Re: Ravet & Associés’ Comments on the White Paper concerning Transfer Pricing Documentation

Dear Madam/Sir,

Ravet & Associés appreciates the opportunity to comment the OECD White Paper concerning Transfer Pricing Documentation (“White Paper”). We would like to salute the work done by the Working Party No. 6 of the Committee on Fiscal Affairs (“WP6”) regarding the program of work on transfer pricing documentation.

Ravet & Associés wants to comment the White Paper regarding the purpose of transfer pricing documentation and timing issues (1) and the proposed tiered approach to transfer pricing documentation (2).

1. Comments regarding the purpose of transfer pricing documentation and timing issues

We note that the conclusions reached by the OECD as to what should be the purpose of a transfer pricing documentation are consistent with the goals that have been stressed by the governments1.

In this respect, the White Paper states that “The OECD believes that it is important that governments be able to access the information they need to conduct a risk assessment enabling an informed decision to perform an audit and that the government also be able to access, on a timely basis, 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. Documentation rules should be designed in such a way that they support each of these objectives without undermining the others.”2.

---

1 White Paper, paragraph n° 46
2 White Paper, paragraph n° 64
In the White Paper the OECD also considers the timing issues as being an area of focus\(^3\). To achieve these goals it seems to us that it is important to identify:

(i) Information that is necessary for the Tax Authorities to conduct their risk assessment. These should be made available to the Tax Authorities together with the tax returns (or shortly after), and;

(ii) Information to be provided in the course of a detailed transfer pricing audit launched after the risk assessment.

We believe that if the documentation is designed to address the risk assessment exercise, its content should be focused on data strictly necessary to enable the Tax Authorities to identify the risks associated with the group transfer pricing policy.

In this respect we consider that information provided for the risk assessment could be the ones contained in table 1 & 2 except for the following elements that could be provided at a later stage (in the course of a detailed tax audit if the Tax Authorities identify area of risks):

- “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 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”\(^4\).

2. **Comments regarding the tiered approach to transfer pricing documentation**

The tiered approach proposed in the White Paper is in line with MNE’s practices. This approach has the advantage of simplicity for taxpayers and of clarity for Tax Authorities, which are therefore assured of being able to be provided a complete documentation. However, we would like to draw the attention of the WP6 on some issues associated with this approach, notwithstanding the above.

---

\(^3\)White Paper, page 25  
\(^4\)White Paper, paragraph n° 83
2.1. Importance of materiality standards

We are in agreement with WP6 regarding the necessity to have materiality standards: "not all transactions are sufficiently material to require full documentation"5.

In this respect, it seems that a clear materiality threshold should be fixed not in absolute terms (e.g. 100,000 dollars) but on a variable basis depending on the taxpayers’ profile so as to meet the risk assessment purpose. For instance, the threshold could be to only document transactions exceeding 1% of the company turnover.

Even though we understand the concept of taking into account “the size and nature of the local economy and the importance of the MNE in that economy”6 we believe that such concerns are not compatible with the necessity to standardize and simplify transfer pricing documentation requirements both for the Tax Authorities and the taxpayers.

2.2. Translation requirements

According to the White Paper, “documentation should be useful to local country tax administrations seeking to undertake a risk assessment, and therefore at least the local documentation package should likely be translated. Where administrations believe that translation of the global masterfile is necessary, they should make specific requests for translation and provide sufficient time at the beginning of an audit to make such translation as comfortable a burden as possible”7.

We are concerned that Tax Authorities may, as a matter of principle, request a translation of the local file. This seems to be inconsistent with handling the transfer pricing issues that are by nature international. In this respect, for instance, the OECD Guidelines on transfer pricing are only available in English, French, German and Italian.

It is to be noted that some taxpayers have entities all around the world and that the production of local files could be simplified if a common language is accepted. Indeed, even if each entity has to be analyzed on an individual basis, some parts of the local file of an entity could be used for another entity in another country.

We thus think that English should be used as the common language for both the master and local files and that a translation of specific parts of the documentation should be made only upon a motivated request.

2.3. Local comparables requirements

Regarding comparables, WP6 considers that: “While the simplification benefits of limiting the number of comparable searches a company is required to undertake are obvious, the use of regional comparables in situations where appropriate local comparables are

---

5 White Paper, paragraph n° 77
6 White Paper, paragraph n° 77
7 White Paper, paragraph n° 77
available will not, in some situations, comport with the obligation to rely on the most reliable comparable information. 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.”  

However, we want to draw the attention of WP6 on the fact that from a business perspective and due to the volume of transactions between related entities, it is often very difficult to differentiate a transfer pricing policy on a country-by-country basis. For this reason, most of the MNEs use regional comparables to determine transfer pricing applied to a specific transaction (for instance administrative services) in a specific region.

Asking for local comparables into transfer pricing documentation is therefore incompatible with business practices that are driven by the importance to maintain a single transfer pricing policy. Besides, applying different transfer prices in the same region would lead to a flawed analysis of the individual performance of each of the related entities for management purposes.

3. **Conclusion**

Once again we appreciate the efforts made by the WP6 in order to standardize transfer pricing documentation requirements and most of the proposals of the White Paper are more than welcome.

However some positions taken in this White Paper do not seem to be in line with another important purpose that is to simplify these transfer pricing documentation requirements.

Ravet & Associés will be pleased to further elaborate on these issues and to contribute to the OECD Conference on 12-13 November 2013.

Best regards,

Cyril Maucour
Ravet & Associés

---

8 White Paper, paragraph n° 77
APPENDIX 1

- **Contact details**

  Cyril Maucour  
  Tax Partner  
  96 boulevard Haussmann - 75008 Paris  
  Tel + 33 1 44 29 31 75  
  Mobile +33 6 84 37 99 99  
  Fax + 33 1 44 29 32 68  
  c.maucour@ravet-associes.com

- **About Ravet & Associés**

  Ravet & Associés is a renowned law firm serving the interests of businesses and their directors. We cover all legal and tax-related matters concerning businesses, from incorporation to growth operations. Our clients are both French and international, comprising SMEs, large corporations and banks.

  Our approach is based on both legal and technical expertise and the personal qualities, case experience and knowledge of our lawyers. Our commitment to quality and availability is no empty promise; it is a constant reality and the very essence of our firm, hence our ISO 9001 certification.

  Ravet & Associés has access to an extensive best friends network both in France and abroad. We are the European representative of LEXNET, a network of South American, and particularly Brazilian, corporate law firms. Finally, Ravet & Associés is the representative in France for tax law and dispute resolutions of International Referral, which is a network of experts structured according to their field of expertise.