

# The OECD and Taxation

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IBFD, Your Portal to Cross-Border Tax Expertise

- **What is the OECD?**
  - **How the OECD sees “the rest of the world”?**
- OECD Tax Work
- Core OECD Tax Standards
  - Tax Treaties
  - Transfer Pricing
  - Transparency and Exchange of Information



# Member Countries of the OECD

- Australia
- Austria
- Belgium
- Canada
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Japan
- Korea
- Luxembourg
- Mexico
- Netherlands
- New Zealand
- Norway
- Poland
- Portugal
- Spain
- Slovak Republic
- Sweden
- Switzerland
- Turkey
- United Kingdom
- United States

## Recent Members

- Chile
- Slovenia
- Estonia
- Israel



# Objectives of the OECD

- Promote policies designed:
  - (a) to achieve the highest sustainable **economic growth and employment** and a **rising standard of living** in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
  - (b) to contribute to sound **economic expansion in Member as well as non-member countries** in the process of economic development; and
  - (c) to contribute to the **expansion of world trade** on a multilateral, non-discriminatory basis in accordance with international obligations.



# How to achieve the OECD objectives?

- Individually and jointly:
  - (a) promote the **efficient use of their economic resources**;
  - (b) in the scientific and technological field, promote the development of their resources, encourage **research** and promote **vocational training**;
  - (c) pursue **policies** designed to achieve economic growth and internal and external financial stability and to avoid developments which might endanger their economies or those of other countries;
  - (d) pursue their efforts to **reduce or abolish obstacles** to the exchange of goods and services and current payments and maintain and extend the **liberalisation of capital movements**; and
  - (e) contribute to the economic development of both Member and non-member countries



# The Operation of the OECD – Key Players

## Council

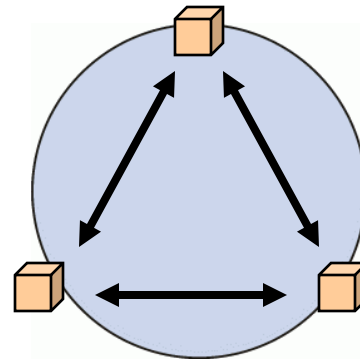
*Oversight and strategic direction*

**Representatives of member countries; decisions taken by consensus**

## Committees

*Discussion and implementation*

**Representatives of member countries and countries with Observer status on specific committee**



## Secretariat

*Analysis and proposals*

**Secretary-General**

**Deputy Secretaries-General**

**Directorates**



**Annual budget:  
Funded by member countries  
+ grants**



# OECD Instruments

- Decisions
- Recommendations
  - Recommendation of the Council on the Model Tax Convention on Income and on Capital
  - Recommendation of the Council on the Determination of Transfer Pricing between Associated Enterprises
- Other Instruments
  - Agreement/Arrangement/Understanding
  - Convention – e.g. on Mutual Assistance in Tax Matters
  - Declaration
  - Guidelines



# OECD and the rest of the World

- Accession
  - Russian Federation
- Enhanced Engagement
  - Brazil, China, India, Indonesia, South Africa and ASEAN countries
- Other Forms of Participation
  - Observers
  - Global Forums



# The Future of OECD Enlargement

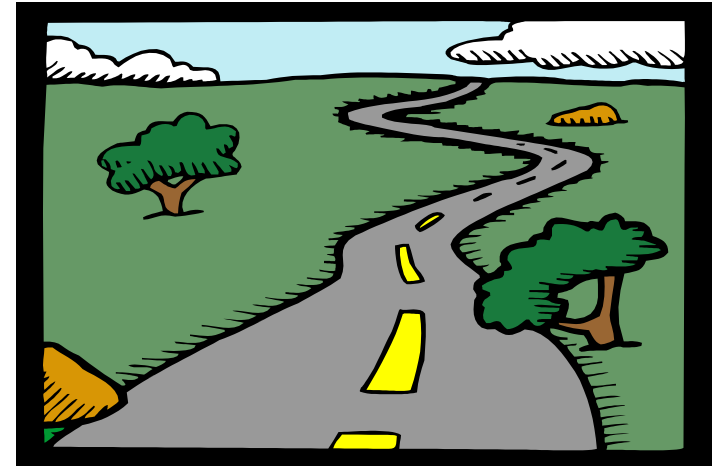
Non-EU

EU States



# Accession Procedures

- Key consideration: Policy convergence!!
  - High level commitment
  - Reservations allowed
- Accession Roadmap
  - Accession process
  - Committees to be consulted and dates of their meetings
  - Areas where Secretariat will be invited to review directly the position of the country concerned
  - Resources required which should be covered by the country concerned



