Recommendation of the Council on Base Erosion and Profit Shifting Measures Related to Transfer Pricing



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Background Information

The Recommendation on Base Erosion and Profit Shifting (BEPS) Measures Related to Transfer Pricing was adopted by the OECD Council on 23 May 2016 on the proposal of the Committee on Fiscal Affairs in its BEPS format. The Recommendation follows from the BEPS Action Plan that identified that the pre-BEPS international standards for transfer pricing rules could be misapplied so that they result in outcomes in which the allocation of profits is not aligned with the economic activity that produced the profits. Accordingly, there was a need to translate the specific transfer pricing measures agreed in the 2015 BEPS Reports on Actions 8-10 and 13 into a new self-standing OECD instrument which reflects only the BEPS-related work on transfer pricing, and not OECD's broader work on transfer pricing. Thus this new self-standing OECD instrument is one to which BEPS Associates, and other non-Members can adhere without adhering to the full set of the OECD Transfer Pricing Guidelines. It should be noted that the Recommendation does not contain a provision requiring reports to Council on monitoring its implementation since the implementation of the BEPS package, including the measures on transfer pricing, will be monitored in detail as part of the BEPS Project.

THE COUNCIL,

HAVING REGARD to Article 5b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Declaration on Base Erosion and Profit Shifting [C/MIN(2013)22/FINAL];

CONSIDERING that the Committee on Fiscal Affairs meeting in its BEPS format, i.e. OECD Members as well as Argentina, Brazil, the People's Republic of China, Colombia, India, Indonesia, Latvia, the Russian Federation, Saudi Arabia and South Africa participating on an equal footing, approved on 21 September 2015 the 2015 BEPS package (the 2015 BEPS Reports and the 2015 BEPS Explanatory Statement) and that these countries have committed to the comprehensive BEPS package and to its consistent application (BEPS Explanatory Statement, paragraph 11);

CONSIDERING that the Council endorsed on 1 October 2015 the BEPS Explanatory Statement and the measures set out in the 2015 BEPS Reports [C(2015)125/REV1] and that the G20 Leaders endorsed the 2015 BEPS Package at the Antalya Summit on 15-16 November 2015;

MINDFUL that, as identified by the Base Erosion and Profit Shifting (BEPS) Action Plan, the existing international standards for transfer pricing rules can be misapplied so that they result in outcomes in which the allocation of profits is not aligned with the economic activity that produced the profits;

CONSIDERING that the 2015 BEPS Report on Actions 8-10 *"Aligning Transfer Pricing Outcomes With Value Creation"* (hereafter the "Actions 8-10 Report") has targeted this issue to ensure that transfer pricing outcomes are aligned with value creation [C(2015)125/ADD8];

CONSIDERING that the 2015 BEPS Report on Action 13 *"Transfer Pricing Documentation and Country-by-Country Reporting"* (hereafter the "Action 13 Report") has developed a three-tiered standardised approach to transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business [C(2015)125/ADD11];

On the proposal of the Committee on Fiscal Affairs in its BEPS format:

I. **RECOMMENDS** that Members and non-Members having adhered to this Recommendation (hereafter the "Adherents") follow the guidance set out in the Actions 8-10 Report and the Action 13 Report.

II. **INVITES** Adherents and the Secretary-General to disseminate this Recommendation;

III. **INVITES** non-Adherents to take due account of and adhere to the present Recommendation.

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