



Third Session, UN Tax Convention Negotiations

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Protocol 2, Comparables

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Thank you, CHAIR . I speak on behalf of TWN, TAFJA, and the GATJ.

On the question of the transfer pricing database and the APA database, we find this approach inadequate and frankly problematic because it continues to be a solution that is based on the use of transfer pricing, including the comparable profit method and the comparable uncontrolled price method.

MNCs and their related entities USE “tax planning” techniques to **attain** “tax optimization” – typically effective tax rates of not more than 1%, **FAR** less than what ordinary workers and employees pay.

Many tax **planning techniques** are turbo-charged by **transfer pricing methods**, which the tax authorities try to deal with through ever-changing transfer pricing measures, which are made more complicated by rapid technological developments.

Transfer pricing incentivizes the use of **intangible property migration**, where for **no apparent business purpose**, the IP, which is increasingly important in a **digitalized economy**, is “migrated” to a tax haven so royalties paid to that related entity is subject to little or no income tax.

ALSO, talking about comparables, we ask

1. What is the proper valuation of the intangible property at the time of transfer?
2. How much should the transferor, or the parent corporation charge to the transferee?
3. What is the basis for the **pricing of the royalties** when the transferee allows a third party to use the IP. This becomes even more complicated in cases where that third party turns out to be yet again another related entity.

Given the flux in technology, services and business models in an increasingly digitalized economy, we cannot simply rely on a TP database. Developing countries may not have THEM , even as THEY are at different stages of economic development and technological endowment.

Furthermore, they say that **data is the new oil**. How then can we determine the proper valuation of assets that consist of data gathered from different sources and through different methods?

With what comparable transactions or similar assets will we compare a set of data when **comparable data was** collected using different methods, another business model, and from entirely different sources.

What we actually have is a **made-up industry** called “transfer pricing” - whose issues are resolved by economists, accountants, and lawyers whose vital services are badly needed ... elsewhere. Their services should not be wasted in solving imaginary issues in the **ALTAR of TAX OPTIMIZATION**, which translates into a veritable **WEALTH TRANSFER** from the working people to the corporations and their shareholders - including billionaires. It's also **WEALTH TRANSFER** from developing countries to rich countries.

This manufactured problem entails additional expenses to be passed on to consumers, mostly ordinary folks.

Thus, we have to do away with transfer pricing.

In its place, we need a **unitary tax system** with formulary apportionment as these will make moot and academic the prices charged by an MNC and related entities to each other.

Under a UNITARY TAX SYSTEM , ALL of them will be treated as a single entity - where **all revenues and all expenses of each** of the separate entities will be accounted for in **one income statement** and where the net taxable income will be assigned to different jurisdictions based on a fair formulary apportionment that is reflective of the **actual** economic activity in each jurisdiction. This will be aided by the annual disclosure through public-country-by-country reports.

Finally, it is clear to us that **TRANSFER PRICING** will certainly make the work on PREVENTION AND RESOLUTION OF TAX DISPUTES even more difficult.

We suspect that if we throw in the CONTROLLED FOREIGN CORPORATION and SOURCING rules of various state parties, all of these become even more complicated. **Thank you.**