

January 8, 2010

Dear Mister Owens,

The French Banking Federation welcomes the OECD proposed revision of Chapters I-III of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

This revision shows significant improvements as compared to the 1995 document. It appears to be the result of an impressive sum of work, and takes into account a huge Transfer Pricing practice.

Our main remarks are summarized below.

Level of guidance

The proposed document provides more detailed guidance, especially as far as the comparability analysis is concerned. As a result, there is a risk that Tax Administrations may put form before substance, and could be focused on whether or not all guidance steps have been strictly followed by taxpayers. OECD guidance has, in our views, to remain governed first by the adequacy of TP methods to functional analyses and facts and circumstances and should not become in any way a “check the box” process.

Most appropriate method

We welcome the terms « most appropriate method » instead of « best method ». Our understanding is that the taxpayers do not need to document why other methods have been rejected. This point must be clearly confirmed by OECD.

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Use of another method by Tax Administrations

In our views, when taxpayers use the "most appropriate method", in link with facts and circumstances, the role of Tax Administrations is to audit the method used by taxpayers. It is only in case where Tax Administrations have evidence that a method used by the taxpayer is inadequate that they may propose another method, justified by facts and circumstances. We think that OECD could make this clearer.

Secret comparables

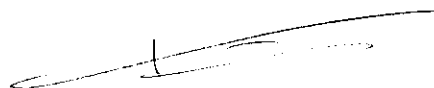
Concerning "secret comparables", the OECD developments are interesting because the taxpayer security is clearly put on the table. We encourage OECD to go further on this issue, and to ban the use of secret comparables by Tax Administrations.

Independent comparables

At least, we would like OECD to takes into account the situation of some industries where external independent comparables hardly exist because of the globalisation of the economy and the markets. It is the case of some banking activities (e.g. brokerage). This point must be incorporated into the OECD report that should mention some exceptions.

We remain at your disposal for any further discussion on these matters.

Best regards.



P. Reynier