



# **The impact of the Global Relations Programme**

## **PARTNER PERSPECTIVES**



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<sup>1</sup> The views expressed in these articles are those of the authors, not necessarily those of the institutions they belong to.



# A New Perspective

**By Pascal Saint-Amans, Director, CTPA**

I started my tenure as Director of the CTPA in February 2012 with a clear priority: to increase the CFA's dialogue and engagement with non OECD economies (NOEs). My vision is to ensure that OECD standards and guidelines in taxation reflect a genuine global consensus, fully encompassing all views and not just those of OECD members.



The financial crisis has made it clear that we all face additional demands on tax administration and need to challenge conventional wisdom on tax policy. OECD countries and NOEs alike are looking to restore growth, stimulate employment and innovation, achieve fiscal consolidation and enhance the competitiveness of their economies. Economic and sustainable growth coupled with job creation and income equality is everyone's concern.

In this context the OECD needs to bring together all perspectives to find the right answers in developing better policies for better lives. Over the last decade the CTPA has championed innovative approaches towards engaging NOEs in its tax work. The Global Forum on Transparency and Exchange of Information, for example, currently has 108 members and countries like Brazil, China, India and South Africa take an active role in the Steering Group and the Peer-Review Group. Other examples are the Forum on Tax Administration, which responds to challenges in tax administration and international tax avoidance and evasion, and the informal Task Force on Tax and Development, co-chaired by South Africa, which has succeeded in integrating not just international organizations and non members, (both emerging and developing economies) but also business and the civil society. The success of these initiatives shows that countries engage best when they are on an equal footing with OECD members and that is the way we want to walk together with you.

The more participants we get around the table, the better and more relevant the results. Global Relations or the building of a global consensus is increasingly the cornerstone of OECD's tax agenda. The work of the Advisory Group for Co-operation with Non OECD Economies is one important platform in enabling country voices to be heard.

We look forward to continue working with you.



# Establishing the Impact of the Global Relations Programme

By Richard Parry, Head of Global Relations Division

The Global Relations Programme (GRP) is the CFA's primary instrument to support the integration of non-OECD economies into the global economy. We achieve this by strengthening policy dialogue on tax issues to increase global engagement and contribution to the CFA's standards, guidelines and best practices



2012 is the 20<sup>th</sup> anniversary of the GRP. From hesitant beginnings in Moscow and Eastern Europe the GRP has established itself as a global platform for capacity building and co-operation with Regional Tax Organisations. With 75 week long events per year, involving around 2.000 programme's officials from 125 countries, the GRP has a broad basis for impact, and the Independent Evaluation Service has consistently supported the GRP for "*continuing to provide a valuable means of learning of the latest OECD developments including examples of how these have been successfully applied*". However, we need to look beyond the numbers and consider whether we are achieving real impact, and helping our partners put in place better policies for better lives.

The aim of this report is to look through the outputs into the outcomes, to get closer to gauging the real impact of the programme.

The GRP is funded by voluntary contributions and assessing impact is key to its sustainability<sup>2</sup>, but finding impact is not an easy exercise. In this report, looking at the Programme through the eyes of our main partners, we hope to establish the value the programme has had in making the tax world a smaller place. As Gao Feng points out, the OECD is an organisation "whose potential benefits go well beyond its members". We hope you can agree.

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<sup>2</sup> *In order to upgrade and maximise contributions and support from member countries there is a particular need to determine impacts in the light of their expected relevance and impact* (Secretary General Preliminary Guidance on the PWB 2013-14)





# Co-operating We Thrive: China's Experience in the Co-operation with OECD

By Gao Feng, State Administration of Taxation. PR China

Co-operation with China in the tax area began in the 1990s, and grew stronger when China became an Observer to the CFA in 2004. By participating in CFA's work programme and other OECD's tax agenda, China familiarizes itself with OECD's standards and guidelines, makes use of its instruments and good practices, gets more involved in the debate of CFA and its working parties and becomes more integrated into the international tax community.



OECD has become one of the most important international organizations who cooperate with China's State Administration of Taxation SAT. OECD's most visible presence in China is the bilateral events it holds with SAT. 120 events have been delivered since the mid 1990's, attended by more than 15,000 Chinese tax officials at the SAT-OECD Training Institute in Yangzhou and elsewhere. These have enabled Chinese tax officials to build expertise and skills, whilst exchanging perspectives and best practices with fellow tax officials on international taxation, tax administration and tax policy. What's more, the exposure to OECD's expertise also helps SAT officials to better understand OECD as an international organization. For example, we came to realize that OECD is not a "club of rich countries", as we previously thought, but an organization with a strong professional background in public policy design and an extensive agenda whose potential benefits go far beyond its members. Understandingly, Chinese tax officials don't see eye to eye with OECD colleagues on every topic or principle, but these events provide us with a good opportunity to look at things from each other's perspective, which is inspiring and I am sure will lead to better common understanding.

Some of the events are tailored to SAT's special requirements. In 2008 SAT established two new Departments, the Large Business Department (LBD) and the Taxpayer Services Department (TSD). At the request of SAT, OECD delivered a series of successful events on the administration of large business and design of service strategy. These events helped SAT re-examine its relation with taxpayers to evolve towards a more taxpayer-oriented organization. We also draw some useful lessons from OECD with respect to these two new Departments by participating in the work of the Forum on Tax Administration (FTA) and its subgroups.

