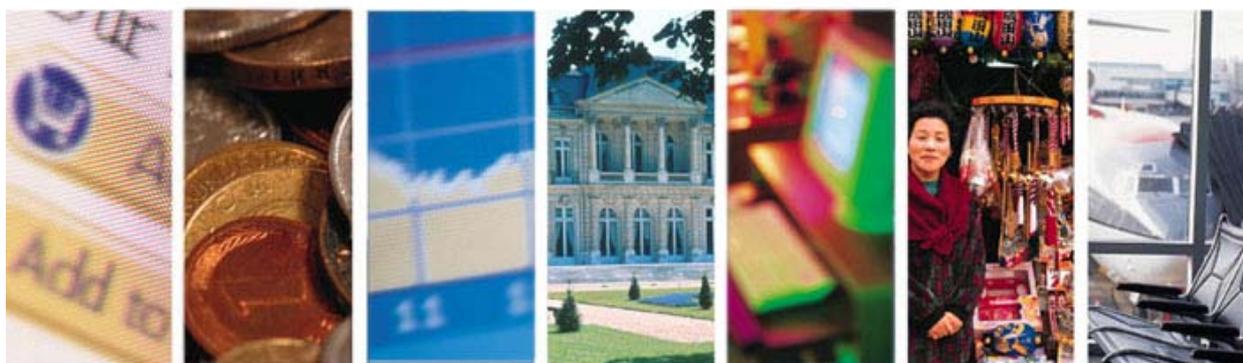




ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT



**DRAFT AGENDA FOR THE CONSULTATION WITH THE ORGANISATIONS
WHICH PROVIDED WRITTEN COMMENTS**

**ON THE MAY 2006 DISCUSSION DRAFT ON COMPARABILITY
AND THE JANUARY 2008 DISCUSSION DRAFT ON TRANSACTIONAL
PROFIT METHODS**

17-18 November 2008



CENTRE FOR TAX POLICY AND ADMINISTRATION

**CONSULTATION WITH THE ORGANISATIONS WHICH PROVIDED WRITTEN
COMMENTS ON THE MAY 2006 DISCUSSION DRAFT ON COMPARABILITY AND
JANUARY 2008 DISCUSSION DRAFT ON PROFIT METHODS**

17-18 November 2008 at the OECD Conference Centre in Paris

1. As part of its procedures for monitoring the implementation of the Transfer Pricing Guidelines (“the TP Guidelines”), Working Party No. 6 of the OECD Committee on Fiscal Affairs (“WP6”) selected two areas to be considered in priority:

- Comparability issues encountered when applying the transfer pricing methods authorised by the TP Guidelines and
- The application of transactional profit methods (i.e., the transactional profit split methods and the transactional net margin method).

2. WP6 started with a review of comparability issues in general. As a first step, an open invitation to comment on comparability issues was released in 2003. Detailed contributions were received from the business community. A series of draft Issues Notes was then developed by the Working Party, building on experience acquired by countries since the adoption of the TP Guidelines in 1995 and on comments received from the business community in response to the 2003 invitation. Comments on the draft Issues Notes on comparability were received from 13 organisations (see www.oecd.org/ctp/tp/cpm).

3. A separate invitation to comment on issues related to profit methods was released in February 2006, which also attracted many detailed responses. Following a process similar to the one followed for the review of comparability, a series of draft Issues Notes on the application of transactional profit methods was produced by the Working Party, building on the experience acquired by countries since the adoption of the TP Guidelines in 1995 and on comments received from the business community in response to the 2006 invitation. Comments on the draft Issues Notes on profit methods were received from 16 organisations (see www.oecd.org/ctp/tp/cpm).

4. The Working Party started discussing the comments received on the two discussion drafts. Given the extent and complexity of the comments received, Delegates felt that the reviews of comparability and profit methods could greatly benefit from a face-to-face discussion with the commentators. The review of comparability and the review of profit methods are intrinsically linked, and several commentators contributed to both. Accordingly, it was decided to organise the consultation as a two-day meeting addressing both topics. The consultation is scheduled to take place on **17 and 18 November 2008** at the OECD Conference Centre in Paris.

Objective of the consultation and proposed agenda

5. The objective of the consultation is for the business commentators to be given the opportunity to orally explain some of their arguments to WP6 Delegates and for the latter to obtain clarification of the arguments raised to the extent needed.

6. The Working Party has not finalised its views on the issues that will be discussed and will therefore not be in a position to provide OECD answers.
7. Given the number of issues addressed by commentators and the variety of positions expressed on some of them, it will not be possible to discuss all the points raised in the comments received. The attached draft agenda was prepared by the Working Party with the objective of focussing the consultation on the issues which would most greatly benefit from a face-to-face discussion.
8. The suggestion is that for each agenda item, a WP6 Delegate will give a very brief introduction of the position in the draft Issues Notes. One or several business commentators will then be invited to explain their views. Time should be kept for discussion on each of the agenda items.
9. The consultation will be held in English. Please note that no interpretation will be provided.

