ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

TRANSFER PRICING METHODS

JULY 2010

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CENTRE FOR TAX POLICY AND ADMINISTRATION

TRANSFER PRICING METHODS

Introduction

1. Chapter II of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (hereafter the "TPG") contains a discussion of five transfer pricing methods that can be applied to establish whether the conditions of controlled transactions are consistent with the arm's length principle. These five methods consist in three "traditional transaction methods": the comparable uncontrolled price method ("CUP" method), the resale price method, and the cost plus method; and two "transactional profit methods": the transactional net margin method ("TNMM") and the transactional profit split method.

2. This five transfer pricing methods represent the international consensus on the manner of applying the arm's length principle. In order to minimise the risk of double taxation, countries are encouraged to make available all the five transfer pricing methods in their domestic rules and to apply them in accordance with the TPG.

A. Description of the methods

3. Guidance on the selection and application of transfer pricing methods can be found in Chapter II of the TPG. A revised version of this guidance was approved by the Council of the OECD on 22 July 2010 and can be downloaded from the Internet (see www.oecd.org/ctp/tp/cpm). All the references in this paper are references to the 2010 edition of the TPG.

The CUP Method (see TPG paragraphs 2.13-2.20)

4. The CUP method compares **the price** charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances. If there is any difference between the two prices, this may indicate that the conditions of the commercial and financial relations of the associated enterprises are not arm's length, and that the price in the uncontrolled transaction may need to be substituted for the price in the controlled transaction.

5. An uncontrolled transaction is comparable to a controlled transaction (*i.e.* it is a comparable uncontrolled transaction) for purposes of the CUP method if one of two conditions is met:

- None of the differences (if any) between the transactions being compared or between the enterprises undertaking those transactions could materially affect the price in the open market; or

- Reasonably accurate adjustments can be made to eliminate the material effects of such differences.

6. The comparable uncontrolled price method can be applied on the basis of the taxpayer's transactions with independent enterprises ("internal comparables"), or on the basis of transactions between other independent enterprises ("external comparables").

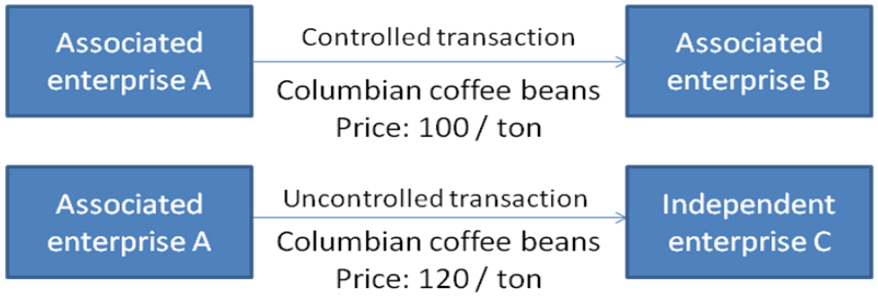
7. Although this method is potentially available for all types of transactions, the product comparability requirement to be able to apply it in a reasonably reliable manner is especially high, because any product difference may materially affect the price of the transaction, while it is often not practicable to make reasonably accurate comparability adjustments for such differences. In the absence of internal comparables, the CUP method is therefore most helpful for establishing an arm's length price for:

i) sales of commodities traded on a market, subject to the controlled transaction and comparable uncontrolled transaction(s) taking place in comparable circumstances, including at the same level of the commercial chain (*e.g.* sale to a secondary manufacturer, to a distributor, to a retailer, etc.), and

ii) some common financial transactions, such as the lending of money.

In effect, market prices (such as commodity prices or rates of interest) may be publicly available for these types of transactions.

CUP method (illustration):



First, it needs to be determined whether the uncontrolled transaction (sale by A to C) is comparable to the controlled transaction (sale by A to B). This will de done through a comparability analysis (review of the five comparability factors).

