DRAFT Program - Subject to changes : Taxation of Multinational Enterprises and Transfer Pricing Policy: 3 ECTS

Course Objective

The course discusses the various profit allocation approaches that States can choose from a tax policy perspective to tax a Multinational Group that operates with separate entities or permanent establishments throughout the globe. The course is divided into three parts.

The first part of the course starts by providing an overview of the various structures through which Multinational Enterprise (MNE) organises itself (horizontal vs. vertical structures). Thereafter, the various approaches that could be deployed to tax such MNEs, in particular, the arm’s length and formulary approaches will be discussed.

The second part of the course, which is core of the course, provides a holistic overview of the arm’s length principle i.e. Transfer Pricing Rules, especially, the operation of such rules in the Post BEPS world. Specifically, the discussion will focus on accurately delineating the transaction (in particular, the role of a value chain, value shop and value network analysis) and applying the transfer pricing methods to the controlled transaction. Moreover, the application of the arm’s length principle to selected intra group transactions will be discussed in a detailed manner. Furthermore, this part will also discuss tax planning using the arm’s length principle. The latter part will also contain presentations that will be made by in house tax experts (from leading multinationals) on international tax planning structures adopted by them in their respective industries.

Finally, the third part of the course will discuss the future of the arm’s length principle from a policy perspective, especially, in light of digitalization of the economy. Should these rules be abandoned in favour of multi factor formulary apportionment or should we alter them by introducing formulary approaches or by moving to a residual profit allocation system? This part of the course will be structured in a debate format.

The course follows a case study approach and will discuss several transfer pricing issues and policy solutions with practical illustrations. Participants will be required to study the material/cases before attending the lectures.
Course Content

Participant’s following the course will learn the following topics relevant to taxation of MNEs from an international and comparative tax policy perspective: types of formulary apportionment (multi factor or single factor), application of the arm’s length principle, functional and value chain, value network & value shop analysis, transfer pricing methods and comparability analysis, special consideration for intangibles, services & financing (through loans, guarantees, cash pooling and captive insurance), the use of cost contribution arrangements, business restructurings, taxation of business activities (permanent establishments and related attribution requirements), state aid & transfer pricing rules, dispute prevention and resolution avenues, supply chain management (principal structures), reduction of effective corporate tax rates and the future of the arm’s length principle in the post BEPS world.

Prior knowledge of participants

Although this is not mandatory, participants should be familiar with the basic rules of a domestic tax system, in particular direct taxation of domestic companies, and the fundamentals of international tax rules.
# Taxation of Multinational Enterprises and Transfer Pricing Policy: Detailed Course Content

<table>
<thead>
<tr>
<th>Session No and Date</th>
<th>Name of the session</th>
<th>Topics covered</th>
<th>Reading Material: M – Mandatory / D – Discretionary</th>
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</table>
| Session 1 September 24th | Introduction | • Overview of a MNE  
• Tax goals of a MNE  
• The international tax legal framework  
• Importance of tax revenues for a State  
• The BEPS Project  
• Overview of the future of the arm’s length principle  
• Overview of the course and exam structure | • Slides M  
• OECD 2013 BEPS Action Plan M |

## I – Overview of MNEs and the various approaches that could be used by States to tax such organisations

### Session 2 October 1st  
**Application of the ALP**  
• Article 9 of the OECD, UN and US Models and the various adjustments such as primary, corresponding and secondary adjustments  
• ALP in domestic tax law of selected common law and civil law States  
• ALP and its application in the EU  
• The two step process for applying the ALP  
| Slides and case studies before the lecture M  
• OECD 2017 Transfer Pricing Guidelines, Chapter 1, Section A, B, C and D M  
• Article 9 of the 2017 OECD Model and Commentary M  
• IBFD, International Tax Structures, Chapter 3 D |
<table>
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<tr>
<th>Session 3</th>
<th>October 8th</th>
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| Accurate delineation of the transaction | • Functional and value chain, value shop or value network analysis  
• Application of the value configuration tools to selected businesses  
• The difference types of manufacturing, distribution and service entities  
• Special consideration for risks  
| Slides and case studies before the lecture  
OECD 2017 Transfer Pricing Guidelines, Chapter 1, Section D  
OECD 2018 Interim report on Digital Economy, Chapter 2 |

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<tr>
<th>Session 4</th>
<th>October 15th</th>
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| Transfer Pricing Methods | • The CUP and sixth method  
• The resale price Method  
• The cost plus Method  
• Illustrations  
| Slides and case studies before the lecture  
OECD 2017 Transfer Pricing Guidelines, Chapter 2 |

