



1 October 2013

Taxand

OECD

OECD Committee of Fiscal Affairs

[TransferPricing@oecd.org](mailto:TransferPricing@oecd.org)

FAO OECD Committee of Fiscal Affairs,

**RE: OECD White Paper on Transfer Pricing Documentation**

Find enclosed our response to the 30 July 2013 Public Consultation on Transfer Pricing Documentation ("The White Paper").

This response deals with two key issues:

1. Practical suggestions for improving consistency in documentation requirements
2. Generation of an example template for country-by-country reporting to Tax Authorities

I can confirm that we have no objections with posting the comments on the OECD website and that comments represent Taxand with input from a number of multinational businesses. We are available for further discussion at the public consultation at the OECD Conference Centre in Paris on 12-13 November 2013 – in particular relating to the example template that has generated most interest from our client base.

More information about Taxand is provided as [Appendix I](#). Taxand is wholly committed to supporting the OECD Committee of Fiscal Affairs and we look forward to contributing to further debate.

Please do not hesitate to get in touch with me directly via the contact details below.

Yours sincerely,  
*Shiv Mahalingham*

**Taxand**

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## **1. Practical suggestions for improving consistency in documentation requirements**

The White Paper objective in paragraph 5 to “make transfer pricing compliance simpler and more straightforward” is welcome and the by-country comparison of local transfer pricing regulations is a useful starting point.

Paragraph 13 raises a critical element that should be included in the transfer pricing audit request process – the existence of APAs and rulings in other countries. In practice, experience from a particular country can and should be persuasive in settling transfer pricing disputes in another country (material comparability differences aside). This is in accord with one of the key objectives of the White Paper to improve international consistency. This initiative should take the opportunity to improve transparency of such rulings in place in addition to building transparency of global profits allocations in response to the BEPS initiative.

Paragraph 15 raises the possibility of requiring an evaluation in the financial statements of material transfer pricing exposures. Linking transfer pricing uncertainty disclosures to general financial statement audit disclosures may be beneficial to businesses and tax authorities as a process for disclosure would already exist and therefore not require a “re-invention of the wheel”.

In agreement with paragraph 16, we recommend that any international template developed in line with the BEPS documentation objectives for submission to tax authorities should replace existing local tax filing obligations/forms/disclosures for transfer pricing.

The bodies listed in Section II.B have incurred significant resource in attempting to achieve consistency without great success in the majority of cases. We are aware of many multi-national businesses that still prepare separate local documents within Europe despite the two-tiered process set out by the EUJTPF. Countries that operate on separate business models or with separate divisions often require a separate treatment and the language in which documentation needs to be submitted is also of key importance in many locations. We have encountered varying local costs for simple reformatting and translations of documentation depending on the location and extent of documentation. The BIAC echo these comments at paragraph 40.

Section IIIA (paragraphs 47-50) sets out a fundamental feature for any revision to international documentation requirements: the risk assessment process. Transparency should serve the purpose of facilitating risk assessment (potentially minimising the number of audit cases that are selected).

Paragraphs 51-56 address businesses approach to transfer pricing documentation and compliance. This should also be linked to the above risk assessment process whereby the “penalty mitigation” criticized in paragraph 55 can be appropriate where the risks are considered lower.



## 2. Country-by-country reporting templates

Section III.C considers the disclosure of information and changes in this area may have the greatest impact on business. There are calls for a country-by-country reporting template to be submitted to tax authorities. Note the following:

### *Audit and risk assessment*

The submission of a template for global information may lead to a significant increase in the frequency of transfer pricing audits. In order to balance the impact of this template, we would strongly urge that this tool has restricted application as part of a risk assessment process<sup>1</sup>. By way of example, the template could provide businesses with the opportunity to explain certain commercial factors (e.g. the existence of tax rulings or losses that have an impact on effective tax rates).