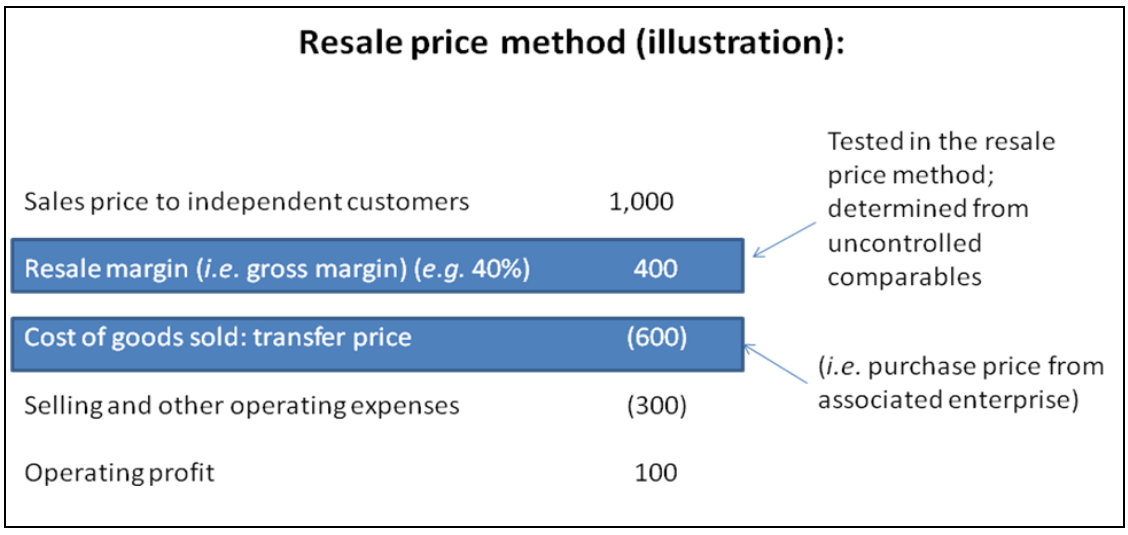
It may be that the difference in the prices of the two transactions reflects a difference in relation to one comparability factor (for instance, an additional function performed or risk borne by A in its transaction with C, compared to its transaction with B). In such a case, the effects of such difference should, to the extent possible, be eliminated through a comparability adjustment.
If the two transactions are comparable, the price difference may indicate that the controlled transaction is not arm's length and the tax administration auditing enterprise A may consider a transfer pricing adjustment of 20.

The Resale Price Method (see TPG paragraphs 2.21-2.38)

8. The resale price method begins with the price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise. This price (the "resale price") is then reduced by an appropriate gross margin (the "resale price margin"), determined by reference to gross margins in comparable uncontrolled transactions, representing the amount out of which the reseller would seek to cover its selling and other operating expenses and, in light of the functions performed (taking into account assets used and risks assumed), make an appropriate profit. What is left after subtracting the gross margin can be regarded, after adjustment for other costs associated with the purchase of the product (*e.g.* customs duties), as an arm's length price for the original transfer of property between the associated enterprises.

9. Thus, in a resale price method, the **resale price margin (*i.e.* the gross margin)** that the reseller earns from the controlled transaction is compared with the gross margin from comparable uncontrolled transactions.

10. This method is probably most useful where it is applied to sales and marketing operations such as those typically carried out by a distributor. In some circumstances, the resale price margin of the reseller in the controlled transaction may be determined by reference to the resale price margin that the same reseller earns on items purchased and sold in comparable uncontrolled transactions (an "internal comparable"). In other circumstances (especially where reliable internal comparables are not available), the resale price margin may be determined by reference to the resale price margin earned by independent enterprises in comparable uncontrolled transactions ("external comparables").



The Cost Plus Method (see TPG paragraphs 2.39-2.55)

11. The cost plus method begins with the costs incurred by the supplier of property or services in a controlled transaction for property transferred or services provided to an associated enterprise. An appropriate mark-up, determined by reference to the mark-up earned by suppliers in comparable uncontrolled transactions, is then added to these costs, to make an appropriate profit in light of the functions performed and the market conditions. Such arm's length mark-up may be determined by reference to the mark-up that the same supplier earns in comparable uncontrolled transactions (an "internal comparable"), or by reference to the mark up that would have been earned in comparable transactions by an independent enterprise ("external comparable"). In general, the mark-up in a cost plus method will be computed after direct and indirect costs of production or supply, but before the operating expenses of the enterprise (*e.g.* overhead expenses).