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<tr>
<th>Session 5</th>
<th>October 22nd</th>
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| Transfer Pricing Methods | • The transactional net margin method  
• The Profit Split Method  
• Illustrations  
| Slides and case studies before the lecture  
OECD 2017 Transfer Pricing Guidelines, Chapter 2  
OECD 2018 Profit Split Report |

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<th>Session 6</th>
<th>October 29th</th>
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| Special considerations for Intra Group Services | • The benefit test  
• Charging for intra group services  
• High Value Added Services  
• Low Value Added Services  
• Intra group service structures (shared service centers)  
• The use of Cost Contribution Arrangements for services  
| Slides and case study before the lecture  
OECD 2017 Transfer Pricing Guidelines, Chapter 7 and 8 |
<table>
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<th>Session 7</th>
<th>Special considerations for Intra Group intangibles</th>
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| November 5\(^{th}\) |  • Types of IP  
| |  • Identifying intangibles  
| |  • Legal vs Economic Ownership  
| |  • Intra group intangible transactions  
| |  • Hard to value intangibles  
| |  • The use of Cost Contribution Arrangements for intangibles  
| |  • Tax planning for IP activities – input and output incentives  
| |  • Slides and case study before the lecture  
| |  • OECD 2017 Transfer Pricing Guidelines, Chapter 6 and 8  
| |  • OECD BEPS Action 5, Executive Summary only  
| |  • IBFD; International Tax Structures, Chapter 8  |

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<tr>
<th>Session 8</th>
<th>Special considerations for Financing</th>
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| November 12\(^{th}\) |  • Transfer Pricing aspects of: Loans, Guarantees, Cash pooling and captive insurance  
| |  • OECD Financial Transactions Draft  |

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<th>Session 9</th>
<th>Profit Attribution to Permanent Establishments</th>
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| November 19\(^{th}\) |  • The PE Concept  
| |  • Profit Attribution to PE using the authorized OECD Approach  
| |  • Case studies for PEs of online retailers and online advertisers  
| |  • Slides and case study before the lecture  
| |  • Article 5 & 7 of the 2017 OECD Model and Commentary  
| |  • 2010 OECD Report on Attribution, Part 1  
| |  • 2018 OECD Report on Attribution,  
| |  • IBFD; International Tax Structures, Chapter 2  |

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<th>Session 10</th>
<th>Tax planning using the ALP</th>
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| November 26\(^{th}\) |  • Moving functions, assets and risks to low tax jurisdictions  
| |  • The Principal structure in the fast moving consumer goods business  
| |  • Speakers: Vikram and Gabriel Candi – Nespresso from 11h15 to 12h00  
| |  • Slides and case study before the lecture  
| |  • OECD 2017 Transfer Pricing Guidelines, Chapter 9  
| |  • IBFD; International Tax Structures, Chapter 7 (see moodle for the chapter)  |
| Session 11  
| December 3rd |
| Transfer Pricing Dispute Prevention and Resolution as well as documentation |
| • The issue of business restructurings and the various TP issues they raise |
| • Advance Pricing Arrangements |
| • Safe Harbors |
| • Advance Rulings and EU State Aid Issues in the Apple, Starbucks and Fiat Finance cases |
| • Domestic litigation |
| • Mutual Agreement Procedure |
| • Mandatory Arbitration |
| • Transfer Pricing Documentation and Country by Country reporting requirements |
| • Speakers: Vikram and Massimo Di Cesare – Richemont from 11h15 to 12h00 |
| | Slides and case study before the lecture M |
| | OECD 2017 Transfer Pricing Guidelines, Chapter 4 and 5 M |
| | Article 25 of the 2017 OECD Model and Commentary M |
| | OECD, Country by Country Reporting M |
### III – Policy debate and wrap up

| Session 12  
December 10th | Should the arm’s length principle be abandoned in the post BEPS world or should the arm’s length principle be modified? What is the impact of digitalization on the arm’s length principle? | • Multifactor formulary apportionment  
• The EU Common Consolidated Corporate Tax Base (CCCTB)  
• The US approach to multifactor formulary apportionment  
• Sales based formulary apportionment  
• Residual profit allocation  
• Destination Based Cash Flow Taxes | • Slides before the lecture M |
|---|---|---|---|
| Session 13  
December 17th | Questions and Answers and Mock Oral Exam | • Questions concerning the course  
• Questions concerning the exams  
• Mock oral exam  
• Evaluation for the course |

### Exams

Participants will be required to do an oral exam. The exam will consist of a short case study that the participant will have to analyze and present. **The exam duration is for 20 minutes.**
Reading Material References (Articles, Books and OECD/EU documents and other literature)

- IBFD, International Tax Structures in the BEPS Era, 2017


