



UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

Mr. Pascal Saint-Amans
Director
OECD Centre for Tax Policy and Administration (CTPA)
2, rue André Pascal
75016 Paris

May 24, 2014

Dear Mr. Saint-Amans,

The United States has
comments on the
plenary meeting
the OECD and

USCIB promotes
corporate re
members in
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views to poli
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Our member
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In step one t
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are following

reduced their tax burden. Another on gross income may be more appropriate to be the focus of more sustained

Also in step one the second box set rates, management fees and service making. There are disclaimers that exploration. The members of USCIB the numerical thresholds as unsafe fees or service fees exceed these the way to address this concern; however that transfer pricing requires careful returns do not accurately reflect an

The third box raises as a risk factor this ought to also be taken into account similar tax rates, then the risk of pro

The section on additional analyses (largest MNEs and suggests information point along the following lines:

Any global standard transfer affecting the jurisdiction, e.g. consistent allocation keys for

As discussed below, companies with

Under step 1 for FDI companies, one may over comply in jurisdictions that usually dealing with multiple jurisdictions place. This typical arrangement does expense of another jurisdiction because consistently worldwide. The existing tax planning with respect to transac

The second bullet in the section on established that significant transaction sector, or a small number of sectors transfer pricing rules to that sector.

emphasis in step 1 on numerical standards will push industries into these categories inappropriately. To mitigate this risk, we suggest changes to the lines of the following after the first sentence of the second box:

Care must be taken in identifying particular sectors because the standards for different industries vary significantly. Thus, companies in some industries may appear high (and that are higher than the figures in some other industries) in that industry. These companies and industries do not necessarily pose a transfer pricing risk.

The sixth box of step 3 provides that "it will be necessary to impose penalties where a) inadequate documentation is maintained or b) their transfer pricing is wrong." It is inappropriate to impose penalties where the documentation is inadequate. The issue of documentation is a very sensitive one. The countries in the documentation that is required. Taxpayers are concerned about the differing and onerous documentation rules and should not be penalized for a documentation failure that does not result in underpayment of taxes.

The third category, building skills, under Step 3 discusses the need for training auditors. Training auditors is critical to implementing a transfer pricing system. It is important to emphasize that functional analysis is not just a technical exercise but is an integral part of understanding business taking place in a country. This should be coupled with training on the economics of key industries including the 25 taxpayers/FDI companies. As we pointed out at the beginning, a good understanding of business is essential to identifying genuine transfer pricing adjustments.

USCIB would also like to raise three issues that are not dealt with in the current tool. First, the assessment tool should provide some caution against aggressive transfer pricing. There is very little in the document that suggests that the tool is for aggressively pursuing transfer pricing cases. Taxpayers are often legally owed in the countries where they do business. However, the tool should make it clear that transfer pricing is not a precise science and that there is a risk of aggressive enforcement. Aggressively pursuing transfer pricing adjustments that result in increased taxation may discourage foreign direct investment. A corollary of this point is that aggressive taxation may arise not only from aggressive enforcement, but also from rules that deviate from global norms. Business needs certainty with respect to its tax obligations. Countries that fail to provide this certainty are likely to see reduced FDI over the long term.

The risk of double taxation leads to the second issue, the assessment tool should emphasize that implementation of transfer pricing regimes should go hand-in-hand with developing a treaty network that can assist in resolving transfer pricing cases (and other issues arising in the area of cross-border taxation).

Finally, the assessment and implementation tool should suggest the coordination of tax rules with other rules. For example, if the transfer pricing rules would permit the payment of a royalty or management fee, other rules (such as bank clearance requirements) should not prohibit that payment.

We look forward to continuing to work on refining the transfer pricing needs assessment and implementation tool.

Sincerely,



William J. Sample
Chair, Taxation Committee
United States Council for International Business (USCIB)

cc: Richard Parry, Head of Global Relations Division, OECD Centre for Tax Policy and Administration
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