

Public Consultation

WHITE PAPER ON TRANSFER PRICING DOCUMENTATION

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Over the last 20 years, transfer pricing documentation requirements have rapidly spread around the world. This trend continues every year with new additions to the list of countries requiring preparation of transfer pricing documentation. The proliferation of diverse local transfer pricing documentation requirements, combined with a dramatic increase in the volume and complexity of international intra-group trade and the heightened scrutiny of transfer pricing issues by tax authorities, makes transfer pricing documentation one of the top tax compliance priorities on the agendas of both tax authorities and businesses. Given this state of play, in November 2011, Working Party No. 6 of the Committee on Fiscal Affairs (“WP6”), approved the programme of work on transfer pricing simplification, which included as one of its work streams a project on the simplification or streamlining of transfer pricing documentation requirements. This White Paper on Transfer Pricing Documentation was developed by WP6 as part of the aforementioned work stream.

On 19 July 2013 the OECD published an Action Plan on Base Erosion and Profit Shifting (“BEPS Action Plan”). Action 13 in the BEPS Action Plan states that the OECD will “develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business. The rules to be developed will include a requirement that MNE’s provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries, according to a common template.”

The outlined BEPS action is consistent with the directive of the G8 summit meeting held on 17 – 18 June 2013 at Lough Erne. The communique issued in connection with that meeting states as follows:

“Comprehensive and relevant information on the financial position of multinational enterprises aids all tax administrations effectively to identify and assess tax risks. The information would be of greatest use to tax authorities, including those of developing countries, if it were presented in a standardised format focusing on high level information on the global allocation of profits and taxes paid. We call on the OECD to develop a common template for country-by-country reporting to tax authorities by major multinational enterprises, taking account of concerns regarding non-cooperative jurisdictions. This will improve the flow of information between multinational enterprises and tax authorities in the countries in which multinationals operate to enhance transparency and improve risk assessment.”

This White Paper on Transfer Pricing Documentation surveys the current state of affairs regarding transfer pricing documentation, considers the purposes and objectives of transfer pricing documentation, and makes suggestions as to how transfer pricing documentation rules might be modified to make transfer pricing compliance simpler and more straightforward, while at the same time providing tax authorities with more focused and useful information for consideration in connection with transfer pricing risk assessment and transfer pricing audits. The White Paper notes that clear and accurate understanding of transfer pricing risk features will often require more information of a “big picture” nature than is often obtained through existing individual country focused documentation requirements and suggests a two tiered approach through which both the “big picture” information is made available for risk assessment purposes and detailed information on the related party transactions can be required when the arm’s length character of specific transactions needs to be assessed. As Action 13 of the BEPS Action Plan and the directive of the G8 summit meeting at Lough Erne are also directed towards making “big picture” financial information available to tax authorities, the work reflected in this White Paper is of direct relevance for and will be integrated with the work on transfer pricing documentation identified in the BEPS Action Plan.

The CFA believes that it is essential for our work on these subjects that we obtain input from the business community and from other interested non-governmental parties. Therefore, as a first step, the CFA is inviting public comments on the White Paper on Transfer Pricing Documentation in order to launch a global conversation on how transfer pricing documentation rules can be improved, standardised and simplified. The OECD also invites comments on whether additional or other possible mechanisms can be developed for complying with the transfer pricing documentation elements of the BEPS Action Plan

Interested parties are invited to send comments on the White Paper on Transfer Pricing Documentation by **1 October 2013**. Comments should be sent electronically (in Word format) to TransferPricing@oecd.org. In your submission you should clearly indicate: a) whether you have any objections with posting your comments in response to this invitation on the OECD website; and, b) in which capacity you are submitting comments in response to this invitation (e.g. as a representative of a business or professional organization or in your personal capacity). It is anticipated that a public consultation on this White Paper and other transfer pricing matters will be held at the OECD Conference Centre in Paris, France on 12 – 13 November 2013. Registration information for the public consultation will be posted on the OECD website during September 2013.

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I. Introduction

1. Since first introduced by the United States in 1994, transfer pricing documentation requirements have spread around the world. While individual country approaches to documentation vary significantly, the number of countries requiring preparation of transfer pricing documentation increases every year. The proliferation of transfer pricing documentation requirements, combined with a dramatic increase in the volume and complexity of international intra-group trade and the heightened scrutiny of transfer pricing issues by tax authorities, makes transfer pricing documentation one of the top tax compliance priorities on the agendas of both tax authorities and businesses.

2. Transfer pricing documentation rules are, and will continue to be, elements of local law enacted in individual countries. However, in today's globally integrated economy, transfer pricing documentation should not be seen purely as a local country compliance tool related to enforcement of the transfer pricing rules in an individual jurisdiction. Rather, transfer pricing enforcement and compliance should be thought of as an issue with multijurisdictional ramifications and documentation rules should be developed with this in mind.¹ When viewed in this light, efficient operation of the international transfer pricing system in a global economy presents an opportunity for international coordination in order to simplify and consolidate the compliance obligations of business, while at the same time assuring that tax authorities have ready access to the information necessary to efficiently enforce their transfer pricing laws.

3. The existing guidance on documentation contained in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD TPG") is not sufficient to meet the transfer pricing compliance requirements of today's economy. Chapter V of the OECD TPG was drafted over 15 years ago, at a time when tax authorities and taxpayers had less experience in creating and using transfer pricing documentation. As an example of the change occurring since current Chapter V was published, one business representative reported that his company had gone from producing around ten documentation studies per year in the early 1990s to approximately two thousand separate transfer pricing studies by 2007.²

4. There have been efforts at an international level to develop a standardised description of the documentation that MNEs should provide to tax authorities to demonstrate the arm's length nature of their cross-border intra-group transactions. However, these initiatives have, for several reasons, not fully met the needs of either taxpayers or tax administrations. As a result, the current state of affairs is one in which business feels overburdened by the compliance demands of rapidly proliferating and rather divergent local documentation rules, while tax authorities often find typical transfer pricing documentation studies to be less than fully informative and not adequate for their tax enforcement needs.

5. This paper surveys the current state of affairs regarding transfer pricing documentation, considers the purposes and objectives of transfer pricing documentation rules, and makes suggestions as to how transfer pricing documentation rules might be modified in order to make transfer pricing compliance simpler and more straightforward, while at the same time providing tax authorities with more useful information for consideration in connection with transfer pricing audits.

¹ "ICC Says Documentation Rules Could Break Corporate Tax System", Tax Management Transfer Pricing Report, BNA (June 2010).

² McWilliams, R., "GE Counsel Details Transfer Pricing Documentation Challenges", Tax Management Transfer Pricing report, BNA (April 2007).

II. Overview of existing guidance and initiatives on transfer pricing documentation

6. Existing transfer pricing documentation rules can be divided into two groups. The first of these are the rules of individual countries. Such rules are adopted through local legislation or regulation and are enforced by local country tax administrations. In some, but not all, countries, compliance with transfer pricing documentation rules is encouraged by adoption of a complementary penalty regime. Some countries have a single set of transfer pricing documentation rules that are intended to comprehensively elicit the relevant transfer pricing information. Other countries segregate transfer pricing documentation rules from other information reporting requirements that may be relevant for transfer pricing purposes.

7. The second group of documentation rules and guidelines are those adopted by international organisations in an attempt to simplify and streamline the patchwork of local country rules. These two groups of documentation rules are described in general terms below.

A. Local Country Documentation Regimes

8. As an initial step in its work on transfer pricing documentation, WP6 undertook in 2011 and 2012 an internal review of the documentation requirements of a number of individual countries. This review is summarised in Annex I. Important features of existing local country transfer pricing documentation rules and practices identified by WP6 in the survey performed, are the following:

9. ***Increasing number of countries with transfer pricing documentation rules:*** Transfer pricing documentation³ plays a key role in the administration of transfer pricing rules for both tax authorities and taxpayers. For this reason, the number of countries introducing specific documentation requirements or guidance grows every year. The OECD survey indicated that all countries surveyed, except for one, had transfer pricing documentation requirements, articulated either through a statutory obligation or through an explicit recommendation to have transfer pricing documentation in place.

10. ***Transfer pricing documentation is addressed at a domestic level:*** Despite the international context and global scope of transfer pricing, documentation for transfer pricing purposes is most often approached from a national perspective. Documentation practices are governed by domestic legislation and regulations, and are implemented with a strong domestic tax enforcement point of view. Consequently, there can be a significant gap between transfer pricing documentation requirements, which have a national and bilateral focus, and the activity carried out by MNEs, which may have a more global focus. This approach has led to a situation in which country-specific transfer pricing documentation requirements can vary significantly from country to country. Furthermore, for a single cross-border controlled transaction, taxpayers are often required to comply with two or more sets of transfer pricing documentation requirements. The compliance burden and costs for taxpayers can sometimes be substantial.

11. ***Transfer pricing documentation requirements vary widely among countries:*** Practice amongst countries varies significantly in terms of the extent of guidance on how to prepare transfer pricing documentation. A first category of countries have a general requirement that taxpayers prepare and submit

³ It should be noted that the term transfer pricing documentation is not always used in a consistent fashion. In some countries, references to transfer pricing documentation primarily refer to internal corporate records related to specific transactions, including agreements, correspondence, and internal deliberative writings concerning a transaction. In other countries, transfer pricing documentation often refers to a stylised analysis of the transfer pricing aspects of a transaction or series of transactions. Such an analysis may refer to internal transactional records, but it will predominantly consist of specially prepared functional analyses, consideration of appropriate transfer pricing methods, and economic analyses designed to demonstrate that results of transactions conform with applicable transfer pricing requirements. These differing notions of the term “documentation” can lead to misunderstandings when issues related to transfer pricing documentation are discussed in international fora.

relevant documentation which can demonstrate the arm's length nature of the conditions of the controlled transactions. A second category of countries have opted to provide more detailed guidance on how to prepare transfer pricing documentation and have specified in their primary or secondary legislation either the steps in the transfer pricing analysis which need to be documented or those documents which need to be produced by the taxpayer in order to demonstrate that their controlled transactions satisfy the arm's length principle. Some country rules specifically dictate the format of documentation submissions and specify the forms to be completed. Required formats, where they exist, vary from country to country.

12. ***One-sided analysis of the controlled transaction (focused on domestic side) is common:*** The majority of countries adopt a strongly one-sided approach, focusing mainly on the domestic side of the controlled transaction, and in particular on the domestic taxpayer and the domestic tax treatment of the cross-border controlled transaction. While there are notable exceptions in some countries, the financial results of the related counterparties to those transactions are often not treated as required subjects for documentation.