When SAT carries out major tax reforms, it also turns to these technical events for advice and ideas. When the Personal Income Tax (PIT) was reformed in 2011 SAT looked at

OECD countries' experience in the design of tax base, rate, deduction and credit of PIT, as well as administration practices in China through GR events during the research and design process. The result is a more balanced PIT law generally welcomed by the public. Again, when China's housing market was overheated in the past couple of years, we looked at the OECD's expertise to use the property tax as a viable instrument to cool it off, with a specially designed event in April 2012.

International taxation is another area where China and the OECD co-operate closely, especially on transfer pricing. We have been holding events on transfer pricing in China consistently for many years and have intensified it lately, staging high level policy dialogues in Beijing consecutively for the past two years, to boost the capacity of China's TP specialists, which is growing both in size and quality. When the Implementation of Measures of Special Tax Adjustment, China's own version of transfer pricing guidelines, came out in 2009, people found it in principle in line with the OECD's Transfer Pricing Guidelines in respect of arm's length principle, cost sharing, transfer pricing investigation methods and so on. Recently, China has become more confident in voicing its own understanding about marketing intangibles, cost saving and market premium, which finds more and more nodding heads around the world.

In short, China benefits a lot from its co-operation with OECD and I hope OECD feels the same way. In the context of globalization we need more co-operation and coordination in international taxation, which I am sure, will lead us toward a common goal, better tax for better life.

# Impact of the OECD Tax Co-operation with India

**By Sanjay Kumar Mishra, Joint Secretary, Foreign Tax & Tax Research,  
Department of Revenue, Ministry of Finance, Government of India**

The OECD engagement with India in the tax field had a humble beginning in 1990s in the form of delivery of technical development programme at the National Academy of Direct Taxes at Nagpur. Over time, India and the OECD have steadily nurtured their valued relationship. The co-operation got a strong fillip in 2007 when India became observer to the work of the Committee of Fiscal Affairs (CFA). The co-operation between the OECD and India in addition to tax covers diverse fields such as trade, development, investment, energy, money laundering and other areas.



India's growing relationship with the OECD is evidenced by its participation in the CFA and its Working Parties since 2006. The relationship has deepened and strengthened with time and now India is working with the OECD in other projects like Forum on Tax Administration, Oslo Dialogue on Tax and Other Crimes, Network on Fiscal Relations across Levels of Government and Advisory Group for Co-operation with Non-OECD Economies. Furthermore, India is also a member of the OECD Task Force on Tax and Development dealing with many important issues. The partnership in the tax field reached to a new level when in June 2011 both parties signed a three-year cooperation in the tax area covering high-level policy dialogue on tax, multilateral events on taxation in India and strengthening of India's participation in the OECD' Committee on Fiscal Affairs its subsidiary bodies and OECD's Global Relations Programme on Tax. To further cement these ties, India hosted a high level International Tax Dialogue Global Conference on Tax and Inequality in December 2011.

India plays a leading role in the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes. India very strongly supports the G 20 call for broader multilateral approach to improve tax co-operation between the countries. India has recently signed and ratified the Convention on Mutual Administrative Assistance in Tax Matters which was developed by the OECD and Council of Europe. It has become the first country outside the membership of the OECD and the Council of Europe to become a Party to the Convention. India believes that the menace of tax evasion cannot be effectively tackled unless the countries exchange information through automatic and spontaneous routes in addition to providing information on request. There should not be any hindrance in exchanging information for earlier periods. India also believes that 'assistance in

collection of tax claims' is a very useful area of international cooperation.

The OECD has been very active in building capacity of tax administration in India, particularly in the fields of transfer pricing and international taxation. OECD's engagement with India which started in the form of yearly training programmes in the late 1990s has now grown to a multi-faceted delivery of tax-technical and tax-policy dialogue events on regular basis. Since 2000, the OECD has delivered around 30 bilateral and multilateral technical events in India. These have provided a platform for Indian tax administrators to learn and discuss practical solutions to challenges faced by them. The courses on transfer pricing held every year since 2000 focused on both basic and advanced topics and have immensely helped in implementing our transfer pricing law passed in 2000. With the passage of time, these events are now a forum for sharing of experience and enable Indian auditors to learn and apply these rules effectively in line with international best practices.

In the field of international taxation, though our approach to taxation differs with the OECD as India follows a source based taxation system, the programs focus on emerging issues which are of prime importance to us. The tailored courses cover issues concerning tax treaties; tax avoidance and tax evasion; and exchange of information. These have enabled the tax auditors and their supervisors to learn and apply audit techniques and taxation principles consistent with the international best practices.

India is happy to organise high level events on administrative as well as tax policy matters for the benefit of policy makers and senior tax officials, in association with OECD. These events covered diverse topics such as: management of large taxpayer units, thin capitalisation and CFC, VAT compliance, money laundering and terrorist financing. OECD has also participated in many high level tax conferences in India adding international flavour to such events. Officers of the Indian tax administration have attended several OECD training events held in Seoul, Ankara and Malaysia. These events have been highly appreciated by the Indian participants as these events allow the participants and trainers drawn from different countries to share experience at working level and develop solutions to tax problems faced by them.

We are very glad to provide our experienced trainers for the OECD events held out of India. These events enable trainers to enrich themselves with an international experience which is of great use in our domestic training programs.

