



TRANSFER PRICING & THE OECD

Working Together To Create The Right Environment for Business

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www.oecd.org/taxation

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WHO DRIVES OECD WORK?

30 Member Governments Council

Oversight and strategic direction

Representatives of 30 member countries and of the European Commission; decisions taken by consensus

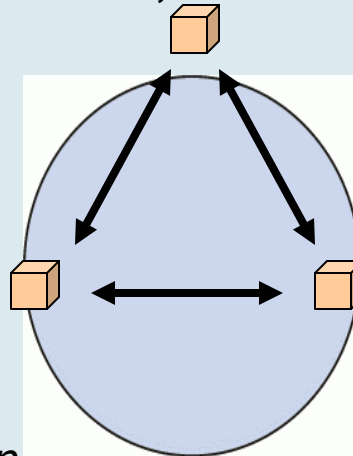
Business

NGO's

Committees
*e.g. the Committee on
Fiscal Affairs*

Discussion and implementation

Representatives of member countries and countries with Observer status work with the OECD Secretariat on specific issues



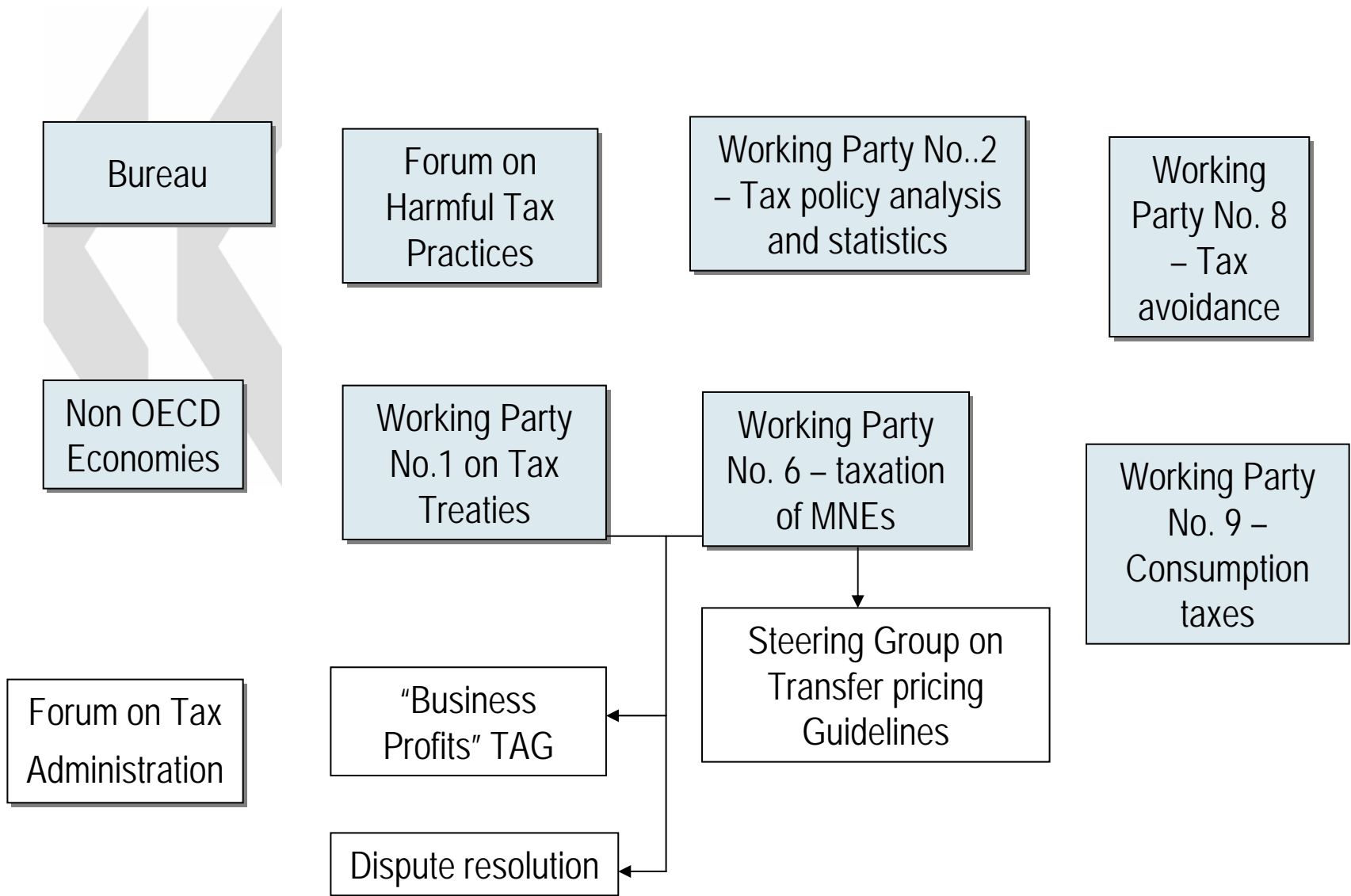
Secretariat

Analysis and proposals

Secretary-General

Deputy Secretaries-General

Directorates



Working with Business

Becoming more common and takes various forms:

- ★ Business and Industry Advisory Committee to the OECD (BIAC)
- ★ Technical working groups (e.g. E-com TAG's)
- ★ Approaches on specific problems (e.g. International Transportation, Insurance)
- ★ Meeting with business communities in key OECD countries.

.../...

