The Voice of OECD Business

BIAC Comments on the OECD White Paper on Transfer Pricing Documentation

October 1, 2013

Dear Mr. Andrus,

BIAC is pleased to respond to the OECD draft *White Paper on Transfer Pricing Documentation*, published on 30 July 2013 (hereafter referred to as "The White Paper").

Currently, businesses devote considerable resources to Transfer Pricing Documentation ("TPD") which sometimes seem to serve little practical purpose, and BIAC agrees that "the proliferation of diverse local TPD 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 authorities" has made simplification one of the most important compliance priorities on business' agendas. BIAC therefore welcomes the discussion of TPD initiated by this document, supports the objectives outlined by the OECD therein, and appreciates the opportunity to continue to work with the OECD towards modifying TPD compliance standards to make them simpler for businesses and more useful to tax authorities.

The timeframe for consultation on The White Paper has been relatively short, and has come at a busy time for tax practitioners. We commend the OECD for the way in which it has accelerated its work being undertaken under the Base Erosion and Profit Shifting ("BEPS") workstreams. As a response to a white paper (rather than a formal Public Consultation), we have not provided detailed paragraph by paragraph feedback on The White Paper. Instead, our response focuses on a few general comments and suggestions about the approach of The White Paper towards its objective of simplifying TPD requirements. Some non-exhaustive supplementary comments on each chapter of The White Paper are included in Appendix I.

1. Objectives

TPD is one of the main issues for businesses in terms of time-consumption, resource management, and the burden of compliance. Acknowledgement of this by the OECD is very welcome and we especially appreciate the effort of Working Party 6 (WP6) to make the TPD requirements simpler and more effective.

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BEPS Action 13 sets out that the OECD will attempt to develop rules on TPD to enhance transparency for tax authorities, taking into account the compliance burden for business. BIAC considers that The White Paper confirms and supports the intention to provide tax authorities with information on a group's global activities and allocation of income in accordance with a common template. As The White Paper reflects, often the current focus of TPD is local, and this is not well suited to an increasingly global economy. BIAC congratulates the OECD in its attempts to lead a global international approach of TPD, and we strongly support the conclusions of Chapter II and the objectives outlined in Chapter III.

Taxpayers and tax authorities would both benefit from the co-ordination proposed in The White Paper to the extent that the level of the TPD required is reduced and consolidated. Benefits would also be achieved if TPD can be better linked with groups' risk statuses, as recommended by BIAC in the recent consultation on Transfer Pricing Risk Assessment (Draft issued 30 April 2013). We urge the OECD to align the objectives of these two workstreams in order to form a coherent framework that includes TPD requirements commensurate with risk levels. BIAC considers that there are two ways in which this could be achieved:

i) Compliance with TPD requirements could be recognized as a contributor to low risk in the Transfer Pricing Risk Assessment ("TPRA") stage; and
ii) TPRA should drive a layered approach to TPD with the first layer presenting a much lower burden for taxpayers.

2. Tiered approach

BIAC welcomes the concept of a masterfile containing information that is relevant to all tax authorities to which groups report, supported by local files containing details of local controlled transactions. Such an approach (if implemented alongside a standardisation of local country TPD requirements) could provide real advantages to tax authorities and welcome administrative relief to taxpayers.

However, BIAC does not believe that the detail proposed in Chapter V for the masterfile is commensurate with the information required for TPRA. When read alongside Chapter IV (and in particular paragraph 72) there is some uncertainty as to both the level of information required and the purposes for which that information would be used. Paragraph 72 implies that very high level "country by country" information should be provided to enable TPRA, but the information requirements of the masterfile are more extensive, and go far beyond the information that would be required for such purposes. BIAC considers that this implies a three tier approach rather than a two tier approach. If this is the proposal then the OECD should make this explicit. We assume that this is an outcome of G8 and, subsequently, G20 recommendations, rather than an organic part of the TPD project.

