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Accounting & Tax Committee
Japan Foreign Trade Council, Inc.

Comments on White Paper on Transfer Pricing Documentation

The following are the comments of the Accounting & Tax Committee of the Japan Foreign Trade Council, Inc. (JFTC) in response to the invitation to public comments by the OECD regarding the “White Paper on Transfer Pricing Documentation.”

The JFTC is a trade-industry association with Japanese trading companies and trading organizations as its core members. One of the main activities of JFTC’s Accounting & Tax Committee is to submit specific policy proposals and requests concerning tax matters. Member companies of the JFTC Accounting & Tax Committee are listed at the end of this document.

Overall Comments

While the proposed “Coordinated Documentation Approach (the “Approach”) would result in a reduction of administrative burden and cost both for tax administrations and taxpayers in some situations, it would not do so in all cases.

We think that the Approach, which assumes that the ultimate parent company (i.e., headquarter) of the MNE would retain all information for the transactions conducted by the MNE, forces such a parent company to bear an excessive burden for transfer pricing documentation. However, we believe that, in reality, such information is not necessarily managed by the parent company in an integrated fashion and thus no regard is given to the statement in the BEPS Action Plan, being “taking into consideration the compliance costs for business (Action 13).” Additionally, since the MNE’s operations would consist of many different types of business in various countries, we believe that it is not always helpful for tax administrations to obtain the overall information of the MNE for their understanding of the individual business.

In addition, one question would arise as to how to describe information related to “associated enterprises” and “controlled transactions” in the

Master File in a uniform manner, as the definitions of such terms are different on a country-by-country basis.

Further, although there might not be any limitation in sharing information in the Master File among associated enterprises which are all, directly or indirectly, 100% owned, there may be significant limitations in doing that among enterprises which are not wholly owned.

Assume that Company P establishes a subsidiary (Company S) jointly with an unrelated enterprise (Company A) and, for transfer pricing purposes, Company P and Company S are associated enterprises. In this case, even if Company P and Company A are business partners for the specific business conducted by Company S in that specific region, they might be competitors for other business in the other regions. In addition, especially when Company P is a listed company, the scope of information Company P can disclose to unrelated entities might be heavily restricted under the relevant laws and regulations applying to a listed company. Even if, in such a situation, Company P has to provide the Master File to Company S when preparing the transfer pricing documentation package, Company P would have to limit the information in the Master File to ensure compliance with that which can be publicly disclosed.

The Coordinated Documentation Approach is one of the accepted approaches. However legal and business restrictions, including those issues stated above, should be taken into account when considering how associated enterprises should be grouped for documentation purposes and the extent of the information to be contained in the Master File. Also the Coordinated Documentation Approach should not be the only acceptable approach available to taxpayers.

Finally, we would like to emphasize the point that there are cases where, due to some operational issues, transfer pricing documents prepared by enterprises are not effectively used for transfer pricing risk assessment or audits and do not contribute to the achievement of the intended purpose. As some tax administrations have less well established procedures for the utilization of transfer pricing documents, they do not understand or thoroughly read the detailed contents of the documents. We consider that this White Paper should bring up such operational issues of tax administrations and also should suggest specific countermeasures against the issues.

Specific Comments

- **Power to compel production of information**

Paragraph 61: This paragraph states that “it is therefore essential that the tax administration’s power to compel production of information

during the course of an audit extend beyond the country's borders" in the case where "the required documents (are) in the possession of members of the MNE group other than the local affiliate under examination." However, we believe that, as a general rule, a tax administration's rights under a tax audit should be effective only within that tax jurisdiction. Therefore, we would request that you appropriately modify the wording so that tax administrations do not mistakenly believe that they have *carte blanche* audit powers which extend beyond their jurisdiction.

- **Languages**

Paragraph 77: Generally, it is global standard practice to use documents written in English in conducting cross-border business. Therefore a consensus that it is sufficient to prepare transfer pricing documents in English (not the country specific language) would result in a significant reduction of the administrative burden.