12. Thus, in a cost plus method, the mark-up on costs that the manufacturer or service provider earns from the controlled transaction is compared with **the mark-up on costs** from comparable uncontrolled transactions.

13. This method probably is most useful where:

i) goods are sold by a manufacturer that does not contribute valuable unique intangible assets or assume unusual risks in the controlled transaction, such as may be the case under a contract or toll manufacturing arrangement; or

ii) the controlled transaction is the provision of services for which the provider does not contribute any valuable unique intangible assets or assume unusual risks.

Cost plus method (illustration):

Cost of raw materials	200
Other direct and indirect production costs	100
Total cost base	300
Mark-up on costs (*e.g.* 20%)	60
Transfer price	360
Overheads and other operating expenses	(40)
Operating profit	20

Tested in the cost plus method; determined from uncontrolled comparables

(*i.e.* sale price to associated enterprise)

The Transactional Net Margin Method (see TPG paragraphs 2.58-2.107)

14. The transactional net margin method ("TNMM") examines a net profit indicator, *i.e.* a ratio of net profit relative to an appropriate base (*e.g.* costs, sales, assets), that a taxpayer realises from a controlled transaction (or from transactions that are appropriate to aggregate) with the net profit earned in comparable uncontrolled transactions. The arm's length net profit indicator of the taxpayer from the controlled transaction(s) may be determined by reference to the net profit indicator that the same taxpayer earns in comparable uncontrolled transactions (internal comparables), or by reference to the net profit indicator earned in comparable transactions by an independent enterprise (external comparables).

15. In cases where the net profit is weighed to costs or sales, the TNMM operates in a manner similar to the cost plus and resale price methods respectively, except that it compares **the net profit** arising from controlled and uncontrolled transactions (after relevant operating expenses have been deducted) instead of comparing a gross profit on resale or gross mark up on costs.

16. Most often, the net profit indicator that is tested in a TNMM is the operating profit (before interest, extraordinary items and income taxes).

17. In general, it is observed that in applying a TNMM, the net profit is weighted to costs for manufacturing and service activities; to sales for sales activities; and to assets for asset-intensive activities.

18. The selected financial indicator should be one that:

a. Reflects the value of the functions performed by the tested party (*i.e.* the party to the controlled transaction for which a financial indicator is tested), taking account of its assets and risks;

b. Is reasonably independent from transfer pricing formulation, *i.e.* it should be based on objective data (such as sales to unrelated parties), not on data relating to the remuneration of controlled transactions (such as sales to associated enterprises); and

c. Is capable of being measured in a reasonably reliable and consistent manner at the level of the controlled transaction and of the comparable uncontrolled transaction(s).

19. Functional comparability is generally found to be of greater importance than product comparability in applying the transactional net margin method.

Difference between a resale price and a TNMM for a distributor (illustration):

Sales revenue (sales to independent customers)	1,000
Cost of goods sold (purchases from associated enterprise)	(400)
Gross profit (*e.g.* 60% of sales)	**600**
Selling and other operating expenses	(400)
Operating profit (*e.g.* 20% of sales)	**200**
Financial items	+10
Exceptional items	(30)
Pretax profit (EBT, earnings before taxes)	180
Income tax	(60)
Net profit	120
Dividends / retained earnings	

Tested in a resale price method

Tested in a TNMM

Difference between a cost plus and a TNMM for a contract manufacturer (illustration):

Cost of raw materials	200
Other direct and indirect production costs	100
Total cost base	300
Mark-up on costs (*e.g.* 20% of costs)	**60**
Transfer price	360
Overheads and other operating expenses	(45)
Operating profit (*e.g.* 5% of costs)	**15**

