



WORLD CUSTOMS ORGANIZATION

conference information



WCO/OECD Conference on Transfer Pricing and Customs Valuation

Customs and related party transactions:
Is it desirable and possible to converge Customs
Valuation and Transfer Pricing?

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Location

WCO Headquarters
Brussels, Belgium

Date

3-4 May 2006

Co-Organised by



2006 CUSTOMS BUSINESS MEETING



WORLD CUSTOMS ORGANIZATION

Our long and valued Customs experience, world-wide expertise in training, select pool of expert Customs officials, and growing demands from the private sector for quality training are the main factors that led to our decision to establish the World Customs Centre of Learning. The Centre offers a wide platform of courses using a variety of training methods and regularly organises training sessions aimed at the private sector. Blended learning is the preferred training method – a new approach that combines face-to-face training with distance learning.

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**Michel Danet****Richard Hecklinger**

Dear Participants,

We are pleased to welcome you to the WCO/OECD Conference on Transfer Pricing and Customs Valuation that will be held at the WCO Headquarters in Brussels on 3-4 May 2006. The conference is being jointly organised by the World Customs Organization (WCO) and the Organisation for Economic Co-operation and Development (OECD) and will bring together the world's most authoritative specialists in this complex field.

"Transfer pricing" is used by multinational enterprises to determine the price and conditions for the transfer of goods, services and assets between their affiliated companies situated in different tax jurisdictions. These multinational enterprises are said to account for 60% of world trade and transfer pricing has become the number one issue in the international tax arena. While the focus has traditionally been on direct taxation, the customs duties dimension of transfer pricing now increasingly attracts the attention of both governments and business.

The conference provides a high-level forum for customs administrations, revenue/tax authorities, business and the academic world to explore ideas that could bridge the gap between direct taxation and the customs valuation of transactions between related parties. Questions to be discussed include: What is the importance of transfer pricing for governments and business? How do tax and customs valuation rules regarding transfer pricing interact? Is it desirable and possible to have greater convergence of rules and administrative practices?

This event is the first major international effort to meet one of the most topical challenges facing governments and business in the international trade and taxation arena.

A programme and further information about this conference are included with this communication for your convenience. Your attendance will certainly add considerable value to the discussions.

Our very best wishes.

Michel Danet
Secretary General
World Customs Organization

Richard Hecklinger
Deputy Secretary General
Organisation for Economic Co-operation and Development

WCO

As the only intergovernmental organization with a unique Customs focus, the **World Customs Organization** (WCO) with its headquarters in Brussels currently has 169 Members across the globe at all stages of economic development that collectively process approximately 98% of world trade.

The WCO is particularly noted for its work in areas covering the security and facilitation of the trade supply chain, the development of global Customs standards, the simplification and harmonization of Customs procedures, trade facilitation, risk management, integrity promotion, valuation, origin, the Harmonized System goods nomenclature, and sustainable Customs capacity building initiatives.

Being the global centre of Customs expertise, the WCO provides an ideal forum for Customs administrations and their stakeholders to discuss, exchange experiences, and share best practices on a range of international Customs and trade issues.

World Customs Organization

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WCO PUBLICATIONS



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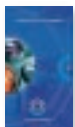


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OECD

The **Organisation for Economic Co-operation and Development's** (OECD) roots go back to post-war Europe and the Marshall Plan for rebuilding the European economy after World War II. The OECD has evolved enormously in the intervening 50 years. Today the OECD Membership comprises 30 market democracies, which produce 60% of the world's goods and services.

The OECD is a unique forum where governments share ideas and develop policies to tackle the economic, social and governance challenges of the globalised economy. The members use the OECD to compare experiences, seek answers to common problems and work to co-ordinate domestic and international policies. Perhaps best known as one of the world's largest and most reliable sources of comparable statistical, economic and social data, the OECD is also at the forefront of efforts to understand, and to enable governments to respond to, new developments and concerns. These include corporate governance, the abuse of the international financial system by terrorists and other criminals, operating a national tax system in a global environment and the "new economy" and the challenges related to an ageing population.