The programs organised by the Global Relations Division of the OECD whether in India or abroad have provided significant input for our tax policy and administration and have played an important role in shaping the international opinion in India. Reducing this to a matter of numbers (say for example, so many tax officers attended OECD courses) would not reflect all the benefits of this relationship in all tangible and intangible forms. As

the Indian economy grows and integrates with world economy, we will share common global challenges and need to equip ourselves to face these new challenges in a rapidly evolving environment. We aim to provide better taxpayer services and create a strong culture of voluntary compliance so as to utilise our scarce resources in the most efficient manner. India considers that co-operation will benefit OECD members and non-OECD economies which in turn help others in developing a better understanding of India's position on major tax issues.

India believes that the partnership with the OECD in tax field has a great potential and will bring amazing results for our mutual benefits and for other countries. India values the pace of mutually beneficial cooperation and is committed to work with the OECD on major tax issues of common concern and find mutually acceptable solutions based on mutual respect as outlined in the three year cooperation programme of June 2011.

Concerning the cooperation with the Global Relations Tax Programme, India would like to step up its efforts so that the National Tax Academy at Nagpur can be used for conducting international tax programmes for tax officers of the MENA region.



# Transforming the Inland Revenue Board of Malaysia with the help of the OECD

**By Dato' Dr. Mohd. Shukor Mahfar, CEO of the Inland Revenue Board of Malaysia**

I took office as the fifth CEO of IRBM in January 2011 at the time when the Malaysian Government has just recently launched its comprehensive Economic Transformation Plan (ETP). The ETP along with many other initiatives of the Government, aimed to lift the country's gross national income per capita from US\$6,700 to US\$15,000 in 2020. This is an increase that would raise Malaysia's economic status to match other high-income nations as envisaged by *Vision 2020*.



In line with the Government's initiatives, I saw the opportunity to transform IRBM in order to contribute effectively to the aspiration of the government. IRBM has done its best in the past, but in terms of revenue collection the figure has always remained in two digits. My priority is to improve the administration, and my first 100 days in office were pivotal. This is the best time to set the tone and to make calculated changes, like rebranding, with the introduction of our new corporate oath; flag, neckties, tiepin, lapel pin and *batik* were made to give IRBM a new fresh image. Internally, I inspire my officers to do their absolute best working as a team, for which I have introduced our new tag line *Be With Us*. This has become our central theme, reflecting the strong bond between all levels, from the management to the front liners, in short, to create a *1Hasil* spirit. I personally kept myself in constant contact with key officers and encourage them to provide ideas and suggestions through the new [idea@hasil.gov.my](mailto:idea@hasil.gov.my). When it comes to motivation, I find many songs have lyrics which are very inspiring such as *WE Will Rock You*. This has become our motivational song. In addition, we have also introduced our own new corporate song.

In terms of functions, I have realigned our compliance strategy and restructured some units, expanding the Multinational Tax Department. To focus more on compliance risk emerging from liberation of trade and capital and the advancement of technology, engaging with the OECD to expand and enhance our cooperation, especially on training, was high on my agenda. Over the last 9 years, the Malaysian Tax Academy has hosted 43 OECD events, with 1040 officers participating from IRBM and 35 other countries. In 2012 we are hosting another 7 events, and I am confident this training will continue in the future. Our association with OECD also assisted us in issuing the IRBM Transfer Pricing Guidelines in 2003. Similarly, this cooperation is providing us the assistance in issuing our

new APA Guidelines and MAP Guidelines which we are currently working to finalise.

I am also excited about the possibilities opened by the secondment of an IRBM officer at OECD headquarters in terms of learning of best practices, work culture and work environment, management techniques, ideology and strategic administrative functions. This is an invaluable opportunity for IRBM to acquire an insightful learning experience of the OECD work.

OECD's contribution in capacity building through its Global Relations programme is very commendable and meaningful to the Non-OECD economies. The Advisory Group for Co-operation with Non-OECD Economies (AGNOE) enables countries outside the OECD to directly influence the management, delivery and future direction of the OECD's Global Relations activities and provide input for the process of developing OECD instruments, standards and guidelines. This year Malaysia is very pleased to host the Meeting of AGNOE for the second time, after having hosted it for the first time in 2004. IRBM is honoured that the Co-chairship to the AGNOE has been given to IRBM since 2011.

I am happy that the OECD has given IRBM the opportunity to be engaged and help developing countries build their tax system, ensuring that developing countries can tax multinational enterprises fairly. IRBM was a member of the OECD Informal Task Force on Tax and Development and last year got invited as observer to Working Party 6 and as a member of the Steering Committee in Transfer Pricing, a positive development which will provide Malaysia an opportunity to learn while contributing to OECD's transfer pricing work. In today's global environment, enhancing cooperation with other tax administrations is crucial and I have initiated bilateral discussions with my counterparts especially in the region to find ways how we could work closer and exchange best practices. This has opened up new possibilities for IRBM to have mutually beneficial programmes like exchange of officers or cross attachment with some of the tax administrations in the region.

The momentum built during my 100 days had kept my officers focused throughout the year. With the level of motivation and *1Hasil* spirit, for the first time in history IRBM has managed to cross the psychological barrier of 2 digits collection at 4.58pm on December 8th, 2011; my 355 days in office. I attribute this achievement to the dedication of my officers, thier eagerness to learn, thier hardwork and the good working relationships we have with other organisations. Credit is also due to OECD for providing IRBM the much needed training to deal with the ever growing international tax issues. Indeed, it was the right time on the 8th December 2011 to introduce the song *We Are The Champions*, another song with motivational lyrics. To all my officers, *You Are The Nation's Hero*, keep up the good work and, sail we shall together, on the IRBM transformation journey.