<u>BIAC would be supportive of such a three tier approach, provided it meets the objectives of real simplification</u>, and (wherever possible in order to meet the objectives) that it uses information already collected or provided to tax authorities.

rather than additional tiers on top of existing complex and differing local requirements. BIAC is concerned that whilst the additional requirements to produce high level "country by country" data (for TPRA purposes) and a masterfile (to consolidate information useful to multiple tax authorities) could theoretically reduce the compliance burden, without stricter limitations on the TPD requirements that can and should be included in the local files, there is a significant risk that the local TPD requirements will remain as varied and extensive as they are today. In addition, there is a risk that even the local country data required could increase if tax authorities interpret the entire list of information in Chapter V as a checklist of documents to request, because it appears to include all of the information that tax authorities may currently require for even the most complex of businesses.

As preparing documentation is time consuming and expensive, special consideration should be given to small and medium sized groups. It should not be expected of smaller and medium sized groups to incur compliance costs related to the preparation of documentation that is disproportionate to the nature, scope and complexity of their intra-group transactions.

In order to achieve the objectives of simplification and providing useful and commensurate information to tax authorities, BIAC observes the following in relation to the three tiers of information:

- The first tier of information (high level country by country data for TPRA purposes) should contain very high level information that enables tax authorities to undertake effective high level TPRA procedures. More detail is provided below in section 3.

- The second tier of information (the masterfile) should contain more detailed information about the group's key value drivers, transfer pricing policies, functions, assets and risks, but should not be so detailed as to deal with specific transactions. BIAC considers that in order to relieve the compliance burden and be useful to tax authorities, the masterfile should *only* contain information that is relevant in assisting *all* of the tax authorities better understand the context of the controlled transactions that are detailed in their corresponding local files.

- The third tier of information (the local files) should contain information on controlled transactions to which the relevant reporting entity is a party.

- Efforts should be made to eliminate duplication between the second and third tiers of information.

- Most importantly, in order to implement the three tier approach and simultaneously secure a reduction in the overall compliance burden, the level of TPD required by each business for each tier of reporting must be informed by the supporting tiers. If businesses provide useful information in the first tier that enables tax authorities to usefully and completely undertake TPRA (and a low level of risk is identified), then the level of detail required in tiers two and three could be significantly reduced.

- Further comments regarding the proposals outlined in Chapter V regarding the information proposed for the masterfile and local files are included in Appendix I.

3. Format of "country by country" reporting

BIAC understands that country by country reporting has been mandated by both the G8 and the G20, and that, therefore, some form of reporting will be required. BIAC understands the purpose of this reporting is to provide tax authorities with appropriate information to enable them to perform high level TPRA. BIAC welcomes this initiative so long as it does not introduce undue and disproportionate additional compliance burdens on businesses.

BIAC believes that the objectives of the required country by country reporting could be achieved by using data that businesses already collect, rather than requiring the collection of new forms of data. BIAC considers that collection and provision of such information is not directly connected with transfer pricing, as it is not sufficient in and of itself to determine whether transfer pricing guidelines have been appropriately applied. However, BIAC is hopeful that if this data is used as a TPRA tool to allow tax authorities to form a better understanding of where income is earned, this will allow them to more tightly focus subsequent TPD requests. BIAC remains committed to working with the OECD and tax authorities to develop a process that benefits both taxpayers and tax authorities.

Detailed comments

Frustrations currently experienced by business regarding the way that TPD is used by tax authorities could be significantly reduced if the information provided at this stage leads to appropriate TPRA by tax authorities and a corresponding reduction in the TPD burden they experience during tax filings and tax audits. Consequently, we again urge the OECD to ensure that such TPD requirements are appropriately expressed as TPRA tools, that and the OECD's TPD and TPRA workstreams aligned.

BIAC represents a wide range of businesses, many of whom report internally and externally in different ways. As such, producing the "country by country" data proposed may not be as easy as paragraph 72 suggests for many businesses (see Appendix I). Further, even where providing such standardised information is straightforward, this does not mean that it will be useful to tax authorities for the business in question.

Many businesses canvassed would be able to provide a breakdown of sales figures, employee numbers and cash taxes paid on some form of country by country basis to a high materiality threshold without undue burden. We also believe that it may be possible to provide information on profits collected for accounting purposes as long as a detailed reconciliation to consolidated numbers is not required. BIAC strongly supports the acknowledgment in The White Paper that the information required for TPRA need not adhere to the same degree of accuracy that may be required in other tax filings.

