



14 April 2014,  
OECD  
OECD Committee of Fiscal Affairs  
[TransferPricing@oecd.org](mailto:TransferPricing@oecd.org)

Dear Sir / Madam,

**RE: Taxand responds to the OECD invitation for public comments on the OECD paper on transfer pricing comparability data and developing countries**

Further to the publication of the OECD's invitation for public comments on the OECD paper on transfer pricing comparability data and developing countries, Taxand is honoured to provide written comments based on the practical experience we have as tax advisors, and transfer pricing specialists.

Our response deals with practical suggestions for improving comparability analyses in developing countries and reducing the complexity of such operations for multinationals.

Taxand can confirm that we have no objections with posting the comments on the OECD website and that comments represent Taxand with input from a number of multinational businesses.

We appreciate this opportunity to provide comments to the OECD Committee of Fiscal Affairs and would be pleased to discuss this further and to participate in any further discussion on these matters.

More information about Taxand is provided below. Taxand is wholly committed to supporting the OECD Committee of Fiscal Affairs and we look forward to contributing to further debate.

If you wish to discuss any of the points raised in this letter, please do not hesitate to get in touch with us directly via the contact details below.

Yours faithfully,  
**Taxand**

**CONTACT DETAILS**

**Antoine Glaize**

**Taxand France**

T. +33 623 088 006

E. [antoine.glaize@arsene-taxand.com](mailto:antoine.glaize@arsene-taxand.com)



## ABOUT TAXAND

Taxand provides high quality, integrated tax advice worldwide. Our tax professionals, more than 400 tax partners and over 2,000 tax advisors in nearly 50 countries - grasp both the fine points of tax and the broader strategic implications, helping you mitigate risk, manage your tax burden and drive the performance of your business.

We're passionate about tax. We collaborate and share knowledge, capitalising on our expertise to provide you with high quality, tailored advice that helps relieve the pressures associated with making complex tax decisions.

We're also independent—ensuring that you adhere both to best practice and to tax law and that we remain free from time-consuming audit-based conflict checks. This enables us to deliver practical advice, responsively.

Taxand has achieved worldwide market recognition. Taxand ranked in the top tier in Chambers Global Guide 2014 global network rankings and in the International Tax Review's (ITR) World Tax 2014, 45 Taxand locations were commended and a further 26 locations listed in ITR's World Transfer Pricing 2014. 29 countries were voted top in the ITR Transaction Tax Survey 2013 and 28 in ITR Tax Planning Survey 2013. Taxand has received 58 national awards and 12 regional awards in the ITR European, Americas and Asia Tax Awards since 2009. These include Latin America Tax Disputes Firm of the Year, European Private Equity Tax Firm of the Year, European Indirect Tax Firm of the Year, European Tax Policy Firm of the Year, Asia Transfer Pricing Firm of the Year, and Asia Tax Policy Firm of the Year. Full details of awards can be viewed at [www.taxand.com/about-us](http://www.taxand.com/about-us)

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Taxand would like to thank the OECD Committee on Fiscal Affairs, country delegates and other participants for the opportunity to provide some general comments on transfer pricing issues faced by multinationals active in developing countries and for the proposed approach to addressing some tax challenges of the emerging economies. Our response to the issues outlined in the OECD paper on transfer pricing comparability data and developing countries is provided below.

Comparable data availability is a key issue and an actual concern for multinationals as there is an ever increasing trend for such corporations to expand into developing countries, due to their advantageous markets, characterised by high growth potential and low market capitalisation. Local tax authorities are conflicted between presenting a favourable climate for investors, which includes multinational corporations, and the monetary and budgetary constraints of their jurisdiction.

In regard to this, and for various reasons exposed by the OECD, comparable public data, which is often exploited by enterprises, administrations and practitioners in developed countries, cannot be used in a proper way in developing countries as the public data is either not available or not reliable.

Before discussing the relevance of approaches to bridge this gap, it is essential to examine the key features which could be specific to these countries in terms of the availability and reliability of the public data. Local markets specificities are difficult, if not impossible, to reflect through adjustments on available data - which would be reliable enough to ensure comparability criteria according to OECD general guidance in transfer pricing.

In order to overcome these difficult (almost crippling) issues for enterprises and local tax administrations, Taxand agrees and shares the vision of the OECD regarding proposed approaches to improve this complex comparability situation, namely:

- ❖ Expanding access to data sources for comparables to cover developing countries which typically have limited resources. In this context, local solutions might be adequate, such as making the file statutory compulsory and available to the public.
- ❖ More effective use of data sources for comparables is required, because the suitable utilisation of available data is as important as the availability of data. Indeed, use of data comparable sources depends on the quality of the available information therein and therefore requires rigorous and expert skills to reliably support transfer pricing practices, and to manage potential litigious controversies on both sides of the transactions.
- ❖ Alternative approaches should be introduced to reduce reliance on direct comparables which involve other reasoning, such as the profit split method, the value chain analysis and the 'sixth method' as referred to in the OECD paper on transfer pricing comparability data and developing countries. These approaches could be useful and adequate to deal with intercompany flows performed in developing countries
- ❖ Local tax authorities should be educated in the protocols of advancing pricing agreements (APAs) and mutual agreement proceedings (MAPs) so they understand the key issues involved in these processes.

Taxand acknowledges that these approaches are as useful as they are relevant. Nevertheless, in order to be pragmatic and to reduce the complexity for both the authorities and multinationals alike, Taxand would recommend the following:



- ❖ It is important not to create a different or specific framework of comparability in developing countries as multinationals need to manage transfer pricing policies globally for cost and consistency. Increasing the transfer pricing documentation burden would notably penalise investors who intend to expand into developing countries.
- ❖ The ultimate aim should be to develop similar tools and methods to use data sources for comparables in developing countries in the same way as those used in developed countries, in order to avoid a gap of utilisation and interpretation for businesses set up locally.
- ❖ It is likely the availability and reliability of such tools will take time due to the length of the information collecting process, databases modeling and the implementation of these tools. For efficiency, it may be that educating local tax administrators in APA and MAP proceedings is more realistic as a long term objective.

Therefore, the following immediate approaches should be favoured:

- ❖ Develop the definition of safe harbour provisions for developing countries which should cover a range of the most frequent and simple transactions, for example:
  - Management fees
  - Distribution fees
  - Contract manufacturing fees
- ❖ However, to ensure an efficient implementation of such an approach it is necessary to make sure that safe harbour provisions are reasonable and realistic with respect to their application in counterpart jurisdictions
- ❖ Tax authorities should be invited to refer more widely to the use of qualitative approaches such as profit split and value chain analysis when no data sources for comparables are available.

In conclusion, Taxand wants to thank the OECD again for this opportunity to address actual and concrete issues which multinationals face on a day to day basis and appreciates the OECD's consideration of our comments and suggestions.

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