

*Appendix***Recommendation of the Council on the Determination of
Transfer Pricing between Associated Enterprises
[C(95)126/Final]**

As amended on 11 April 1996 [C(96)46/FINAL], 24 July 1997 [C(97)144/FINAL], 28 October 1999 [C(99)138] and 16 July 2009 [C(2009)88]

The COUNCIL,

Having regard to Article 5(b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December, 1960;

Having regard to the Declaration of 21st June, 1976 adopted by the Governments of OECD member Countries on International Investment and Multinational Enterprises and the Guidelines annexed thereto [C(76)99(Final)];

Having regard to the Report on the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, hereafter referred to as "the 1995 Report" [DAFFE/CFA(95)19 and Corrigendum I] adopted on 27 June 1995 by the Committee on Fiscal Affairs, as supplemented by the report on intangible property and services adopted on 23 January 1996 by the Committee on Fiscal Affairs [DAFFE/CFA(96)2] and incorporated in Chapters VI and VII; by the report on cost contribution arrangements adopted on 25 June 1997 by the Committee on Fiscal Affairs [DAFFE/CFA(97)27] and incorporated in Chapter VIII; by the report on the guidelines for monitoring procedures on the OECD Transfer Pricing Guidelines and the involvement of the business community [DAFFE/CFA/WD(97)11/REV1], adopted on 24 June 1997 by the Committee on Fiscal Affairs and incorporated in the Annexes; by the report on the guidelines for conducting Advance Pricing Arrangements under the mutual agreement procedure adopted on 30 June 1999 by the Committee on

Fiscal Affairs [DAFFE/CFA(99)31] and incorporated in the Annexes; and modified by an update of Chapter IV which was adopted by the Committee on Fiscal Affairs on 6 June 2008 [CTPA/CFA(2008)30/REV1] and by an update of the Foreword and of the Preface which was adopted by the Committee on Fiscal Affairs on 22 June 2009 [CTPA/CFA(2009)51/REV1];

Having regard to the fundamental need for co-operation among tax administrations in order to remove the obstacles that international double taxation presents to the free movement of goods, services and capital between member countries;

Considering that transactions between associated enterprises may take place under conditions differing from those taking place between independent enterprises;

Considering that the prices of such transactions between associated enterprises (usually referred to as transfer pricing) should, nevertheless, for tax purposes be in conformity with those which would be charged between independent enterprises (usually referred to as arm's length pricing) as provided in Article 9 (paragraph 1) of the OECD Model Tax Convention on Income and on Capital;

Considering that problems with regard to transfer pricing in international transactions assume special importance in view of the substantial volume of such transactions;

Considering the need to achieve consistency in the approaches of tax administrations, on the one hand, and of associated enterprises, on the other hand, in the determination of the income and expenses of a company that is part of a Multinational Enterprise Group that should be taken in to account within a jurisdiction.

I. RECOMMENDS to the Governments of member countries:

I.1. that their tax administrations follow, when reviewing, and if necessary, adjusting transfer pricing between associated enterprises for the purposes of determining taxable income, the guidance in the 1995 Report, as amended -considering the integrity of the Report and the interaction of the different chapters -- for arriving at arm's length pricing for transactions between associated enterprises;

I.2. that tax administrations should encourage taxpayers to follow the guidance in the 1995 Report, as amended and to that end that they give the 1995 Report as amended publicity in their country and have it translated, where necessary, into their national language(s);

I.3. that they develop further co-operation between their tax administrations, on a bilateral or multilateral basis, in matters pertaining to transfer pricing.

II. INVITES the Governments of member countries:

II.1. to notify the Committee on Fiscal Affairs of any modifications to the text of any laws or regulations that are relevant to the determination of transfer pricing or of the introduction of new laws or regulations.

III. INSTRUCES the Committee on Fiscal Affairs:

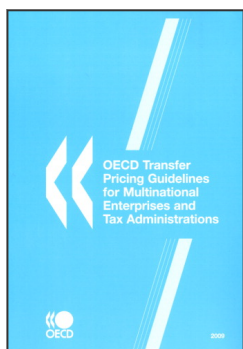
III.1. to pursue its work on issues pertinent to transfer pricing and to issue the additions to the guidelines referred to in the 1995 Report as amended;

III.2. to monitor the implementation of the 1995 Report as amended, in cooperation with the tax authorities of member countries and with the participation of the business community and to recommend to the Council to amend and update, if necessary, the 1995 Report as amended, in the light of this monitoring;

III.3. to report periodically to the Council on the results of its work in these matters together with any relevant proposals for improved international cooperation;

III.4. to develop its dialogue with non-member countries, consistently with the policy of the Organisation, with the aim of assisting them to become familiar with the 1995 Report as amended, and where appropriate encourage them to associate themselves with the 1995 Report as amended.

IV. DECIDES to repeal the Recommendation on the Determination of Transfer Prices between Associated Enterprises issued on the 29th May 1979 [C(79)83(Final)].



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