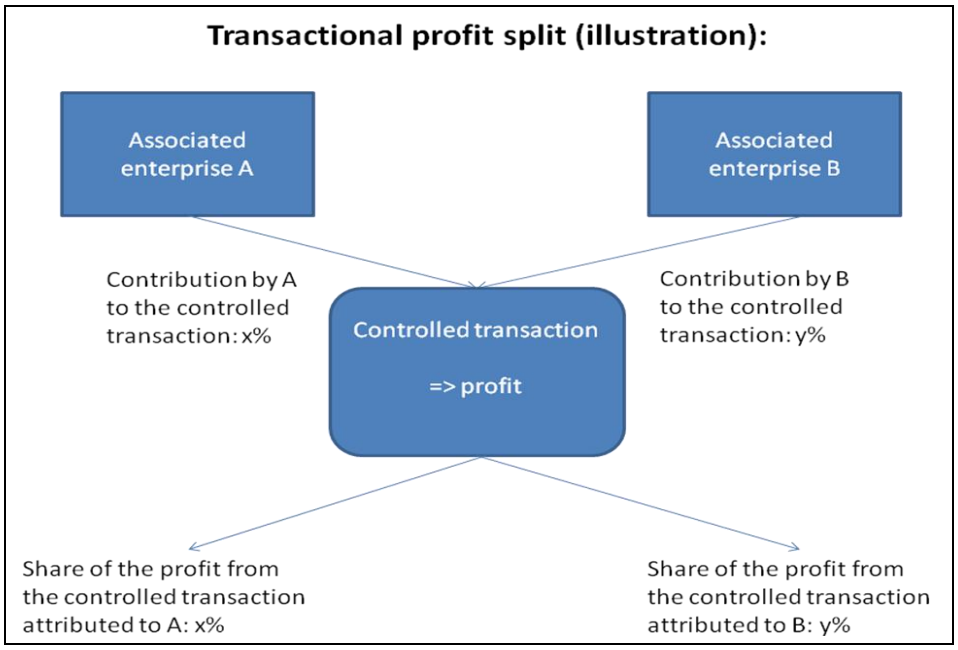
Tested in a cost plus method

Tested in a TNMM

The Transactional Profit Split Method (see TPG paragraphs 2.108-2.145)

20. The transactional profit split method first identifies the combined profits to be split for the associated enterprises from the controlled transactions in which the associated enterprises are engaged. In some cases, the combined profits will be the total profits from the controlled transactions in question. In other cases, the combined profits will be a residual profit intended to represent the profit that cannot readily be assigned to one of the parties from the application of another transfer pricing method, such as the profit arising from valuable, unique intangibles. Note that the combined profits may be a loss in some circumstances.

21. The transactional profit split method then splits the combined profits between the associated enterprises on an economically valid basis that approximates **the division of profits** that would have been anticipated between independent enterprises. Where possible, this economically valid basis may be supported by independent market data (*e.g.* division of profits observed in uncontrolled joint-venture agreements). Most often, however, it will be supported by internal data. The types of such internal data that may be relevant will depend on the facts and circumstances of the case and may include, for example, allocation keys relating to the respective sales, research and development expenses, operating expenses, assets or headcounts of the associated enterprises. The splitting factor should reflect the respective contributions of the parties to the creation of income from the controlled transaction and be reasonably independent from transfer pricing formulation. This means that it should, to the greatest extent possible, be based on objective data (such as sales to unrelated parties), rather than on data relating to the remuneration of controlled transactions (such as sales to associated enterprises).



B. Selection of the most appropriate transfer pricing method to the circumstances of the case (see TPG paragraphs 2.1-2.11)

22. The selection of a transfer pricing method always aims at finding the most appropriate method for a particular case. No one method is suitable in every possible situation, nor is it necessary to prove that a particular method is not suitable under the circumstances.

23. The selection process of the most appropriate method for a particular case should take account of the following four criteria (listed at paragraph 2.2 of the TPG):

i. The respective strengths and weaknesses of the OECD recognised methods;

ii. The appropriateness of the method considered in view of the nature of the controlled transaction, determined in particular through a functional analysis;

iii. The availability of reliable information (in particular on uncontrolled comparables) needed to apply the selected method and / or other methods; and

iv. The degree of comparability between controlled and uncontrolled transactions, including the reliability of comparability adjustments that may be needed to eliminate material differences between them.