BIAC is concerned that if the OECD were to simply recommend a list of general items that should be presented, there is a risk that governments will each enact different requirements to ensure that all eventualities are captured, thus increasing the burden on taxpayers. BIAC recommends, therefore, that the OECD produce a template to which countries must adhere, and would be delighted to work with OECD on the construction of such a template.

In sum, BIAC is also anxious to ensure that the parameters of the reporting requirements result in the provision of information that will be helpful for tax authorities without undue burden on business. BIAC looks forward to working with the OECD on the practicalities of this as an accounting and controllership issue.

Conclusion

BIAC again applauds the desire of the OECD to cut back on unnecessary and burdensome transfer pricing documentation, is supportive of a tiered approach allied to better use of TPRA methods, and acknowledges the need for business to work with the OECD to establish a common template for high level Country by Country reporting as mandated by the G8 and G20. BIAC looks forward to working with the OECD 0n this project.

Sincerely,

Will Morris

Will Morris
Chair, BIAC Tax Committee

Mr. Pascal Saint-Amans,
Director of the Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development

Appendix I
Specific comments

Chapter I: Introduction (paragraphs 1-5)

The White Paper "*surveys the current state of affairs regarding transfer pricing documentation, considers the purposes and objectives of transfer pricing documentation rules, and makes suggestions as to how transfer pricing documentation rules might be modified in order to make transfer pricing compliance simpler and more straightforward, while at the same time providing tax authorities with more useful information for consideration in connection with transfer pricing audits".*

In addition to these goals, and besides the acknowledge of the current difficulties in this matter that are underlined in the Introduction, we suggest that from the very beginning of The White Paper, tax authorities and businesses have the clear idea of what TPD is used for. In general terms, the TPD should provide tax authorities with clear information on intragroup activities. Based on The White Paper, this would include how income is allocated throughout the group and the relevant information on intragroup transactions (already included in most TPD requirements). Although the "*purposes of transfer pricing documentation requirements*" are in Chapter III, it would be useful to have a briefing of the TPD objective upfront.

Chapter II: Overview of existing guidance and initiatives on transfer pricing documentation. (Paragraphs 6-44)

Chapter II outlines the country existing guidance and initiatives on TPD, acknowledging that Chapter VI of the OECD Guidelines does not deal appropriately with the issue, which has led to a number of different regimes and a compliance burden for businesses and tax authorities.

Chapter II also outlines attempts to consolidate and simplify TPD multilaterally (focusing on EU Guidance on TPD, PATA Documentation Package and ICC Proposals). It also examines why these initiatives have had limited success and summarises concerns canvassed from BIAC. As noted above, BIAC welcomes acknowledgment of its concerns and is keen to remain engaged with the OECD in any way required in the development of The White Paper.

We agree that any attempt to consolidate an international approach to TPD should start with a detailed analysis of the different current legislation requirements and tax authorities' practices are. We applaud the efforts made in this Chapter. Notwithstanding this, the differences in tax authorities' practices and approaches are not sufficiently highlighted and there is no mention of Court decisions regarding relating to TPD. BIAC considers that these are two areas in which further examination could enhance The White Paper.

Chapter III: Purposes of Transfer Pricing Requirements (Paragraphs 45-67)

BIAC welcomes the acknowledgment that tax authorities currently view TPD as serving three distinct purposes (TPRA, taxpayers assessment of compliance, and provision of information required to complete an audit), and that each of these purposes requires a different level of TPD at different times.

However, the welcome simplification that could arise from providing specific information required to complete a TPRA will not provide all of the administrative benefits that could be achieved if a separate requirement remains to simultaneously maintain detailed TPD that could be used to satisfy either or all of the other purposes identified.

BIAC encourages the OECD to develop its approach to TPD closely with the development of its Handbook on TPRA to ensure that the TPD requirements proposed meet the objectives of reducing the burden on businesses and tax authorities who both operate with scarce resources.

BIAC also considers that to create the conditions under which genuine co-ordination in TPD matters is effective, a good starting point would be to provide global definitions of terms such as "*Multinational Enterprise",* "*controlled transaction"*, and "*materiality of intercompany dealing*", so that business and tax authorities have a clear idea of the scope of TPD requirements. In addition to that, an effort should be made to precise, as much as possible, the terminology. Participation of business, tax and transfer pricing specialists to work on this issue would be advisable.