# Implementing Transfer Pricing in Russia

**By Alexey L. Overchuk, Ph.D. Deputy Commissioner, Federal Tax Service of Russia**

In July 2011 the President of the Russian Federation signed the Federal Law that introduces new transfer pricing controls in the country. The new rules, based on OECD Guidelines, became effective on January 1, 2012, taking both taxpayers and tax administration to an absolutely new legal environment. There is a widely accepted view within the community of Russian tax professionals that the new transfer pricing legislation is the most significant change in the tax system of the country since the introduction of the Tax Code in the late 90th.



Combating transfer pricing deals between related parties that shift the tax base between jurisdictions for tax avoidance purposes is not entirely new for us. In an economy like Russia's, relying on the export of mineral resources for revenue, the absence of effective tax administration of transfer pricing presented a visible problem. Further integration of Russia into the World economy, the increase of international trade and a favorable outlook for WTO accession were factors that contributed to addressing this issue. Besides, taking into account that Russia is federation another goal of introducing new legislation was to address domestic transfer pricing issue, to avoid the creation of profit centers in regions where the profit was not actually created as this results in unfair distribution of revenue among different regions. Introduction of the arm's length principle into the tax administration practice is expected to reduce distortions in the economic and social development in different parts of the country.

The approval of our new transfer pricing law by the Parliament was preceded by discussions between the business community, legislators, tax policymakers and tax administration officials, thus reflecting a wide spectrum. There was debate about the complexity of the transfer pricing methods and the feasibility of their application, the availability of comparable data and taxpayers' concern about increased administrative tax burden. Others were concerned about the lack of capacity amongst taxpayers and tax officials to effectively apply the provisions concerning Advance Pricing Agreements and Mutual Agreement Procedures as well as corresponding adjustment.

Despite all these drawbacks it was evident that the introduction of internationally recognized transfer pricing rules and procedures would outweigh the difficulties. The new legislation is based on the arm's length principle, a new concept in the Russian tax law

modeled after Article 9 of the OECD Model Tax Convention. The new legislation also defines related parties, controlled transactions and outlines the information sources required to perform TP analysis and specifies compliance requirements. Most importantly, it introduces five TP methods to apply the arm's length principle following the OECD rules, a step forward in aligning the Russian economy to international practice and, particularly important, in view of Russia's accession to the WTO.

The practical application requires new knowledge and skills. Although our previous tax legislation made an attempt, it was not based on the OECD model and did not require for tax officials this specific expertise, while international tax consultants operating in Russia and international businesses and large Russian companies with overseas operations in countries that follow OECD rules and procedures had that expertise already.

With the new transfer pricing legislation effective since January 2012 the top priority of the Federal Tax Service is to address this knowledge gap. The OECD has extended its assistance to providing comprehensive workshops and a number of international study visits have been conducted by the FTS to tax administrations of different nations.

APA procedures are also new for us, and large businesses are demonstrating a visible interest in APA negotiations. Moreover, some of them have experience in negotiating these arrangements with tax administrations of other countries.

It is a known notion that transfer pricing is not exact science. Unlike other areas, in TP judgment plays an important role. Taxpayers and tax officials reach consensus through a professional dialogue, also a new concept built on trust rather than traditional old attitudes and perceptions. The FTS is hiring employees for the new transfer pricing department trying to balance professionals who built their careers in the tax service and experts with a business background so that the Service understands the business models and concepts applied by taxpayers and eventually develops enhanced relationships with large businesses.

Although the new legislation will be gradually coming into force over the next few years and it is still early to give assessments of how effective it has become, it is evident that some of Russian taxpayers are already considering ways to follow arm's length principle and make adjustments in their pricing policies. We are grateful for the Global Relations Programme assistance in this process.

# South Africa and the OECD Global Relations programme

**By Oupa Magashula, SARS Commissioner**

*The OECD seeks to encourage a truly global perspective on taxation by interacting with all interested countries, through the Global Relations Programme. Closer engagement with non-OECD economies is essential to enable tax officials to benefit from the perspectives and experiences developed within and beyond the borders of the OECD. (Information note published by the OECD).*

South Africa's observer status in the work of the Committee of Fiscal Affairs (CFA) and its close ties with the management and staff of the Centre for Tax Policy and Administration (CTPA) has significantly assisted the South African Revenue Service in building capacity and enhancing its knowledge and skills in respect of tax administration. As an observer to the OECD's CFA and by working in close collaboration with the OECD on various projects including Tax and Development, Transfer Pricing, Compliance and the exchange of tax information issues, SARS has been able to review and benchmark its own systems and strategies and to advise other countries, through inbound and outgoing study visits, as well as a member of the African Tax Administration Forum.



The contribution by the OECD towards the improvement of the quality and efficiency in Exchange of Information (EOI) over the past few years has been of immeasurable value to both SARS and other African revenue authorities. With assistance from the OECD, SARS has reviewed its existing internal EOI mechanisms resulting in a redesign of our EOI unit. The work completed by the OECD during 2011 on Article 26 of the Model Taxation Agreement provided South Africa with a basis for this redesign.

In addition, the OECD continues to invest considerable resources in training conventions and material for African tax administrations. This is evident from the two training sessions which took place in Pretoria in May 2011 and in Abuja in November 2011. The achievements of these training interventions included:

- Spearheading the establishment of dedicated exchange of information capability to improve the quality of exchange of information among African tax administrations
- Providing a quality framework in which an exchange of information process could operate

- Providing participants with a model exchange of information office that can be implemented in developing countries
- Empowering participants in the exchange of information process through practical examples.

