

Public Consultation

DISCUSSION DRAFT ON TRANSFER PRICING DOCUMENTATION AND CbC REPORTING

30 January 2014



PROPOSED DISCUSSION DRAFT

In the 19 July 2013 BEPS Action Plan, the OECD was directed to “[d]evelop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into account the compliance costs for business. The rules to be developed will include a requirement that MNE’s provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template”.

This paper contains an initial draft of revised guidance on transfer pricing documentation and country-by-country reporting. It is submitted for comment by interested parties. This document does not necessarily reflect consensus views of either the Committee on Fiscal Affairs (CFA) or of Working Party n°6 (WP6) regarding the issues it addresses. Rather, it reflects limited consideration of the issues in the short time since the publication of the Action Plan and seeks to identify issues for public comment. It is considered that stakeholder comments are essential to advancing this work. Specific issues on which comments would be appreciated are noted in the draft.

Commentators should be aware that this paper was prepared by the OECD in the context of revisions to Chapter V of the Transfer Pricing Guidelines, concerning transfer pricing documentation. As the call to develop a common template for country-by-country reporting to tax authorities did not specifically limit the application of country-by-country reporting to transfer pricing administration, the OECD will be giving further consideration to whether information relevant to other aspects of tax administration and the BEPS Action Plan should also be included in the common template.

Comments should be submitted in writing to TransferPricing@oecd.org on or before 23 February 2014.

It is proposed that the text of Chapter V of the Transfer Pricing Guidelines be deleted in its entirety and replaced with the following language and annexes.

Chapter V

Documentation

A. Introduction

1. This chapter provides guidance for tax administrations to take into account in developing rules and/or procedures on documentation to be obtained from taxpayers in connection with a transfer pricing inquiry or risk assessment. It also provides guidance to assist taxpayers in identifying documentation that would be most helpful in showing that their transactions satisfy the arm’s length principle and hence in resolving transfer pricing issues and facilitating tax examinations.

2. When Chapter V of these Guidelines was adopted in 1995, tax administrations and taxpayers had less experience in creating and using transfer pricing documentation. The previous language in Chapter V of the Guidelines put an emphasis on the need for reasonableness in the documentation process from the

perspective of both taxpayers and tax administrations, as well as on the desire for a greater level of cooperation between tax administrations and taxpayers in addressing documentation issues in order to avoid excessive documentation compliance burdens while at the same time providing for adequate information to apply the arm's length principle reliably. The previous language of Chapter V did not provide for a list of documents to be included in a transfer pricing documentation package nor did it provide clear guidance with respect to the link between the process for documenting transfer pricing, the administration of penalties and the burden of proof.

3. Since then, many countries have adopted transfer pricing documentation rules and the proliferation of these requirements, combined with a dramatic increase in the volume and complexity of international intra-group trade and the heightened scrutiny of transfer pricing issues by tax administrations has resulted in a significant increase in compliance costs for taxpayers. Nevertheless tax administrations often find transfer pricing documentation to be less than fully informative and not adequate for their tax enforcement and risk assessment needs.

4. The following discussion identifies three objectives of transfer pricing documentation rules. The discussion also provides guidance for the development of such rules so that transfer pricing compliance is more straight-forward and more consistent among countries, while at the same time providing tax administrations with more focused and useful information for transfer pricing risk assessments and audits. An important overarching consideration in developing such rules is to balance the usefulness of the data to tax administrations for risk assessment and other purposes with any increased compliance burdens placed on taxpayers. In this respect it is noted that clear and widely adopted documentation rules can reduce compliance costs which could otherwise arise in a transfer pricing dispute.

B. Objectives of transfer pricing documentation requirements

5. Three objectives for requiring transfer pricing documentation are:

1. to provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment ;
2. to ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated enterprises and in reporting the income derived from such transactions in their tax returns; and
3. to provide tax administrations with the information that they require in order to conduct an appropriately thorough audit of the transfer pricing practices of entities subject to tax in their jurisdiction.

6. Each of these objectives should be considered in designing appropriate transfer pricing documentation requirements. It is important that tax administrations be able to access the information they need to conduct a risk assessment. This will enable tax administrations to make an informed decision to perform an audit. It is also important that tax administrations be able to access, on a timely basis, all additional information necessary to conduct a comprehensive audit once the decision to conduct such an audit is made. It is also important that taxpayers be required to carefully evaluate, at or before the time of filing a tax return, their own compliance with the applicable transfer pricing rules.