13. ***Documentation does not always yield a complete understanding of the global business:*** The information requested from the taxpayer often does not provide a clear picture of the global business context of the individual transactions being documented. Except for the legal and organisational structure, very few countries ask for information on the global business of the MNE group, other cross-border controlled transactions between foreign associated enterprises belonging to the MNE group which may directly or indirectly affect the pricing of the taxpayer's controlled transactions; income or tax paid by the MNE, a comprehensive description of the global supply chain, or a comprehensive summary of the MNE's global APAs and rulings in other countries on similar issues.

14. ***Significant divergences exist in the nature and detail of country transfer pricing documentation requirements:*** Although there are certain categories of information common to all countries' transfer pricing documentation rules, the type and detail of the information that the taxpayer should maintain and submit ranges from very exhaustive in some countries to more high level in others. The level of discretion accorded business in determining which information is relevant also varies from country to country.

15. ***Purposes served by transfer pricing documentation are not always clear:*** Most transfer pricing requirements do not explicitly describe the reasons for their documentation demands. Many countries' rules seem to be focused on obtaining general background information on the taxpayer and a statement of its transfer pricing positions. Other countries seem to seek through documentation most or all of the information they might conceivably require to conduct a thorough transfer pricing audit. In some countries, the scope of the government's authority to obtain taxpayer information in an audit is linked to the scope of the transfer pricing documentation rules. Generally, there is little explicit emphasis on obtaining the information required for a transfer pricing risk assessment. However, an increasing number of countries have put in place additional disclosure or information reporting requirements regarding taxpayers' controlled transactions to be submitted at the time of the annual tax return. A few countries also now require disclosure of the taxpayer's financial statement evaluation of material transfer pricing exposures. This information is not usually considered to be part of the transfer pricing documentation in a strict sense, but such additional information may be used by tax authorities for risk assessment purposes.

16. ***Divergent practices regarding timing of documentation disclosures.*** Many countries seek information available at the time of filing the tax return. Other countries require information as of the time of audit. There is also a variety in practice regarding the amount of time given to taxpayers to respond to specific tax authority requests for documentation and other audit related information requests. These differences in content requirements, timing of providing information, and the lack of clear focus on the

purpose of documentation add to taxpayers' difficulties in setting priorities and in providing the right information to the tax authorities at the right time.

B. Documentation Guidance Provided by International Organisations

17. This section of the paper presents an overview of previous international initiatives related to transfer pricing documentation. All these initiatives originated as a response to the potential difficulties that MNEs face in complying with a continuously increasing number of local law and administrative requirements for transfer pricing documentation. The original aim of these international approaches was to provide guidance in order to minimise potential adverse consequences for taxpayers derived from the multiplicity of documentation requirements, which include costly duplicative administrative and recordkeeping requirements and lack of certainty about the minimum standards that must be satisfied in each jurisdiction in order to comply with local rules and avoid penalties.

1. Chapter V of the OECD Transfer Pricing Guidelines

18. The OECD TPG adopted in 1995 included a chapter on transfer pricing documentation, which constituted the first attempt to achieve a coordinated approach following the 1994 United States §482 Regulations and associated penalty regime. Chapter V of the OECD TPG “provides general guidance for tax administrations to take into account in developing rules and/or procedures on documentation to be obtained from taxpayers in connection with a transfer pricing inquiry. It also provides guidance to assist taxpayers in identifying documentation that would be most helpful in showing that their controlled transactions satisfy the arm's length principle and hence in resolving transfer pricing issues and facilitating tax examinations”.⁴

19. There is considerable emphasis in Chapter V of the 1995 TPG on the need for reasonableness in the documentation process from the perspective of both taxpayers and tax administrations, as well as on the desire for a greater level of cooperation between tax administrations and taxpayers in addressing documentation issues “in order to avoid excessive documentation requirements while at the same time providing for adequate information to apply the arm's length principle reliably”.⁵

20. The current guidance in Chapter V does not provide for an exhaustive list of documents to be included in a transfer pricing documentation package, as “it is not possible to define in any generalised way the precise extent and nature of information that would be reasonable for the tax administration to require and for the taxpayer to produce at the time of the examination”.⁶ It outlines the information that “could be relevant, depending on the individual circumstances”, but stipulates that the information described “should not be viewed as a minimum compliance requirement” and “is not intended to set forth an exhaustive list of the information that a tax administration may be entitled to request”.

21. The 1995 TP Guidelines do not contain any clear guidance with respect to the link between the process for documenting transfer pricing and the administration of penalties and of the burden of proof. The 1995 TP Guidelines do not differentiate between documentation that might be useful to a tax

⁴ See OECD TPG, paragraph 5.1. Additional comments on documentation requirements are contained in Chapter I (The Arm's Length Principle), Chapter II (Transfer Pricing Methods), Chapter III (Comparability Analysis), Chapter IV (Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes), Chapter VIII (Cost Contribution Arrangements) and Chapter IX (Transfer Pricing Aspects of Business Restructurings), as well as in the Annex to Chapter IV (Guidelines for MAP APAs).

⁵ See OECD TPG, paragraph 5.28-5.29.

⁶ See OECD TPG, paragraph 5.16.

administration in undertaking a transfer pricing risk assessment and the information a tax administration may wish to review in the course of a full audit of a taxpayer's transfer pricing practices.

2. *European Union Guidance on Transfer Pricing Documentation*

22. In June 2006, the Council of the EU agreed to a Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union ("EUTPD").⁷ Within the framework of the OECD TPG, the EUTPD aims at standardising the documentation that MNEs doing business in Europe must provide to tax authorities on the pricing of cross-border intra-group transactions in Europe, while achieving a balance between the tax administrations' right to obtain from a taxpayer the information necessary to assess the arm's length nature of the taxpayer's transfer pricing and the compliance costs for the taxpayer.

23. For MNEs, the EUTPD is optional,⁸ although a company adopting the EUTPD should do so in a way that is consistent throughout the European Union and from year to year. For European Union ("EU") Member States, the EUTPD is a political commitment and it does not affect EU Member States' rights and obligations or the respective spheres of competence of the EU Member States and the EU. EU Member States are, however, expected to implement the EUTPD by legislating for it in the national law or through administrative guidelines, when introducing or amending legal or administrative documentation requirements. This would enable MNEs to use the same documentation in all EU Member States.

24. The EUTPD consists of two main elements: the masterfile and the country specific documentation. In addition, EU Member States retain the right to require a taxpayer to provide more information and documents than would be contained in the EUTPD, but only upon specific request or during a tax audit.

25. The key features of the "masterfile," as contemplated by the EUTPD, are:

- It would contain common standardized information relevant for all European Union group members of an MNE.
- It should follow the economic reality of the enterprise and provide a "blueprint" of the company and its transfer pricing system for all EU Member States concerned.
- It would be available to all EU Member States involved in a specific controlled transaction.
- It would require the taxpayer to provide information on: the MNE group; the business and business strategy; the controlled transactions involving associated enterprises in the EU and their comparability analysis; the enterprise's transfer pricing policy; the ownership of intangibles; and a list of the cost contribution arrangements ("CCAs"), advance pricing arrangements ("APAs") and rulings covering transfer pricing aspects as far as group members in the EU are affected.

26. Under the EUTPD, the country-specific documentation has the following characteristics:

⁷ Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 27 June 2006 on a code of conduct on transfer pricing documentation for associated enterprises in the European Union (2006/C 176/01).

⁸ It can apply to transactions between: a) two associated enterprises resident in the EU; or b) an enterprise resident outside the EU and an associated enterprise resident in the EU. Some businesses express the view that the optional nature of the EU approach is undermined in practice by uniform requests in some countries for the "masterfile" in virtually every case.

- It would consist of a set of standardized documentation for each of the specific EU Member States involved.
- It would generally be available only to the specific member state concerned.
- It would contain information relevant to that country only, such as: the business and business strategy; country-specific controlled transactions and their comparability analysis; particular transfer pricing methods used; information on internal and/or external comparables, if available; and, an explanation of how the group's intercompany transfer pricing policy is implemented and applied by the local associated enterprise.

27. The masterfile and the country-specific documentation would, together, constitute the documentation file for the relevant EU Member States and should provide tax authorities with greater transparency on the EU transfer pricing system of MNEs. When taxpayers comply in good faith, in a reasonable manner and within a reasonable time with standardised and consistent documentation, EU Member States are advised not to impose documentation-related penalties.

28. While there are several advantages to implementing the EUTPD (e.g. simplification of and consistent approach to transfer pricing documentation and cost savings through avoiding duplication of effort), a first survey of the European Commission launched in 2009 indicated that, at that time, numerous taxpayers had elected not to fully implement the EUTPD guidance. Some tax publications from the same period suggest the following:⁹

- In practice, there may be a lack of clarity as to the acceptability of the EUTPD across EU Member States. Furthermore, the flexibility given to EU Member States regarding the implementation of documentation rules could create a degree of uncertainty.
- The variability in local country requirements and the enforcement of local transfer pricing documentation requirements in some countries could make the masterfile less useful than it might otherwise be.
- The requirement to disclose all APAs and rulings as part of the masterfile, which is made available to all tax authorities in the EU, could be seen as a stumbling block for some taxpayers.
- The adoption of the EUTPD does not shelter MNEs from further questioning by the tax authorities or the obligation to submit more documents when requested.
- The adoption of the EUTPD does not always protect taxpayers against transfer pricing adjustments. According to some business representatives, the wider dissemination of European-wide information by taxpayers could lead to increased scrutiny by tax authorities and challenges on the same issues in multiple countries, as well as an increased risk of being subject to a tax audit.

29. However, with respect to the findings on the implementation of the EUTPD by taxpayers, the data available from the EU 2009 review may not be fully up date. The European Commission survey of 2009 followed shortly the adoption of the EUTPD in June 2006 and EU Member States may not have had sufficient time to fully implement the new guidance. In addition, in recent years numerous taxpayers have indicated that they follow the EUTPD in practice without officially opting for it. The Commission intends

⁹ See: Guðmundsson, A. K., "Lost in Transfer Pricing: The Pitfalls of EU Transfer Pricing Documentation", *International Transfer Pricing Journal*, IBFD (January/February 2009), pages 25-28; Nichols, W. and Hughes, L., "EU Transfer Pricing Documentation – White Elephant or Missed Opportunity?", *Transfer Pricing International Journal*, BNA (February 2010). See "European Companies Questioning Benefits of EU Masterfile Documentation Approach", *Tax Management Transfer Pricing Report*, BNA (May 2006).

to launch a new survey on the EUTPD in 2013 that should provide a full and more up to date picture on the current situation prevailing in the EU.

