



UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

September 4, 2018

VIA EMAIL:

Ms. Ingela Willfors

Mr. Stig Sollund

Co-coordinators

Subcommittee on Article 9

UN Committee of Experts on International Cooperation in Tax Matters

ojedaalvarez@un.org

Dear Ms. Willfors and Mr. Sollund,

The United States Council for International Business¹ is pleased to have the opportunity to provide input regarding the direction of the UN's subcommittee on Transfer Pricing for its work during this term of the committee.

The decisions reflected in the 2017 version of the UN Practical Manual on Transfer Pricing for Developing Countries were vigorously debated, and difficult compromises were achieved. It is our view that rather than reopening these difficult issues (e.g., intangibles and the sixth method) the guidance should be allowed to take effect and be tested. That way, any revisions could reflect needed improvements as demonstrated by experience with the 2017 Manual, rather than simply revisiting the previous decisions.

Certainty is a recognized important element in companies' investment decisions. An important aspect of certainty is the frequency of law changes. Allowing the basic decisions reflected in the 2017 Manual to take effect and be implemented will enhance certainty. In that vein, USCIB welcomes the support for maintaining the arm's-length standard and the advice the manual provides to developing countries. In USCIB's view, the 2017 Manual is a well-balanced product that should not be substantially revised until countries and taxpayers have had a real opportunity to work with it.

One UN subcommittee is working on taxation of the digitalizing economy. This work primarily involves Articles 5 and 7, permanent establishment and profit attribution issues, rather than

¹ USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing leading international business organizations, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

Article 9. So, that work should not be the focus of the TP subcommittee or revisions to the Manual. It may be worthwhile, however, to coordinate with the digital subcommittee, to the extent that profit allocation is based on a functional analysis.

The subcommittee could expand on dispute avoidance and resolution and coordinate with the work being done on the dispute resolution handbook.

The subcommittee could expand on the safe harbors, particularly as regards low-value services, but also could consider broader use of safe harbors. In our view, safe harbors have the potential to create real value for developing countries. Safe harbors increase certainty and therefore encourage investment. Safe harbors may also be easier to audit, especially in lower-capacity countries.

Given the limited resources of the UN, USCIB believes that the UN should avoid duplicating work being done in other fora. Thus, work on financial services should not be taken up at this point.

USCIB welcomes the opportunity to work with the UN on these important issues, including providing business feedback on experience with the 2017 Manual. If you have any questions or would like to discuss these issues further, please contact Carol Doran Klein at cdklein@uscib.org or 202-682-7376.

Sincerely,

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Chair, Taxation Committee
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