



# The 2013 OECD International Tax Conference:

## OECD-U.S. Business Dialogue on International Tax

Washington, DC June 3-4, 2013

### Agenda–Day One, June 3, 2013

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1:00 – 1:30 REGISTRATION

#### I. Welcome

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- 1:30 – 2:00
- Robert J. Mulligan, Senior Vice President, Policy and Government Affairs, USCIB
  - Pascal Saint-Amans, Director of OECD Centre for Tax Policy & Administration

#### II. OECD's Work on Base Erosion and Profit Shifting: Part I

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2:00 – 3:15 The OECD launched a project in 2012 on base erosion and profit shifting (BEPS) in response to growing concerns among both OECD and non-OECD countries about the risks to tax revenues, tax sovereignty and tax fairness that BEPS poses, in particular where it results in double non-taxation. At the request of the G20, the OECD published the report, *Addressing Base Erosion and Profit Shifting*, on February 12, 2013. The Report, approved by all OECD countries and endorsed by the G20 in February, calls for the development of a comprehensive action plan to address base erosion concerns. This panel will provide an overview of the project. It will also examine issues related to jurisdiction to tax and in particular those related to (i) application of tax treaty concepts such as permanent establishment to the digital economy, and (ii) the use of CFC regimes to tackle BEPS.

- Pascal Saint-Amans, Director of OECD Centre for Tax Policy & Administration
- Robert B. Stack, Deputy Assistant Secretary for International Tax Affairs, U.S. Treasury
- Mike Williams, Director, Business and International Tax, HM Treasury
- Brian Ernewein, General Director, Tax Policy, Finance Canada
- Will Morris, Chairman, BIAC Committee on Taxation and Fiscal Affairs; Director, Global Tax Policy, GE International Inc. (United Kingdom)

3:15 – 3:35 **REFRESHMENT BREAK – Sponsored by** **DUFF & PHELPS**



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### OECD's Work on Base Erosion and Profit Shifting: Part II

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3:35 – 4:45      The BEPS Report identified six key pressure areas: international hybrid mismatches in entity and instrument characterization; application of treaty concepts to the digital economy; the tax treatment of related party debt-financing; transfer pricing; the effectiveness of anti-avoidance measures; and the availability of harmful preferential regimes. This panel will examine issues related to countering base erosion and in particular those related to (i) hybrid mismatch arrangements, (ii) intra-group financing and (iii) the use of general and specific anti-avoidance rules to tackle BEPS.

- Michael Plowgian, Senior Advisor, Base Erosion and Profit Shifting, OECD
- Danielle E. Rolfes, International Tax Counsel, U.S. Treasury
- Martin Kreienbaum, Director General – International Taxation, Federal Ministry of Finance, Germany
- Peter van Dijk, Senior Vice President, Tax, TD Bank Group

### III. OECD's Work on Permanent Establishments

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4:45 – 6:00      The OECD is currently revising the Commentary of the Model Tax Convention to address a number of interpretation and application issues related to the definition of permanent establishment. In October 2011, the OECD released proposed changes to the Commentary for public comment. The comments received on these draft changes raised a number of concerns with the proposed changes. In October 2012, the OECD released revised changes that sought to address some of these concerns. The comments subsequently received on this second discussion draft indicated that there are still significant concerns concerning some of the proposals. The panel will discuss these proposals, the concerns that they raise and, more generally, whether the current guidance on the definition of permanent establishment accords with business reality. The discussion will focus primarily on the proposals concerning the meaning of “at the disposal”; how the business of an enterprise is carried on; the time requirement for the existence of a permanent establishment; and the meaning of “to conclude contracts in the name of”.

- Jacques Sasseville, Head of Tax Treaty Unit, OECD
- Arlene Fitzpatrick, Attorney-Advisor, U.S. Treasury
- Rafic Barrage, Partner, Baker & McKenzie
- Jocelyn Krabbenschmidt, Senior Director, International Tax, Salesforce.com

6:00 – 7:30      **RECEPTION – Sponsored by**





## Agenda–Day Two, June 4, 2013

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8:00 – 8:30

**CONTINENTAL BREAKFAST – Sponsored by**

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### IV. **Cross-Border Compliance**

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8:30 – 10:00

Congress enacted the tax reporting and withholding provisions commonly known as FATCA in 2010 to address the use of offshore accounts and entities to evade U.S. tax, and the provisions phase in beginning January 1, 2014. Treasury is entering into agreements (“IGAs”) with other countries to facilitate the implementation of FATCA through international cooperation. In a “Model 1 IGA”, financial institutions report information to their local tax authorities, which exchange the information on an automatic basis. Recognizing the interest of financial institutions and governments in establishing a single standard for reporting and exchange, OECD is also working to develop a common residence reporting standard based on the approach in the Model 1 IGAs for countries wishing to exchange information amongst themselves. This panel will discuss latest developments regarding FATCA including IGAs, and the work on a common reporting standard.

