



Informal Meeting on Practical Transfer Pricing Issues for Developing Countries

New York, 7-8 June 2011

1. Objective

The objective of the Informal Meeting on the Practical Transfer Pricing Issues for Developing Countries is two fold: 1) To ensure that developing countries perspectives, priorities and examples are fully represented in the Practical Manual on Transfer Pricing which is currently being prepared by a subcommittee of the UN Tax Committee; and 2) To familiarize the Permanent Missions of the UN Member States with the issue of Transfer Pricing and the costs to development of “improper pricing” by multinational enterprises (MNEs), which are widely considered to be extremely high. The provisional agenda of the meeting is attached.

2. Expected Outcomes

Expected outcomes will include an informed discussion on the issues of transfer pricing in context of development, and specific new developing country input into the draft chapters of the Practical Manual on Transfer Pricing. A report on the meeting will be prepared and submitted to the annual session of the UN Tax Committee in I

Transfer pricing involves the complex issue of pricing transactions within a corporate group, usually an MNE. Since market pricing conditions are not generally directly applicable in such dealings, an approximation of such market based pricing (“arm’s length pricing”) is usually called for in their affairs by MNEs and tax administrations.

Proper application of “arm’s length pricing” to such transfer pricing prevents complex transactions being structured within an MNE from shifting profits and losses in a way that ensures the lowest possible overall tax bill for the MNE. Unsuccessfully responding to such mispricing may on the other hand lead to minimal tax revenue being left in the country where the profit is economically sourced. Due to the complexity of MNE structures and operations, the difficulty of determining a fair price, such countries often have a special disadvantage when securing fair tax revenue from transactions of MNEs.

It should be noted, however, that overly complex or obscure transfer pricing regimes will also unnecessarily worsen a country's investment climate, possibly detrimentally affecting development. Therefore, clarifying the practical operation of transfer pricing principles is "good for good business". Also, business and trade patterns may vary from country to country, and it is therefore important that each country take into consideration its conditions and circumstances when implementing transfer pricing legislation and policies.

To meet the needs of developing countries in the area of transfer pricing the UN Tax Committee formed the Subcommittee on Transfer Pricing at its fifth annual session in 2009. The Subcommittee is mandated to prepare a practical manual for developing countries on transfer pricing. It will be presented for adoption at the 2012 annual session of the Committee and will be based on the following principles:

- That it reflects the operation of Article 9 of the UN Model Convention, and the Arm's Length Principle embodied in it, and is consistent with relevant Commentaries of the UN Model.
- That it reflects the realities for developing countries, at their relevant stages of capacity development.
- That special attention should be paid to the experience of other developing countries.
- That it draws upon the work being done in other fora.

For the Manual to provide clear and relevant guidance for developing countries on the application of transfer pricing analyses to the MNE transactions, input from developing countries, including perspectives, priorities and examples is essential. Unfortunately, there has been a general difficulty in gaining sufficient developing country input in these areas of tax work. This Meeting is intended to help bridge this gap and to encourage more active developing country input in the area of tax cooperation in the future.

4. Format

Each session will begin with a panel of participants presenting country experiences focused on a subject covered by a draft chapter of the Manual. This will be followed by a discussion of the relevant draft chapter in light of the presentations, with special reference to developing country issues and examples.