

Organization for Economic Cooperation and
Development
Center for Tax Policy and Administration – Working
Party No. 6
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Gefördert durch:



aufgrund eines Beschlusses
des Deutschen Bundestages

VIA EMAIL to TransferPricing@oecd.org

Ihre Zeichen, Ihre Nachricht vom

Unsere Zeichen

Tel. (0 61 96) 777 26 -

Eschborn

1st of October 2013

Comments on the White Paper on Transfer Pricing Documentation, AWV Working Group 3.5 “Transfer Pricing”

Dear Madam,
Dear Sir,

the Working Group for Economic Administration (Arbeitsgemeinschaft für Wirtschaftliche Verwaltung e.V., AWV) welcomes the OECD's efforts in assessing effective and efficient transfer pricing documentation requirements and in making suggestions for harmonization and simplifications in this respect.

The AWV is a non-profit association in accordance with German civil law. The AWV's members include both natural and legal persons, including large corporations, small and medium enterprises, associations and public authorities. The AWV is led by its executive board, which establishes specialized committees for its operational work. The working groups are organized beneath these committees.

The budget is made available through subsidies from the German Federal Ministry of Economics and Technology (BMW) in accordance with a decision made by the German Bundestag (Federal Diet), and through membership fees, income from publications and events, as well as through external project funds and efforts leading to donations.

We are grateful for the opportunity to provide the attached comments of our expert working group 3.5 “Transfer Pricing” on the White Paper and agree to the publication of these comments on the OECD website.

Yours faithfully



Werner Thumbs
Head of working group 3.5



Dr. Ulrich Naujokat
AWV Managing Director

Attachment

Präsident Werner Schmidt, Mitglied der Vorstände LVM Versicherungen, Münster
Vizepräsident Christoph Verenkotte, Präsident des Bundesverwaltungsamtes, Köln

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Comments of the AWV Working Group 3.5 „Transfer Pricing“

We share your view that measures for improved cooperation between taxpayers and tax administrations can help minimize risk and administrative burden for taxpayers and administrations alike. This includes aspects such as the tiered and coordinated approach to documentation described in the White Paper and we were pleased to notice the references that you have made to the EUTPD.

However, we are concerned that the contents of the masterfile and respective requirements you have described in paragraph 82 Table 1 are substantially broader than those stipulated in the EUTPD. We would like to describe this new proposal as “extended masterfile concept” which we think is a significant extension of the existing masterfile concept of the EU. For the avoidance of doubt, we are in line with the existing masterfile concept. However, we believe that the conclusion currently drawn in paragraph 83, concerning the trade-off between greater transparency and more streamlined documentation requirements, is not completely adequate yet.

We understand that the risk assessment processes and subsequent audit activities could be enhanced if authorities were made available documentation which conveyed a broader or big picture of the MNE’s activities across the globe. However, we recommend to emphasise that the documentation required as part of the extended masterfile should be limited to the kind of information which is indeed foreseeably relevant for and to all of the MNE’s entities.

In contrast, you may want to consider clarifying that information that is not foreseeably relevant to all entities of the MNE should not be part of the masterfile. Such information can be made available to tax administrations concerned by exchange of information as stipulated in in Article 26-type clauses of the relevant bilateral double tax treaties.

The term “relevant” should be viewed in the context of whether information may indeed be helpful to assess the arm’s length nature of a specific taxpayer’s intercompany transactions. An illustration of what should not be considered relevant information relates to entities which only conduct transactions which are or could in theory be covered by safe harbours as described in the respective OECD report dated 16 May 2013. To be precise, we do not believe that the documentation package required from a taxpayer only performing low risk distribution services in a particular country must incorporate an extended masterfile containing detailed information on all of the MNE’s intangibles, financial activities and of the MNE’s tax positions. The term “relevant” should have the same meaning as in the context of Article 26.

From the perspective of businesses, the masterfile scope and level of detail are very important in the context of compliance. Some countries have linked procedural aspects such as penalty protection and access to arbitration procedures to the degree of compliance with provisions on documentation. More onerous provisions on such requirements based on the proposed coordinated approach could therefore lead to more disputes with less legal certainty and more risk of double taxation.

In the context of compliance and the taxpayers’ ability to actually obtain all requested and relevant information, we encourage you to add clarifying language in paragraph 61. Taxpayers, at least those that do not happen to be parent companies, may face legal and factual limitations to produce or obtain information that is not linked to their activities and their particular role in their relevant value chain. The request in paragraph 61 seems to suggest an undue burden and may also be disproportionate in that the information expected could be beyond what would ordinarily fall under the sovereignty of the individual taxpayer’s country.