

## MEDEF

### INTANGIBLES – A draft reaction to OECD questions

MEDEF welcomes the opportunity to convey some elements from enterprises in the intangibles' area.

Recent works of OECD on art 7 of the model convention and on business restructuring have raised new approaches and new issues that need indeed to be addressed. Thus the new project launched by OECD is highly welcome by the business community.

Intangibles are a very complex issue which should be addressed by all participants with much pragmatism. We need to exchange & listen to each other during some time to find a common understanding of it. Moreover it would be useful to try and find some basic principles on which proper guidelines would be designed.

Our main issues would be the following:

1. Identification of intangibles which constitute **assets** that are raising a transfer pricing issue:
  - a. Chapter VI of the Guidelines should be updated to take into account the deeply changed reality of the worldwide economy and the new business models resulting from it.
  - b. An update of the Guidelines on intangibles is indeed helpful but it should not mean necessarily an enlargement on the field of the transactions to be covered by the examination.
  - c. New principles should be designed to address the actual situation and what can be expected in the future (medium term).
  - d. Principles should come first & only afterward can we search for examples; examples are useful but they reduce the scope of the matter and they reflect only the past.
  - e. We think it would be helpful to try & find some definition of intangibles (even if not perfect) instead of a one or more lists.
  
2. Identification of the 'owners'
  - a. There are presently several definitions of ownership, with different meanings & scope, with different use and resulting from different document (mainly from OECD): legal/economic/beneficial/functional...

- b. An issue is what type of 'owner' should be taken into account for transfer pricing purposes: beneficiary of the royalty, the person entitled to sell the asset, the designer of the intangible ...
- c. Identification of the owner is linked to the identification of the location of the intangible.
- d. The identification of the user can raise some issues in certain cases.

### 3. Valuations

- a. The methods actually used by the business should be taken into consideration not disregarding the circumstances (legal, regulatory, sale & purchase frame, etc...) in which they have been used.
  - b. Valuation of one item of intangible should be re-examined in the perspective of the total value of the business it belongs to.
4. Identification, definitions as well as valuation will probably enter in conflict with several international standards that apply presently to the enterprises: accounting, financial, legal, etc...

As a conclusion we think that a long study within OECD should result in a report and then a rewriting of Chapter VI.

MEDEF would appreciate taking an active part in the future work on intangibles.