# AGENDA

- What is the OECD?
  - How the OECD sees “the rest of the world”?
- **OECD Tax Work**
- Core OECD Tax Standards
  - Tax Treaties
  - Transfer Pricing
  - Transparency and Exchange of Information



# Key Players in the OECD Tax Work

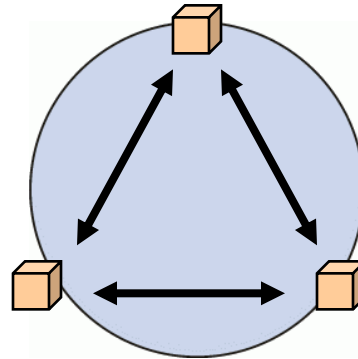
## Council

*Oversight and strategic direction*

Representatives of member countries; decisions taken by consensus

## Committee on Fiscal Affairs

Representatives of member countries and countries with Observer status on specific committee



## Centre for Tax Policy and Administration

Director

Divisions

Units



## **Aims:**

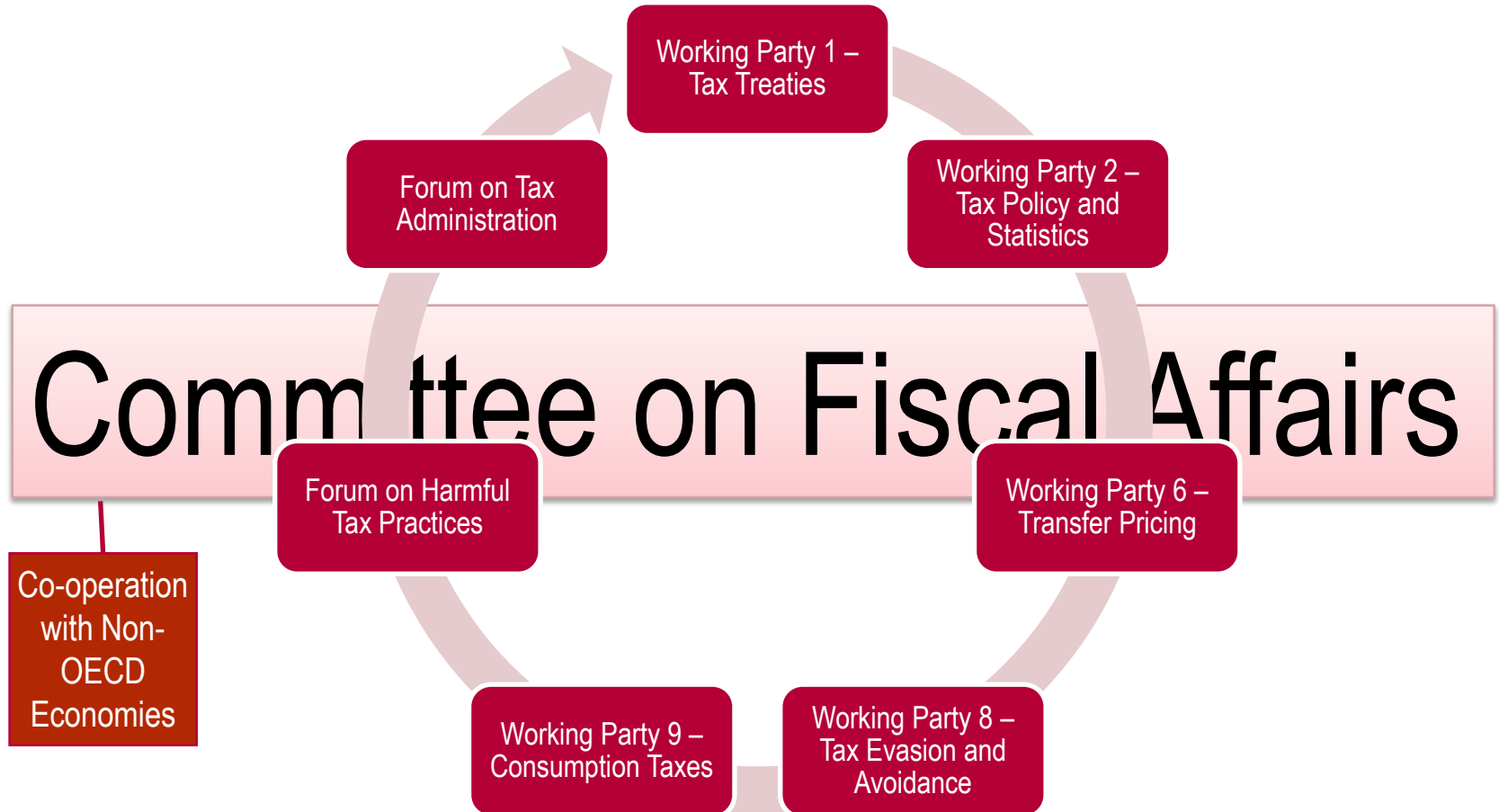
- To eliminate tax measures distorting trade and investment flows
- To prevent double taxation
- To counteract tax evasion and avoidance
- To promote good practices in tax policy and administration