This area is where the OECD has made the most tangible impact, backing up theory with sound practical training which allows Administration to make it workable in practice.

South Africa looks forward to continuing our close relations with the OECD CTPA in 2012 to identify further areas for cooperation, collaboration and capacity building

# Assessing Impact from the Independent Evaluation Service

The Independent Evaluation Service (IES) administered by the Canada Revenue Agency, provides objective third-party written evaluations of most OECD Global Relations events. Evaluations are based on feedback provided at the conclusion of each event by the participants, technical experts and OECD event leader. Evaluations report on the effectiveness of each event, including:



- Participants' perceived increase in knowledge;
- Event topics they consider the most relevant to their ongoing work;
- How they intend to apply what they learned upon returning to their respective duties, and
- Which Global Relations events they hope to attend in the future.

Evaluations also identify best practices and potential areas for improvement. In addition to evaluations of individual events, the IES produces an annual report summarizing the results of the year's Global Relations Programme.

Ongoing results of IES evaluations are a key indicator of the impact of the Global Relations Programme. Based on results from recent years, a large majority of participants indicate that:

- The event they attended was relevant to them and their tax organisation,
- Their knowledge of the subject matter increased significantly during the event,
- They intend to apply what they learned to their ongoing work, and
- They intend to share what they learned with their organisation as a whole.

Many participants also suggested future events on a variety of topics.

IES evaluations also help the OECD determine which elements of Global Relations events are working well and which require improvement. This helps ensure that the most beneficial events are offered, their level of difficulty is appropriate, groups of participants are the optimal size, individual participants are qualified for each event, event methodology and delivery are sound, and all event topics are relevant.

The IES recently conducted a pilot post-event (level 3) evaluation of a Global Relations event to assess the extent to which participants applied what they learned to their ongoing work. The pilot level 3 evaluation was based on feedback from both participants and their immediate supervisors. Results were positive, with most participants indicating that they had been able to apply what they learned directly to their ongoing work, the quality of which had improved as a result. Supervisors indicated that sending a participant to the event was a worthwhile investment of time and money, and that the acquired knowledge benefitted not only the participants but their organisations as a whole. The IES has recommended that it conduct additional level 3 evaluations in 2012 to help assess the long-term impact of the Global Relations Programme.

IES evaluations consistently indicate that the Global Relations Programme is an effective method of sharing the OECD's tax standards and best practices. Initial results from the pilot level 3 evaluation indicate that these standards and practices are being practically applied. Taken as a whole, these results demonstrate that the Global Relations Programme is having a strong and positive impact on event participants and their organizations.

### **Evaluation of the 2011 Global Relations Programme**

The 2011 Global Relations Programme comprised 75 interactive learning events covering a broad range of tax policy and administration topics. The Independent Evaluation Service (IES) evaluated 52 of these events. In addition to the contribution of the OECD Secretariat, 94 countries, mostly non-OECD economies (NOEs) sent participants to events in 2011, 17 countries hosted events and 25 countries provided technical experts.

The 2011 programme continued the success of previous years. Participants at all events reported a knowledge gain in the pertinent subject area; at two thirds of all events, participants felt their knowledge of the topic increased by 25% or more. More than 85% of all participants rated the difficulty level of their respective events as ideal. Statistically, programme results were high and compare favourably to results from previous years. The average level of satisfaction of participants was 88%. Demand for Global Relations events remains high. A substantial number of participants in the 2011 programme had attended past events, and an even greater number requested an increased number of events in the future.

The Global Relations Programme can be considered a mature programme in terms of its organization, planning and event methodology, all of which have been consistently successful over a number of consecutive years. Within this context, the Global Relations Programme remains committed to meeting the learning needs of participating countries as

they change over time. As a result, the programme is dynamic and flexible in nature. The OECD has repeatedly shown its ongoing willingness to rethink and redesign the programme in order to ensure its continued relevance and the timeliness of event topics.

**Some of the highlights of the 2011 programme include:**

- Increased participation in the Global Relations Programme by African countries; 27 African countries participated in events (only 15 participated in 2010), four African countries hosted events (Kenya, Liberia, Nigeria, South Africa) and two African countries provided technical experts (Kenya, South Africa)
- Increased participation by technical experts from NOEs
- An increase in the number of events that were custom designed to meet the identified needs of participants

The Global Relations Programme remains a valuable mechanism by means of which the OECD is able to engage closely with numerous NOEs worldwide. This allows the OECD to assist NOEs with their capacity development in the field of tax and disseminate knowledge of OECD guidelines, standards and best practices, as well as the experiences and practices of OECD-member countries.





# Transfer Pricing in the New Global Landscape: the OECD's Engagement beyond its Borders

By Masatsugu Asakawa, Deputy Vice-Minister of Finance for International Affairs, Japanese Ministry of Finance and Chairman, OECD Committee on Fiscal Affairs

Since 1979, the OECD has taken the global lead in developing international standards on transfer pricing, the tax rules relevant to determining the appropriate pricing for transactions between associated enterprises and the resulting profit allocation between jurisdictions. The *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (the *Transfer Pricing Guidelines*), originally published in 1979, and updated in 1995 and 2010, provide detailed guidance to tax authorities and multinational enterprises on the application of the arm's length principle, which is the principle that forms the core of the internationally accepted standard on transfer pricing.