30. It remains to be seen whether the approach of the EUTPD would be acceptable outside the EU, e.g. the EU approach appears to be less detailed and the information it requires seems to be less extensive than the requirements in at least some non-EU countries.

3. *Pacific Association of Tax Administrators Documentation Package*

31. In March 2003, the Pacific Association of Tax Administrators (“PATA”), whose members include Australia, Canada, Japan and the United States, released principles under which taxpayers can create uniform transfer pricing documentation (“PATA documentation package”) so that one set of documentation would meet the respective transfer pricing documentation provisions of each of the four member countries.

32. As under the EUTPD rules, the use of the PATA documentation package by a taxpayer is voluntary and it is intended to be consistent with the general principles outlined in Chapter V of the OECD TPG.

33. The PATA documentation package provides for three operative principles. According to these, MNEs need to: make reasonable efforts to establish transfer prices in compliance with the arm's length principle; maintain contemporaneous documentation of their efforts to comply with the arm's length principle; and, produce, in a timely manner, that documentation upon request by a PATA member tax administrator. If these principles are satisfied, use of the PATA documentation package will protect the taxpayer from domestic transfer pricing penalties that might otherwise apply in each of the four jurisdictions.

34. The PATA documentation package provides for an exhaustive list of documents (organised in 10 headings and covering 48 specific document areas) that PATA tax administrations view as necessary in order to provide relief from the otherwise applicable transfer pricing penalties. It is recognized that in certain instances some of the listed documents will not be needed. Nevertheless, the tax authorities retain the possibility to request additional information not listed in the package when necessary to examine an MNE’s conclusions as to the arm’s length nature of its arrangements.

35. To date, the practical impact of the PATA documentation package seems to be fairly limited as it does not seem to be widely utilized by MNEs. Some of the concerns raised by business are:

- The PATA member countries reached a consensus on documentation requirements by demanding everything in the domestic requirements of each of the four countries. Accordingly, practitioners have noted that the list of required documents is more elaborate than any single country’s requirements and contains some requirements that may not be relevant and can be burdensome.
- The PATA documentation package does not seem to incorporate the notions of relevance, materiality, or the cost of preparing the documentation in relation to the value of the intercompany transaction under review. The tax authorities decide whether a request for further specific items of information is reasonable and, therefore, it is unclear whether the comparatively large documentation burden faced by medium-sized companies will be eased.
- Satisfaction of the PATA documentation package does not preclude PATA member tax administrations from making transfer pricing adjustments, and assessing any interest due on those adjustments.

- The definition of “reasonable efforts” is left to the local laws of the PATA member countries. The views of PATA member countries on what constitutes “reasonable efforts” do not converge in all cases. Some commentators suggest this undermines the goal of uniformity and certainty for taxpayers.

4. *International Chamber of Commerce (ICC) Proposals*¹⁰

36. In December 2003 the ICC Commission on Taxation produced a policy statement “Transfer Pricing Documentation: A case for international cooperation”. For the ICC, the issue of harmonising transfer pricing documentation is intrinsically linked to the administration of the burden of proof, to penalties, and to the process for eliminating double taxation.

37. This ICC policy statement proposes a set of rules allowing MNEs to prepare a single uniform package of documentation that would be considered reasonable by all involved tax authorities. This proposal would be based on three key principles: the documentation package should be based upon information that is readily available in the bookkeeping and management reports of the MNE concerned; common documentation rules should be a reasonable and balanced reflection of the various national approaches; and once an MNE fulfils the proposed documentation requirements, it should be relieved of any liability for penalties and from having any special burden of proof.

38. These ICC recommendations have not developed into a widely recognized standard.

C. *Discussions with Selected Business Representatives*

39. As part of the preparation of this White Paper, the OECD Secretariat conducted a series of conversations with a few members of BIAC. The purpose of these conversations was to identify at a general level issues that the business community finds particularly troubling in their efforts to comply with existing transfer pricing documentation rules. This survey of business sentiment was neither comprehensive nor scientific.¹¹ However, the conversations reflected certain recurring themes that are worth noting in the context of this paper.

40. The following observations were made repeatedly by the business representatives with whom we spoke:

- Businesses perceive a fairly steady expansion in the quantity of information required by country documentation rules. The observation was regularly made that the documentation required has become detailed and massive.
- In a similar vein, businesses expressed the opinion that constant changes in the amount, nature and format of documentation required created a great deal of work without adding particular value.
- There was a general observation that relatively minor differences in the required formatting of documentation dictated by individual countries gave rise to significant commitments of time and substantial expense, even where the substance of the information requests were largely consistent. Several businesses expressed the view that some effort to standardise formatting would be very helpful.

¹⁰ For more detailed information on this initiative, please see the ICC Policy Statement “Transfer Pricing Documentation: A case for international cooperation”, available at www.iccwbo.org

¹¹ It is anticipated that written public comments and public consultation meetings on this White Paper will help to fill in gaps in understanding resulting from the narrow range of the initial discussions.

- Several business representatives suggested that because the studies performed in response to documentation requirements may be quite massive, local tax auditors often do not seem to be able to fully digest or understand what is being said. Auditors often ask questions that are answered in the documentation.
- It was suggested that different views among countries regarding the acceptability of regional comparable sets create substantial burdens. Insistence of some countries on the identification of local comparables compounds the cost and difficulty of preparing documentation.
- Business representatives expressed mixed views regarding the savings resulting from a two – tier documentation system like that permitted in the European Union. Some thought that the masterfile concept created a compliance cost saving. Others believed that the masterfile concept merely added to the number of documents that need to be prepared and made it more difficult for businesses to exercise judgment about what level of information should satisfy tax authorities in a particular case. This latter sentiment was expressed particularly by conglomerates that carry on more than one distinct line of business and find that a total corporate overview is not necessarily useful in understanding the economics of any particular autonomous business line.
- Although it may be a substantive point rather than a pure documentation issue, it was suggested by business representatives that requirements to perform new comparable searches every year added cost with very little added value. It was suggested that requiring only freshening of data for previously identified comparables annually, with new comparable searches being required only every three or four years, would create significant cost savings.
- Some businesses expressed the view that notwithstanding the quality of the work going into documentation, many governments will not accept documentation at face value and either engage in detailed fact checking or require expensive third party confirmations or audits of the relevant information.
- A recurring theme was that many countries’ documentation standards lack materiality thresholds. Most business representatives indicated that notwithstanding the lack of materiality standards in local country documentation rules, the businesses are likely to impose their own materiality screens as a cost-saving device.

D. Conclusions Regarding the Current Documentation Environment

41. It is evident that existing transfer pricing documentation requirements vary significantly from country to country. That fact makes it difficult for business to consolidate and streamline compliance practices since documentation in each country must be tailored to the specific requirements of local country law. Moreover, the local country focus of many countries’ documentation requirements makes it difficult for tax authorities to easily get a “big picture” view of the MNE group’s transfer pricing practices and results. This lack of a broad perspective may lead to countries pursuing matters of less importance in great detail, while missing matters of greater importance or higher transfer pricing risk.

42. International efforts to create uniformity in documentation practice have not been particularly effective. Some international efforts contain promising approaches, but because of their lack of universal application and a lack of flexibility they have not become as widely accepted or provided as important a savings in compliance burden as might be expected. Other international efforts premised on compiling every participating country’s documentation demands into one omnibus set of requirements provide little in the way of simplification and have therefore not been widely used by taxpayers.

43. The result of this state of affairs is a growing compliance burden on business as more and more countries adopt transfer pricing documentation rules. This state of affairs either increases costs for MNEs in an area of activity that may be largely viewed by business as having few benefits beyond penalty avoidance, or gives rise to decisions to simply not comply in the time and manner desired by the governments promulgating the documentation rules. Ad hoc materiality and risk screens are applied by business, largely as a matter of self-preservation, given the burden of complying with the rules as written. As a result, a serious question exists as to whether documentation rules are performing their intended purposes in the most efficient possible manner.

44. Clearly, it seems that there is room for improvement.

III. Purposes of transfer pricing documentation requirements

45. Any consideration of the simplification and improvement of transfer pricing documentation practices around the world should start with a consideration of the purposes for requiring transfer pricing documentation. It may be that the existing diversity of documentation requirements can be traced, at least in part, to a failure to agree on and clearly articulate the fundamental reasons for requiring transfer pricing documentation. Moreover, the development of a stronger consensus around the identification of the most important purposes served by transfer pricing documentation may provide direction with regard to the preferred form and content of the required documentation package.

46. At least three different reasons can be identified for governments to require the creation and submission of transfer pricing documentation. These are:

- To provide governments with the information necessary to conduct an informed transfer pricing risk assessment at the commencement of a tax audit;
- To assure 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;
- To provide governments with all of the information that they require in order to conduct an appropriately thorough audit of the transfer pricing practices of entities subject to tax in their jurisdiction.

This section of the paper considers the purposes served by transfer pricing documentation requirements.

A. *Transfer pricing risk assessment*

47. In recent years emphasis has been placed by tax administrations and taxpayers on the development and implementation of sound tax risk assessment and management systems for purposes of administering and complying with transfer pricing rules. The emphasis on transfer pricing risk assessment arises from the fundamental observation that “effective risk identification and assessment are the key steps which enable tax administrations to select the right cases for transfer pricing audits or inquiries.”¹² Because tax administrations operate with limited resources, it is important for them to accurately evaluate at the very outset of a possible audit, whether a taxpayer’s transfer pricing arrangements warrant in depth review and a commitment of significant tax enforcement resources, or whether they do not warrant such a detailed examination. Taxpayers have also noted that “where audits and enquiries are not based on

¹² OECD (2012), *Dealing Effectively with the Challenges of Transfer Pricing*, OECD Publishing. <http://dx.doi.org/10.1787/9789264169463-en>

effective risk assessment cases last much longer, and all too often the most significant transfer pricing issues are missed.”¹³ Thus, particularly with regard to transfer pricing issues (which generally are complex and fact-intensive), effective risk identification becomes an essential prerequisite for more cost effective audits and enquiries that are completed in shorter timescales

48. Proper assessment of transfer pricing risk by the tax administration requires access to a sufficient amount of the right kind of information to support an appropriate evaluation of the risks involved. While there are many sources of such information, transfer pricing documentation can be one critical source of the right kind of information.