B.1. Transfer pricing risk assessment

7. Effective risk identification and assessment constitute a crucial early stage in the process of selecting appropriate cases for transfer pricing audits or inquiries and in focusing such audits on the most important issues. Because tax administrations operate with limited resources, it is important for them to

accurately evaluate, at the very outset of a possible audit, whether a taxpayer's transfer pricing arrangements warrant in-depth review and a commitment of significant tax enforcement resources. Particularly with regard to transfer pricing issues (which generally are complex and fact-intensive), effective risk assessment becomes an essential prerequisite for a focused and resource-efficient audit. The OECD Handbook on Transfer Pricing Risk Assessment is a useful tool to consider in conducting such risk assessment.

8. Proper assessment of transfer pricing risk by the tax administration requires access to sufficient, relevant and reliable information at an early stage. While there are many sources of relevant information, transfer pricing documentation is one critical source of such information.

9. There are a variety of tools and sources of information used for identifying and evaluating transfer pricing risks of taxpayers and transactions, including transfer pricing forms (to be filed with the annual tax return), transfer pricing mandatory questionnaires focusing on particular areas of risk, general transfer pricing documentation requirements identifying the supporting evidence necessary to demonstrate the taxpayer's compliance with the arm's length principle, and cooperative discussions between tax administrations and taxpayers. Each of the tools and sources of information appears to respond to the same fundamental observation: there is a need for the tax administration to have ready access to relevant information at an early stage to enable an accurate and informed transfer pricing risk assessment. Some countries have also found that sharing risk assessment results with taxpayers can help improve compliance and enhance the effectiveness and the quality of an audit. Assuring that a high quality risk assessment can be carried out efficiently and with the right kinds of reliable information should be one important consideration in designing transfer pricing documentation rules.

Comments are requested as to whether work on BEPS Action 13 should include development of additional standard forms and questionnaires beyond the country-by-country reporting template. Comments are also requested regarding the circumstances in which it might be appropriate for tax authorities to share their risk assessment with taxpayers.

B.2. Taxpayer's assessment of its compliance with the arm's length principle

10. By requiring taxpayers to articulate solid, consistent and cogent transfer pricing positions, transfer pricing documentation can help to ensure that a culture of compliance is created. Well-prepared documentation will give tax administrations some assurance that the taxpayer has analysed the positions it reports on tax returns, has considered the available comparable data, and has reached consistent transfer pricing positions. Moreover, contemporaneous documentation requirements can restrain taxpayers from developing justifications for their positions after the fact.

11. This compliance objective may be supported in two important ways. First, tax administrations can require that transfer pricing documentation requirements be satisfied on a contemporaneous basis. This would mean that the documentation would be prepared at the time of the transaction, or in any event, no later than the time of completing and filing the tax return for the fiscal year in which the transaction takes place. The second way to encourage compliance is to establish transfer pricing penalty regimes in a manner intended to reward timely preparation of transfer pricing documentation and to create incentives for timely, careful consideration of the taxpayer's transfer pricing positions. Filing requirements and penalty provisions related to documentation are discussed in greater detail in Section D., below.

12. While ideally taxpayers will use transfer pricing documentation as an opportunity to articulate a well thought out basis for their transfer pricing policies, thereby meeting an important objective of such requirements, issues such as costs, time constraints, and competing demands for the attention of relevant personnel can sometimes undermine these objectives. It is therefore important for countries to keep

documentation requirements reasonable and focused on material transactions in order to ensure mindful compliance on the most important matters.

B.3. Transfer pricing audit

13. A third objective for transfer pricing documentation is to provide tax administrations with information they need to conduct a thorough transfer pricing audit. Transfer pricing audit cases tend to be fact-intensive. They often involve difficult evaluations of the comparability of several transactions and markets. They can require detailed consideration of financial, factual and other industry information. The availability of adequate information from a variety of sources during the audit is critical to facilitating a tax administration's orderly examination of the taxpayer's controlled transactions with associated enterprises and enforcement of the applicable transfer pricing rules.

