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OECD Centre for Tax Policy and Administration
Attn. Mr. Joseph L. Andrus
2 rue André Pascal
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30 September 2013

Via email

Re: RSM International comments on the White Paper on Transfer Pricing Documentation

Dear Mr. Andrus,

We are appreciative of everything that Working Party No. 6 has achieved on all its transfer pricing endeavours. On behalf of RSM International Limited, we respectfully submit for your consideration, our comments on the White Paper on Transfer Pricing Documentation.

“Big Picture” in Documentation

The two-tier approach is practical and reasonable and we agree with this structure of transfer pricing documentation.

As written in paragraph 46, one of the purposes of transfer pricing documentation requirements is to provide governments with all the information that they require to conduct an appropriately thorough audit in their jurisdictions. Transfer pricing tax auditors require “big picture” global income allocation information, and thus governments need to understand the income allocating policies among related entities. This shall include not only information on policies between a parent & subsidiary, but also within a supply chain, e.g., a manufacturer, an R&D entity, a distributor and a parent entity in more than three jurisdictions.

We support that a multinational enterprise’s (MNE) principal global transfer pricing policies should be described in the masterfile. This includes the mainstream of related transactions for each market (for example, Americas, EMEA, and Asia-Pacific with the corresponding transfer pricing methods and profit level indicators). Many MNEs have already applied for bilateral advance pricing agreements (BAPAs) for those flagship transactions, but if the transactions are part of a supply chain, the agreed transfer pricing policies under a BAPA show a partial adequacy or balance.

Governments should analyze the “big picture” without bias (as in an advance pricing agreement) and a masterfile should contain all the necessary evidence in order to validate MNEs’ compliance.

Materiality Standards

With respect to the materiality of transactions (paragraphs 70 and 77), in the case of Mexico, for example, transfer pricing documentation compliance is required for both domestic and cross-border intercompany transactions. There is no materiality standard on transactions per se. That is, a separate analysis is required for each transaction, regardless of its amount. Occasionally, the amount of an intercompany transaction is less than the costs incurred in its analysis and documentation. We fully support a materiality standard for thresholds as thought out in paragraph 77.

Practices Regarding Timing of Documentation

Pursuant to paragraph 16, taxpayers relying on the availability of financial information for comparable companies being used in profit based methods often face lags in information available at the time the tax return is filed, or on the specific date of documentation compliance requirement, if different than the tax filing date. Thus, the authorities should not require the use of comparable data which do not yet exist in the public domain.

This timing issue is particularly relevant to taxpayers in countries where the local tax authorities make use of secret comparables. In addition to the advantage of using secret comparables, the perfect matching of secret comparables' fiscal years exacerbates the timing issue faced by a compliant taxpayer who would face a transfer pricing audit. The use of secret comparables by selected tax authorities should not be a continuing practice since taxpayers have no means of documenting or accessing such information.

Annex 1

Per Mexico's Income Tax Law, Article 215, the following should be marked for Mexico:

- × Economic and market conditions circumstances
- × Business strategies
- × Reasons for multiple year analysis

Standardization of Documentation – ISO Standards

Pursuant to the goals sought in the White Paper and the details it cites which remain to be worked out, among them instruments and procedures that could be used to create greater uniformity in documentation practices, we propose for consideration, the promotion of documentation under the Transfer Pricing Guidelines to a standard set by the International Organization for Standardization (ISO).

In principle, there would be measurable benefits by way of a reduction of resources used by tax administrations in the review of taxpayer information for compliance purposes and risk assessment, among others. Taxpayers would also benefit by effectively focusing their resources on a standardized approach to documentation which would be acceptable in multiple jurisdictions with more certainty.

While it is recognized that transfer pricing methodology analyses and preparation of documentation require degrees of judgment and experience, to the extent it is possible, the implementation of ISO standards could lead to the certification of personnel involved in the handling of transfer pricing matters. This would be similar to the ISO 9000 family of standards related to quality management.

As noted in paragraph 83 of the White Paper, other practical steps might be possible for enhancing uniformity in documentation practices. For instance, building on the two-tier approach to documentation and taking the common factors sought by countries as depicted in the White Paper's Annex 1, the OECD, the Guidelines, and Working Party No. 6 are a natural platform to work with the ISO and set



international standards needed in transfer pricing documentation and the processes to create it. ISO standards are also achieved through a consensus process by worldwide experts, i.e., the professionals in Working Party No.6 (note, the OECD already works with the ISO on other matters).

As transfer pricing practitioners and consultants to MNEs, we would welcome the potential benefits brought about by ISO standards. Conformity assessments and certification would be equally applicable to all transfer pricing products or parties involved. RSM International would be pleased to work with the OECD in exploring the feasibility of these ideas.

We thank you for the opportunity to provide our input and look forward to participating in the upcoming consultation this November. Should you have any questions on our comments, please contact Dr. Enrique Rayon at +1 949 255 6500 or Enrique.Rayon@McGladrey.com.

Yours sincerely,

On behalf of the RSM International Transfer Pricing Group

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Transfer Pricing within RSM International

The RSM International network has a presence in over 100 countries around the world with over 32,500 people serving the needs of their clients.