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Via E-Mail

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Comments of SwissHoldings to the White Paper on Transfer Pricing Documentation, released by OECD on 30 July 2013

Dear Mr. Andrus

The business federation SwissHoldings represents the interests of 57 Swiss based multinational enterprises from the manufacturing and service sectors (excluding the financial sector). SwissHoldings is pleased to provide comments on the OECD White Paper on Transfer Pricing Documentation (hereafter referred to as “the White Paper”).

General comments

SwissHoldings believes that the White Paper is a good starting point for opening the discussion for improved guidelines covering transfer pricing documentation. It addresses a number of practical issues and as such can be a useful tool for multinationals operating in numerous jurisdictions.

It needs to be noted, however, that there is the risk that the list of documentation requirements for the template will be used as a checklist by tax authorities although some of the requirements are not practical or even not possible to implement for large multi-business groups. From this perspective, we would welcome more support to mitigate formal requirements and the administrative burden imposed on taxpayers, such as the use of regional benchmarking studies and English (or other common) language documentations. In addition, some of the documentation requirements are not necessary to verify the arm's length character of transactions of a taxpayer in a single country.

Our more specific comments follow the structure of the White Paper.

[Paragraph 40]: The comments provided in the White Paper by business representatives are fully agreed. Additionally, we would like to draw the attention of the OECD to some challenges that multinationals are facing when preparing transfer pricing documentation for their subsidiaries worldwide:

- Documentation prepared in English language (or other common language) is often not accepted by the tax authorities. While some degree of translation into local language may be necessary, we believe that a foreign language document should be sufficient to meet the compliance deadline for submission dates and to avoid penalties.

- Some countries like Norway and Korea require annual filing of financial information of related parties. Local subsidiaries often do not have access to this type of data. Without detailed analysis such data is often not useful to draw any conclusions from a transfer pricing perspective.
- Tax authorities in different countries present different requirements regarding multiple year and single year analysis. This makes the use of regional benchmarking studies more difficult. In addition, multiple year analyses should generally be accepted as they take into account business cycles.
- In some cases tax authorities request a deep segmentation of financial data of the taxpayer (in particular profit and loss accounts). Many multinationals can provide this level of detailed information only based on their management books run in common accounting standards (e.g., US GAAP or IFRS) and not in local GAAP. We believe that tax authorities should accept segmented data based on management books, provided that the taxpayer can reasonably explain the differences between the results in both accounting standards.
- Tax authorities provide different requirements for benchmarking studies (search criteria, thresholds etc.). A more streamlined approach would enhance the comparability of data used in different countries and limit the administrative burden of the taxpayers.

[Paragraph 61]: SwissHoldings believes that the power to compel cross-border information goes too far. The requirement to provide cross-border information should be limited to the information necessary to verify the arm's length character of a transaction.

[Paragraph 70]: Many multinationals keep a "closed books" policy for intercompany transactions. In such decentralized groups some of the required information, e.g., data on financial results of transactions, may distort internal competition and business relations.

[Paragraph 77, 3rd bullet point]: The practice shows that regional benchmarking studies often yield results similar to local studies. We believe that regional studies should not be rejected just because of a formal requirement to have a domestic study.

[Paragraph 77, 4th bullet point]: Documentation prepared in a common language should be sufficient for penalty protection. In fact, the practice shows that many tax inspectors can easily read documents in a foreign language, in particular in English. Translation of specific parts of the documentation should then only be provided on request.

[Paragraph 82, Table 1]: We have the following comments to the content of Table 1:

- Internet links may not be helpful as links may change over time
- Following information in the Master File is not necessary to review the transfer pricing position in a certain country:
 - Description of all actual intangible transfers
 - Description of all actual financial activities
 - List of all APAs and tax rulings, MAPs
- The requirement to list all APAs may even discourage taxpayers to enter into new APAs.
- Requirement to describe business restructurings over 5 years seems excessive, especially in groups that perform numerous acquisitions. Clarification should be also provided if the information requirement would apply also to the acquired entities prior to acquisition.
- In the last bullet point it is not clear what is meant by "company"? Does this term refer to the Group?
- Available transfer pricing policy can be added as a requirement.

[Paragraph 82, Table 2]: We have the following comments to the content of Table 2:

- Under “Controlled transactions”; 1st bullet point: “manufacture” is an activity, not a transaction. We believe that it should say “Description of each category of the controlled transactions”.
- In practical terms, it may not be straightforward to define to whom local executives report as many of them may have multiple roles and multiple reporting lines, both local and regional / global.

We kindly ask you to consider the above requests.

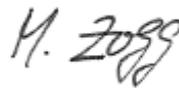
Yours sincerely

SwissHoldings

Federation of Industrial and Service Groups in Switzerland



Christian Stiefel
Chair Executive Committee



Dr. Martin Zogg
Member Executive Committee

cc: - SwissHoldings Board
- Nicole Primmer, Senior Policy Manager, BIAC
- Krister Andersson, Chariman, BusinessEurope Tax Policy Group
