



GLOBAL FINANCIAL INTEGRITY

OECD Secretariat
Transfer Pricing Group

Via email: transferpricing@oecd.org

October 1, 2013

To whom it may concern,

RE: Public Consultation on White Paper on Transfer Documentation Practices

Thank you for the opportunity to participate in the OECD's public consultation on the White Paper on Transfer Documentation Practices, dated 30 July 2013. This submission is provided by Global Financial Integrity, a research and advocacy organization based in Washington, DC. We have no objections to this submission being made publicly available, and believe firmly that it should be a requirement that all submissions be a part of the public record.

Global Financial Integrity publishes economic analyses of international trade data in order to measure global illicit financial flows, with a particular focus on developing countries. Our analysis shows that the vast majority of illicit financial flows from developing countries can be attributed to trade mis-invoicing. Although we are not able to determine what percentage of that mis-invoiced trade is between related parties as opposed to unrelated parties, both forms of trade are included. Because of the nature of the data that we analyze, our figures do not include trade between related parties that does not require a customs invoice (mere "paper transactions" between related parties where, for example, goods are technically "routed" through a country, but are never actually shipped through that country, usually to reduce taxation), transactions involving services or intellectual property, or smuggled goods. As a result, our estimates of illicit financial flows can be viewed as extremely conservative. Despite that fact, our analysis shows that in 2010 alone, developing countries lost \$858.8 billion in illicit financial flows.

Given the nature of our work, we approach this rather technical paper on transfer pricing from the perspective of ensuring that the exercise is focused on achieving the appropriate goals. It is critical that the OECD Secretariat and member states keep the genesis of this review in mind at all times. This review is part of the overall BEPS project, which has been undertaken by the OECD at the behest of the G20 following the public's realization that many large, high-profile multinational corporations have been taking advantage of, and in some cases taking a substantial role in drafting, rules and regulations that allow them to avoid as much taxation as possible. The public has finally become aware of an international financial structure that has substantially reduced government tax receipts in a manner that directly affects the daily lives of many lower and middle income families around the world. The public outrage that has resulted, taking the form of large scale protests throughout Europe and in the U.S., is the primary reason that the OECD is holding this consultation on this important element of illicit financial flows.

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Having reviewed the White Paper with these points in mind, we would like to provide the following comments.

Purpose

Part III of the White Paper recognizes the need to consider “the purposes for requiring transfer pricing documentation.” While we agree that the three bullet points included in the section indeed identify three existing purposes for requiring transfer pricing documentation, we note that each of the statements relates to either the corporate taxpayer, the sovereign nation requiring the documentation, or the relationship between the two. None of the stated purposes identifies the importance of this information in the aggregate for the economic analysis necessary to ensure that the global system as a whole is not distortive. Global economic distortion is the root of the problem that the G20 and the OECD are trying to solve, and it must be an integral part of the review of the transfer pricing regime. As a result, we suggest that another purpose be added. That additional purpose should be:

- To provide the information necessary to allow for informed analysis of the macroeconomic effects of transfer pricing guidelines, laws and regulations, and any adjustments thereto.

This is a global, public-good-oriented focus. We strongly recommend that reforms to the global transfer pricing regime include a procedure for collection of transfer pricing data by one or more international organizations in order to provide for this critical analysis. We also strongly recommend that the data be made publicly available so that organizations like Global Financial Integrity and academic researchers around the world are able to significantly expand the universe of resources that can be applied to analyzing this data and the efficacy of the global transfer pricing regime.

Bigger Picture Reporting

We were pleased to see a recognition of the need for “big picture” reporting to inform risk assessment instead of the current, telescopic, country-specific approach (para 71). That concept was immediately followed by the statement that “It seems possible for businesses to provide without undue burden individual country data based on either management accounts, consolidating income statements and balance sheets, and/or tax returns that would provide tax administrators with a general sense of how their global income is allocated and where pressure points in the transfer pricing arrangements might lie,” (para 71).

We agree, and have been advocating for country-by-country reporting of financial information by multinational corporations for several years for this reason. The difference between our request and the statement above is that we advocate for corporations to be required to make this information publicly available.

The question we have been asking ourselves for years is why this is met with such resistance by companies? As is pointed out in the quote above, it is possible to provide this information without undue burden. Why? Because in order to consolidate balance sheets, you must already have the underlying balance sheets prepared. It is simply a matter of making this information available.

In fact, making this information publicly available, for example on a company’s website, would only serve to *decrease* any additional burden such a reporting requirement might generate. All of the company’s relevant “big picture” data, as you have described it, would be readily available to all tax

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authorities around the world. Companies would not have to constantly respond to individual tax authorities' requests for the information, or have to even think about whether the information had been provided to or updated for specific tax authorities.

We have concluded that there must be another reason that many multinational corporations have opposed the provision of this information, whether publicly or to tax authorities. It is perhaps because they have much to gain from keeping the system as opaque as it is.

We refer back to our opening remarks about why this BEPS project is being undertaken in the first place. As has been stated by the G20, it is in part to restore public confidence in our international financial system and in our governments' ability to regulate it. We believe that there is a strong public interest in this type of data being made publicly available for analysis. It would go a long way toward restoring public confidence in the international financial system. Again, it is important to keep that goal in mind.

Stylized Analysis vs. Specific Transaction Records

The issue of whether a company provides, or is required to provide, a stylized analysis of the transfer pricing aspects of a transaction or series of transactions, or instead internal corporate records relating to specific transactions, was relegated to an observational footnote in the White Paper (footnote 3). We believe that this raises an important point that must be fleshed out. Are we actually dealing with two systems of accounting for tax purposes – actual reporting of real figures, and stylized accounting that may make particular transactions defensible as part of a larger scheme when certain accounting loopholes are applied? “Creative” and “aggressive” accounting were major factors in the recent financial crisis and have not yet been addressed. Their impact should not be overlooked in the transfer pricing context.

Liability/Safe Harbors

The White Paper contains at least a few references to statements by companies suggesting that they believe that if they provide the required documentation then they should be shielded from follow-up questions and/or liability for any activity that a government deems to have been *ultra vires* (paras 28, 35, 37, 40). We would like to ensure that the record of comments reflects our opposition to creating a safe harbor for merely fulfilling paperwork requirements. Whether liability for underpayment exists can only be determined after review of the documentation provided by the company. It is merely a first step in a process, not a final determinant. We strongly oppose tying the hands of governments by creating any such safe harbor concept.

Thank you for taking the time to consider our views on this issue of global import. While no doubt many multinational companies and trade associations will provide comments on this technical White Paper, we reiterate that it is important to remember why this process is happening in the first place. This is, at its core, an issue of public resources, public accountability, and the public good.

Kind regards,

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