14. In situations where a proper risk assessment suggests that a thorough transfer pricing audit is warranted with regard to one or more issues, it is clearly the case that the tax administration must have the ability to obtain, within a reasonable period, all of the relevant documents and information in the taxpayer's possession. This includes information regarding the taxpayer's operations and functions, relevant information on the operations, functions and financial results of associated enterprises with which the taxpayer has entered into controlled transactions, information regarding potential comparables, including internal comparables, and documents regarding the operations and financial results of potentially comparable uncontrolled transactions and unrelated parties. To the extent such information is included in the transfer pricing documentation, special information and document production procedures can potentially be avoided. It must be recognised, however, that regardless of how comprehensive transfer pricing documentation requirements may be, situations will inevitably arise when tax administrations wish to obtain information not included in the documentation package. Thus, a tax administration's access to information should not be limited to, or by, the documentation package relied on in a risk assessment. Where a jurisdiction requires particular information to be kept for transfer pricing audit purposes, such requirements should balance the administration's need for information and the compliance burdens on taxpayers.

15. It may often be the case that the documents and other information required for a transfer pricing audit will be in the possession of members of the MNE group other than the local affiliate under examination. Often the necessary documents will be located outside the country whose tax administration is conducting the audit. It is therefore important that the tax administration is able to obtain directly or through information sharing, such as exchange of information mechanisms, information that extends beyond the country's borders.

Comments are specifically requested on the appropriate scope and nature of possible rules relating to the production of information and documents in the possession of associated enterprises outside the jurisdiction requesting the information.

C. A two-tiered approach to transfer pricing documentation

16. In order to achieve the objectives described in Section B, countries should adopt a standardised approach to transfer pricing documentation. This section describes a two-tier structure consisting of (i) a master file containing standardised information relevant for all MNE group members, and (ii) a local file referring specifically to material transactions of the local taxpayer.

17. This approach to transfer pricing documentation will provide tax administrations with relevant and reliable information to perform an efficient and robust risk assessment analysis. It will also provide a platform on which the information necessary for an audit can be developed and provide taxpayers with a

means and an incentive to meaningfully consider and describe their compliance with the arm's length principle in material transactions.

C.1. Master file

18. The master file should contain common standardised information relevant for all MNE group members. Its purpose is to elicit a reasonably complete picture of the global business, financial reporting, debt structure, tax situation and the allocation of the MNE's income, economic activity and tax payments so as to assist tax administrations in evaluating the presence of significant transfer pricing risks. Taxpayers should be able to prepare the master file either for the MNE group as a whole or by line of business, depending on which would provide the most relevant transfer pricing information to tax administrations.

Comments are requested as to whether preparation of the master file should be undertaken on a line of business or entity wide basis. Consideration should be given to the level of flexibility that can be accommodated in terms of sharing different business line information among relevant countries. Consideration should also be given to how governments could ensure that the master file covers all MNE income and activities if line of business reporting is permitted.

19. The information required in the master file provides a "blueprint" of the MNE group and contains relevant information that can be grouped in five categories: a) the MNE group's organisational structure; b) a description of the MNE's business or businesses; c) the MNE's intangibles; d) the MNE's intercompany financial activities; and (e) the MNE's financial and tax positions.

20. The section of the master file on financial and tax positions includes country-by-country reporting of certain information relating to the global allocation of profits, the taxes paid, and certain indicators of the location of economic activity (tangible assets, number of employees and total employee expense) among countries in which the MNE group operates. It also requires reporting of the capital and accumulated earnings as well as aggregate amounts of certain categories of payments and receipts between associated enterprises.

A number of difficult technical questions arise in designing the country-by-country template on which there were a wide variety of views expressed by countries at the meeting of Working Party n°6 held in November 2013. Specific comments are requested on the following issues, as well on any other issues commentators may identify:

- Should the country-by-country report be part of the master file or should it be a completely separate document?
- Should the country-by-country template be compiled using "bottom-up" reporting from local statutory accounts as in the current draft, or should it require (or permit) a "top-down" allocation of the MNE group's consolidated income among countries? What are the additional systems requirements and compliance costs, if any, that would need to be taken into account for either the "bottom-up" or "top-down" approach?
- Should the country-by-country template be prepared on an entity by entity basis as in the current draft or should it require separate individual country consolidations reporting one aggregate revenue and income number per country if the "bottom-up" approach is used? Those suggesting top-down reporting usually suggest reporting one aggregate revenue and income number per country. In responding, commenters should understand that it is the tentative view of WP6 that to be useful, top-down reporting would need to reflect revenue and earnings attributable to cross-border transactions between associated enterprises but eliminate revenue and transactions between group entities within the same country. Would a requirement for separate individual country consolidations impose significant

additional burdens on taxpayers? What additional guidance would be required regarding source and characterization of income and allocation of costs to permit consistent country-by-country reporting under a top-down model?