Each of these four criteria is discussed below.

B.1 The respective strengths and weaknesses of the OECD recognised methods

24. Each of the transfer pricing methods has strengths and weaknesses which should be considered in determining its appropriateness to the circumstances of the case. See TPG paragraphs 2.13-2.16 for a discussion of the strengths and weaknesses of the CUP method; 2.21-2.35 for the resale price method; 2.39-2.52 for the cost plus method; 2.62-2.67 for the TNMM; and 2.109-2.114 for the transactional profit method.

Comparable uncontrolled price (CUP)

25. Where it is possible to locate comparable uncontrolled transactions to apply it, the CUP method is the most direct and reliable way to apply the arm's length principle. Consequently, in such cases the CUP method is preferable over all other methods.

26. However, in practice, it is often difficult to find a transaction between independent enterprises that is similar enough to a controlled transaction such that no differences have a material effect on price. For example, a minor difference in the property transferred in the controlled and uncontrolled transactions could materially affect the price even though the nature of the business activities undertaken may be sufficiently similar to generate the same overall profit margin.

27. Therefore, the CUP method is a particularly reliable method where an independent enterprise sells the same product as is sold between two associated enterprises (commodities for instance).

Resale price

28. The resale price method is probably most useful where it is applied to marketing operations. In making comparisons for purposes of the resale price method, fewer adjustments are normally needed to account for product differences than under the CUP method, because minor product differences are less likely to have as material an effect on profit margins as they do on price.

Cost plus

29. The cost plus method probably is most useful where semi finished goods are sold between associated parties, where associated parties have concluded joint facility agreements or long-term buy-and-supply arrangements, or where the controlled transaction is the provision of services. As is the case under the resale price method, in determining whether a transaction is a comparable uncontrolled transaction for the purposes of the cost plus method, fewer adjustments may be necessary to account for product differences under the cost plus method than the CUP method.

30. The cost plus method presents some difficulties in proper application, particularly in the determination of costs. Although it is true that an enterprise must cover its costs over a period of time to remain in business, those costs may not be the determinant of the appropriate profit in a specific case for any one year. While in many cases companies are driven by competition to scale down prices by reference to the cost of creating the relevant goods or providing the relevant service, there are other circumstances where there is no discernible link between the level of costs incurred and a market price (*e.g.* where a valuable discovery has been made and the owner has incurred only small research costs in making it).

31. Another important aspect of comparability is accounting consistency. Where the accounting practices differ in the controlled transaction and the uncontrolled transaction, appropriate adjustments should be made to the data used to ensure that the same type of costs are used in each case to ensure consistency.

TNMM

32. One strength of the TNMM is that net profit indicators (*e.g.* return on assets, operating income to sales, and possibly other measures of net profit) are less affected by transactional differences than is the case with price, as used in the CUP method. Net profit indicators also may be more tolerant to some functional differences between the controlled and uncontrolled transactions than gross profit margins. Differences in the functions performed between enterprises are often reflected in variations in operating expenses. Consequently, this may lead to a wide range of gross profit margins but still broadly similar levels of net operating profit indicators.

33. In addition, in some countries the lack of clarity in the public data with respect to the classification of expenses in the gross or operating profits may make it difficult to evaluate the comparability of gross margins, while the use of net profit indicators may avoid the problem.

34. Another practical strength of the TNMM is that, as with any one-sided method, it is necessary to examine a financial indicator for only one of the associated enterprises (the "tested" party). This can be practically advantageous when one of the parties to the transaction is complex and has many interrelated activities or when it is difficult to obtain reliable information about one of the parties.

35. There are also a number of weaknesses to the transactional net margin method. The net profit indicator of a taxpayer can be influenced by some factors that would either not have an effect, or have a less substantial or direct effect, on price or gross margins between independent parties. These aspects may make accurate and reliable determinations of arm's length net profit indicators difficult. Thus, it is important to pay particular attention at establishing comparability for the TNMM, as set forth in paragraphs 2.68-2.75 of the TPG.