To meet the challenges posed by globalisation, the OECD cannot work alone. It involves a growing number of non-OECD economies and other international organisations in its work as well as business, trade unions and other representatives of civil society.

Organisation for Economic Co-operation and Development

Centre for Tax Policy and Administration

2, rue André Pascal, F-75775 Paris Cedex 16, France - Email : ctp@oecd.org - <http://www.oecd.org>

OECD PUBLICATIONS

- **OECD Model Tax Convention**
Serves as a model used by countries when negotiating bilateral tax agreements.
- **Transfer Pricing Guidelines**
Provides guidance on dealing with commercial transactions between different parts of a multinational group.
- **Revenue Statistics** (annual publication)
Provides comparable data on tax levels and structures.
- **Taxing Wages** (annual publication)
Provides unique information on income tax paid and social security contributions levied on an average worker and their employers in OECD countries.
See also www.oecd.org/ctp/taxingwages
- **Consumption Tax Trends** (bi-annual publication)
Provides information on taxes such as value added taxes and excise taxes across OECD countries. It includes information on tax rates and coverage as well as trends in taxation of consumption over the last 30 years.
- **OECD Tax Policy Series**
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Wednesday, 3 May 2006

9:30 Welcome by WCO and OECD
 - Michel Danet, Secretary General, WCO
 - Richard Hecklinger, Deputy Secretary General, OECD

Session 1

Transfer Pricing Methods

- Globalisation and the importance of multinationals in economic development
- What is transfer pricing and how does it work for multinationals?
- Recent trends regarding transfer pricing
- Why is transfer pricing important: implications for multinationals, for tax authorities and for customs administrations
- Economic and development implications of transfer pricing
- OECD Transfer Pricing Guidelines for Multinationals and Tax Administrations
- National tax responses to transfer pricing
- Do developing countries need transfer pricing regulations?

Moderator: Franz Tomasek, General Manager: Legislation, South African Revenue Service

10:00 Introduction and overview by the Moderator

10:20 Presenter 1: Chriticles Mwansa, Director, Tariff and Trade Affairs Directorate, WCO

10:40 Presenter 2: Jorge Treviño Riva Palacio, Subdirector of Transfer Pricing Audit, Tax Administration Service of Mexico

11:00 Presenter 3: National Tax Authority

11:20 **Refreshment Break**

11:50 Presenter 4: Guglielmo Maisto, Professor of Tax Law, University of Piacenza, Italy

12:10 Open discussion

13:00 **Lunch Break**

Session 2

Customs Valuation of Related Party Transactions

- Determination of customs value under the WTO Valuation Agreement
- National customs response
- Desirability of developing guidelines concerning the customs response
- Capacity building in developing countries

Moderator: Aziz El Kassimy, Deputy Director, Tariff and Trade Affairs Directorate, WCO

14:30 Introduction and overview by the Moderator

14:50 Presenter 1: Eki Kim, Counsellor, Market Access Division, WTO

15:10 Presenter 2: Paul Allan, Senior Policy Advisor, Valuation, Canada Border Services Agency

15:30 Presenter 3: Pierre Bellot, Director, Head of the nomenclature, agriculture and valuation service, Belgium Customs Administration
 Erik Willems, Senior Inspector, general enforcement and organisation services, Belgium Customs Administration

15:50 Presenter 4: Julien Pauwels, Tax Consultant, Deloitte Europe

16:10 **Refreshment Break**

16:40 Open discussion

18:00 Close of Day 1

Thursday, 4 May 2006

Session 3

Bridging the gap (part 1): comparison of custom valuation and transfer pricing methods (principles and outcomes)

- Definition of "related parties" and "associated enterprises"
- Methods: traditional methods, profit methods, arm's length range, hierarchy of methods, choice of the method by the taxpayer
- Services and intangibles
- Aggregation of transactions
- Practical experience relating to the comparability and relevance of functional and economic analysis