- Should the country-by-country template require one aggregate number for corporate income tax paid on a cash or due basis per country? Should the country-by-country template require the reporting of withholding tax paid? Would a requirement for reporting withholding tax paid impose significant additional burdens on taxpayers?
- Should reporting of aggregate cross-border payments between associated enterprises be required? If so at what level of detail? Would a requirement for reporting intra-group payments of royalties, interest and service fees impose significant additional burdens on taxpayers?
- Should the country-by-country template require reporting the nature of the business activities carried out in a jurisdiction? Are there any features of specialist sectors that would need to be accommodated in such an approach? Would a requirement for reporting the nature of the business activities carried out in a jurisdiction impose significant additional burdens on taxpayers? What other measures of economic activity should be reported?

21. The country-by-country data required in the master file may be helpful in risk assessment processes. However, such information should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices, a full functional analysis or a full comparability analysis. The information in the country-by-country reporting template would not constitute conclusive evidence that transfer prices are or are not appropriate.

22. Annex I to Chapter V of these Guidelines sets out the information to be included in the master file. Annex III to Chapter V contains the country-by-country reporting template to be provided as part of the master file.

C.2. Local file

23. The information required in the local file supplements the master file and helps to meet the objective of assuring that the taxpayer has complied with the arm's length principle in its material transfer pricing positions affecting a specific jurisdiction. The local file focuses on information relevant to the transfer pricing analysis related to transactions taking place between a local country affiliate and associated enterprises in different countries and which are material in the context of the local country's tax system. Such information would include relevant financial information regarding those specific transactions, a comparability analysis and the selection and application of the most appropriate transfer pricing method for the fiscal year in question.

24. Annex II to Chapter V of these Guidelines sets out in detail the items of information to be included in the local file.

D. Compliance issues

D.1. Contemporaneous documentation

25. Each taxpayer should endeavour to determine transfer pricing for tax purposes in accordance with the arm's length principle, based upon information reasonably available at the time of the determination. Thus, a taxpayer ordinarily should give consideration to whether its transfer pricing is appropriate for tax purposes before the pricing is established and should confirm the arm's length nature of its financial results at the time of filing its tax return.

26. Taxpayers should not be expected to incur disproportionately high costs and burdens in producing documentation. Therefore, tax administrations should balance requests for documentation against the expected cost and administrative burden to the taxpayer of creating it. Where a taxpayer reasonably demonstrates, having regard to the principles of these Guidelines, that either no comparable data exists or that the cost of locating the comparable data would be disproportionately high relative to the amounts at issue, the taxpayer should not be required to incur costs in searching for such data.

D.2. Time frame

27. Practices regarding the timing of the preparation of the documentation differ among countries. Some countries require information to be prepared by the time the tax return is filed. Others require documentation to be in place by the time the audit commences. There is also a variety in practice regarding the amount of time given to taxpayers to respond to specific tax administration requests for documentation and other audit related information requests. These differences in the time requirements for providing information can add to taxpayers' difficulties in setting priorities and in providing the right information to the tax administrations at the right time. The best practice is to require that both the master file and the local file be prepared no later than the due date for the filing of the tax return for the fiscal year in question. In countries pursuing policies of auditing transactions as they occur under co-operative compliance programmes, it may be necessary for certain information to be provided in advance of the filing of the tax return.

28. It is recognised, however, that in some instances final statutory financial statements and other financial information relevant for the country-by-country data described in Annex III may not be finalised until after the due date for tax returns in some countries for a given fiscal year. Accordingly, best practice would extend the date for completion of the Annex III template to one year following the last day of the fiscal year of the ultimate parent entity of the MNE group.

D.3. Materiality

29. Not all transactions that occur between associated enterprises are sufficiently material to require full documentation. Obviously, tax administrations have an interest in seeing the most important information while at the same time they also have an interest in seeing that MNEs are not so overwhelmed with compliance demands that they fail to consider and document the most important items. Thus, transfer pricing documentation requirements should include specific materiality thresholds that take into account the size and the nature of the local economy, the importance of the MNE group in that economy, and the size and nature of local operating entities, in addition to the overall size and nature of the MNE group.

Comments are requested as to whether any more specific guideline on materiality could be provided and what form such materiality standards could take.

30. A number of countries have introduced in their transfer pricing documentation rules simplification measures which exempt small and medium-sized enterprises (SMEs) from transfer pricing documentation requirements or limit the information required to be provided by such enterprises. In order not to impose on taxpayers costs and burdens disproportionate to the circumstances, it is recommended to not require SMEs to produce the amount of documentation that might be expected from larger enterprises. However, SMEs should be obliged to provide information and documents about their material cross-border transactions with foreign associated parties upon a specific request of the tax administration in the course of a tax examination or for risk assessment purposes, and should be required to provide the country-by-country reporting template set out in Annex III.