## **Means:**

- Encouraging dialogues between governments
- Promoting communication, co-operation and mutual assistance in tax matters
- Guidelines, information papers and models

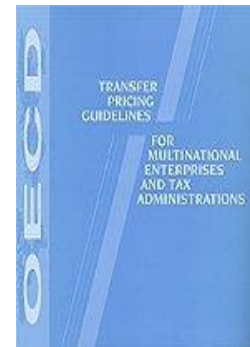


# Committee on Fiscal Affairs and its Working Parties



# Core OECD Tax Standards

- OECD Model Tax Convention on Income and on Capital
- OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
- OECD Standards on Transparency and Exchange of Information
  - OECD 2002 Model Agreement
  - Art. 26 of the OECD Model Tax Convention



# OECD 2002 Model Agreement

- Object and Scope of the Agreement (Art. 1)
- Jurisdiction (Art. 2)
- Taxes Covered (Art. 3)
- Definitions (Art. 4)
- Exchange of Information Upon Request (Art. 5)
- Tax examinations abroad (Art. 6)
- Possibility of Declining a Request (Art. 7)
- Confidentiality (Art. 8)
- Mutual Agreement Procedure (Art. 13)



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  - **Transparency and Exchange of Information**



# The OECD Model Tax Convention

***Recommendation of the OECD Council Concerning the Model Tax Convention on Income and on Capital (1997)***



***The COUNCIL....***

***I. RECOMMENDS to the governments of member countries:***

- 1. To pursue their efforts to conclude bilateral tax conventions on income and on capital...;***
- 2. When concluding new bilateral conventions or revising existing bilateral conventions, to conform to the Model Tax Convention, as interpreted by the Commentaries thereon;***
- 3. That their tax administrations follow the Commentaries....***



# Role of Tax Treaties and OECD Model

Elimination of international double taxation

Balance

Prevention of tax evasion



Double tax relief in Residence state

Limits on source state taxation

Specific treaty provisions

Assistance in collection

Exchange of information



# OECD Model vs. Other Alternatives

Andean  
Model Treaty

Source



Residence



# Points of Differences – OECD vs. UN Models

- Definition of Permanent Establishments
- Allocation of business profits to permanent establishments
- Income from shipping, inland waterways transport and air transport
- Taxation of independent personal services income
- Definition and source taxation of royalties
- Taxation of capital gains from disposal of certain types of shares
- Taxation of salaries of top level managerial officials
- Taxation of pensions and social security payments
- Source taxation of other income



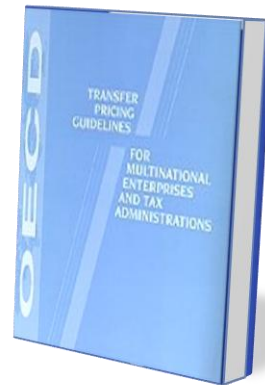
# The OECD Transfer Pricing Guidelines

## *Recommendation of the Council on the Determination of Transfer Pricing between Associated Enterprises*

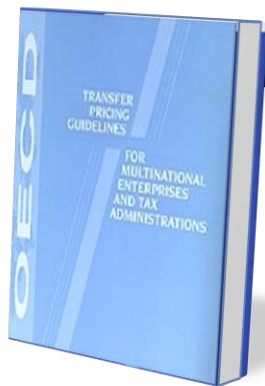
### *The COUNCIL....*

#### *1. RECOMMENDS to the governments of member countries:*

*1.1 that their tax administrations follow, when reviewing, and if necessary, adjusting transfer pricing between associated enterprises for the purposes of determining taxable income, the guidance in the 1995 Report...*