36. Application of any arm's length method requires information on uncontrolled transactions that may not be available at the time of the controlled transactions. This may make it particularly difficult for taxpayers that attempt to apply the TNMM at the time of the controlled transactions (although use of multiple year data may mitigate this concern). In addition, taxpayers may not have access to enough specific information on the profits attributable to comparable uncontrolled transactions to make a valid application of the method. It also may be difficult to ascertain revenue and operating expenses related to the controlled transactions, to establish the net profit indicator used as the profit measure for the transactions.

37. There may also be difficulties in determining an appropriate corresponding adjustment when applying the transactional net margin method, particularly where it is not possible to work back to a transfer price. This could be the case, for example, where the taxpayer deals with associated enterprises on both the buying and the selling sides of the controlled transaction. In such a case, if the transactional net margin method indicates that the taxpayer's profit should be adjusted upwards, there may be some uncertainty about which of the associated enterprises' profits should be reduced.

Transactional profit split

38. The main strength of the transactional profit split method is that it can offer a solution for highly integrated operations for which a one-sided method would not be appropriate. For example, see the discussion of the appropriateness and application of profit split methods to the global trading of financial instruments between associated enterprises in Part III, Section C of the Report on the Attribution of Profits to Permanent Establishments.[1]

[1] 2008 Report on the Attribution of Profits to Permanent Establishments approved by the Committee on Fiscal Affairs on 24 June 2008 and by the OECD Council for publication on 17 July 2008 and 2010 Report on the

39. A transactional profit split method may also be found to be the most appropriate method in cases where both parties to a transaction make unique and valuable contributions (*e.g.* contribute unique intangibles) to the transaction, because in such a case independent parties might wish to share the profits of the transaction in proportion to their respective contributions and a two-sided method might be more appropriate in these circumstances than a one-sided method. In addition, in the presence of unique and valuable contributions, reliable comparables information might be insufficient to apply another method.

40. On the other hand, a transactional profit split method would ordinarily not be used in cases where one party to the transaction performs only simple functions and does not make any significant unique contribution (*e.g.* contract manufacturing or contract service activities in relevant circumstances), as in such cases a transactional profit split method typically would not be appropriate in view of the functional analysis of that party.

41. Where comparables data are available, they can be relevant in the profit split analysis to support the division of profits that would have been achieved between independent parties in comparable circumstances. However, in those cases where there is no more direct evidence of how independent parties would have split the profit in comparable circumstances, the allocation of profits may be based on the division of functions (taking account of the assets used and risks assumed) between the associated enterprises themselves.

42. Another strength of the transactional profit split method is that it offers flexibility by taking into account specific, possibly unique, facts and circumstances of the associated enterprises that are not present in independent enterprises, while still constituting an arm's length approach to the extent that it reflects what independent enterprises reasonably would have done if faced with the same circumstances.

43. A further strength of the transactional profit split method is that it is less likely that either party to the controlled transaction will be left with an extreme and improbable profit result, since both parties to the transaction are evaluated. This aspect can be particularly important when analysing the contributions by the parties in respect of the intangible property employed in the controlled transactions. This two-sided approach may also be used to achieve a division of the profits from economies of scale or other joint efficiencies that satisfies both the taxpayer and tax administrations.

44. A weakness of the transactional profit split method relates to difficulties in its application. On first review, the transactional profit split method may appear readily accessible to both taxpayers and tax administrations because it tends to rely less on information about independent enterprises. However, associated enterprises and tax administrations alike may have difficulty accessing information from foreign affiliates, especially where the foreign affiliate is the parent company or a sister company rather than a subsidiary of the taxpayer. In addition, it may be difficult to measure

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Attribution of Profits to Permanent Establishments approved by the Committee on Fiscal Affairs on 22 June 2010 and by the OECD Council on 22 July 2010.

combined revenue and costs for all the associated enterprises participating in the controlled transactions, which would require stating books and records on a common basis and making adjustments in accounting practices and currencies. Further, when the transactional profit split method is applied to operating profit, it may be difficult to identify the appropriate operating expenses associated with the transactions and to allocate costs between the transactions and the associated enterprises' other activities.

