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Dear Mr Saint-Amans

SABMiller plc response to the Discussion paper on Transfer Pricing Comparability Data and Developing Countries

The SABMiller Group is one of the world's leading brewers, involved in the manufacture, distribution and sale of beverages across six continents. Listed on the London Stock Exchange it is ranked as one of the top 20 companies on the FTSE. It has some 70,000 employees, with over 200 branded beverages sold in over 75 countries, including a number of market-leading local brands. As a large multinational group transfer pricing is clearly an important area for the Group.

Approximately 70% of our profits come from developing markets. We welcome the opportunity to share our experience and comment on the proposed actions in respect of transfer pricing comparability in these countries.

Overall, we agree with the intent of the OECD's proposed approaches to improving developing country comparables because we agree there is a lack of available data. However, whilst prima facie the approaches identified are the correct starting point, we believe there remain inherent issues in the proposals. We explain these below from the SABMiller Group perspective.

Expanding access to data sources for comparables:

1. Paragraphs 16 & 17 – tax authority internal comparable database and secret comparables

We agree with the OECD's comments in paragraph 16. The development of country or regional databases which are readily available to both the taxpayer and the tax administration would benefit all transfer pricing discussions.

We agree with the OECD's comments in paragraph 17. If greater publicly available information is not available, tax administrations should utilise access to independent company financial statements. We would expect this as a normal part of the tax administration risk assessment process. However, this information should not be used during the risk assessment process or tax audit unless it is made available to the taxpayer. The use of secret comparables does not create a level playing field for taxpayers and does not enable an open and transparent discussion of the facts and the arm's length pricing of a transaction.

We have experienced a situation where a developing country tax administration used secret comparables as a basis for their audit position. When asked to satisfy the burden of proof they conceded their position as they were unable to share their data.

In another of our developing countries, tax administrations routinely use any information in their possession, regardless of whether in the public domain or not. It is not uncommon for this information to then be used during an audit. When this practice has been challenged in the courts it was upheld as acceptable provided the taxpayer had the opportunity to rebut during audit. This leads to confusion, additional burden on the taxpayer and an inequitable position.

Approaches to reducing reliance on direct comparables:

2. Paragraph 26 – role of safe harbours

We agree with the OECD's approach to greater utilisation of safe harbours. This should reduce resource used on low risk transfer pricing activities and therefore enable better discussions between tax administrations and taxpayers. Where a taxpayer applies a safe harbour we would also recommend simplified documentation requirements.

Nevertheless, we are aware that there are differences of opinion within developing country tax administrations which underlines the challenges with this approach. Safe harbours have the risk of potential double taxation although we agree that this may be mitigated if safe harbours are developed on a bilateral basis to ensure an arm's length outcome. We are also aware of countries with unilateral safe harbours which are not considered by counter party taxpayers to be arm's length. This creates additional transfer pricing discussions rather than reducing the burden for low risk transfer pricing activities.

The OECD's *Revised Section E on Safe Harbours* paper includes useful guidance on this issue. We believe further guidance would be helpful to address the following issues;

- The *Revised Section E* suggests the benefit to using safe harbours in countries comes "*when they are directed at taxpayers and/or transactions which involve low transfer pricing risks and when they are adopted on a bilateral or multilateral basis*". Some activities are not 'low' value add activities and the OECD should provide further guidance and assistance for tax administrations and taxpayers. This will enable them to identify, agree and support activities which are 'higher' value add activities and may warrant greater remuneration. We note that any use of safe harbours for higher value add services would need to be realistic.
- The *Revised Section E* annexes include "Memorandum of Understanding" examples which are helpful in understanding what may be required and setting guidance. However, they anticipate the Qualifying Entity having a single function (manufacturing, R&D or distribution) and this will reduce their application. We would encourage further guidance that enables tax administrations to be able to analyse activity by line of business.

3. Paragraph 27 – 'Sixth method'

The introduction of a 'sixth method' which would require mandatory use of publicly quoted commodity prices raises concerns in respect of the arm's length principle.


We agree with the OECD's primary concern that the method does not consider critical conditions in the determination of an arm's length price. This contravenes its own guidelines, i.e. selecting the most appropriate method based on arm's length criteria.

We also believe there would be a misunderstanding on when the method should be applied. Many companies who work with commodities actually incur significant conversion costs to create their relevant raw material inputs, e.g. aluminium is converted into cans. Converted raw materials are not available publicly quoted commodity prices.

Conclusion

We trust that our comments are useful to the OECD's further consideration. If you would like to contact us directly in relation to any of the above issues or our experiences we would be more than happy to discuss in more detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G Holford', written over a printed name and title.

Graham Holford
Group Head of Tax, SABMiller plc