# The Legal Framework



**Arm's Length Principle\*  
embodied in the  
OECD & UN Model Tax  
Conventions  
Article 9**

**Article 9 equivalent can be found in  
thousands of concluded Income &  
Capital Tax Treaties**



Allocation of profits between an enterprise resident in one Contracting State and an enterprise resident in the other Contracting State

# The Arm's Length Standards

## Arm's Length Principle ('ALP')



Tax  
Treaty



*...and in either case **conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly***



# Details of the OECD Transfer Pricing Guidelines

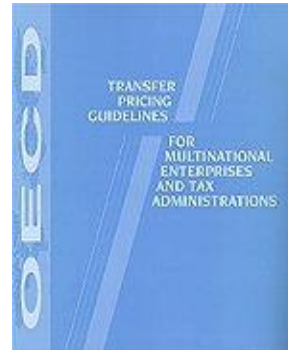
**Chapter 1 - The Arm's Length Principle**  
**Functional Analysis: Functions performed, assets employed, risks assumed**

**Comparability Factors: Contractual terms, economic circumstances, characteristics of property or services, functions, assets and risks assumed and business strategies**

**Chapters 2 and 3**  
**Transfer Pricing Methods**

**Chapter 4**  
**Administrative Approaches**

**Chapter 9 (2010 Model)**  
**Transfer Pricing Aspects of Business Restructurings**



**Chapter 5**  
**Documentation**

**Chapter 6**  
**Intangible Property**

**Chapter 7**  
**Intra- Group Services**

**Chapter 8**  
**Cost Contribution Arrangements**



# Applying the Arm's Length Principle

**“...transfer pricing is largely a question of facts and circumstances coupled with a high dose of common sense”**

Canadian Tax Court – GE Capital Canada Case 2009



# Developing Country Considerations

- Policy considerations
- Domestic Law
- Resources (capacity building)
- Processes and information (identifying risks)
- Access to taxpayer information
- Access to / availability of (reasonably reliable) comparable information
- Flexibility, judgment and internal controls
- Respect for treaty obligations (ALP, MAP etc)



# Developing Country Considerations

- Customs vs income taxes
- Resources available from States with developed transfer pricing regimes (i.e. Australia's rulings)
- Transfer pricing is two sided
- Resourcing/capacity building is key
- UN is developing a practical manual



# OECD Standards on Transparency and EOI

1996

- Harmful Tax Practices
- Defensive mechanisms



2002

- OECD Standards on transparency and effective exchange of information

2010

- 17 September 2010 – latest progress report
- Continuing developments reported on OECD Website



# Tax Haven vs. Standards on Transparency

- Tax havens are jurisdictions with four features
  - No or nominal tax on the relevant income
  - Lack of effective exchange of information
  - Lack of transparency
  - No substantial activities
- OECD standards focus only on second and third criteria!!



# OECD Standards on Transparency and EOI

- Based on Art. 26 of the OECD Model Tax Convention or 2002 Model Agreement
  - EOI on request where it is “foreseeably relevant”
  - No restrictions caused by bank secrecy or domestic tax interest requirements
  - Availability of reliable information and powers to obtain it
  - Respect for taxpayers’ rights’
  - Strict confidentiality of information exchanged



# September 2010 Progress Report

- Jurisdictions that have substantially implemented the OECD standards
- Jurisdictions that have committed to the standards but have not yet substantially implemented
  - Belize, Liberia, Marshall Islands, Montserrat, Nauru, Niue, Panama, Vanuatu, Costa Rica, Guatemala, Phillipines and Uruguay
- Jurisdictions not committed to the OECD standards
  - Costa Rica, Malaysia (Labuan), Philippines and Uruguay (2 April 2009 report)
  - None as from 28 Sept 2009 report



# “Substantially Implemented” Means...

- Whether a jurisdiction has signed 12 agreements on exchange of information that meet the OECD standards, taking into account the following
  - Agreements with other tax havens excluded
  - Willingness to continue to sign agreements after threshold is reached
  - Effectiveness of the implementation
- Legal and administrative framework are important