B.2 Appropriateness of the method considered in view of the nature of the controlled transaction, determined in particular through a functional analysis

45. The selected transfer pricing method should be consistent with the functional analysis of the controlled transaction. This issue is linked to the choice of the "tested party(ies)", *i.e.* the party(ies) for which a financial indicator is tested.

- In the cost plus method, the tested party is the seller (often, a manufacturer or service provider) and the tested financial indicator is the mark-up on costs of the seller.

- In the resale price method, the tested party is the buyer (often, a distributor) and the tested financial indicator is the resale margin (*i.e.* gross margin).

- In the transactional net margin method, the tested party can be either the seller or the buyer. In the former case, the tested financial indicator is generally the net profit on costs or the net profit on assets. In the latter case, the tested financial indicator is generally the net profit on sales.

- In the transactional profit split method, both parties to the transaction are tested. For this reason, the transactional profit split method is often referred to as a "two-sided method", while the cost plus, resale price and TNMM are referred to as "one-sided methods". What is being tested in a transactional profit split is the division of profits between the parties.

46. The choices of the transfer pricing method and of the tested party are intrinsically linked. As a general rule, the tested party is the one to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparables can be found, *i.e.* it will most often be the one that has the less complex functional analysis.

Choice of the tested party: illustration

Assume that company A manufactures two types of products, P1 and P2, that it sells to company B, an associated enterprise in another country.

Assume that A is found to manufacture P1 products using valuable, unique intangibles that belong to B and following technical specifications set by B. Assume that in this P1 transaction, A only performs simple functions and does not make any valuable unique contribution in relation to the transaction. The tested party for this P1 transaction would most often be A.

Assume now that A is also manufacturing P2 products for which it owns and uses valuable unique intangibles such as valuable patents and trademarks, and for which B acts as a distributor. Assume that in this P2 transaction, B only performs simple functions and does not make any valuable unique contribution in relation to the transaction. The tested party for the P2 transaction would most often be B.

B.3 Availability of reliable information (in particular on uncontrolled comparables) needed to apply the selected method and / or other methods

47. The selection of the most appropriate transfer pricing method for a particular case will depend on the availability of reliable information to apply it, and in particular, on the availability of reliable comparables data.

48. For instance, as explained above, where it is possible to locate comparable uncontrolled transactions to apply it, the CUP method is the most direct and reliable way to apply the arm's length principle. However, in practice, it is often difficult to find a transaction between independent enterprises that is similar enough to a controlled transaction such that no differences have a material effect on price. Where no sufficiently reliable comparable is available to apply a CUP, another method will be selected.

49. Availability of reliable comparable data may also influence the determination whether to select a gross profit method (*i.e.* cost plus or resale price) or a net profit method (*i.e.* TNMM). In effect, it is not always the case that reliable information is available on comparables at the gross profit level to apply a cost plus or resale price.

50. On the other hand, it would not be appropriate to apply a transactional profit method merely because data concerning uncontrolled transactions are difficult to obtain or incomplete in one or more respects. Comparables data are imperfect in practice and the objective is not to set an unrealistic comparability standard. All the four criteria listed at paragraph 2.2 of the TPG (paragraph 23 above) must be considered and weighted in evaluating the reliability of the transactional profit method.

B.4 Degree of comparability between controlled and uncontrolled transactions, including the reliability of comparability adjustments that may be needed to eliminate material differences between them

51. The selection of the most appropriate transfer pricing method for a particular case will also depend on the degree of comparability between the controlled transaction and the uncontrolled transactions used as comparables. This is because the objective is to use the most reliable comparables data, *i.e.* data of lesser comparability should be eliminated to the extent possible. It should however be kept in mind that comparables data will rarely be perfect, so that it is a matter of professional judgment to decide whether or not the available data are sufficiently reliable. See separate paper on comparability.