49. Individual countries have developed a variety of different approaches and tools for identifying and evaluating transfer pricing risks with regard to specific taxpayers and transactions. The information developed through these means may be utilized for case selection purposes, allowing tax administrations to allocate resources to those taxpayers which raise most concern, when certain factors are identified that might indicate that there is a significant amount of transfer pricing risk.¹⁴ In connection with the Global Forum on Transfer Pricing, the OECD is in the process of assembling individual country experiences and designing a Risk Assessment Handbook to assist countries with this process with a particular focus on risk assessment in developing countries. Different countries use differing means to obtain from the taxpayer the information required for an effective risk assessment process, including the following:

- ***Transfer pricing forms*** (to be filed with the annual tax return)

Some tax administrations require companies to supplement the tax return by completing a form that provides additional information on transfer pricing. Generally, most countries will require taxpayers to report whether they have entered into cross-border controlled transactions, and if so, they must provide certain additional information such as identity of the foreign related parties, the amounts of the transactions, pricing methodology applied and whether the taxpayer has produced contemporaneous transfer pricing documentation to support transfer prices (e.g. Australia, Norway). Others, however, request very detailed information that may go beyond the level of detail required for risk assessment (e.g. Argentina and China). For a more complete list and insight to the content of individual countries’ transfer pricing forms, please see *Annex 2*.

- ***Transfer pricing questionnaires***

Some countries use targeted transfer pricing questionnaires. In most cases, the completion of these is mandatory and it can be done in the framework of: a) the risk assessment of a specific taxpayer, and so the transfer pricing questionnaire is requested after an initial review of the taxpayer’s tax return and account by the tax administration (e.g. South Africa, New Zealand); or, b) a general compliance program or initiative which targets certain groups of taxpayers (e.g. taxpayers operating in certain industries, such as the extractive or automobile industries) and focused on particular areas of risk (e.g.

¹³ Id.

¹⁴ For instance, the United Kingdom and Australia have publicly released their risk assessment and case selection approaches, which provides business with an insight of tax administrations’ areas of concern and allow them to plan how to best allocate their own resources for tax compliance purposes. See HMRC International Manual, Section INTM482010 *et seq.* “Transfer Pricing: Risk Assessment”, available at www.hmrc.gov.uk/manuals/intmanual. Also, see the ATO publication “Large business and tax compliance” (2010) available at www.ato.gov.au

Business has reported that they would find it beneficial if tax administrations shared their risk assessments before committing themselves to an in depth audit of all the issues they have identified. Some tax administrations already do this. Business would welcome the systematic sharing of transfer pricing risk assessments, even in cases that are not selected for audit, as this would help them to allocate their own resources to the areas of most concern. See OECD, “Dealing Effectively with the Challenges of Transfer Pricing” (2012), pages 20.

financing or business restructurings) as a means for selecting taxpayers for audits and/or to facilitate actual field audits. For instance, Australia issued in 2010 over 150 questionnaires to multinational companies focusing on transfer pricing risks associated with business restructurings, profitability, financing and services in the mining industry. *Ad hoc* questionnaires are also central to New Zealand's Inland Revenue compliance programmes. In addition, New Zealand's Inland Revenue encourages taxpayers to use the three standard questionnaires developed (foreign-owned MNEs, New Zealand-owned MNEs and branches) as an effective self-assessment tool to scope their exposure to transfer pricing related risks.¹⁵

- ***Cooperative approaches with tax authorities***

A number of countries have introduced mechanisms to engage taxpayers in a dialogue with the tax administration to enhance compliance and provide greater certainty. This can be achieved by (jointly) identifying and discussing at an early stage difficult transfer pricing issues, in a transparent way, without delay and when the relevant information and business personnel are more easily accessed. Enhanced engagement relationships also provide MNEs with the opportunity to explain to tax authorities their systems, any aspects of the risk assessment that were based on partial information, or a misunderstanding of the commercial context in which the transactions in question took place and demonstrate that their risks are well managed. Australia¹⁶, the Netherlands¹⁷, the United Kingdom¹⁸ and the United States¹⁹ are some of the countries that have in place such systems.

- ***General transfer pricing documentation requirements***

¹⁵ A description of New Zealand's transfer pricing compliance programme and the three standard questionnaires for transfer pricing issues can be found in *Annex 2*.

¹⁶ The Australian Tax Office has published the following reports: "ATO risk assessment", "ATO Large business and tax compliance" and "Self assessment risk product" for small and medium-sized enterprises and large business taxpayers who require a level of assurance as to the ATO view of their transfer pricing risk. "ATO risk assessment" is available to taxpayers wishing to obtain some degree of assurance from the ATO as to its views on their transfer pricing risk particularly on a specific dealing or dealings having a limited life. "Self assessment risk product" is for taxpayers with less complex transfer pricing arrangements and lower levels of related party dealings and allows such taxpayers to evaluate their own level of transfer pricing risk.

¹⁷ In 2008, the Dutch Tax and Customs Administration introduced a horizontal monitoring approach, based on mutual trust, understanding and transparency between the tax administration and the taxpayer. The horizontal monitoring approach provides the possibility of concluding enforcement covenants between the tax administration and very large businesses. The benefits of this initiative are a here-and-now work approach, the openness from both sides and a reduction of tax uncertainties for businesses. For additional information, please see the publications by the Netherlands' Tax and Customs Administration, both publicly available: "Tax Control Framework. From a focus on risks to being in control: a different approach" and "Thinking differently, behaving differently and working differently. Tax Control Framework".

¹⁸ In the United Kingdom, the HMRC manual states that HMRC will seek to work transfer pricing issues in real-time as it provides earlier certainty for taxpayers and allows tax administration to examine the issues when information and relevant business personnel are more easily accessed. The manual indicates that real time working may reduce the time taken to review an issue, and discussions with a taxpayer often arise in advance of a return being made at the initiative of the taxpayer or as a result of HMRC's risk management approach.

¹⁹ In the United States, the Internal Revenue Service has the Compliance Assurance Process (CAP) which is structured to conduct real-time compliance reviews to establish the correct tax treatment of tax return positions prior to a taxpayer filing its tax return. These enhanced engagement approaches in transfer pricing risk assessment will be discussed in the paper and, along with any good practices or practical experiences, can be shared among tax administrations.

Finally, as discussed above, an increasing number of countries have introduced transfer pricing documentation rules that require all taxpayers engaging in cross-border transactions with related persons to provide information and supporting evidence to demonstrate that the conditions in a cross-border controlled transaction satisfy the arm's length principle.²⁰ Where such documentation is provided, it can also form a basic starting point for transfer pricing risk assessment. For instance, the EUTPD expressly states that transfer pricing documentation should contain "enough details to allow the tax administration to make a risk assessment for case selection purposes or at the beginning of a tax audit".²¹

50. Vocabulary can create confusion in this context. Some would describe special transfer pricing forms filed with the tax return and special transfer pricing questionnaires as being part of the transfer pricing documentation. Others would reserve the word documentation for more specific application to the taxpayer's description of its transfer pricing methods and its comparability analysis. Moreover, many (although not all) countries approach transfer pricing risk assessment in a staged fashion, and desire to have more detailed or more specific information at each stage of the evaluation. What is clear, however, is that each of the mechanisms described above appears to respond to the same fundamental observation: there is a need for the tax authority to have ready access to sufficient information at the early stages of an audit to conduct an accurate and informed transfer pricing risk assessment. Assuring that such a risk assessment can be carried out efficiently and with the right kinds of reliable information should be one important consideration in designing transfer pricing documentation rules.

B. Taxpayer's assessment of its compliance with the arm's length principle

51. At the time the United States first adopted transfer pricing documentation rules, one concern of the tax administration had to do with the desire to have taxpayers adopt considered transfer pricing positions when completing tax returns. There was a concern that, in some instances, taxpayers would put reasonably aggressive numbers on tax returns, wait for a government challenge, and then develop a theory after the fact to rebut the government challenge and support a more favourable position. US rules related to burden of proof, which required taxpayers to demonstrate that the government position was arbitrary and capricious in order to overturn it, compounded the problem and gave rise to strategies designed to limit government access to relevant information during audits so that government positions could more easily be made to appear arbitrary and capricious. Transfer pricing documentation was thought to have the potential of breaking such patterns of behaviour by requiring the taxpayer to adopt a transfer pricing method based on a thorough functional analysis, and to demonstrate through its transfer pricing documentation that it had taken reasonable steps to comply with the arm's length principle when filing its tax return, in order to avoid penalties.

52. By requiring taxpayers to articulate solid, consistent and cogent transfer pricing positions, transfer pricing documentation can help to ensure that a culture of compliance is created. Extremely aggressive positions can often readily be identified by reviewing the documentation. Well-prepared documentation will give tax authorities some assurance that the taxpayer has analysed the positions they report on tax returns, the available comparable company data, and has reached defensible transfer pricing positions. Moreover, contemporaneous documentation requirements can restrain taxpayers from developing only after the fact justifications for their positions.

53. This objective of mindful compliance is backstopped in many countries in two important ways. First, countries often require that the documentation requirement be satisfied on a contemporaneous basis. That is, the transfer pricing documentation, and the thinking that underlies that documentation, is required

²⁰ Some countries exempt small taxpayers and small transactions from their general documentation requirements.

²¹ See EUTPD, Section 1, paragraph 1.

to take place at the time of the transaction, or in any event, prior to filing the tax return for the year. While some countries follow policies allowing documentation to be prepared any time prior to the commencement of an audit, most follow some form of requirement designed to force taxpayers to evaluate their compliance with transfer pricing rules annually, before or at the time of completing and filing their tax return.

54. Second, many countries have constructed transfer pricing penalty regimes in a manner intended to reward timely preparation of transfer pricing documentation and to create monetary incentives for timely careful consideration of the taxpayer's transfer pricing positions. For example, in the United States, penalties otherwise imposed in connection with large transfer pricing adjustments will be abated if the taxpayer contemporaneously prepares and timely provides to the tax authorities adequate and reasonable documentation of its transfer pricing positions

55. While the objective of creating a culture of mindful compliance with the arm's length principle is laudable, tax authorities and taxpayers report that the preparation of documentation can sometimes become a process driven primarily by penalty avoidance and minimum compliance rather than by a desire to provide a thoughtful defence of well thought out transfer pricing policies, supported by the best available factual and financial data. Some country tax administrators report that documentation studies, particularly when prepared by consultants, or when prepared using commercial software, often have a "canned" or formulaic feel. Such studies sometimes appear to tax administrators to represent a cut and paste stringing together of previously drafted language from the memory of a word processing program, rather than representing a careful analysis of the real operations of a real MNE group and the transfer pricing consequences of those operations. Consultants report that because of cost considerations they sometimes do not have full access to the facts necessary for a thorough functional analysis. Individuals working in large volume documentation shops are all too familiar with mass e-mails from colleagues near documentation deadlines urgently requesting "a comparable set in the x industry supporting a y percent return on sales." And companies report that the costs and time involved with compliance with proliferating demands for documentation often make it physically impossible to satisfy all of the global requirements related to transfer pricing documentation at even a superficial level of detail.