Simply put, this standard requires that the conditions of transactions between associated enterprises not differ from those that would apply to transactions between independent enterprises in comparable circumstances. The arm's length principle has almost universal application. It is cited in the Commentary to both the OECD and United Nations Model Tax Conventions, and has been adopted by very nearly every country that has adopted transfer pricing rules into its domestic tax legislation (of which there are over 100). It has been a notable achievement to have created a broad international consensus on a principle that serves as a tool, when adopted into countries' transfer pricing legislation, to counter artificial cross-border shifting of profit and, at the same time, to create an international investment climate that provides predictability of treatment and minimises the risk of double taxation.

## ***Changing international landscape***

Notwithstanding achievements to date, neither the economic nor the political landscapes in which international commerce is conducted remain static, and the demands on international tax standards, and the pressures on them, are thus ever-changing. Globalisation and open borders mean that the taxation of multinational enterprises is an increasingly prominent and important feature of tax authorities' work – and this, of course, extends well beyond the borders of the 34 OECD countries. Emerging economies such as

China, India and South Africa have recognised the importance of transfer pricing in their globalised economies and have adopted comprehensive rules in line with the arm's length principle and begun to build the skills and administrative structures needed to implement them. In addition, developing countries view transfer pricing rules based on the arm's length principle as both a vital defensive measure to protect their tax bases and a critical element to create a commercial environment conducive to international trade and investment.

Transfer pricing has been identified by regional organisations such as the African Tax Administration Forum (ATAF) and the Inter-American Centre of Tax Administration (CIAT) as key to allowing countries to collect their fair share of tax revenue. Reflecting the importance ATAF attributes to transfer pricing as a tax risk to its members ATAF have formed a Transfer Pricing Working Group to assist ATAF members to build their transfer pricing capacity and the OECD are providing technical support and advice to the Working Group. Both the OECD's Task Force on Tax and Development, discussed below, and the G-20 have recognised the role that effective transfer pricing rules can play for developing countries in raising the tax revenue they need to carry out their economic and social programmes and reduce their dependency on aid. Indeed, non-governmental organisations (NGOs) and others have raised awareness of the risks to the tax revenue of developing countries posed by transfer pricing abuse – but we must remember that effective country transfer pricing rules provide the key to countering such abuse.

OECD experience, and that of other international organisations, is that developing countries see the adoption of effective transfer pricing rules as key to protecting their tax revenues, and that they are seeking support in adopting and implementing transfer pricing rules in line with the arm's length principle.

### **Challenges**

There is no doubt that very many countries consider transfer pricing rules as vital to their interests and are seeking support and assistance in adopting them. Nevertheless, many countries have also reported that they face difficulties with the practical implementation of their transfer pricing rules. It is widely acknowledged that transfer pricing is often not straightforward – either for taxpayers or for tax administrations. For the latter, the implementation of a new transfer pricing regime requires a number of legal and administrative steps. The first is, of course, the adoption of transfer pricing rules into the tax legislation, together with supporting provisions on issues such as documentation and advance pricing arrangements. These rules generally require multinational enterprises operating in the relevant jurisdiction to use arm's length pricing in cross-border, intra-group transactions, and they provide the tax authority with the power to adjust the measure of taxable profit where such prices are not used. Once the legislative

framework is in place, most countries form an administrative structure for the implementation of the rules, often centered on a team of specialists.

Building the legal and administrative framework for a transfer pricing regime, however, is probably little different from adopting legal and administrative structures for other types of tax rules. There are, nevertheless, two areas in which countries and others most often report more specific challenges: these are in the building of relevant skills amongst tax auditors and the obtaining of publicly available information on arm's length conditions between independent enterprises which is needed for the comparability analysis conducted in applying the arm's length principle. As far as skills-building is concerned, the OECD and other international organisations must and will continue to provide training and other support to countries as they start to implement their rules, and a description of various initiatives to that end is provided below.

As for access to public data for comparability, we are taking a two-pronged approach. The first is to consider how access to such information can be improved and the work of our Task Force on Tax and Development described below includes a focus on this question. The second is to reflect on the extent to which, and the form in which, such information is necessary for the purposes of carrying out reliable comparability analyses. We are looking at whether we need to develop more clarity on how the arm's length principle can be effectively applied with limited access to information and data on comparable transactions, in particular in the form of databases, which are frequently not available in developing countries. This includes consideration of the standard of comparability that is appropriate in this context, the issues relating to the use of comparables data from other markets, the kinds of comparability adjustments that may be feasible and appropriate and the appropriateness of using simplification measures, such as safe harbours.

The OECD must take on board these issues and fully address them, and substantial work is already underway to do so. Many of these issues are not new to OECD countries, and, indeed, many, if not all; OECD countries have encountered similar challenges in the implementation of their own rules, and have built up experience in addressing them that must be shared. It is essential that all countries are able to effectively apply their transfer pricing rules and make them work in their interests. We are working with all stakeholders – OECD and non-OECD countries, regional organisations and other international organisations – to ensure this is the case. We also need to ensure that the standards and the guidance that the OECD produces are relevant to, and effective for, all countries. And we know that, if this does not remain the case, we risk losing the broad global consensus of approach that everyone desires. Indeed, we consider this to be one of the most important issues on our agenda.

What are we doing to address these issues? There are three main aspects to our approach. Ensuring that transfer pricing works in the interests of all countries means: engaging with non-OECD economies on transfer pricing; increasing the relevance and applicability of the OECD's work to all countries; and increasing the impact of the OECD's approach to transfer pricing.

