



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT



**CONSULTATION WITH THE ORGANISATIONS WHICH PROVIDED
WRITTEN COMMENTS**

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

AGENDA

17-18 November 2008



CENTRE FOR TAX POLICY AND ADMINISTRATION

REVISED AGENDA FOR THE CONSULTATION

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

| Day one: Comparability | |
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| 08:30 – 09:00 | Registration |
| 09:00 – 9:30 | <p>Welcome, Overview and Ground Rules</p> <ul style="list-style-type: none"> • Welcome by Ms. Marlies de Ruyter, Chair of Working Party No.6 and Mr. John Burns, BIAC Tax Committee • Status of the project, possible outputs • Purpose of and procedures for the consultation |
| 9: 30 – 10:30 | <p>Putting comparability analysis into perspective</p> <p>Issues to be addressed:</p> <ul style="list-style-type: none"> • Is a comparison with uncontrolled transactions a requirement for taxpayers under Article 9? <p>Introduction by Ms. Caroline Silberztein, Secretariat to Working Party No.6; presentations by (i) Mr. Philippe Thiria (MEDEF) and (ii) Mr. Chris Faiferlick (Ernst & Young)</p> |
| <p>10:30 – 12:00</p> <p><i>(Including a refreshment break from 11:00 to 11:20)</i></p> | <p>Timing issues</p> <p>Issues to be addressed:</p> <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)? <p>Introduction by Mr. Jon Clark (United Kingdom); presentations by (i) Mr. John Burns (BIAC, KPMG) and (ii) Mr. Loek de Preter (PwC)</p> |

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| <p>12:00 – 13:00</p> | <p>Internal comparables</p> <p>Issues to be addressed:</p> <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? By other group members? <p>Introduction by Ms. Caroline Silberztein, Secretariat to Working Party No.6; presentation by Mr. John Hollas (Ceteris)</p> |
| <p>13:00 – 14:30</p> | <p>LUNCH BREAK</p> |
| <p>14:30 – 16:00</p> | <p>Sources of information</p> <p>Issues to be addressed:</p> <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. <p>Introduction by Mr. Marc Simpson (Australia); presentations by (i) Mr. Andrew Casley (PwC) (ii) Mr. Alistair Collins (Astra Zeneca)</p> |
| <p>16:00 – 16:20</p> | <p>REFRESHMENT BREAK</p> |
| <p>16:20 – 17:00</p> | <p>Multiple year data</p> <p>Issues to be addressed:</p> <ul style="list-style-type: none"> • In what circumstances can multiple year data be useful and how should they be used? <p>Introduction by Ms. Michelle Levac (Canada); presentation by Mr. Philippe Thiria (MEDEF)</p> |
| <p>17:00 – 18:00</p> | <p>Arm’s length range</p> <p>Issues to be addressed:</p> <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. <p>Introduction by Ms. Michelle Levac (Canada); presentations by (i) Mr. Joseph Andrus (BIAC) and (ii) Mr. Ihor Soroka (RSM Richter)</p> |
| <p>18:00</p> | <p>End of Day One</p> |

| Day two: Transactional Profit Methods | |
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| 9:30 – 10:45 | <p>Status of transactional profit methods</p> <p>Issues to be addressed:</p> <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. <p>Introduction by Mr. Michael McDonald (United States); presentations by (i) Mr. Charles Triplett (BIAC) and (ii) Mr. Steven Hannes (Mc Dermott Will & Emery)</p> |
| 10:45 – 11:05 | REFRESHMENT BREAK |
| 11:05 – 12:00 | <p>Use of more than one method</p> <p>Issues to be addressed:</p> <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? <p>Introduction by Mr. Andy Beazley (United Kingdom); presentations by (i) Mr. Jean-Vincent Massoni and Ms. Tania Saulnier (Fédération Bancaire Française) and (ii) Mr. John Hollas (Ceteris)</p> |
| 12:00 – 13:00 | <p>Access to information on foreign affiliates</p> <p>Issues to be addressed:</p> <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)? <p>Introduction by Mr. Andy Beazley (United Kingdom); presentations by (i) Mr. Alistair Collins (Astra Zeneca) and (ii) Ms. Jennifer Rhee (RSM Richter)</p> |
| 13:00 – 14:30 | LUNCH BREAK |

| Day two: Transactional Profit Methods (cont'd) | |
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| 14:30 – 15:30 | <p>Transactional profit split method</p> <p>Issues to be addressed:</p> <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? <p>Introduction by Mr. Ronald van den Brekel (Netherlands); presentations by (i) Mr. Axel Eigelshoven and Mr. John Oatway (Deloitte) and (ii) Mr. Chris Faiferlick (Ernst & Young)</p> |
| 15:30 – 16:30 | <p>Transactional Net Margin Method (TNMM)</p> <p>Issues to be addressed:</p> <ul style="list-style-type: none"> • Is TNMM a transactional method (theory and practice)? <p>Introduction by Mr. Marc Simpson (Australia); presentations by (i) Mr. Charles Triplett (BIAC) and (ii) Mr. Robert Miall (Ernst & Young)</p> |
| 16:30 – 16:50 | REFRESHMENT BREAK |
| 16:50 – 17:45 | <p>Profit margin indicators for sales activities</p> <p>Issues to be addressed:</p> <ul style="list-style-type: none"> • Should sales activities always be remunerated using a sales-based indicator? • In what circumstances is a Berry ratio appropriate? <p>Introduction by Mr. Ronald van den Brekel (Netherlands); presentation by Mr. Andrew Casley (PwC)</p> |
| 17:45 – 18:00 | Conclusion and indication of way forward by Ms. Marlies de Ruiter, Chair of Working Party No. 6 |