56. Thus, while in theory taxpayers could use transfer pricing documentation as an opportunity to articulate a well thought out defence of their transfer pricing policies, thereby meeting an important objective of such requirements, costs, time constraints, and competing demands for the attention of relevant personnel can undermine these objectives. While it is desirable that documentation have as one of its objectives the encouragement of a culture of thoughtful compliance, the pragmatics of ever-expanding demands from tax authorities may undermine that objective and contribute to a culture of minimal effort and commoditised economic analysis directed purely at penalty protection.

C. Provision of information necessary to start, conduct and complete an audit

57. A third purpose for transfer pricing documentation is to provide tax authorities with the information they need to conduct a thorough transfer pricing audit. Transfer pricing cases under examination or audit tend to be fact-intensive. They often involve difficult evaluations of the comparability of several transactions and markets. They can require detailed consideration of financial, factual and other industry information. The availability of adequate information from a variety of sources is critical to facilitating a tax administration's orderly examination of the taxpayer's controlled transactions with associated enterprises and enforcement of the applicable transfer pricing rules.

58. Generally, most of the relevant information required for a transfer pricing audit must come from the taxpayer itself. Governments often express the view that the taxpayer's control of relevant information provides it with a significant advantage in a transfer pricing audit. A review of country legislation and

regulations on transfer pricing documentation could easily lead one to believe that country documentation rules in many jurisdictions primarily pursue an objective of levelling the audit playing field by assuring that all documents and information necessary for a full transfer pricing audit are readily available to the tax administration at the time the tax return is filed or the audit commences.

59. In some countries, transfer pricing documentation legislation provides either the exclusive or the primary legal authority permitting governments to compel submission of the information needed to perform a transfer pricing audit.

60. In situations where a proper risk assessment suggests that a thorough transfer pricing audit is warranted, it is clearly the case that the tax administration must have the ability to obtain, within a reasonable period, all of the relevant documents and information in the taxpayer's possession. This includes information regarding the taxpayer's operations and functions, information regarding potential comparables, including internal comparables, and documents regarding the operations and financial results of potentially comparable uncontrolled transactions and unrelated parties. To the extent such information is included in the transfer pricing documentation, special information and document production procedures can potentially be avoided. It must be recognised, however, that regardless of how comprehensive transfer pricing documentation requirements may be, situations will inevitably arise when tax authorities wish to obtain information not included in the documentation package. Thus, country legislation should always include powers and processes that will allow the tax authority to obtain information from the taxpayer beyond what is included in the information relied on in a risk assessment at the beginning of the audit. The time of preparation of various elements of necessary documentation will be an issue necessarily considered in designing a documentation system that meets government needs for information without imposing unnecessary compliance burdens on taxpayers.

61. It may often be the case that the required documents will be in the possession of members of the MNE group other than the local affiliate under examination. Often the necessary documents will be located outside the country whose tax administration is conducting the audit. It is therefore essential that the tax administration's power to compel production of information during the course of an audit extend beyond the country's borders.

62. An additional issue that individual countries will need to consider in devising documentation and other document production rules relates to the burden of proof with respect to transfer pricing adjustments. Country practice varies with regard to this issue. In some countries, governments must bear the burden of demonstrating that the taxpayer's reported transfer pricing arrangements are inconsistent with the arm's length principle and local transfer pricing rules. In other countries, government adjustments will be sustained unless they are clearly arbitrary. In still other situations taxpayers will bear the burden of demonstrating that their transfer pricing arrangements conform to the requirements of the country's transfer pricing rules.²² The nature of local law requirements regarding burden of proof may influence the amount and nature of information that a government believes it needs to obtain in a transfer pricing documentation package or later in the course of a transfer pricing audit.

D. Conclusions regarding the purposes of transfer pricing documentation

63. At least three different reasons for requiring taxpayers to provide transfer pricing documentation can be identified. Each of these purposes is valid in its own way and each should be considered in designing appropriate transfer pricing documentation requirements.

²² See OECD TPG, paragraph 5.2.

64. The OECD believes that it is important that governments be able to access the information they need to conduct a risk assessment enabling an informed decision to perform an audit and that the government also be able to access, on a timely basis, additional information necessary to conduct a comprehensive audit once the decision to conduct such an audit is made. It is also important that taxpayers be required to carefully evaluate at or before the time of filing a tax return their own compliance with the applicable transfer pricing rules. Documentation rules should be designed in such a way that they support each of these objectives without undermining the others.

65. A relevant question, therefore, is whether documentation rules can be tailored to the staged information needs of the transfer pricing audit process. Would it be possible, for example, to focus initial compliance efforts on the information necessary for risk assessment, while preserving the ability of the tax administration to get the information it needs when it conducts an audit? Moreover, if initial document demands were to be simplified and focused on risk assessment, what would the consequences be for the meaningful self-assessment that documentation was originally intended to encourage? Improving the documentation process is dependent on properly weighing these competing considerations.

66. Care must be taken that efforts to simplify early stage compliance burdens on taxpayers do not limit government access to relevant information later when a full audit is deemed to be necessary. It should be recognised that in some countries, a narrower focus on risk assessment at an early stage would require other changes to information gathering powers to be sure additional relevant information can be obtained in the event the tax administration decides to conduct a full transfer pricing audit.

67. The considerations discussed above regarding the appropriate reasons for requiring transfer pricing documentation have guided the suggestions set out below.

IV. A Tiered Approach to Transfer Pricing Documentation

68. This section of the paper describes in general terms the structure and requirements of possible documentation rules that would initially focus on higher level information that would be most helpful in assisting governments in undertaking a transfer pricing risk analysis and in confirming taxpayers' good faith efforts to comply with the arm's length principle. Some of the identified information is typical of the demands of many existing local country transfer pricing documentation rules. Other identified information is less typical of existing individual country rules and is intended to help provide a relatively clear big picture overview of the transfer pricing policies and practices of an MNE group. Additional information submission rules would then focus on more detailed information most helpful in conducting audits.

A. Information Required for a Transfer Pricing Risk Assessment

69. In its January 2012 publication entitled "Dealing Effectively with the Challenges of Transfer Pricing" the OECD Forum on Tax Administration identified nine features that may indicate the presence of significant transfer pricing risk. These include:

- Significant transactions with, and income allocated to, related parties in low tax jurisdictions;
- Transfers of intangibles to related parties;
- Business restructurings;
- The existence of specific types of related party payments that have the potential to erode the tax base, including payments of interest, insurance premiums and royalties;
- Year on year loss making;

- Poor or non-existent documentation of related party transactions and their results;
- Excessive debt.

70. Accordingly, it would be appropriate to focus documentation requirements on obtaining clear information that would permit the tax authority to identify whether the foregoing risk factors are present. In order to permit tax authorities to quickly develop a clear understanding of these features of the transfer pricing practices of a company, documentation would need to focus on the following types of information:

- Identification of material cross border transactions between associated enterprises, including material payments for goods, services, intangibles, and interest flows.
- Identification of recent business restructuring transactions and transfers of intangibles.
- Information regarding the levels of corporate debt and interest expense in relevant countries.
- Information regarding the MNE's global transfer pricing policies and the financial results of applying those transfer pricing policies. It would especially include a description of where in the group important intangibles are held. It would also include the identification of the MNE Group's existing APA and ruling arrangements related to income allocation with various countries.
- The taxpayer's explanation of how its material transfer pricing arrangements comply with the arm's length principle and local transfer pricing rules.

71. It is worth noting that clear and accurate understanding of the risk features described above will often require more information of a "big picture" nature than is often obtained through existing individual country focused documentation requirements. Transfer pricing risk often arises in situations where taxpayers seek to shift income from jurisdictions where that income will be relatively heavily taxed to those where it will be subjected to lower levels of tax or will be altogether free from tax. While traditional documentation requirements focus to a great extent on local country entities and their functional and financial dealings, accurate risk analysis requires a broader view.

72. It seems possible for businesses to provide without undue burden individual country data based on either management accounts, consolidating income statements and balance sheets, and/or tax returns that would provide tax administrators with a general sense as to how their global income is allocated and where pressure points in the transfer pricing arrangements might lie. Such information would likely not be a sufficient basis for a detailed transfer pricing analysis of individual transactions and prices, nor would it provide a substitute for a full functional analysis. However, in a risk assessment setting, an observation that, for example, a company based in a high tax country that reports 85 percent of its income in low-tax jurisdictions while maintaining 80 percent of its employees and assets in high tax jurisdictions may warrant more tax administration attention to transfer pricing than one where shares of assets, employment and income are more consistent across countries. As long as all involved in preparing and reviewing such data understand that risk assessment is a first step and that precision may not be necessary, greater overall reporting might productively be required for risk assessment purposes.

73. It is important that the heart of transfer pricing documentation continue to be the taxpayer's description of the transfer pricing methods and analysis it uses to demonstrate its compliance with the arm's length principle. These should be built on a robust comparability analysis, analysing the functions, assets and risks relevant to the transfer pricing analysis for transactions that are material in the context of the jurisdiction receiving and reviewing the documentation package.

B. Structure of a Global Documentation Package

74. The two-tier structure laid out in the EU documentation guidance has significant potential for simplifying transfer pricing documentation compliance. Information relevant to all countries could be assembled one time on an MNE wide basis and be supplied to any country requesting documentation. Such information would include the overall business descriptions and functional analysis, and required information regarding consolidated group income, tax rates and debt structure. It could also include descriptions of recent business restructurings and transfers of intangibles. The global masterfile would not, however, include specific transfer pricing analyses related to individual transactions, which could be reserved to local country documentation.

75. Assuming local countries are given a copy of the MNE's masterfile, additional information filed in the local country could be limited to the specific identification of material cross border transactions affecting the local jurisdiction, the detailed functional analysis of the business activities in the local entity, and the taxpayers analysis and application of the most appropriate transfer pricing methodology to the described facts, including its identification of the most relevant data regarding comparables. Relevant financial data for local entities could also be supplied locally.

76. Comments of business regarding the usefulness of the masterfile in a business where more than one line of business is pursued should be kept in mind. A coordinated documentation system would have sufficient flexibility to allow the taxpayer to supply masterfile information either on a company wide basis or by line of business, depending on which would provide the most relevant transfer pricing information to tax authorities.

C. Mechanics of Preparing Transfer Pricing Documentation

77. Some purely mechanical issues exist that make the process of preparing transfer pricing documentation more difficult than it needs to be for compliant businesses. Following is a summary of some of these mechanical issues and potential approaches that could have an impact on the compliance burden.