### ***Engaging with non-OECD economies on transfer pricing***

It is vital that the voices of non-OECD economies are heard in the development of international standards on transfer pricing. Currently 9 non-OECD countries representing a significant portion of the world's economy (Argentina, Brazil, China, Colombia, India, Malaysia, Singapore, Russia and South Africa) participate in the work of the OECD on transfer pricing, shaping future guidance, and bringing their views, perspectives and priorities to the table. These countries work side by side with OECD member countries in the activities of the OECD's Working Party No. 6, the body responsible for the ongoing development of the *Transfer Pricing Guidelines*.

Our dialogue and engagement with non-OECD countries is being further enhanced by a new Global Forum on Transfer Pricing. This meeting is organised under the auspices of the long-standing Global Forum on Tax Treaties and Transfer Pricing, which for over 15 years has represented the leading forum for OECD and non-OECD countries on tax treaties and transfer pricing. The new annual meeting, dedicated exclusively to transfer pricing, will be held for the first time in March 2012. This annual event will provide a unique forum for government officials from more than 100 OECD and non-OECD countries to share their expertise and exchange their views on policy and administrative aspects of transfer pricing. The work of the new Global Forum on Transfer Pricing will be guided by a Steering Committee, including 10 to 15 non-OECD economies, including developing countries, working closely with the Bureau of Working Party No. 6. Such work may include, for example, the development of best practices in relation to transfer pricing documentation, risk assessment and the treatment of home and regional costs. The group, which first met in 2011, includes transfer pricing specialists representing Argentina, Brazil, China, Colombia, Egypt, Ghana, India, Indonesia, Kenya, Malaysia, Russia, Singapore, South Africa and Vietnam.

The OECD's long-standing Global Relations programme remains the core of our dialogue with non-OECD countries on taxation. The programme consists of a series of bilateral and multilateral events, held at our 5 multilateral tax centres and elsewhere, covering all

aspects of the OECD's work in the area of taxation. Last year, for example, the programme consisted of 75 events of which 21 were focused mainly on transfer pricing.<sup>3</sup> These events provide a forum for both North-South and South-South dialogue that allows countries to share their approaches to transfer pricing and other taxation issues, mainly through real case study analysis. The events also provide a means for a very broad range of non-OECD countries to input their perspectives into the OECD's work. The programme, which annually involves upwards of 2000 tax officials from 125 countries, is demand-driven, and shaped by an Advisory Group for Non-OECD Economies<sup>4</sup> which plays a key role in inputting NOE views into the work of the Global Relations programme and the wider work of the OECD in the tax area. The Global Relations programme is delivered in partnership with regional organisations, such as ATAF in Africa and CIAT in Latin America.

### ***Increasing the relevance and applicability of the OECD's work to all countries***

The core outcome of the OECD's engagement with countries on a global level must be that its work on transfer pricing, and the standards and guidance it develops, is relevant to, and effective for, all countries. Many of our current initiatives are focused in that direction.

Working Party No. 6 is currently undertaking a project on the administrative aspects of transfer pricing, including a focus on simplification measures that tax administrations may take in order to balance an acceptable level of compliance with transfer pricing legislation, with an acceptable level of resource cost to the tax administration and to taxpayers. The Working Party published a multi-country survey of administrative simplification measures currently in place,<sup>5</sup> has sought and obtained public comment on possible simplification measures<sup>6</sup> and is using the main findings to inform its work on the administrative aspects of transfer pricing. In March 2011 the OECD announced a project to consider the administrative aspects of transfer pricing, including approaches designed to simplify the implementation of transfer pricing regimes, through measures such as safe harbours. This work is expected to be of great interest to less developed countries with scarce administrative resources and to emerging economies which, as we have seen, are increasingly active on the transfer pricing front.

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<sup>3</sup> See the 2010/2011 Annual Report of the Global Relations Programme at <http://www.oecd.org/dataoecd/19/10/48336381.pdf>.

<sup>4</sup> The Advisory Group for Non-OECD Economies is a group of representatives from non-OECD economies, OECD countries and regional organisations with an interest in the delivery of, or participation in, the CFA's Global Relations programme.

<sup>5</sup> See [http://www.oecd.org/document/45/0,3746,en\\_2649\\_33753\\_48131629\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/45/0,3746,en_2649_33753_48131629_1_1_1_1,00.html).

<sup>6</sup> See [http://www.oecd.org/document/54/0,3746,en\\_2649\\_33753\\_48340470\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/54/0,3746,en_2649_33753_48340470_1_1_1_1,00.html).

As part of this project on the administrative aspects of transfer pricing, we are reviewing the existing guidance in the *Transfer Pricing Guidelines* on safe harbours. This is with a view to updating it in order to reflect the experience acquired since the original guidance was developed in 1995. Safe harbours are potentially of great interest to developing countries. They make it easier for multinational enterprises to comply with country transfer pricing rules and can provide them with some certainty of treatment. At the same time, they reduce the resource cost of compliance, both for taxpayers and tax authorities.

The OECD's Forum on Tax Administration, a group of the Commissioners or Heads of Taxation of over 40 OECD and non-OECD jurisdictions,<sup>7</sup> has also carried out work on countries' approaches to the administration of their transfer pricing rules, and published a report in December 2011 entitled "Dealing Effectively with the Challenges of Transfer Pricing" on these issues<sup>i</sup>. This report is of significant relevance to non-OECD countries as it addresses many of the areas that are a priority for developing countries.