- Pascal Saint-Amans, Director of OECD Centre for Tax Policy & Administration
- Jesse Eggert, Associate International Tax Counsel, U.S. Treasury
- Mike Williams, Director, Business and International Tax, HM Treasury
- Lorraine White, Managing Director, Head of EMEA Securities Tax and US Tax Services, The Bank of New York Mellon
- Keith Lawson, Senior Counsel - Tax Law, Investment Company Institute

10:00-10:20

**REFRESHMENT BREAK**



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### V. Tax and the Investment Climate in Developing Countries

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10:20 – 12:00 The investment climate has a key role to play in raising investment levels, and as a result, a country's growth rate. A good investment climate brings benefits for both domestic and foreign investors and depends on a number of factors. This panel will discuss what constitutes a favorable investment climate from a tax perspective and the OECD's efforts through its Tax and Development Program to help developing countries build better tax systems both from the perspective of increasing investment and of improving compliance.

- Grace Perez-Navarro, Deputy Director, OECD Centre for Tax Policy & Administration
- Mike McDonald, Financial Economist, U.S. Treasury
- Richard E. Stern, Global Program Manager, Investment Climate Tax Program, World Bank Group
- John Bartlett, Group Head of Tax, BP plc

12:00 – 1:30 **LUNCHEON AND KEYNOTE ADDRESS – Sponsored by**



Mike Danilack, Deputy Commissioner, LB&I, IRS

Recent Forum on Tax Administration Developments



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### VI. Current Issues in Transfer Pricing

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#### A. Definitional Issues Related to Intangibles

1:30 – 2:30 In its June 2012 Discussion Draft on the Transfer Pricing Aspects of Intangibles the OECD crafted a reasonably broad definition of intangibles. The Discussion Draft suggested that goodwill should be treated as an intangible, but that features of a local market, location savings, and corporate synergies should not. The Discussion Draft treatment of an assembled workforce was somewhat ambiguous. While indicating that local market features and synergies were not intangibles, the Discussion Draft reserved for the next version of the intangibles draft the task of giving specific guidance on how such items should be treated in a transfer pricing analysis. The OECD is now in the process of revising the Discussion Draft. Panelists will discuss these critical definitional issues and explore how they interact with the work on base erosion and profit shifting:

- ✓ The treatment of local market advantages and location savings;
- ✓ The treatment of corporate synergies;
- ✓ How goodwill should be addressed in a transfer pricing analysis;
- ✓ The importance of an assembled workforce for transfer pricing purposes; and
- ✓ Whether a definition tied to accounting or legal concepts should be adopted.

- Joe Andrus, Head of Transfer Pricing Unit, OECD
- Mike McDonald, Financial Economist, U.S. Treasury
- Bill Sample, Corporate Vice President – Worldwide Taxes, Microsoft
- Rocco V. Femia, Member, Miller & Chevalier

#### B. Ownership of Intangibles and Allocation of Intangible Related Returns

2:30-3:30 The section of the June 2012 Discussion Draft on the Transfer Pricing Aspects of Intangibles generating the most business comment was captioned Entitlement to Intangible Related Returns. This section sought to describe the interactions between the taxpayer's legal forms and contractual relations and the substance reflected in functions, assets, risks and investments undertaken by various members of a multinational group as they relate to the ownership of intangibles. Business commentators suggested that this portion of the Discussion Draft appeared to depart from the guidance in Chapter IX on Business Restructurings, that it had too much of an anti-abuse flavour, did not adequately address the importance of cash investment in development activities, and that it was not fully consistent with the arm's length principle. Panelists will discuss the challenging issues that arise in considering which member or members of a group are entitled to the returns attributable to intangibles and how OECD guidance can be crafted that would bring clarity to these challenging



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areas of transfer pricing law and practice. The potential impact of the project on Base Erosion and Profit Shifting on these issues will also be discussed.

- Joe Andrus, Head of Transfer Pricing Unit, OECD
- Christopher Bello, Branch Chief, Associate Chief Counsel (International), IRS
- Graeme Wood, Director, Transfer Pricing, Global Taxes, Procter & Gamble
- Barbara Angus, Principal, Ernst & Young LLP

3:30-3:50      **REFRESHMENT BREAK**

### **C. Transfer Pricing Administration, Documentation and Safe Harbors**

3:50-4:50      Approximately 18 months ago the OECD undertook a project to simplify transfer pricing administration and practice in several important areas. Significant progress has been made on the simplification project and other issues related to transfer pricing administration. This panel will consider transfer pricing simplification and other administrative issues related to:

- ✓ Safe harbours;
- ✓ Transfer pricing documentation;
- ✓ Transfer pricing risk assessment;
- ✓ MAP procedures; and
- ✓ Arbitration

- Marlies de Ruiters, Head of Tax Treaty, Transfer Pricing and Financial Transactions Division, OECD
- Sam Maruca, Director, Transfer Pricing Operations, LB&I, IRS
- Rich Goldberg, Transfer Pricing Consultant
- Craig Sharon, Principal, Ernst & Young LLP

4:50 – 5:00      **Closing Remarks**

Pascal Saint-Amans, Director of OECD Centre for Tax Policy & Administration  
Carol Doran Klein, Vice President and International Tax Counsel, USCIB

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