- Certification of documentation by an outside auditor: Some countries require that the information in a transfer pricing documentation study be certified by an outside auditor or other third party. Such a requirement may be excessive, particularly at the stage of risk assessment.
- Mandatory use of consulting firms to prepare documentation: In some countries, tax administrations do not accept documentation prepared by internal company employees. Provided the personnel preparing the documentation are qualified and have access to the appropriate data, there is no reason to believe that documentation prepared by consultants is more reliable than that prepared by company employees themselves.
- Use of local or regional comparables: Businesses suggest that permitting the use of a standard set of regional comparables in documentation prepared for countries in the same geographic region would provide substantial simplification. While the simplification benefits of limiting the number of comparable searches a company is required to undertake are obvious, the use of regional comparables in situations where appropriate local comparables are available will not, in some situations, comport with the obligation to rely on the most reliable comparable information. A desire for simplifying compliance processes should not go so far as to undermine compliance with the requirement to use the most reliable available information.

- Translation: The necessity to provide documentation in local language is sometimes noted as one of the complicating factors with respect to transfer pricing compliance. While it would be convenient if all tax inspectors around the world spoke the same language, it is not practical to make such an assumption. Documentation should be useful to local country tax administrations seeking to undertake a risk assessment, and therefore at least the local documentation package should likely be translated. Where administrations believe that translation of the global masterfile is necessary, they should make specific requests for translation and provide sufficient time at the beginning of an audit to make such translation as comfortable a burden as possible.
- Materiality standards: Not all transactions are sufficiently material to require full documentation. Country documentation practices should reflect materiality thresholds. However, it should be recognised that such thresholds should be established taking into account the size and nature of the local economy, the importance of the MNE in that economy, and the size and nature of local operating entities, as well as the overall size and nature of the MNE group.

V. Development of a Coordinated Approach to Documentation

78. In an attempt to move towards a simpler and more efficient compliance with transfer pricing documentation rules, this paper sets out a possible coordinated approach to transfer pricing documentation (“Coordinated Documentation Approach”). This approach follows a two-tier structure consisting of a masterfile and a local file.

79. As conceived, the Coordinated Documentation Approach is intended to serve the purposes for documentation discussed earlier in the paper. First, it ought to provide to tax authorities sufficient, relevant and reliable information to perform an efficient and robust risk assessment analysis. Second, it should provide a platform on which the information necessary for an audit can be developed. Third it should provide taxpayers with a means and incentive to meaningfully consider and describe their compliance with arm’s length pricing in material transactions.

80. The masterfile portion of the documentation would seek to elicit a reasonably complete picture of the global business, financial reporting, debt structure and tax situation of the MNE to enable tax authorities to identify the presence of significant transfer pricing risks. In particular, the information requested in the masterfile can be grouped in five categories: a) information on the MNE group; b) description of the MNE’s business or businesses; c) information on the MNE’s intangibles; d) information on the MNE’s intercompany financial activities; e) information on the MNE’s financial and tax positions.

81. The information solicited under the local file would supplement the masterfile and help meet the objective of assuring that the taxpayer has complied with the arm’s length principle in its material transfer pricing positions. It focuses on specific transfer pricing analyses related to material transactions taking place between a local country affiliate and associated enterprises in different countries. This would include relevant financial information regarding those specific transactions, a comparability analysis and application of the most appropriate transfer pricing method.

82. Tables 1 and 2 in the following pages set out in detail the items of information to be included in the masterfile and the local file.

Table 1: Coordinated Documentation Approach – Masterfile

Overview of Multinational Enterprise Group (MNE):

- Chart illustrating the MNE’s legal and ownership structure and geographical location of principal operating entities.
- Management structure and geographical location of key management personnel.

Description of MNE’s business(es)

For each MNE’s major business line:

- General written description of the MNE’s business including:
 - Important drivers of business profit
 - Chart showing supply chain for material products and services.
 - Chart showing important related party service arrangements other than R&D services.
 - A list of the main markets for material products and services.
 - Key competitors.
 - A written functional analysis showing the principal contributions to value creation by individual entities within the group.
 - A description of important business restructuring transactions occurring during the last 5 years.
- Internet links to representative analyses of the industry and company prepared by rating agencies, stock analysts, or others familiar with the business.

MNE’s intangibles

- A description of the MNE’s strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- A list of material intangibles or groups of intangibles of the MNE group and details as to which companies are entitled to returns from relevant intangibles.
- A list of important related party agreements related to intangibles, including cost contribution arrangements, principal research service agreements and important license agreements.
- A description of the group’s transfer pricing policies related to R&D and intangibles.
- A description of any material transfers of interests in intangibles during the relevant year, including the entities, geographies, and compensation involved.

Table 1: Coordinated Documentation Approach – Masterfile

MNE's intercompany financial activities

- A description of material intercompany loans and other financial arrangements (e.g. loans, hybrid financial instruments, performance guarantees, financial guarantees and similar transactions) including:
 - Related parties involved (directly or indirectly) and geographic location
 - Principal amounts involved in the arrangement.
- The MNE's inter-company transfer pricing policy or a description of the group's transfer pricing system for its financial activities.

MNE's financial and tax positions

- MNE's consolidated accounts for the prior (x) years.
- A list and brief description of the MNE group's applicable unilateral or bilateral/multilateral APAs.
- A list and brief description of other relevant tax rulings related to the allocation of income to particular jurisdictions.
- A list and brief description of transfer pricing matters pending under treaty MAP processes or resolved in MAP during the last two years.
- A schedule showing for each country in which the MNE does business the total number of employees in the country.
- A copy of the company's consolidating income statement for the most recent year.

Table 2: Coordinated Documentation Approach – Local file

Local entity

- A description of the management structure of the local entity, to whom local management reports and the geographical location of senior executives.
- An indication whether the local entity has been involved or affected by business restructurings or intangibles transfers in the present or immediately past year and explain aspects of such transactions affecting the local entity.

Controlled transactions

For each material controlled transaction in which the taxpayer is involved, provide the following information:

- Description of the controlled transactions (e.g. manufacture, distribution of goods, provision of services) and context in which it takes place (e.g. business activity, financial activities of the MNE group, cost contribution arrangement).
- Aggregate amount of intercompany charges for each category of transactions.
- Identification of associated parties involved in each category of controlled transactions, and the relationship amongst them.
- A detailed functional analysis of the taxpayer with respect to each documented category of controlled transactions, i.e. functions performed, assets used (including intangibles) and risks borne, including any changes compared to prior years.
- Identification and description of other controlled transactions of the taxpayer that can directly or indirectly affect the pricing of the controlled transaction being documented.
- Indicate the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.
- Indicate which associated enterprise is selected as the tested party and explain why.
- Indicate the important assumptions made in applying the transfer pricing methodology.
- If relevant, explain the reasons for performing a multi-year analysis.
- List and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for unrelated parties relied on in the transfer pricing analysis, including a description of the comparable search methodology.
- Describe any comparability adjustments performed, and indicate whether these have been done to the tested party, the comparable uncontrolled transactions, or both.
- Describe the reasons for concluding that relevant transactions were conducted on an arm's length basis based on the application of the selected transfer pricing method.
- A summary of financial information used in applying the transfer pricing methodology.

Financial information

- Annual local entity financial accounts for the previous (x) years, audited if they exist.
- Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- Summary schedules of relevant financial data for comparables used in the analysis.

83. The OECD believes that this proposal for the content of documentation offers a balanced trade-off between greater transparency requested from MNE and more streamlined country transfer pricing documentation requirements. This approach has significant advantages to both tax authorities and taxpayers. A number of details related to the proposal remain to be worked out, however. These include at least the following:

- Timing issues remain to be resolved. An appropriate question is which elements of the documentation packages should be provided at the time the tax return is filed such that they would be available for risk assessment purposes, and which might be deferred until after the decision is made to conduct a more detailed audit.
- Materiality standards are important, particularly with regard to the information contained in the local documentation package. Not every intercompany transfer requires the same level of documentation. However, materiality can depend to some extent on the specific country and the specific taxpayer.
- The creation of the proper incentives for complying with transfer pricing documentation can be a crucial factor. Country practices with regard to transfer pricing related penalties vary widely. The existence of different local country penalty regimes may influence the quality of taxpayers' compliance. There may be some opportunity to make country practices more consistent so that taxpayers are not driven to favour one country over another in their compliance practices.
- An important question relates to the instruments and procedures that could be used to create greater uniformity in documentation practices. It is clear that one issue raising difficulty for business involves the differences in forms and practices among countries. Documentation rules are local country rules by their nature. One option for enhancing uniformity is for the OECD to modify its Transfer Pricing Guidelines on a non-binding basis. However, other practical steps might be possible including the publication of model legislation on documentation, adoption of international agreements, or other implementing tools.

84. This paper is not intended to provide all of the answers, but rather to begin a conversation among countries and affected taxpayers regarding ways to improve the documentation environment. The OECD welcomes written comments of interested persons on the proposals contained in this paper and on the issues outlined in the preceding paragraph.

ANNEX 1: MULTI-COUNTRY SURVEY ON TRANSFER PRICING DOCUMENTATION REQUIREMENTS

		EUTPD Masterfile	EUTPD Country file	PATA	Argentina	Australia	Brazil	Canada	Chile	China	Colombia	Ghana	India	Indonesia	Israel	Japan	Kenya	Korea	Malaysia	Mexico	New Zealand	Norway	Singapore	South Africa	Switzerland	Turkey	United Kingdom	United States	Vietnam	
TP documentation	No statutory obligation for TP documentation	n/a	n/a	n/a		x			x ²³												x		x	x	?					
	Statutory obligation for TP documentation	n/a	n/a	n/a	x		x	x		x	x	x	x	x	x	x	x	x	x	x	x		x				x	x	x	x
Broad-based analysis of MNE group and taxpayer	Legal and organisational structure of the group	x		x	x ²⁴	x				x ²⁵	x	x	x	x	x	x		x	x		x	x	x			x		x	x	
	Business and business strategy of the group (including changes compared to previous years)	x				x					x	x										x	x						x	
	Operational structure of the group	x								x	x	x								x		x	x							
	Description of any changes in the business in current or past years	x										x								x		x								
	Economic circumstances and market analysis			x	x					x	x					x					x		x			x		x		

²³ Chile: According to Article 41 E of the Chilean Income Tax Law taxpayers carrying out operations with related parties abroad shall submit annually to the Internal Revenue Service a sworn statement regarding such operations, according to the information and format established by the Internal Revenue Service. Likewise, the Internal Revenue Service may request taxpayers to provide information regarding their related parties abroad.

