NEW OECD INTERNATIONAL TAX INITIATIVES: LOOKING AHEAD

Washington D.C.
June 4, 2007

Transfer Pricing: Comparability Issues and Profit Methods

Caroline Silberztein
Head, Transfer Pricing Unit
OECD Centre for Tax Policy and Administration
www.oecd.org/ctp/tp
Context and process

- Monitoring procedures of the OECD 1995 Transfer Pricing Guidelines

- The review of comparability and the review of profit methods are intrinsically linked

- Working methods and timeline:
  - 2003: open questionnaire on comparability
  - February 2006: open questionnaire on profit methods
  - May 2006: discussion draft on comparability
  - [end of 2007 or 2008?] discussion draft on profit methods
Comparability: overview of issues addressed in the discussion draft

- Putting a comparability analysis and search for comparables into perspective
- Timing issues in comparability
- Internal comparables
- Determination of available sources of information and of their reliability
- Uncontrolled transactions
- Examining the five comparability factors
Comparability: overview of issues addressed in the discussion draft

- Selecting or rejecting third parties or third party transactions
- Determination of and making comparability adjustments where appropriate
- Multiple year data
- Aggregation of transactions
- Definition of the arm’s length range, extreme results, methods to enhance reliability, loss-making comparables
- Documenting a search for comparables
Profit methods: overview of the project

- Profit methods currently have a last resort status in the OECD Guidelines, but there are more widely used than would be expected from their last resort method status.

- Re-discuss the status of the methods:
  - Transactional Net Margin Method and Profit Split methods
  - In what cases are they appropriate?
Profit methods: overview of the project

Notwithstanding the hierarchy of methods, a number of factors influence the choice of TP method:

- Strengths and weaknesses of the methods
- Comparability analysis (including functional analysis) of the controlled transaction under review
- Availability of reliable enough comparable data
Profit methods: overview of the project

- Develop further guidance on how to apply these methods in practice:
  - TNMM: comparability standard, choice of the PLI...
  - Profit split: how to determine the profit to be split, how to split the profit...
Current work

- Analysis of responses received to the questionnaire on profit methods (31 August 2006) and of the comments received on the comparability discussion paper (30 November 2006)

- End product should be a revision of Chapters I and III of the OECD TP Guidelines