D.4. Retention of documents

31. Taxpayers should not be obliged to retain documents beyond a reasonable period consistent with the requirements of domestic law at either the parent company or local entity level. However, at times materials and information required in the documentation package (master file and local file) may be relevant to a transfer pricing inquiry for a subsequent year that is not time barred, for example where taxpayers voluntarily keep such records in relation to long-term contracts, or to determine whether comparability standards relating to the application of a transfer pricing method in that subsequent year are satisfied. Tax administrations should bear in mind the difficulties in locating documents for prior years and should restrict such requests to instances where they have good reason in connection with the transaction under examination for reviewing the documents in question.

32. Because the tax administration's ultimate interest would be satisfied if the necessary documents were submitted in a timely manner when requested by the tax administration in the course of an examination, the way that documentation is stored – whether in paper, electronic form or in any other system - should be at the discretion of the taxpayer provided that relevant information can promptly be made available to the tax administration in a useful form.

D.5. Frequency of documentation updates

33. It is recommended that transfer pricing documentation be periodically reviewed in order to determine whether functional and economic analyses are still accurate and relevant and to confirm the validity of the applied transfer pricing methodology. In general, both the master file and local file should be reviewed and updated annually. It is recognised, however, that in many situations business descriptions, functional analyses, and descriptions of comparables may not change significantly from year to year.

34. In order to simplify compliance burdens on taxpayers, tax administrations may determine, as long as the operating conditions remain unchanged, that the searches in databases for comparables supporting part of the local file be updated every 3 years rather than annually. Financial data for the comparables should nonetheless be updated every year in order to apply the arm's length principle reliably.

Comments are requested regarding reasonable measures that could be taken to simplify the documentation process. Is the suggestion in paragraph 34 helpful? Does it raise issues regarding consistent application of the most appropriate transfer pricing method?

D.6. Language

35. The necessity of providing documentation in local language may constitute a complicating factor with respect to transfer pricing compliance to the extent that substantial time and cost may be involved in translating documents. As a general matter the master file should be prepared and submitted to all tax administrations in English. However, transfer pricing documentation should be useful to local country tax administrations seeking to undertake a risk assessment, and therefore at least the local file should likely be prepared in the relevant local language. Where tax administrations believe that translation of relevant parts of the master file is necessary, they should make specific requests for translation and provide sufficient time to make such translation as comfortable a burden as possible.

Comments are requested regarding the most appropriate approach to translation requirements, considering the need of both taxpayers and governments.

D.7. Penalties

36. Many countries have adopted documentation-related penalties to ensure efficient operation of transfer pricing documentation requirements. They are designed to make non-compliance more costly than compliance.

37. Documentation-related penalties imposed for failure to comply with transfer pricing documentation requirements or failure to timely submit required information are usually civil (or administrative) monetary penalties. These documentation-related civil (or administrative) monetary penalties are based on a fixed amount that may be assessed for each document missing or for each fiscal year under review or calculated as a percentage of the related tax understatement ultimately determined or as a percentage of the related adjustment to the income .

38. It would be unfair to impose sizable documentation-related penalties on taxpayers that make a reasonable effort, in good faith, to demonstrate through reliable documentation that their controlled transactions satisfy the arm's length principle. In particular, care should be taken not to impose a documentation-related penalty on a taxpayer for failing to submit data to which the MNE did not have access. However, a decision not to impose documentation-related penalty does not mean that adjustments cannot be made to income where prices are not consistent with the arm's length principle. The fact that positions are fully documented does not necessarily mean that the taxpayer's positions are correct. Moreover, an assertion by a local entity that other group members are responsible for transfer pricing compliance is not a sufficient reason for that entity to fail to provide required documentation, nor should such an assertion prevent the imposition of documentation-related penalties for failure to comply with documentation rules where the necessary information is not forthcoming.

39. Country practices with regard to transfer pricing documentation-related penalties vary widely. The existence of different local country penalty regimes may influence the quality of taxpayers' compliance so that taxpayers could be driven to favour one country to another in their compliance practices.