²⁴ Argentina: The Argentinean legislation requires that detailed information (e.g. name, place of residence, tax identification number and supporting information on the ownership relationship, stockholders and ownership percentage, place of residence of the stockholders, information on the CEO, a description of the activities performed by each group member, list of group members authorized to trade in stock exchange markets, written agreements regarding transfer of shares, capital increases and capital reductions, mergers and acquisitions, amongst other information requested) be provided for all enterprises associated to the Argentinean taxpayer, regardless of whether they entered into a controlled transaction. Argentinean legislation also requires the taxpayer to declare whether any of the members of the group has been subject to a primary transfer pricing adjustment in the last three years as well as whether any of the group members is undergoing a tax audit of their transfer prices.

²⁵ China: The Chinese legislation requires that, in addition to the general information on the group members (such as names, legal representative, senior management, the registered addresses of associated enterprises and the actual operation places), the taxpayer provides information on each associated enterprises' applicable type of tax, tax rates and possible tax incentives.

		EUTPD Masterfile	EUTPD Country file	PATA	Argentina	Australia	Brazil	Canada	Chile	China	Colombia	Ghana	India	Indonesia	Israel	Japan	Kenya	Korea	Malaysia	Mexico	New Zealand	Norway	Singapore	South Africa	Switzerland	Turkey	United Kingdom	United States	Vietnam	
Analysis of taxpayer and controlled transactions	Business and business strategy of the taxpayer (including changes compared to previous years)		x	x	x	x				x	x	x	x	x	x	x		x	x		x		x			x		x	x	
	Identification and description of controlled transactions	x ²⁶	x	x	x	x		x		x		x	x	x	x	x		x	x	x	x	x	x	x		x		x	x	
	Identification and information on foreign associated enterprises engaged in controlled transactions with taxpayer; relationship with taxpayer at the time of transaction	x		x	x	x		x		x	x	x	x	x	x	x		x	x	x	x	x	x			x		x	x	
	Identification and description of other associated enterprises or controlled transactions that can affect directly or indirectly the pricing of the taxpayer's controlled transaction			x				x							x	x			x					x				x		
	Intangible property relevant for controlled transactions purposes	x		x		x				x					x	x						x					x			
	Overall transfer pricing policy of the group and implementation at company level	x	x	x		x								x	x		x		x	x							x		x	x
TP methods	Explanation of selection of the most appropriate transfer pricing method		x	x	x	x		x		x	x		x	x	x	x		x	x	x	x ²⁷	x	x	x		x		x	x	
	Reasons for rejection of other pricing methodologies			x	x	x												x										x		

²⁶ EUTPD: Identification of the controlled transactions involving associated enterprises in the EU only.

²⁷ New Zealand: The New Zealand Inland Revenue requests the use of cross-checks for highly uncertain transactions (e.g. intangibles). If one methodology produces a result that is significantly different to another, an explanation regarding the difference is requested. For instance, for purposes of the analysis of IP, a cross check and an explanation of the relativities are requested for: a) CUP; b) split of channel profits; c) overall profit (TNMM); and, d) relative return on goodwill and sold IP over reported accounting assets

		EUTPD Masterfile	EUTPD Country file	PATA	Argentina	Australia	Brazil	Canada	Chile	China	Colombia	Ghana	India	Indonesia	Israel	Japan	Kenya	Korea	Malaysia	Mexico	New Zealand	Norway	Singapore	South Africa	Switzerland	Turkey	United Kingdom	United States	Vietnam		
Comparability analysis and selection of comparables	Characteristics of property and services		x	x	x	x		x		x	x	x	x	x	x	x		x	x		x	x	x			x		x	x		
	Functional analysis (functions, risks and assets)		x	x	x	x		x		x	x	x	x	x	x	x			x ²⁸	x	x	x	x	x		x		x	x		
	Contractual terms		x	x	x	x		x		x	x	x	x	x	x	x		x	x			x	x	x		x		x	x		
	Economic and market conditions circumstances		x	x		x		x		x	x	x	x	x	x	x		x	x		x	x	x	x		x		x	x		
	Business strategies		x	x		x		x		x	x	x		x		x			x			x	x			x		x	x		
	Aggregation of transactions analysis and/or details of each transaction aggregated			x		x						x				x			x			x									
	Reasons for multiple-year analysis			x		x																									
	Identification, analysis and selection of internal comparables		x	x	x	x					x	x	x	x	x	x	x			x		x	x	x	x		x		x		
	Identification, analysis and selection of external comparables		x	x	x	x					x	x	x	x	x	x	x			x		x	x	x	x		x		x		
	Financial information (e.g. profitability) of selected comparables					x	x					x							x			x									
	Comparability adjustments and justification			x	x	x						x	x	x		x	x		x	x		x	x	x			x		x	x	
Determination TP and adjustments	Determination of transfer price (e.g. process, calculation tables, assumptions)			x	x	x		x		x	x	x	x		x	x			x		x					x		x	x		
	Document outcomes of arm's length range and selection of the point in the range			x	x	x					x	x			x				x							x					
	Evidence of price negotiation position					x							x			x													x		

²⁸ Malaysia: A functional analysis is required of all associated enterprises with which the taxpayer has transacted or other group companies to the extent that they affect or are affected by the controlled transaction carried out by the taxpayer.

		EUTPD Masterfile	EUTPD Country file	PATA	Argentina	Australia	Brazil	Canada	Chile	China	Colombia	Ghana	India	Indonesia	Israel	Japan	Kenya	Korea	Malaysia	Mexico	New Zealand	Norway	Singapore	South Africa	Switzerland	Turkey	United Kingdom	United States	Vietnam
Financial & accounting data	Financial and/or accounting statements of current year and past years (segmented or consolidated)			x	x	x				x	x	x				x		x	x			x	x	x					
	Financial and/or accounting relevant information of current and/or past years				x					x	x		x			x						x				x		x	x
	Budgets, business plans and financial projections					x						x	x					x	x					x					
	Country-by-country sales																												
	Country-by-country operating income																												
	Country-by-country tax paid																												
Information on the foreign related-party	TP documentation and tax reporting of controlled transaction in other country														x ²⁹	x													
	Advanced rulings or APAs obtained with foreign tax authorities														x	x			x ³⁰			x							
	Financial and accounting statements of current year/year under review (segmented or company-wide)				x ³¹						x	x ³²				x		x	x ³³			x				x			
	Financial and accounting data of previous years (segmented or company-wide)				x ³⁴											x						x							

²⁹ Israel: If there is a difference in the reporting in the foreign country and in Israel, explanation of such difference.

³⁰ Malaysia: APAs entered into by members of the group with respect to transactions to which the taxpayer is a party.

³¹ Argentina: Only when needed, based on the transfer pricing methodology used.

³² Ghana: This information item requires the consolidated financial statements of the group to be submitted.

³³ Malaysia: The taxpayer is required to submit the group's financial report (i.e. annual report)

³⁴ Argentina: Only when needed, based on the transfer pricing methodology used.

		EUTPD Masterfile	EUTPD Country file	PATA	Argentina	Australia	Brazil	Canada	Chile	China	Colombia	Ghana	India	Indonesia	Israel	Japan	Kenya	Korea	Malaysia	Mexico	New Zealand	Norway	Singapore	South Africa	Switzerland	Turkey	United Kingdom	United States	Vietnam
	Other				x ³⁵																								
Specific documentation requirements	Transactions involving intangible property																		x			x							
	Transactions involving centralised intra-group services																		x			x						x	
	CCAs/CSAs			x															x			x						x	
Other information	Copies of inter-company agreements			x	x					x	x	x			x	x		x	x ³⁶		x	x	x	x		x			
	Tax audits or disputes (of any of the associated enterprises)				x											x													
	List of CCAs/CSAs	x																				x							
	List of APA/rulings obtained by taxpayer	x																	x			x							
	Information which could affect TP obtained between end of tax year and filing of the tax return																		x									x	
	Accounting standards applied by associated enterprises											x					x										x		
Background documentation supporting ³⁷			x	x	x						x		x		x	x		x			x ³⁸			x		x		x	x

³⁵ Argentina: Information on whether the foreign associated enterprises involved in controlled transactions with the taxpayer are subject to a transfer pricing regimes and, if so, if they have any undergoing transfer pricing dispute with the tax administration or at judicial level (and status).

³⁶ Malaysia: Including all commercial agreements with third parties.

³⁷ Including assumptions, strategies, policies and material factors that could affect prices or profits in arm's length controlled transactions. Also, information on how property was dealt with in subsequent transactions or dealings (Canada). Official publications, reports, studies and databases; reports on market research and technical publication by recognized institutions; and supporting documents for the economically significant activities and functions of the taxpayer (Malaysia).

³⁸ New Zealand: The New Zealand Inland Revenue requests documentation on conclusions, including sanity checks to demonstrate commercial realism.

		EUTPD Masterfile	EUTPD Country file	PATA	Argentina	Australia	Brazil	Canada	Chile	China	Colombia	Ghana	India	Indonesia	Israel	Japan	Kenya	Korea	Malaysia	Mexico	New Zealand	Norway	Singapore	South Africa	Switzerland	Turkey	United Kingdom	United States	Vietnam
	Tax authorities can request supplementary information	x	x	x	x	x		?		x	x	x	?	?	?	x		?	x	?	?	?	x	x		x		x	?
	Tax return disclosure information on taxpayer's controlled transactions ³⁹	n/a	n/a	n/a	x	x	x	x		x	x		x	x	x	x	x	x	x	x	x	x		x	x	x		x	x

³⁹ This information has been sourced from the PwC GDC country matrix (not publicly available).