- **Information to be contained in Master File**

Paragraph 82 (Table 1): According to the list in the Table 1, information to be contained in the Master File consists of five items, i.e., (1) Overview of MNE, (2) Description of MNE's business(es), (3) MNE's intangibles, (4) MNE's intercompany financial activities, (5) MNE's financial and tax positions.

However, where the MNE is a listed company group, at least some of information required by (1), (2) and (5), would be publicly available in the MNE's legally required periodic financial reporting disclosures (annual report, security report to be filed to the relevant Stock Exchanges, etc.). The duplication of that information in the Master File would create an unnecessary burden. Therefore, we consider that it should be sufficient for taxpayers to provide tax administrations with the source documents, such as the annual report prepared for financial reporting purposes, to satisfy the Master File requirements.

Also, as stated above, we believe consideration should be given to cases where the scope of information taxpayers can include in the Master File is limited to the information permitted or required to be disclosed for financial reporting purposes, under the relevant local laws and regulations.

Further, APA, MAP and/or tax rulings are exclusive agreements between/with specific tax authorities and as such the taxpayer is sometimes required to maintain confidentiality. Therefore, such information should not be contained in the Master File, but may be contained in the Local File as required.

- **Local File**

Paragraph 82 (Table 2): We would request you to address countermeasures for the possibility that one fact could lead to different results from transfer pricing analysis due to differences in methodologies among countries.

In addition, we would like to emphasize it should be addressed in the Work Paper that, depending on the case, it is not appropriate that a tax administration in one jurisdiction requests the taxpayer being audited to submit a Local File prepared for a legally separate enterprise located in another jurisdiction.

- **Timing Issues**

Paragraph 83: For timing issues (i.e., which elements of the documentation packages should be provided at the time the tax return is filed or upon a more detailed audit), we consider that, since, in many cases, it is difficult for taxpayers to collect information of the comparables in a timely manner, it would be better to defer the timing until the audit, which would result in a more appropriate transfer pricing analysis that would bring about benefits to both tax administrations and taxpayers.

Especially, for many small companies without any in-house tax department, accounting staff would usually prepare the tax filings after the year-end accounting closing and the relevant financial audit work. Therefore, in discussing the timing issues, it should be recognized that it is a significant burden for such companies to prepare the transfer pricing documents while they are completing such accounting work.

- **Materiality standards**

Paragraph 83: We agree that it is very important to set certain materiality standards for information to be contained in the documentation packages, to reduce administrative burden and improve efficiency of risk assessment work.

- **Incentives for complying with transfer pricing documentation**

Paragraph 83: Unfavorable situations for taxpayers should not arise where the taxpayers have complied with documentation requirements. As a matter of course, taxpayers would bear certain burden and cost due to the documentation work required. However as long as taxpayers prepare the transfer pricing documentation based on appropriate analysis, the burden of proof should be shifted from taxpayers to tax administration and the taxpayers should be relieved from penalties on any transfer pricing adjustments arising. Such an incentive system granted to taxpayers who make appropriate transfer pricing documentation would promote a cooperative relationship between tax administrations and taxpayers, which would result in the benefits both

for tax administrations and taxpayers that administrative work is reduced, predictability for tax consequences is ensured and the taxpayers' compliance system is enhanced.

- **Uniformity of forms**

Paragraph 83: In some situations, it might result in greater efficiency to use a standard form. However, in some situations, the use of a standard form may result in information, critical for the tax administration's understanding of the big picture (or so as not to misunderstand the taxpayer's business), being omitted. Also we consider it unreasonable that, in some countries, the mere fact that taxpayers do not follow certain formality requirements can result in the failure to qualify for penalty protection granted to taxpayers under the relevant domestic tax laws and/or regulations. Therefore, although we have no objection to guidance for the framework of the documentation packages being provided, we consider that certain flexibility in the format of documentation should be retained so that the fundamental purpose of the transfer pricing documentation can be achieved.

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