40. Another way for countries to encourage taxpayers to fulfil transfer pricing documentation requirements is by designing compliance incentives such as penalty protection or a shift in the burden of proof. Where the documentation meets the requirements and is timely submitted, the taxpayer could be exempted from tax penalties or subject to a lower penalty rate if a transfer pricing adjustment is made and sustained, notwithstanding the provision of documentation. In jurisdictions where tax administration bears the burden of proof, a shift of the burden of proof to the taxpayer's side is another measure to secure transfer pricing documentation compliance when the documentation meets the requirements and is timely submitted.

D.8 Confidentiality

41. Tax administrations should ensure that there is no public disclosure of trade secrets, scientific secrets, or other confidential information. Tax administrations therefore should use discretion in requesting this type of information and assure taxpayers that the information presented in documentation will remain confidential. In cases where disclosure is required in public court proceedings or judicial decisions, every effort should be made to ensure that confidentiality is maintained and that information is disclosed only to the extent needed.

Comments are requested as to measures that can be taken to safeguard the confidentiality of sensitive information without limiting tax administration access to relevant information.

D.9. Other issues

42. The requirement to use the most reliable information will usually require the use of local comparables over the use of regional comparables where such local comparables are reasonably available. The use of regional comparables in transfer pricing documentation prepared for countries in the same geographic region in situations where appropriate local comparables are available will not, in some cases, comport with the obligation to rely on the most reliable information. While the simplification benefits of limiting the number of comparable searches a company is required to undertake are obvious, and materiality and compliance costs are relevant factors to consider, a desire for simplifying compliance processes should not go so far as to undermine compliance with the requirement to use the most reliable available information. See paragraphs 1.57-1.58 on market differences and multi-country analyses for further detail of when local comparables are to be preferred.

43. It is not recommended, particularly at the stage of risk assessment, to require that the transfer pricing documentation should be certified by an outside auditor or other third party. Similarly, mandatory use of consulting firms to prepare transfer pricing documentation is not recommended provided the internal personnel preparing the documentation are qualified and have access to the appropriate data.

E. Implementation

44. Transfer pricing documentation requirements are and should continue to be features of local law. The implementation of the two-tiered transfer pricing documentation consisting of a master file and a local file, therefore, requires that local countries modify their domestic transfer pricing documentation and reporting rules to require any locally based affiliate of an MNE group to produce the information contained in Annexes I-III.

45. In this respect, consistent and uniform formats are essential. To ensure that the master file information is consistent from country to country, local transfer pricing documentation requirements should include master file information conforming to Annexes I and III. It is recommended that the master file portion of the proposed documentation (including the country by country reporting template) be completed under the direction of the parent company of the MNE group and be shared with each country in which the MNE has an affiliate subject to tax. The master file could then be obtained by local taxing authorities directly from local affiliates. Absent prompt compliance at the local country level, such information could be obtained by tax administrations under treaty exchange of information mechanisms.

Comments are requested regarding the most appropriate mechanism for making the master file and country-by-country reporting template available to relevant tax administrations. Possibilities include:

- The direct local filing of the information by MNE group members subject to tax in the jurisdiction;
- Filing of information in the parent company's jurisdiction and sharing it under treaty information exchange provisions;
- Some combination of the above.

Annex I to Chapter V: Transfer pricing documentation - Master file

The following information should be included in the master file:

Organisational structure

- Chart illustrating the MNE's legal and ownership structure and geographical location of operating entities.

Description of MNE's business(es)

For each of the MNE's major business lines:

- General written description of the MNE's business including:
 - Important drivers of business profit
 - Chart showing supply chain for material products and services
 - Chart showing important service arrangements between members of the MNE group other than R&D services
 - A description of the main geographic markets for material products and services
 - A written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used
 - A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.
 - The title and country of the principal office of each of the 25 most highly compensated employees in the business line (note: names of such individuals should not be included)

MNE's intangibles

- A description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- A list of material intangibles or groups of intangibles of the MNE group and which entities own them.
- A list of important related party agreements related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements.
- A description of the group's transfer pricing policies related to R&D and intangibles.
- A description of any material transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

MNE's intercompany financial activities

- A description of how the group is financed, including identification of important financing

arrangements with unrelated lenders.

- The identification of any members of the MNE group that provide a central financing function for the group, including the country under whose laws the entity is organised and place of effective management of such entities.
- A description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

MNE's financial and tax positions

- MNE's annual consolidated financial statement for the fiscal year concerned.
- A list and brief description of the MNE group's applicable unilateral and bilateral/multilateral APAs and Advance rulings.
- A list and brief description of other relevant tax rulings related to the allocation of income to particular jurisdictions.
- A list and brief description of transfer pricing matters pending under treaty MAP or resolved in MAP during the last two years.
- Country-by-country reporting template according to Annex III.