Chapter IV: A Tiered Approach to Transfer Pricing Documentation (Paragraphs 68-77)

BIAC considers that consolidation and standardisation of TPD requirements has the potential to provide benefits both in terms of providing more useful information at the right times to tax authorities, and reducing the burden on businesses of preparing a significant number of different detailed TPD packages that are ultimately not useful and not required.

As a general comment, BIAC is concerned that a tiered approach to TPD, as suggested in The White Paper, risks adding TPD requirements on taxpayers on top of existing requirements (rather than reducing the burden). Notwithstanding this fact, BIAC recommends that the purpose of any additional TPD requirements (with reference to both Chapter III of the White Paper and the OECD's work on TPRA) are carefully defined through consultation with tax authorities to ensure that any additional information provided will actually be useful to them.

SECTIONS A & B

Paragraph 69 details features of high risk identified in an OECD January 2012 report (Dealing Effectively with the Challenges of Transfer Pricing). As this document has now been superseded by the OECD's work on TPRA, we would recommend that this be updated to give references to the TPRA Handbook. We would also request that low risk identifiers be included.

Format

The White Paper (paragraph 72) suggests that it will be easy for businesses to produce high level information for the *masterfile*. Whilst there is acknowledgment that tax authorities will need to understand the limitations in the precision of such data, preparing global information as prescribed may not be straightforward for many businesses, who may report internally along different lines and manage different local and regional GAAPs and exchange rates (or need to prepare accounts based only on statutory entities, if at all). Further, where such information is available it is not generally focused on controlled transactions and it may therefore not even provide useful information to tax authorities.

BIAC strongly supports the recognition in paragraph 76 that a masterfile format should be sufficiently flexible to allow businesses to report either by business line or company-wide bases. However, dependent on numerous factors such as industry, business objectives, corporate structure and geographical business locations, the information required by tax authorities will vary from business to business if it is to be useful for TPRA. If the OECD does not recommend a pro forma of information required then there is a significant risk that tax authorities will each enact different requirements, increasing the burden on taxpayers.

BIAC would also welcome explicit clarification that paragraph 72 should be read under the context of the OECD's work on TPRA, and consider that it would be helpful to also clarify that high level transactional information from such sources is not sufficient to conclude on whether transfer pricing principles have been appropriately applied (and that they should not be assumed to be commensurate to the allocation of taxable income in place of a full analysis of the local functions and risks).

Ultimately, BIAC acknowledges that if taxpayers do not provide useful information sufficient for the tax authorities to undertake TPRA (whether through submitted TPD or in response to follow up questions), this is more likely result in a "high risk" classification, which is not in the interests of businesses or tax authorities.

BIAC would also welcome clarification on the comments in paragraph 72 regarding the level of precision required, particularly if this could be linked to the recommendations in paragraphs 77 and 78 that the numbers provided need not be audited and should correspond to an appropriate level of materiality.

Timing

Paragraph 74 implies that the business maintain the masterfile and provide to tax authorities upon request. However, depending upon the format of the TPD and the underlying source data, there may be difficulties for taxpayers in providing the masterfile containing transaction or period specific data to tax authorities at the early stage required to enable effective TPRA. For example:

- There may be non-coterminous period ends within a group.
- There may be different statutory accounts or tax return filing deadlines across different countries.
- Following an acquisition or disposal, information may not be available in a timely manner.

Further, statutory accounts are not drawn up until the end of a period of account. It may not be possible for businesses to provide the tax authorities with information on global operations that they did not themselves have.

BIAC would welcome acknowledgment of these difficulties, and in light of them, we would also welcome OECD commentary on the circumstances under which penalties should or should not be applied for failures in maintaining or submitting contemporaneous TPD. Explicit guidance on when each tier of TPD should be prepared would be welcomed.

<u>Administration</u>

The White Paper does not make explicit the need for tax authorities to adhere to confidentiality standards. It is likely that the information included in the masterfile would include sensitive information and their public release could be detrimental to the company concerned. The OECD should require tax authorities to agree to abide by confidentiality standards before requiring taxpayers to provide the suggested information.

The White Paper does not address the format of providing the TPD or the period of time companies should retain TPD. Both issues are critical for groups working in various jurisdictions seeking to reduce their compliance burdens.

