

## *Appendix*

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

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 on International Investment and Multinational Enterprises and the Guidelines annexed thereto [C(76)99(Final)];

**HAVING REGARD** to the Declaration on Base Erosion and Profit Shifting (“BEPS”) [C/MIN(2013)22/FINAL] and to the BEPS Explanatory Statement and the measures set out in the BEPS Final Reports (the BEPS package), endorsed by the Council on 1 October 2015 [C(2015)125/REV1] and the G20 Leaders at the Antalya Summit on 15-16 November 2015;

**HAVING REGARD** to the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, hereafter referred to as “Guidelines” as they may be modified by the Committee on Fiscal Affairs;

**HAVING REGARD** to the Recommendation of the Council on Base Erosion and Profit Shifting Measures Related to Transfer Pricing [C(2016)79] which recommends that Members and non-Members having adhered to it follow the guidance set out in the 2015 BEPS Reports on Actions 8-10 “Aligning Transfer Pricing Outcomes With Value Creation” [C(2015)125/ADD8] and on Action 13 “Transfer Pricing Documentation and Country-by-Country Reporting” [C(2015)125/ADD11] as incorporated in the Guidelines;

**HAVING REGARD** to the establishment of the Inclusive Framework on Base Erosion and Profit Shifting as agreed by the Committee on Fiscal Affairs [CTPA/CFA/NOE2(2016)1/REV3], reported to the Council [C/M(2016)3], and endorsed by the G20 Finance Ministers at their

26-27 February 2016 meeting in Shanghai, China, under which over 100 countries and jurisdictions have been invited to participate as members [C(2016)78], i.e. on an equal footing with OECD Members on the basis of the same commitments as OECD Members and existing Associates with regard to the BEPS Project;

**CONSIDERING** the fundamental need for co-operation among tax administrations to remove the obstacles that international double taxation presents to the free movement of goods, services and capital between jurisdictions;

**CONSIDERING** the equally fundamental need to effectively prevent double non-taxation as well as no or low taxation resulting from the misapplication of the international standards for transfer pricing rules leading to outcomes in which the allocation of profits is not aligned with the economic activity that produced the profits;

**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) consistent with Article 9 (paragraph 1) of the OECD Model Tax Convention on Income and on Capital;

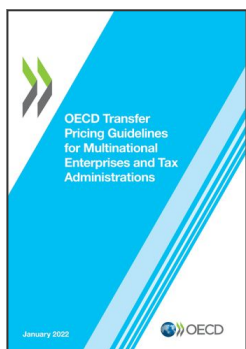
**CONSIDERING** that problems with regard to transfer pricing in international transactions assume special importance in view of the substantial volume of such transactions;

**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 into account within a jurisdiction.

**On the proposal of the Committee on Fiscal Affairs:**

- I. RECOMMENDS** that Members and non-Members adhering to this Recommendation (hereafter the “Adherents”):
  - i) follow, when reviewing, and if necessary, adjusting transfer pricing between associated enterprises for the purposes of determining taxable income, the Guidelines – considering the whole of the Guidelines and the interaction of the different chapters – for arriving at arm's length pricing for transactions between associated enterprises;

- ii) encourage taxpayers to follow the Guidelines; to that effect Adherents should give the Guidelines publicity and have them translated, where necessary, into their national language(s);
  - iii) develop further co-operation, on a bilateral or multilateral basis, in matters pertaining to transfer pricing.
- II. INVITES** Adherents 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. INVITES** Adherents and the Secretary-General to disseminate this Recommendation and the Guidelines.
- IV. INVITES** non-Adherents to take due account of and adhere to this Recommendation.
- V. INSTRUCTS** the Committee on Fiscal Affairs to:
- i) pursue its work on issues pertinent to transfer pricing and modify the Guidelines as necessary;
  - ii) monitor the implementation of this Recommendation, in co-operation with the tax authorities of Adherents and with the participation of the business community and other stakeholders and report to Council in light of this monitoring every five years;
  - iii) develop its dialogue with jurisdictions that have not adhered to this Recommendation with the aim of assisting them to become familiar with the Guidelines, and to adhere to the present Recommendation.



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