Comments are specifically requested as to whether reporting of APAs, other rulings and MAP cases should be required as part of the master file.

Annex II to Chapter V: Transfer pricing documentation - Local file

The following information should be included in the local file:

Local entity

- A description of the management structure of the local entity, a local organization chart and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- An indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

Controlled transactions

For each material category of controlled transactions in which the entity is involved, provide the following information:

- Description of the controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, licenses of intangibles, etc.) and the context in which it takes place (e.g. business activity, financial activities of the MNE group, cost contribution arrangement).
- Aggregate amount of intercompany charges for each category of transactions.
- Identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.
- A detailed functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, i.e. functions performed, assets used and/or contributed (including intangibles) and risks borne, including any changes compared to prior years.¹
- Identification and description of other controlled transactions of the taxpayer that can directly or indirectly affect the pricing of the controlled transaction being documented.
- Indicate the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.
- Indicate which associated enterprise is selected as the tested party, if applicable, and explain why.
- Summarise the important assumptions made in applying the transfer pricing methodology.
- If relevant, explain the reasons for performing a multi-year analysis.
- List and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information.
- Describe any comparability adjustments performed, and indicate whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both.
- Describe the reasons for concluding that relevant transactions were conducted on an arm's length basis based on the application of the selected transfer pricing method.

¹ To the extent this functional analysis duplicates information in the master file, a cross reference to the master file is sufficient.

Annex II to Chapter V: Transfer pricing documentation - Local file
• A summary of financial information used in applying the transfer pricing methodology.
<u>Financial information</u> • Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if they do not existing unaudited statements should be supplied. • Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements. • Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

Annex III to Chapter V: A Model Template of Country-by-Country Reporting

Overview of allocation of income, taxes and business activities on a country-by-country basis

Country	Constituent Entities Organised in the Country	Place of Effective Management	Important business activity code(s)	Revenues	Earnings Before Income Tax	Income Tax Paid (on Cash Basis)		Total Withholding Tax Paid	Stated capital and accumulated earnings	Number of Employees	Total Employee Expense	Tangible Assets other than Cash and Cash Equivalents	Royalties Paid to Constituent Entities	Royalties Received from Constituent Entities	Interest Paid to Constituent Entities	Interest Received from Constituent Entities	Service Fees Paid to Constituent Entities	Service Fees Received from Constituent Entities
						(a) To Country of Organisation	(b) To All Other Countries											
	1.																	
	2.																	
	3.																	
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Additional information: *Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country by country template.*

GENERAL INSTRUCTIONS FOR ANNEX III TO CHAPTER V

Purpose

This Annex III to Chapter V contains a template for reporting a multinational enterprise's ("MNE") allocation of income, taxes and business activities on a country by country basis. The template is to be provided to tax administrations as part of the global transfer pricing documentation master file described in Annex I to Chapter V. These instructions form an integral part of the country-by-country template.

Definitions

Reporting MNE

A Reporting MNE is the ultimate parent entity of an MNE group.

Constituent Entity

For purposes of completing Annex III, a Constituent Entity of the MNE group is any separate business unit of the MNE group that is an associated enterprise to the reporting MNE within the meaning set out in the glossary of the OECD Transfer Pricing Guidelines.

Treatment of Branches and Permanent Establishments

The term Constituent Entity also includes permanent establishments of a member of the MNE group conducting business in a country, provided such permanent establishment prepares a separate income statement for regulatory, financial reporting, internal management or tax purposes.

Period Covered by the Annual Template

The template should cover the fiscal year of the Reporting MNE. For each Constituent Entity, the template should reflect information for the fiscal year of such Constituent Entity that ends on the same date as the fiscal year of the Reporting MNE, or that ends within the 12 month period ending on such date. Alternatively, at the option of the Reporting MNE, information for all Constituent Entities may instead be reported for the fiscal year of the Reporting MNE.

SPECIFIC INSTRUCTIONS

Country

In the first column of the template, the Reporting MNE should list all of the countries under whose laws Constituent Entities of the MNE group are organised.

Constituent Entities Organised in the Country

In the second column of the template, the Reporting MNE should list, on a country by country basis, all of the Constituent Entities of the MNE group (company, corporation, trust, partnership, permanent establishment etc.) organised under the laws of the relevant country. With regard to permanent establishments, however, the permanent establishment should be listed by reference to the country in which the permanent establishment is situated. The legal entity of which it is a permanent establishment should be noted (*e.g.* XYZ Corp – Country A PE).