SECTION C

BIAC welcomes the examples in Section C (Mechanics of Preparing Transfer Pricing Documentation) of where the process of preparing TPD is more burdensome than it need be for compliant businesses. BIAC encourages the OECD to make recommendations that tax authorities do not impose such requirements on businesses. In particular, recommendations regarding materiality levels and the requirement to translate of documents into different languages would be welcomed.

Chapter V: Development of a Co-ordinated Approach to Documentation (Paragraphs 78-83)

Notwithstanding our comments above expressing our general concerns around the difficulties that may arise in providing country by country reporting, we are happy to provide comments on the approach proposed in Chapter V. Hopefully, this contribution (in tandem with our general comments in sections 2 and 3 of our covering letter) can be used as a preliminary point so that conversation proposed in paragraph 84 can commence.

The following Table provides the OECD proposed Co-ordinated Documentation approach:

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<tr>
<th><u>MASTERFILE</u></th>
<th><u>LOCALFILE</u></th>
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<td>
Overview of Multinational Enterprise Group (MNE):

Chart illustrating the MNE’s legal and ownership structure and geographical location of principal operating entities.
Management structure and geographical location of key management personnel.

Description of MNE’s business(es)
For each MNE’s major business line:

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 related party service arrangements other than R&D services.
A list of the main markets for material products and services.
Key competitors.
A written functional analysis showing the principal contributions to value creation by individual entities within the group.
A description of important business restructuring transactions occurring during the last 5 years.

Internet links to representative analyses of the industry and company prepared by rating agencies, stock analysts, or others familiar with the business.

MNE’s intangibles

A description of the MNE’s strategy for the development, ownership and

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Local entity

A description of the management structure of the local entity, to whom local management reports and the geographical location of senior executives.
An indication whether the local entity has been involved or affected by business restructurings or intangibles transfers in the present or immediately past year and explain aspects of such transactions affecting the local entity

Controlled transactions
For each material controlled transaction in which the taxpayer is involved, provide the following information:

Description of the controlled transactions (e.g. manufacture, distribution of goods, provision of services) and 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 parties involved in each category of controlled transactions, and the relationship amongst them.
A detailed functional analysis of the taxpayer with respect to each documented category of controlled transactions, i.e. functions performed, assets used (including intangibles) and risks borne, including any changes compared to prior years.
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

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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 details as to which companies are entitled to returns from relevant intangibles.*
• *A list of important related party agreements related to intangibles, including cost contribution arrangements, principal research service agreements and important 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 during the relevant year, including the entities, geographies, and compensation involved.*
 	
MNE's intercompany financial activities
 	
• *A description of material intercompany loans and other financial arrangements (e.g. loans, hybrid financial instruments, performance guarantees, financial guarantees and similar transactions) including:*
    o *Related parties involved (directly or indirectly) and geographic location*
    o *Principal amounts involved in the arrangement.*
• *The MNE's inter-company transfer pricing policy or a description of the group's transfer pricing system for its financial activities.*
 	
MNE's financial and tax positions
 	
• *MNE's consolidated accounts for the prior (x) years.*
• *A list and brief description of the MNE group's applicable unilateral or*
	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 and explain why.*
	• *Indicate 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 unrelated parties relied on in the transfer pricing analysis, including a description of the comparable search methodology.*
	• *Describe any comparability adjustments performed, and indicate whether these have been done to 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.*
	• *A summary of financial information used in applying the transfer pricing methodology.*
	
	Financial information
	
	• *Annual local entity financial accounts for the previous (x) years, audited if they exist.*
	• *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*

bilateral/multilateral APAs. • *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 processes or resolved in MAP during the last two years.* • *A schedule showing for each country in which the MNE does business the total number of employees in the country.* • *A copy of the company's consolidating income statement for the most recent year.*	

General comments

The Co-ordinated Documentation Approach could potentially add further requirements to those that already apply to companies, without necessarily reducing the burdens that already exist. The requirement to produce both a masterfile as outlined above and high level TPRA documentation as described in paragraph 72 are actually two new TPD requirements. Whilst there is great potential for this data to be standardised and removed from the local TPD requirements, there are no actual proposals to limit local compliance requirements.