Working with Business OCDE

- ★ Consultation on discussion drafts (<http://www.oecd.org/taxation>):
 - ★ Cross Border tax issues related to Pensions
 - ★ Taxation of employee stock options
 - ★ BP TAG Report
 - ★ Attribution of Profits to Permanent establishments
 - ★ Improving International Tax Disputes Resolution
 - ★ The Arm's length principle: Practical issues with respect to comparability
- ★ Open Fora, roundtables



Current issues on the agenda of Working party No. 6

Working Party No. 6 of the CFA: the Current Agenda

1. Monitoring the application of the 1995 TP Guidelines
2. Extending the Guidelines: Attribution of profits to PEs
Attribution of profits to Permanent Establishments
3. E-commerce
4. Cross-border Financial Transactions
Thin capitalisation, intra-group loans, etc.
5. Improving Dispute Resolution
6. Training and Technical assistance. Non OECD Economies.

1. Monitoring



- Peer review - Mexico

1. Monitoring the application of the 1995 TP Guidelines

- “Hot issues” - e.g. employee stock options
- CFA’s work on stock options:
 - Working Party No. 1
 - Working Party No. 2
 - Working Party No. 6



Working Party No. 6 and stock options

Analysis of stock-options for inter-company transactions and the arm's length principle:

3 situations:

- I. A parent company “TOPCO” issues stock options for employees of its foreign affiliates; under the arm's length principle, should there be a charge by the issuing company to the employer? If yes, what should be the measurement principles?



Working Party No. 6 and stock options

How do stock options affect the application of transfer pricing methods and comparability?

E.g. cost plus where cost basis includes remuneration costs

E.g. third party comparables: do they operate SOP ? Can reliable enough comparability adjustments be performed ?



Working Party No. 6 and stock options

Issues in the context of Cost Contribution Arrangements

Should SOP be taken into account in participants' contributions to CCAs

If so, what measurement principles ?

Affect contributions and also share in future intangible rights

Working Party No. 6 and stock options

The work is intended to be released as an analytical document in the Tax Policy Studies series (not a consensus document)

Summer 2004

Could possibly be re-visited in the future, when :

- ✓ more experience is gained on the new accounting standards;
- ✓ more TP cases involving SOP;
- ✓ possibly when re-visit CCA chapter in the TPG

1. Monitoring the application of the 1995 TPG

Review of comparability. Scope of the project:

- External comparables
- All OECD transfer pricing methods.
- Practical issues faced by good faith taxpayers / tax administrations

See invitation to comment on

- www.oecd.org/taxation

1. Monitoring the application of the 1995 TPG

- Review of comparability issues :
 - Transactional comparison / aggregation of transactions
 - Independent comparables
 - Access to information pertaining to the review of the five comparability factors
 - How can comparable studies be audited
 - Multiple year data: trends, averages...
 - Access to information, commercial databases
 - Comparability adjustments
 - Interpretation of data : range issues
 - Specific comparability issues for profits methods

1. Monitoring

Review of profit methods

Difficult case paradigms

Development of examples

Identify issues - self-review of profit methods ; re-visit
Chapter III of the TPG

- Status of profit methods
- Practical application

2. Attribution of profits to Permanent establishments

Starting point : lack of consensus

- no common interpretation or application

Problems e.g. with global trading and e-commerce

Development of Working Hypothesis (WH):

- How far can PE be treated as if it were a separate enterprise?
- How far can guidance in TP Guidelines be applied, *by analogy*, to attribute profits under Article 7(2)?

Test the application of WH in practice: does it make sense?

- banks, insurance, global trading and server PEs

2. Attribution of profits to Permanent establishments

- First Discussion Paper: February 2001
- Part I : PE in general
- Part II: Special Considerations for banks
- Consultation with commentators - April 2002
- Revised Part II (Banks) + Part III (Global trading) released for public comment in March 2003
 - (www.oecd.org/taxation)
- Consultation in Geneva in March 2004
- Part I (General case) and Part IV (Insurance) being revised

3. E-commerce

- The « Technical Advisory Group on Monitoring the Application of existing Treaty Norms for the Taxation of Business profits » (« Business Profits TAG »)
 - Current treaty rules
 - Attribution of profits to a server PE
- Sub-group on E-commerce and TP Guidelines
 - Whether the current TPG provide sufficient and relevant guidance to address E-commerce business models

4. Cross-border Financial Dealings

- Intercompany loans
 - Interest rate; principal; guarantees...
- Thin-capitalisation : can the ALP be applied (even indirectly)?
- Possible approaches
 - comparable arm's length structure
 - earnings stripping
 - debt/equity ratio of group
 - independent banker
 - safe harbours

5. Improving Dispute Resolution

Scope of the project :

- TP and other international tax disputes
- MAP and possible supplementary dispute resolution mechanisms

Invitation to comment : www.oecd.org/taxation

5. Dispute resolution

- Joint WP1/WP6 project :

(a) assess current operation of Mutual Agreement Procedure and Correlative Adjustments

(b) propose possible improvements to MAPs

(c) discuss potential mechanisms to supplement MAP (e.g. - but not limited to - arbitration):

« Supplementary Dispute Resolution Mechanisms »

Consultation held in December 2003

6. Non OECD Economies



- Global Forum

- Training

- Technical assistance

- Explore ways in which non-members can associate with the 1995 Guidelines



Thank You for your attention!

- Contact:
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- Further information
 - www.oecd.org/taxation