Place of Effective Management

In the third column of the template, enter the country of the Constituent Entity's place of effective management. The place of effective management should be determined in accordance with the provisions of Article 4 of the OECD Model Tax Convention and its accompanying Commentary.

Important business activity code(s)

In the fourth column of the template, determine the important business activity(ies) of the Constituent Entity, using the codes of the list below. One or more codes may be indicated, as appropriate.

Code	Business activities
A	R & D
B	Holding intellectual property
C	Purchasing and Procurement
D	Manufacturing and Production
E	Sales, Marketing and Distribution
F	Administrative and Support Service
G	Finance
H	Insurance
I	Holding company
J	Other ²

Revenues

In the fifth column of the template, the total revenues of the Constituent Entity should be reported. Total revenues include revenues from sales of inventory and properties, services, royalties, premiums and any other amounts received, regardless of whether they were generated from transactions with associated

² Please specify the nature of the activity of the Constituent Entity in the « Additional information » section

enterprises or independent enterprises. The intention is that the amounts reported should be the revenue numbers taken directly from (i) the Constituent Entity's statutory financial statement if one exists, (ii) if a statutory statement is not prepared, the revenue number from the Constituent Entity's audited financial statement prepared for any other purpose (e.g. financing, regulatory, tax etc.) or (iii) if audited statements do not exist, annual revenues as reflected in the Constituent Entity's internal management accounts. Amounts should generally be reported in the Constituent Entity's functional currency and the relevant currency should be identified in the statement.

It is not required that the amounts of revenue or other financial information be reported using the same accounting standards for all Constituent Entities. Thus, revenue of a Constituent Entity organised in one country may be reported in IFRS if it uses IFRS in its accounts, and revenue of a Constituent Entity organised in another country may be reported in local GAAP if it uses local GAAP in its accounts. Taxpayers wishing to do so, however, may elect to report all amounts under consistent accounting principles and translated on a consistent basis to a single currency.

Income

Earnings Before Income Tax

In the sixth column of the template, enter the total amount of earnings before income tax for the Constituent Entity. This number should be taken from the same financial statement as the revenue numbers and should generally be reflected in the functional currency of the Constituent Entity.

Income Tax Paid (on Cash Basis)

(a) To Country of organisation

In the seventh column of the template, enter the amount of income tax actually paid to the country of organisation by each Constituent Entity during the relevant year. Cash payments of tax and not tax accruals should be reported. Tax payments should be reported in the same currency used to report earnings before income tax in column 6.

(b) To All Other Countries

In the eighth column of the template, enter the amount of income tax paid by the Constituent Entity to all countries other than the country of its organisation for the relevant fiscal year. Cash payments of tax and not tax accruals should be reported. Tax payments should be reported in the same currency used to report earnings before income tax in column 6.

In some cases tax will be paid by one entity on behalf of a combined group of associated enterprises operating in a country. Where that is the case, tax should be allocated among members of the relevant combined group in proportion to their shares of the EBIT of the combined group.

Total withholding Tax Paid

In the ninth column of the template, enter the total amount of withholding tax paid with respect to payments received from other entities. This amount should not include withholding of taxes on employee salaries, withholding of social welfare taxes, withholding on payments of pensions, or any other amount other than withholding in lieu of income tax on payments such as dividends, royalties, interest, service fees and similar items received.

Stated capital and accumulated earnings

In the tenth column of the template, enter the stated capital and accumulated earnings of the Constituent Entity as reflected in the year-end balance sheet of the Constituent Entity.

Number of Employees

In the eleventh column of the template, enter the total number of employees of the Constituent Entity as of the last day of the entity's relevant fiscal year. All employees on the payroll of the Constituent Entity should be included, regardless of their location. However, employees seconded to other members of the MNE group need not be included. Employees seconded from other members of the MNE group should be included.

Total Employee Expense

In the twelfth column of the template, provide total employee expense including all non-cash payments or benefits such as employee option schemes.

Tangible Assets other than Cash and Cash Equivalents

In the thirteenth column of the template, enter the book value of tangible assets reflected on the balance sheet of the Constituent Entity as of the last day of the relevant fiscal year. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

Intercompany Payments

In columns fourteen and fifteen of the template, report total royalties paid to and received from other Constituent Entities. In columns sixteen and seventeen, report total interest paid to and received from other Constituent Entities. In columns eighteen and nineteen, report total service fees paid to and received from other Constituent Entities.