

Transfer Pricing Unit  
Organisation for Economic Co-operation and Development

By email: [transferpricing@oecd.org](mailto:transferpricing@oecd.org)

11 April 2014  
Our ref: WJID/AL/LKS

Dear Sirs

## **Paper on transfer pricing comparability data and developing countries released for comment**

Thank you for the opportunity to comment on the interim draft paper on transfer pricing comparability data and developing countries (the 'draft paper').

We fully support the work carried out by the OECD Secretariat (in conjunction with the Task Force on Tax and Development) on this matter and the areas highlighted within the draft paper. We share the concerns about the availability and quality of financial data on transactions between unrelated parties that can be used to assess the transfer pricing position for transactions with developing countries.

We agree with the OECD's proposals to help developing countries gain access to databases and suitable data. We agree major suppliers of the databases should be engaged to help highlight issues with the current system and explore steps that could be taken to improve developing country coverage and access. The current databases have weaknesses which include limited financial data on companies and relevant transactions in some developing countries. As identified, this may be due to a limited number of sizeable independent companies currently active in some countries and in these cases, genuine comparables based on third party commercial transactions in-country are limited. However, this is different from circumstances where independent transactions do exist, but data is not collected as a result of there being no statutory obligation for companies to file accounts. As the landscape of the economy changes and adapts in some countries, the number of independent companies is likely to increase and therefore, comparable data may become available, if it is collated and any access to database concerns are addressed. It may be sensible to encourage developing countries to introduce requirements to file accounts and make these available publicly, as in much of Europe.

As mentioned in the draft paper, if direct comparable data is not available within a specific country, comparable data may be available if combined with data from similar economies. By using wider ranges, it may be possible to eliminate differences and provide accurate data for businesses and tax authorities. Additional guidance should be provided in relation to the effective use of commercial databases, and in relation to comparability adjustments

We would be concerned if there was creation of a transfer pricing system for developing countries that differs from the arm's length principle resulting in a 'two-tiered' system which differs between developed and developing countries. This could result in different approaches being applied on either side of the same transaction, increasing the risk of dispute between governments and double taxation for businesses.

A separate area of concern would be the use of 'secret comparables' by tax authorities, where data is not available to taxpayers or the tax authority of the counterparty. This does not allow for a transparent and workable tax system and may lead to uncertainty for business. It may also influence a business' decision to invest in a country and may distort data that could be used in the future.

An alternative method to reduce reliance on direct comparable data may be necessary in some cases but should be a 'last resort' where comparable data is not available. It is important that tax administration capacity in relation to transfer pricing continues to be supported by the OECD, the UN and governments. The long-term goal of the OECD should be to ensure there is one consistent approach globally to transfer pricing, and interim measures should be pursued alongside capacity building and database creation activities. We consider bilateral safe harbours with an arm's length override for taxpayers may be an appropriate interim measure for developing countries. There is an option here for developed, investing countries (or regions, such as the European Union) to assist with the agreement of such safe harbours as part of international development assistance.

Anti-avoidance provisions should not, fundamentally, be included within arm's length transfer pricing rules operating on a bilateral basis under treaty principles. Any abuse should instead be considered under other domestic laws – for example, such as a black list approach to transactions with tax havens. Including anti-avoidance within transfer pricing rules can unnecessarily increase the risk of inter-governmental dispute and double taxation where the governments do not share the same view of the transactions undertaken.

If you wish to discuss any of the points raised in this letter, please do not hesitate to contact either me ([bdodwell@deloitte.co.uk](mailto:bdodwell@deloitte.co.uk)), or Alison Lobb ([alobb@deloitte.co.uk](mailto:alobb@deloitte.co.uk)).

Yours faithfully



**W J I Dodwell**  
**Deloitte LLP**