Further, the long list of potential requirements for local files could be interpreted by tax authorities as a checklist of requirements, thus actually increasing the local TPD burden in some countries. The White Paper acknowledges similar difficulties that have arisen under the EU TPD, PATA, and ICC proposals. Many businesses welcomed the goals of these initiatives, but consider that they the EU masterfile / local file concept (for example) is in practice more costly and disproportionate for many businesses. In order to be successful where these attempts have not been, BIAC believes that the OECD should attempt to take a more rigid approach to enforcing standardised local TPD requirements.

There is some duplication in the required documentation for the masterfile and the local files. For example, whilst the masterfile requires “A written functional analysis showing the principal contributions to value creation by individual entities within the group”, the local files require “[a] detailed functional analysis of the taxpayer with respect to each documented category of controlled transactions, i.e. functions performed, assets used (including intangibles) and risks borne, including any changes compared to prior years.”

BIAC considers it important to avoid duplication where possible and to bear in mind that the masterfile should be more general in nature, whilst the local files should limit their scope to transactions involving in the local country. In the context of the example noted, if the masterfile contained a functional analysis of the value creation of individual entities within the group, and the transfer pricing policies applied by the group, then it should be sufficient for the local files to contain only details of the material relevant controlled transactions undertaken in the period.

There are some terms that are vague and in need of clarification. For example *consolidated accounts* or *relevant financial data* are likely to be interpreted differently by different tax authorities.

Specific comments on the masterfile

It is proposed that the masterfile include the group’s organisational structure, including an overview of business lines, a high level description of global business management structure, a general discussion of an group’s business model (e.g. integrated vs decentralised), and the way in which this has determined the “optimal” tiered TPD structure.

Large groups may have hundreds of legal entities all performing valuable but different functions. BIAC considers it would be a significant compliance burden for such groups to provide information in the masterfile covering all companies in the group.

Whilst we understand the importance of putting the transactions into context (starting with the business of the group and drilling down to the legal entities involved in the transactions), it appears that this approach would result in the taxpayers disclosing information on the global nature of their business to countries that are not party to the transactions under review. For large group's undertaking a range of activities (i.e. those without a simple supply chain or principal structure), providing a detailed masterfile would disclose far more information that is not relevant (for local TPRAs or understanding of how the local functions and risks fit into the group's activities) than actually is relevant for many tax authorities. One of the benefits of standardising TPD under a tiered approach is providing tax authorities with only relevant information so that they are able to best utilise their finite resources. Inclusion of significant information that relates solely to extra territorial transactions (rather than an overview of the group's activities, functions and risks) could consequently erode the benefit to tax authorities.

We consider especially that the following information proposed for inclusion in the masterfile would not be necessary to review the transfer pricing position in a certain country:

- Description of all actual intangible transfers.
- Description of all financial activities.
- List of all APAS and tax ruling or MAPs.
- Chart showing supply chain for material products and services.
- Chart showing important related party service arrangements other than R&D services.
- A list of the main markets for material products and services.

Statistical methods may instead be more useful to determine the relevant transactions, products or services, in the area of transfer pricing.

BIAC considers that the requirement to describe business restructurings over five years is excessive, especially in groups that perform numerous acquisitions or are in evolving or new industries.

In practice, internet links may not be helpful as they may change over time, and are also likely to present information for the purposes of customers rather than tax authorities. Many businesses allocate considerable resource in developing websites that primarily serve the purposes of marketing or actual delivery of their products and services. It is unlikely that such websites will demonstrate sufficiently the functions and risks that are undertaken in each of the countries in which they operate. Whilst some groups do have useful information on their websites, we would welcome acknowledgment in The White Paper of the dangers of relying on such sources to provide the full picture. Additionally, for publicly traded companies, the annual report and shareholder information may provide similar relevant information in a format that is easier to locate and review.

Specific comments on the local files

In the local files, the reference to “each material controlled transaction in which the taxpayer is involved, provide the following information” without a threshold, could result in a significant and unwarranted compliance burden.

“Manufacture” is an activity, not a transaction. BIAC considers that this reference should be replaced with “Description of each category of the controlled transactions”.

Tax authorities should seek to become more streamlined and the OECD should provide guidance to them in relation to how this is achieved, as far as possible within the current guidelines and best practices.