### *Burden of proof*

The template itself is an additional burden on business and therefore we have found it useful to develop an example (see below) to demonstrate that a lot of information is already in the public domain through websites, annual reports and accounts. The burden of proof is, in many countries, on the Tax Authority to demonstrate that transactions are not at arm's length – a template of this nature may shift part of that burden to the taxpayer creating inconsistencies with local legislation.

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<sup>1</sup> The UK "Gate" process for transfer pricing case selection has many features that would enable an audit to be closed before getting to advance dispute stage.



Country	Revenue \$m	Employee numbers	Senior Executives	Economic activity	Operating margin	Taxable profits	Effective tax rate	Comments
US	\$1000	500	10	Trading	11%	\$200	15%	Losses brought forward
UK	\$200	150	3	Trading	4%	\$10	22%	
Spain	\$150	180	3	Manufacturing	5%	\$10	32%	
Brazil	\$50	50	1	Trading	(2%)	\$0	0%	Current year losses – in second year of operation
Singapore	\$250	40	4	IP Owner	15%	\$50	5%	Tax ruling in place
<b>Total</b>	<b>\$1,650</b>	<b>920</b>	<b>21</b>		<b>6%</b>	<b>\$90</b>	<b>15%</b>	



#### *Publicly available info*

Some of the above information can be found in the public domain:

- Segmented revenue by region (may not have by country)
- Employee numbers by region (may not have by country)
- Total operating margin
- Total effective tax rate

Other information will only be available in the tax returns (submitted in local language). It may be advisable to consider IFRS disclosures for taxation so that the template can be provided in annual reports as opposed to through the tax return filing process and as stated above this may minimise the additional administrative burden on affected parties. This would also have the additional advantage if addressing reputational risk concerns – something many businesses would be keen to disclose in any case.

#### *Materiality*

There should be a materiality level for which countries are to be listed as businesses may operate in a significant number of locations.

#### **Recommendations on a tiered approach (Sections IV-V)**

A tiered approach sits well with the goal of reducing the administrative burden on business. Whilst not appropriate in all cases (see comments above) – the White Paper does not recommend that only “two” tiers should apply and provides a framework for companies to assess risk across all entities (e.g. high, medium, low as opposed to (i) masterfile and (ii) everything else). We support this as it may help to alleviate concerns raised by our clients that they look to establish separate reports in certain locations in Europe where operations are material and/or complex despite having a masterfile in place. In terms of empirical evidence, note the following since inception of the UK transfer pricing department in October 2007:

- Percentage of documentation studies in Europe adopting a master-file approach 70%
- Percentage of documentation studies in non-Europe locations adopting a master-file approach 40%



## APPENDIX I

### ABOUT TAXAND

Taxand provides high quality, integrated tax advice worldwide. Our tax professionals, more than 400 tax partners and over 2,000 tax advisors in nearly 50 countries - grasp both the fine points of tax and the broader strategic implications, helping you mitigate risk, manage your tax burden and drive the performance of your business.

We're passionate about tax. We collaborate and share knowledge, capitalising on our expertise to provide you with high quality, tailored advice that helps relieve the pressures associated with making complex tax decisions.

We're also independent—ensuring that you adhere both to best practice and to tax law and that we remain free from time-consuming audit-based conflict checks. This enables us to deliver practical advice, responsively.

Taxand has achieved worldwide market recognition. In the International Tax Review's (ITR) World Tax 2013, 43 Taxand locations were commended. 35 countries were voted top in the ITR Transaction Tax Survey 2012 and in the ITR Tax Planning Survey 2012. Taxand has received 58 national awards and 12 regional awards in the ITR European, Americas and Asia Tax Awards since 2009. These include Latin America Tax Disputes Firm of the Year, European Private Equity Tax Firm of the Year, European Indirect Tax Firm of the Year, European Tax Policy Firm of the Year, Asia Transfer Pricing Firm of the Year, and Asia Tax Policy Firm of the Year. Full details of awards can be viewed at [www.taxand.com/about-us](http://www.taxand.com/about-us).  
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