Moderator: Marlies de Ruiters, Deputy Director, Directorate for International Tax Policy and Legislation, Ministry of Finance, the Netherlands

09:30	Introduction and overview by the Moderator
10:00	Presenter 1: Liu Ping, Senior Technical Officer, Tariff and Trade Affairs Directorate, WCO
10:20	Presenter 2: Caroline Silberstein, Head, Transfer Pricing Unit, Centre for Tax Policy and Administration, OECD
10:40	Presenter 3: Martin Jovanovich, Baker McKenzie, Buenos Aires
11:00	Open discussion: <ul style="list-style-type: none"> • In what circumstances could OECD transfer pricing methods (including profit methods) be used for customs valuation rules? • In what circumstances could customs valuation influence transfer pricing?
11:30	Refreshment Break

Session 3

Bridging the gap (part 2): desirability and feasibility of having converging standards

12:00	Open Discussion: <ul style="list-style-type: none"> • Pros and cons from the perspective of customs, from the perspective of transfer pricing and from the operational perspective of business • To what extent is it acceptable to have different rules because the policy objectives are different? • Do different answers to the same question "what is the arm's length price?" alter the credibility of the assessing authorities? • If converging standards are found desirable, would the 1995 Transfer Pricing Guidelines form a suitable basis?
13:00	Lunch Break

Thursday, 4 May 2006 (continued)

Session 3

Bridging the gap (part 3): desirability and feasibility of coordinated administrative approaches

- *Scope for joint advanced agreements on customs and transfer pricing*
- *Exchange of information between customs and tax authorities*
- *Confidentiality provisions*
- *Scope for joint audits: customs and transfer pricing audit practices, the consequences of a transfer pricing adjustment on previously accepted customs value and vice versa, the consequences for fiscal receipts of a customs authority statement that the value of the transaction cannot be used because the relationship influenced the price*

Moderator: Kunio Mikuriya, Deputy Secretary General, WCO

14:30	Introduction and overview by the Moderator
14:50	Presenter 1: Martine Milliet-Einbinder, Head, Unit of International Cooperation and Exchange of Information, OECD
15:10	Presenter 2: Ian Cremer, Valuation Policy Advisor, Frontiers, HM Revenue and Customs, UK
15:30	Presenter 3: Antoine Glaize, Avocat Associé, Thérèse-Anne Amy, Avocat, Directeur Douane, Ernst & Young Société d'avocats, Paris
15:50	Presenter 4: Mark Ludwig, Partner, Worldtrade Management Services, William Seeger, Transfer Pricing Partner, PricewaterhouseCoopers
16:10	Refreshment Break
16:40	Open discussion
17:40	Wrap-up session
18:00	Close of Symposium

Transfer pricing at a glance....

The arm's length principle

Approximately 60% of world trade is carried out by multinational enterprises (MNEs), and half of that consists of transfer of goods, intangibles and services within MNEs. This makes international taxation and in particular transfer pricing a top priority for tax administrations as well as MNEs.

Transfer pricing refers to the allocation of profits for tax purposes among the various entities that are parts of a MNE group. Transactions between two subsidiaries of a multinational enterprise are not subject to the same market forces as transactions between independents. Over or under-pricing can affect the allocation of tax bases among the various jurisdictions in which the MNE operates. By shifting profits from one jurisdiction to another, distorted transfer pricing can deprive governments of their fair share of taxes from cross-border transactions. It can also expose MNEs to double taxation if two jurisdictions involved in a cross-border transaction claim taxing rights on the same profit. Ten years ago, transfer pricing was a subject for a few specialists - tax administrators, tax managers of large multinationals and their advisors. But recently, politicians, economists and business people as well as NGOs have been waking up to the importance of who pays tax on what in international business transactions between different arms of the same multinational group. Transfer pricing is no longer an issue for rich countries only – all countries increasingly realise the importance of transfer pricing, both to protect their tax base and to provide foreign investors with a fiscal environment that follows international standards and minimises risks of double taxation.