**OECD CONSULTATION WITH COMMENTATORS ON THE COMPARABILITY AND PROFIT
METHODS DISCUSSION DRAFTS**

ORGANISED BY WORKING PARTY No. 6 OF THE COMMITTEE ON FISCAL AFFAIRS

**17-18 November 2008 at the OECD Headquarters
OECD Conference Centre, RoomCC5
2, rue André Pascal, 75016 Paris, France**

DRAFT AGENDA

Chair: Ms. Marlies de Ruyter, Chair of Working Party No. 6

<i>Day one: Comparability</i>	
08:45 – 09:15	Registration
09:15 – 9:30	Welcome, Overview and Ground Rules Chair: Marlies de Ruyter <ul style="list-style-type: none">• Welcome by the Chairs of WP6 and of the BIAC Tax Committee• Status of the project, possible outputs• Purpose of and procedures for the consultation
9: 30 – 10:30	Putting comparability analysis into perspective Issues to be addressed: <ul style="list-style-type: none">• Is a comparison with uncontrolled transactions a requirement for taxpayers under Article 9?
10:30 – 12:00 <i>(Including a refreshment break from 11:00 to 11:20)</i>	Timing issues Issues to be addressed: <ul style="list-style-type: none">• Year-end adjustments: why they are performed and how. Conditions for acceptability by tax authorities.• What is hindsight (see TPG 1.51)?

Day one: Comparability	
12:00 – 13:00	Internal comparables Issues to be addressed: <ul style="list-style-type: none">• Working Party No. 6 has expressed a general preference for internal comparables over external ones: rationale and practical consequences.• Definition of internal comparables. Does this include comparable uncontrolled transactions performed by either party to the controlled transaction? Or only by the party being examined? Or only by the tested party? Does this include comparable uncontrolled transactions performed by other group members?
13:00 – 14:30	LUNCH BREAK
14:30 – 16:00	Sources of information Issues to be addressed: <ul style="list-style-type: none">• “Secret comparables”: definition. Why they are used by some tax authorities. What are the issues and possible ways to deal with them.• Acceptability of database searches with a particular focus on regional searches for comparables.
16:00 – 16:20	REFRESHMENT BREAK
16:20 – 17:00	Multiple year data Issues to be addressed: <ul style="list-style-type: none">• In what circumstances can multiple year data be useful and how should they be used?
17:00 – 18:00	Arm’s length range Issues to be addressed: <ul style="list-style-type: none">• Enhancing the reliability of the range: statistical tools and other techniques.• Choosing the point in the range.• Loss-making comparables and extreme results.
18:00	End of Day One

Day two: Transactional Profit Methods	
9:30 – 10:45	Status of transactional profit methods Issues to be addressed: <ul style="list-style-type: none">• Working Party No. 6’s proposal for selecting the “most appropriate method to the circumstances of the case”: rationale and practical application.
10:45 – 11:05	REFRESHMENT BREAK
11:05 – 12:00	Use of more than one method Issues to be addressed: <ul style="list-style-type: none">• In what circumstances is the use of a second method, either in conjunction with the primary method or as a sanity check, useful or required?• In what circumstances can a tax administration require the taxpayer to provide the information needed to apply a method other than the one selected by the taxpayer, either as a sanity check, or in replacement for the taxpayer’s method?
12:00 – 13:00	Access to information on foreign affiliates Issues to be addressed: <ul style="list-style-type: none">• What information on foreign affiliates should be available to tax administrations? How is this affected by the choice of the most appropriate method and the selection of the tested party? What are the foreign affiliates concerned (only the related party to the transaction or also other group members)?
13:00 – 14:30	LUNCH BREAK
14:30 – 15:30	Transactional profit split method Issues to be addressed: <ul style="list-style-type: none">• When to apply a transactional profit split method? In particular, is this method a good solution for cases where no satisfactory comparables are found?
15:30 – 16:30	Transactional Net Margin Method (TNMM) Issues to be addressed: <ul style="list-style-type: none">• Is TNMM a transactional method (theory and practice)?
16:30 – 16:50	REFRESHMENT BREAK

Day two: Transactional Profit Methods

16:50 – 17:45

Profit margin indicators for sales activities

Issues to be addressed:

- Should sales activities always be remunerated using a sales-based indicator?
- In what circumstances is a Berry ratio appropriate?

17:45 – 18:00

Conclusion and indication of way forward by Chair