
OECD – White Paper on Transfer Pricing Documentation

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Note: The opinions expressed in this submission are entirely those of the individuals listed above and do not necessarily represent the views of either Duff & Phelps, LLC or other related entities, affiliates, clients, or employees.

Initial Thoughts on White Paper Proposals

We believe that the concerns listed in the White Paper regarding the current TP documentation requirement are accurate. We would like to place specific emphasis on the following issues with the current TP documentation requirements:

- Documentation requirements / standards are not always clear (i.e., what will be accepted by local taxing authorities)
- Documentation does not always yield a complete understanding of the business
- Significant divergences exist in the nature, detail, and timing of local country transfer pricing documentation requirements.
- Steady expansion in the quantity of information required by local country documentation rules are becoming too detailed and costly to prepare.

We believe that international efforts to more closely align local country documentation requirements to a global standard (e.g., OECD Guidelines) would be helpful in allowing MNEs to minimize the amount of time spent compiling slightly different documentation for each country in which it operates. Our goal should be towards having one global report that clearly lays out the operations and intercompany transactions of the MNE and that covers all countries under which that MNE operates. Furthermore, the global report could then be translated into the local language upon commencement of an audit (but not before such time).

Thoughts on Two-Tiered Approach Outlined in Whitepaper

We applaud the efforts of the OECD in initiating this global discussion and taking the first step towards simplifying TP documentation. However, we believe that the two-tiered approach proposed by the OECD is subject to the following issues:

- The two-tiered approach (i.e., global Master File prepared at HQ level and then supplemental local country files) is already being followed by many MNEs in practice.
 - Amount of information required is the same as, and in some cases more than, that currently requested and prepared under most TP regimes. This means that it will not be an effective tool for cutting down on compliance and administrative costs for taxpayers / taxing authorities and may in fact even increase the administrative burden on taxpayers / taxing authorities.
 - Heavy litany of information required may cause the same problem we see currently, in which audit teams are overwhelmed by the information and are not able to fully digest / understand what is being said in the report, leading to long audits and duplicative and unnecessary information gathering.
 - In order for this approach to work, local tax authorities would have to endorse the proposal and be clear on whether or not they will accept this approach. The EU member states attempted to implement a similar master file policy, which was never fully accepted.
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Proposed Alternative Approach to Two-Tier Documentation – Thresholds and Format

We present our suggestions for simplifying transfer pricing documentation requirements, while still allowing for a useful exercise for MNEs to consider the TP requirements in setting their intercompany pricing policies below:

- ***Set materiality thresholds.***
 - This could vary according to a local country's specific market. However, many local country TP regimes do not specify a materiality threshold, forcing MNEs to make this determination themselves due to cost / time constraints.
 - ***New Global TP Report Format - Global Transfer Pricing Policy & Testing Presentation***
 - Companies should try to capture the global TP regime in one comprehensive, easy-to-read document. We are recommending that this presentation be prepared in PowerPoint format to encourage companies to take a global perspective and understand the 'big picture' in a focused manner. The global presentation would be developed in the language of the parent company and could then be translated into the local country language upon request under audit. In addition, this format will be useful for tax departments to share with their controllers/tax colleagues in other countries and may lead to better implementation and understanding of the policies throughout the MNE.
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An Alternative Global Transfer Pricing Report Format: Global Transfer Pricing Policy & Testing Presentation

In order to cut down on the administrative burden to taxpayers and to provide more targeted information to the taxing authorities, we propose streamlining the contemporaneous documentation report into a *Global Transfer Pricing Policy & Testing Presentation* that contains the following information:

- **List of the Company's Intercompany Transactions:** To include the legal names and location of the parties to the transactions and the total transaction value of each transaction.
- **Global Transfer Pricing Policies:** Clear articulation of the transfer pricing policies for the transactions outlined above and how they are implemented. Where appropriate, this section will reference intercompany agreements that would be available upon request.
- **Company / Industry Analysis:** A list of reference material (e.g., websites, SEC filings, etc.) that would provide interested parties with general information about the Company and the Industry it operates in. Specific reference will be made to any company or industry information that might impact current year intercompany pricing and/or results. This will allow companies to draw attention to information that is of particular importance to their intercompany pricing and that may not be available publicly. The use of a list of reference material, rather than including the full text, for publicly available / general company and industry information will help taxing authorities understand and focus on the key factors affecting a company's intercompany pricing without getting sidetracked by extraneous information.
- **Functional Analysis:** This information should include a functional characterization of each entity party to a controlled transaction, as well as an overall supply chain diagram that clearly summarizes the global operations, intercompany transactions, IP owners, and routine service providers. In addition, a summary of the steps in performing the functional analysis should be listed.
- **Selection of Method:** This section should include the method selected and why, as well as the methods that were considered but that were ultimately not applied. There would be no need to include regulatory text describing each method available.
- **Economic Analysis and Testing:** Presentation of the economic analyses performed to test the arm's length nature of the controlled transaction(s).
- **Conclusion:** Summarize the conclusion (i.e., the arm's length nature of a controlled transaction) determined by the functional and economic analysis.

An example of the global presentation in PowerPoint format can be provided upon request.

Final Thoughts

We believe that the following goals are important to keep in mind when discussing the structure of TP documentation going forward:

- Provide taxing authorities with information necessary to conduct an informed transfer pricing risk assessment at the commencement of a tax audit. This will allow taxing authorities to provide targeted information requests and not lead to duplicative or unnecessary information gathering.
- Ensure that taxpayers have given appropriate consideration to transfer pricing requirements in establishing prices and other conditions for related party transactions and in reporting the income derived from such transactions in their tax returns.
- Provide a tool for taxpayers to consider global transfer pricing policies and manage their global operations.
- Truly cut down on the administrative burden to taxpayers in preparing TP documentation in a diverse global TP environment. This will allow both taxpayer and taxing authorities to focus on the key issues, invest their limited budgets (time and expense) in performing robust functional analyses and in-depth economic analyses on those transactions that are non-routine and require a deep understanding of the MNE's business and the functional and risk profiles of each related party.

Finally, we believe that the implementation of safe harbors (covered in other OECD initiatives) will go a long way in simplifying current TP documentation requirements and applaud the OECD in its efforts towards this initiative.