The OECD Transfer Pricing Guidelines

The international consensus on transfer pricing is found in the OECD arm's length principle. According to that principle, the price for a transaction between associated enterprises should be the same as if the transaction took place between two independents. The legal basis for the arm's length principle is found in Article 9 of the OECD



Model Tax Convention and in over 2,000 bilateral treaties between OECD countries, and many non-OECD economies.

The OECD Transfer Pricing Guidelines provide a framework for applying the arm's length principle in practice. The Guidelines were first issued in 1979 and substantially revised in 1995. In applying the 1995 Guidelines, the cornerstone of any transfer pricing study is a comparability analysis of an MNE's internal transactions with similar transactions between independents. The economic analysis builds on a review of the func-

tions undertaken, assets used and risks assumed by each party to a transaction. Five OECD approved transfer pricing methods are described in the Guidelines. The Guidelines were completed in 1996-1999 with new chapters looking at intangibles, services, and cost contribution arrangements, and with Annexes containing practical examples, procedures for monitoring the implementation of the Guidelines and guidelines for conducting Advance Pricing Arrangements. An Advance Pricing Arrangement is a procedure whereby an MNE can secure the transfer pricing method for its future transactions by seeking an agreement from the competent authorities of the States in which these future transactions will take place.

The four main current focus areas

First, providing guidance on how to apply the general principles of the Guidelines to complex situations, such as financial services, global trading and business restructuring.

Second, monitoring the practical implementation of the Guidelines and amending and updating the existing guidance in the light of this monitoring. The business community, via the Business and Industry Advisory Committee of the OECD (BIAC), is associated with this activity. A peer review of Mexican transfer pricing legislation and practices was completed in 2004. The extent to which the existing guidance on transfer pricing can be applied to electronic commerce and to the granting of employee stock option plans were the subjects of two Tax Policy Studies published in 2005.

Third, the improvement of administrative procedures. A major project is currently examining ways of improving resolution of international tax disputes by improving the functioning of the Mutual Agreement Procedure which is the basic mechanism to eliminate double taxation. This includes examination of supplementary dispute resolution mechanisms such as arbitration.

Fourth, encouraging countries outside the OECD to associate themselves with the Guidelines. This is undertaken by means of multilateral seminars, often with appropriate regional partners, which discuss transfer pricing issues and explain the Guidelines to tax officials from non-member countries.

Conclusion

Applying the arm's length principle is not an easy task. It does not always give a single, easy answer and therefore leaves room for subjective interpretation and disputes. It often requires detailed documentation to be produced by taxpayers and can be a burdensome exercise. But it has proved capable of providing reasonable solutions in the vast majority of cases. Further work needs to be done to ensure sufficient rigor in the analysis without creating excessive burdens for taxpayers. In a global economy, the two key objectives of the arm's length principle – ensuring fairness in the allocation of tax bases and minimising disputes – are more than ever topical.

• REFERENCES

For more on the OECD's tax work: www.oecd.org/taxation
 Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, OECD, 2001.

• OECD WORK ON TAXATION - Tax in a Borderless World: the Role of the OECD

The Committee on Fiscal Affairs (CFA) brings together senior tax officials from all OECD Member countries and a number of non-OECD economies. The Committee sets standards and exchanges views in the tax area on international and domestic tax issues, including direct and indirect taxes (other than customs duties) and tax administration. Over the last decade it has extended its dialogue with non-OECD economies. Argentina, Chile, China, Russia and South Africa are now Observers in the Committee. The Committee's mission is "to provide a forum for tax policy makers and administrators to discuss current policy and administration issues; to assist OECD countries and non-OECD economies to improve the design and operation of their tax systems; to promote co-operation and co-ordination among them in the area of taxation; and to encourage non-OECD economies to adopt taxation practices which promote economic growth through the development of international trade and investment". The CFA's role is to promote an environment supporting the effective fiscal sovereignty of countries over the design and implementation of the tax systems, which reflect each country's social, economic and political preferences.



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