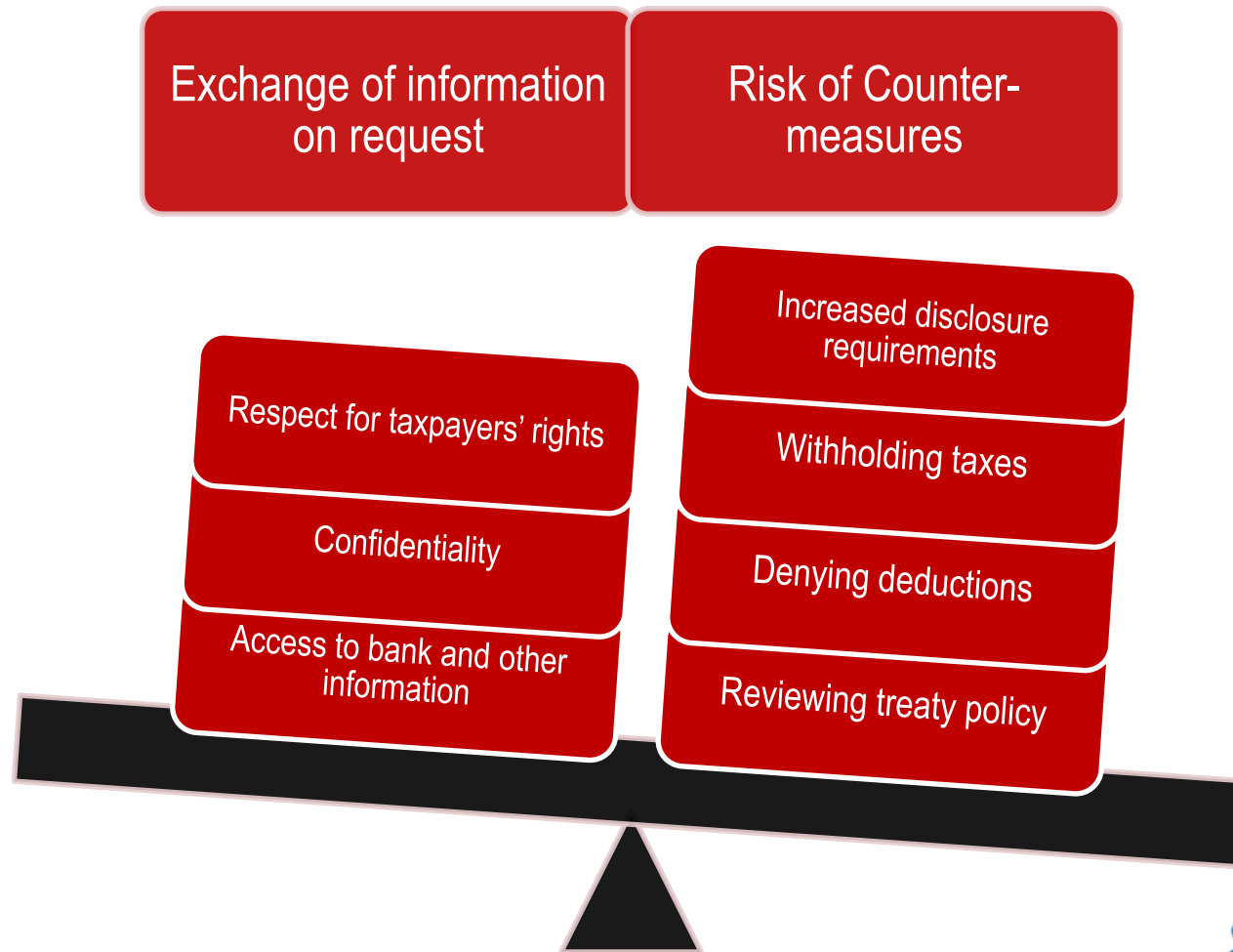


# Means of Implementation of Commitment

- Tax Information Exchange Agreements (TIEAs)
- Limited form of tax treaties
- Mutual assistance treaties
- Full treaties/protocol to existing treaties
- Unilateral domestic legislation – e.g. approach used in Cayman Islands



# Why Comply with OECD Standards?



# Ways to Participate in OECD Tax Work as Non-Members

- Observer status on the CFA
- Participation in the Forum on Harmful Tax Practices and Forum on Tax Administration
- Business and Industry Advisory Committee (BIAC)
- Participation in Global Relations events
- Through other international organizations
  - IDB, CIAT
  - LAC Initiative
- Through open consultation process on policy documents



Thank you!

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