Supplementing this work, the OECD Secretariat is developing further explanatory material designed to help non-OECD countries adopt and implement their transfer pricing rules. Sample transfer pricing legislation, designed to assist countries intending to introduce transfer pricing rules for the first time, was published in 2010.<sup>8</sup> The suggested legislation is intended to be purely illustrative, for countries to use and adapt according to their circumstances and priorities. We are expecting to design further sample legislation to cover various issues including Advanced Pricing Agreements and thin capitalisation. In addition, the Secretariat is developing explanatory notes on a number of aspects of transfer pricing. The first five of these (on transfer pricing methods, comparability, comparability adjustments, the arm's length range and location savings) have been made available on the OECD's website.<sup>9</sup> The Secretariat is now working on further explanatory notes on issues of particular relevance for non-OECD economies, which are intended to address questions of transfer pricing implementation, recognising the challenges that developing countries in particular face in this area.

### ***Increasing the impact of the OECD's approach to transfer pricing***

A complementary, but central, pillar of our work is to ensure that non-OECD countries, including developing countries, are able to fully benefit from the application of

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<sup>7</sup> See [http://www.oecd.org/about/0,3347,en\\_2649\\_33749\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/about/0,3347,en_2649_33749_1_1_1_1_1,00.html).

<sup>8</sup> This is available in English, French and Spanish - see [http://www.oecd.org/findDocument/0,3770,en\\_2649\\_33753\\_1\\_119669\\_1\\_1\\_1,00.html](http://www.oecd.org/findDocument/0,3770,en_2649_33753_1_119669_1_1_1,00.html)).

<sup>9</sup> These are available in English and French - see [http://www.oecd.org/findDocument/0,3770,en\\_2649\\_33753\\_1\\_119669\\_1\\_1\\_1,00.html](http://www.oecd.org/findDocument/0,3770,en_2649_33753_1_119669_1_1_1,00.html)).

the arm's length principle in their transfer pricing rules. That is, to ensure that they can use their transfer pricing rules to collect their fair share of tax revenue, and to counter tax loss caused by abusive cross-border intra-group pricing.

The OECD's Task Force on Tax and Development, a multi-stakeholder body including representatives from OECD and non-OECD countries, the private sector and NGOs, has identified transfer pricing as one of its high-priority areas of work, and has formulated a detailed work programme on transfer pricing and developing countries.<sup>10</sup> This work programme was approved by the OECD's Committee on Fiscal Affairs and its Development Assistance Committee in June 2011 and is now being implemented. The programme currently consists of two main elements. The first consists of bilateral work with specific developing countries to improve their capacity to adopt and effectively implement transfer pricing rules. We are working with Ghana, Kenya, Colombia, Vietnam, and Rwanda. The second element is to support regional organisations (such as ATAF) in their capacity-building programmes. At ATAF's request, the OECD is currently providing the technical input into ATAF's technical training programme for African tax administrations and providing technical support and advice to its Transfer Pricing project and its Exchange of Information project.

The OECD is also responding to the need for developing countries to develop the capacity to deliver training on transfer pricing to their own tax officials and those of neighbouring countries. We are holding a "Train the Trainers event" in October 2012 which will provide selected transfer pricing specialists from developing countries with the skills to train tax auditors in their own and neighbouring countries on transfer pricing.

The Task Force on Tax and Development is also considering practical aspects of the implementation of transfer pricing rules, such as the availability of comparables data and, in this context, will consider how developing countries can better access the financial data sometimes needed to apply transfer pricing rules. Work is being carried out to explore the possible benefits and feasibility of wider statutory reporting of financial accounts in developing countries as a means of improving both the transparency of the operations of multinational enterprises and tax administration access to data on potential comparable transactions.

Through the Task Force on Tax and Development, the OECD is working with other international organisations including the UN, World Bank, IMF, the International Tax Compact (ITC), and regional tax organisations to help developing countries adopt and implement transfer pricing rules. A framework for co-operation with the World Bank and

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<sup>10</sup> See [www.oecd.org/tax/globalrelations/development](http://www.oecd.org/tax/globalrelations/development).

the European Commission (EC) on transfer pricing capacity-building for developing countries has been agreed and this forms the basis for working together on the bi-lateral work with specific developing countries. The OECD Secretariat and representatives of a number of OECD countries are also actively participating in and contributing to the work of the UN's Sub-Committee on Transfer Pricing in the development of a Practical Transfer Pricing Manual for Developing Countries, which is focused on addressing transfer pricing implementation issues faced by developing countries in particular and how they can address those issues in the context of applying the arm's length principle.

### ***Final remarks***

We are very aware of the challenges faced by many countries in implementing transfer pricing rules. Indeed, many of these challenges have been faced by OECD member countries. We are very aware also that, partly as a result of these challenges, some have advocated an alternative approach to transfer pricing, such as global formulary apportionment. We are far from convinced that such an approach represents a realistic option in the current international tax landscape – it is difficult to see, for example, how the required consensus on the computations of the profit base to be apportioned between countries, or allocation formulae to be applied to split that profit between countries, would be achieved, and it is far from demonstrated that any such approach would be advantageous to developing countries.

Clearly, the arm's length principle should be neither rigid nor immovable, but, at the current time, we believe it is the only realistic option in the interests of developing countries. Through the initiatives described in this article, the OECD is committed to ensuring that it works to the advantage of all countries.

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<sup>i</sup> See [www.oecd.org/.../0,3746,en\\_2649\\_33749\\_49681354\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/.../0,3746,en_2649_33749_49681354_1_1_1_1,00.html)