B.5 Cases where it is found, based on the application of the four above criteria, that two methods can be equally reliably applied

52. Traditional transaction methods are regarded as the most direct means of establishing whether conditions in the commercial and financial relations between associated enterprises are arm's length. This is because any difference in the price of a controlled transaction from the price in a comparable uncontrolled transaction can normally be traced directly to the commercial and financial relations made or imposed between the enterprises, and the arm's length conditions can be established by directly substituting the price in the comparable uncontrolled transaction for the price of the controlled transaction.

53. Therefore, where, taking account of the four criteria listed at paragraph 2.2 of the TPG (paragraph 23 above), a traditional transaction method and a transactional profit method can be applied in an equally reliable manner, the traditional transaction method is preferable to the transactional profit method.

54. Moreover, where, taking account of the four criteria listed at paragraph 2.2 of the TPG (paragraph 23 above), the CUP method and another transfer pricing method can be applied in an equally reliable manner, the CUP method is to be preferred.

55. MNE groups retain the freedom to apply methods not described in the TPG (hereafter "other methods") to establish prices, provided that the resulting prices satisfy the arm's length principle. Such other methods should however not be used in substitution for OECD-recognised methods where the latter are more appropriate to the facts and circumstances of the case. In cases where other methods are used, their selection should be supported by an explanation of why OECD-recognised methods were regarded as less appropriate or non-workable in the circumstances of the case and of the reason why the selected other method was regarded as providing a better solution. A taxpayer should maintain and be prepared to provide documentation regarding how its transfer prices were established.

56. It is not possible to provide specific rules that will cover every case. Tax administrators should hesitate from making minor or marginal adjustments. In general, the parties should attempt to reach a reasonable accommodation keeping in mind the imprecision of the various methods and the preference for higher degrees of comparability and a more direct and closer relationship to the transaction.

57. The arm's length principle and TPG do not require the application of more than one method for a given transaction (or set of transactions that are appropriately aggregated) by either the tax examiner or taxpayer. While in some cases the selection of a method may not be straightforward and more than one method may be initially considered, generally it will be possible to select one method that is apt to provide the best estimation of an arm's length price. However, for difficult cases, where no one approach is conclusive, a flexible approach would allow the evidence of various methods to be used in conjunction. In such cases, an attempt should be made to reach a conclusion consistent with the arm's length principle that is satisfactory from a practical viewpoint to all the parties involved, taking into

account the facts and circumstances of the case, the mix of evidence available, and the relative reliability of the various methods under consideration.

58. This can be summarised in the table below.

<table>
<tr><th colspan="4">Illustration of the selection of the most appropriate method to the circumstances of the case</th></tr>
<tr><td>If CUP and another method can be applied in an equally reliable manner</td><td colspan="3">⇒ CUP</td></tr>
<tr><td colspan="4">If not:</td></tr>
<tr><td>Where one party to the transaction performs “benchmarkable” functions (e.g. manufacturing, distribution, services for which comparables exist) and does not make any valuable, unique contribution (in particular does not contribute a unique, valuable intangible)</td><td colspan="3">⇒ One sided method
⇒ Choice of the tested party (seller or purchaser): generally the one that has the less complex functional analysis.</td></tr>
<tr><td>*The tested party is the seller (e.g. contract manufacturing or provision of services)</td><td>✓ Cost plus
✓ Cost-based TNMM (i.e. testing the net profit / costs)
✓ Asset-based TNMM (i.e. testing the net profit /assets)</td><td>⇒</td><td>If cost plus and TNMM can be applied in an equally reliable manner: cost plus</td></tr>
<tr><td>*The tested party is the buyer (e.g. marketing / distribution)</td><td>✓ Resale price
✓ Sales based TNMM (i.e. testing the net profit/sales)</td><td>⇒</td><td>If resale price and TNMM can be applied in an equally reliable manner: resale price</td></tr>
<tr><td>Where each of the parties makes valuable, unique contributions to the controlled transaction (e.g. contributes valuable unique intangibles)</td><td colspan="3">⇒ Two-sided method
✓ Transactional profit split</td></tr>
<tr><td>MNEs retain the freedom to use “other methods” not listed above, provided they satisfy the arm’s length principle. In such cases, the rejection of the above-described methods and selection of an “other method” should be justified.</td><td colspan="3">⇒ Other methods</td></tr>
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