Sources of information for Annex 1 “Multi-country survey on TP documentation requirements”

Country/Regional organisation	Source of information	Available at
European Union Joint Transfer Pricing Forum	Code of conduct on transfer pricing documentation for associated enterprises in the European Union	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:176:0001:0007:EN:PDF
Pacific Association of Tax Administrations	Transfer pricing documentation package	http://www.irs.gov/businesses/international/article/0,,id=156266,00.html
Argentina	Transfer Pricing Country Profile: Argentina General regulation AFIP 1122/2001, Annex IV	http://www.oecd.org/dataoecd/0/10/38360110.pdf http://biblioteca.afip.gov.ar/gateway.dll/Normas/ResolucionesGenerales/reag01001122_2001_10_29.xml
Australia	Taxation Ruling 98/11 – Income tax: documentation and practical issues associated with setting and reviewing transfer pricing in international dealings	http://law.ato.gov.au/pdf/pbr/tr1998-011.pdf
Brazil	IBFD, Transfer Pricing Chapter: Brazil	
Canada	International Tax Act, Subsection 247(4) Transfer Pricing Memorandum 05 – Contemporaneous documentation	http://www.oecd.org/dataoecd/20/20/39424177.pdf http://www.transferpricing.com/pdf/CRA%20TPM-05.pdf
Chile	Income Tax Law, article 41E	http://www.oecd.org/tax/transfer-pricing/Chile_TPCountryProfileJan2013.pdf
China	IBFD, Transfer Pricing Chapter: China	
Colombia	Colombian Tax Code, articles 260-1 to 260-10 Decree 4349 of 2004, article 7 Transfer Pricing Country Profile: Colombia	http://www.dian.gov.co/contenidos/servicios/pt_normatividadrelacionada.html http://www.dian.gov.co/contenidos/servicios/pt_normatividadrelacionada.html http://www.oecd.org/tax/transfer-pricing/transferpricingcountryprofiles.htm
Ghana	Transfer Pricing Regulations, 2012	http://www.ghana.gov.gh/index.php/news/general-news/16036-parliament-adopts-report-on-transfer-pricing-regulations
India	OED, Transfer Pricing Country Profile: India	http://www.oecd.org/dataoecd/9/4/42236399.pdf
Indonesia	PER-43/PJ/2010	http://www.pwc.com/id/en/taxflash/assets/TaxFlash_2010-09.pdf
Israel	Income Tax Regulation no. 5767/2006 (Determination of Market Conditions), article 5	http://www.oecd.org/dataoecd/31/13/44421522.pdf

<i>Country/Regional organisation</i>	<i>Source of information</i>	<i>Available at</i>
Japan	National Japanese Agency – Commissioner’s Directive on the Operation of Transfer Pricing (Administrative Guidelines), article 2-4.	http://www.nta.go.jp/foreign_language/07.pdf
Korea	PwC International Transfer Pricing 2011 – Korea	http://www.pwc.com/gx/en/international-transfer-pricing/assets/korea.pdf
Malaysia	Inland Revenue Board Malaysia	http://www.hasil.gov.my/pdf/pdfam/garispenduanpindahanharga_bm.pdf
Mexico	OECD Mexican Transfer Pricing Profile	http://www.oecd.org/dataoecd/57/25/38665620.pdf http://www.diputados.gob.mx/LeyesBiblio/pdf/82.pdf
New Zealand	New Zealand inland Revenue’s Transfer Pricing Documentation site	http://www.ird.govt.nz/transfer-pricing/practice/transfer-pricing-practice-documentation.html
Norway	Regulations relating to the Documentation of Price Determination for Controlled Transactions and Transfers	http://www.skatteetaten.no/no/Artikler/Regulations-relating-to-the-Documentation-of-Price-Determination-for-Controlled-Transactions-and-Transfers/
Singapore	Inland Revenue Authority of Singapore, IRAS Circular – Transfer Pricing Guidelines, Annex G (23 February 2006)	http://www.iras.gov.sg/irashome/uploadedfiles/e-Tax_Guide/etaxguides_IIT_Transfer%20Pricing%20guidelines_2006-02-23pdf.pdf
South Africa	SARS, Practice Note No. 7	http://www.sars.gov.za/home.asp?pid=4588
Switzerland	OED, Transfer Pricing Country Profile: Switzerland	http://www.oecd.org/dataoecd/21/51/42572950.pdf
Turkey	IBFD, Transfer Pricing Chapter: Turkey	
United Kingdom	International Tax Manual (INTM 433030) – Part 4 TIOPA 2010: Self-assessment obligations: Record keeping: Transfer pricing documentation	http://www.hmrc.gov.uk/manuals/intmanual/INTM483030.htm
United States	Treasury Regulations, 1.6662-6	http://edocket.access.gpo.gov/cfr_2011/aprqr/pdf/26cfr1.6662-6.pdf
Vietnam	Circular No. 66/2010/TT-BTC – Guiding the determination of market prices in business transactions between associated parties	http://ssaudit.com/upload_img/files/TT66_22042010BTC[E].pdf

**ANNEX 2: MULTI-COUNTRY SURVEY ON TRANSFER PRICING DISCLOSURE REQUIREMENTS
SUBMITTED WITH THE ANNUAL TAX RETURN**

		Argentina	Australia	Brazil	Canada	Chile	China	Colombia	Ghana	India	Indonesia	Israel	Japan	Kenya	Korea	Malaysia	Mexico	New Zealand	Norway	Singapore	South Africa ⁴⁰	Switzerland	Turkey	United Kingdom	United States	Vietnam
TP disclosure requirements	Transfer pricing information is included in the annual tax return (i.e. no separate form)								N					x ⁴¹	x		N		N	x	N		N			
	Specific transfer pricing form needs to be filed with the annual tax return	x	x	x ⁴²	x	x ⁴³	x	x	N	x	x	x	x		x	x	N	x	N		N	x	N	x	x	
Formalities	The form/information submitted needs to be certified by an external auditor/accountant or through an affidavit	x ⁴⁴				x				x						x										
APAS and TP documentation	Report existing APAs with the local tax authorities										x															
	Report existing bilateral APAs																									
	Report existing APAs between foreign related party and a foreign tax administration				x						x															
	Existence of documentation for related party transactions				x		x			x	x															
General	Information on taxpayer's business activity				x	x		x							x				x						x	

⁴⁰ South Africa: IT14 Form requires taxpayers with controlled transactions to submit upon request a copy of the agreements entered into and a copy of the transfer pricing policy document applied to the current year.

⁴¹ Kenya: The taxpayer is required to provide information on whether it has related/associated enterprises outside Kenya and, for each, to provide company name and address.

⁴² Brazil: Export and import transactions with related parties and with no related parties need to be reported in two different forms (29A and 29B).

⁴³ Chile: The submission of a transfer pricing form has been introduced for 2012 onwards. The administrative ruling approving the content of such form was issued on 31 of January 2013 through resolution No. 14 (<http://www.sii.cl/documentos/resoluciones/2013/reso14.pdf>). The annual statement No. 1907 should be submitted by taxpayers with transactions with related parties until the last working day of June

⁴⁴ Argentina: The transfer pricing documentation report (as well as the taxpayer's financial statement), which needs to be provided with the annual return, needs to be certified independent certified public accountant, whose signature must be certified by the professional association of which he or she is a member.

		Argentina	Australia	Brazil	Canada	Chile	China	Colombia	Ghana	India	Indonesia	Israel	Japan	Kenya	Korea	Malaysia	Mexico	New Zealand	Norway	Singapore	South Africa ⁴⁰	Switzerland	Turkey	United Kingdom	United States	Vietnam
information on the existence of controlled transactions	Indicate whether there are or not controlled transactions with foreign associated persons							x											x ⁴⁵		x		x ⁴⁶			
	Quantification total value and/or number of related party transactions		x	x		x										x ⁴⁷	x								x	
	Quantification total value/number (e.g. percentage) of third party transactions			x			x	x																		
Identification of foreign countries	Information on related party transactions with associated parties located in countries other than low tax jurisdictions		x			x																				
	Information on related party transactions with associated parties located in low tax jurisdictions	x	x			x					x									x						
	List of all low tax jurisdictions in which taxpayers undertakes related party transactions					x														x						
	List of main low tax jurisdictions in which taxpayer undertakes related party transactions		x		x																				x	
Type of controlled	Specify type of transaction involving, for instance:	x	x	x ⁴⁸	x	x	x ⁴⁹	x		x	x		x		x		x		x				x		x	

⁴⁵ Norway: Form 1123E requests the taxpayer to provide the number of companies and entities with which the taxpayer or entity has conducted controlled transactions in Norway, in EEA countries and in countries outside EEA.

⁴⁶ Turkey: The form requests the taxpayer to provide a list of associated persons with which the taxpayer has controlled transactions.

⁴⁷ Malaysia: Part N of Form C requires total amounts for sales, purchases, expenses, loans and other inform from related companies in Malaysia and from related companies outside Malaysia.

⁴⁸ Brazil: For each type of transaction, Form 29A requires taxpayers to segment the information into: a) transactions with related parties; transactions with residents in preferential tax jurisdictions; and, c) other transactions (within the specific category).

⁴⁹ China: Taxpayers are required to file specific forms for the sale and purchase of merchandise (form no. 3); labour service form (form no. 4); intangible assets form (form no. 5); fixed assets form (form no. 6); financing form (form no. 7); foreign investment survey form (form no. 8); information form regarding overseas payment (form no. 9)

		Argentina	Australia	Brazil	Canada	Chile	China	Colombia	Ghana	India	Indonesia	Israel	Japan	Kenya	Korea	Malaysia	Mexico	New Zealand	Norway	Singapore	South Africa ⁴⁰	Switzerland	Turkey	United Kingdom	United States	Vietnam		
transactions	1. Tangible property	x	x	x	x	x	x	x		x ⁵⁰	x		x		x		x						x		x	x		
	2. Intangibles property (owned or used)	x	x	x	x	x	x	x		x	x		x		x		x		x					x		x	x	
	3. Intra-group services ⁵¹	x	x	x	x	x		x		x	x				x		x		x					x		x	x	
	4. Rent and/or leasing activities		x		x	x		x		x							x		x							x		
	5. Financial transactions	x	x ⁵²	x	x	x	x	x		x	x		x				x		x			x			x		x	x
	6. Derivatives and global trading		x		x	x						x																
	7. Other financial dealings (other than the ones listed in 5-6)		x		x	x		x																				
	8. Acquisition or disposal of capital tangible or intangible property		x				x	x	x			x		x				x		x								x
	9. Cost contribution agreements		x								x					x											x	
	10. Other transactions	x					x		x		x	x						x		x ⁵³								
Information required on each type of transaction	For each specific transaction, information is requested on:																											
	1. Description of the transactions (e.g. type of transactions; volume/units; nature; currency)			x		x				x	x	x																

⁵⁰India: Form No. 3CEB distinguishes between controlled transactions involving a) the purchase/sale of raw material, consumables or any other supplies for assembling/processing/manufacturing of goods/articles from/to associated enterprises; b) purchase/sale of traded/finished goods; c) tangible movable/immovable property or lease of such property.

⁵¹ Australia: IDS requires the taxpayer to provide the information by type of service: treasury related services; management and administration services; insurance; reinsurance; R&D; sales and marketing services; software and IT services; technical services; logistics; asset management; other services.

⁵² Australia: IDS requires the taxpayer to provide detailed information on amounts borrowed/loaned, interest, guarantees, insurance, reinsurance, other financial dealings.

⁵³ Norway: Form 1123E requests information on changes in the legal or operation (functions performed, risks assumed, assets employed) structure during the income year being reported.

		Argentina	Australia	Brazil	Canada	Chile	China	Colombia	Ghana	India	Indonesia	Israel	Japan	Kenya	Korea	Malaysia	Mexico	New Zealand	Norway	Singapore	South Africa ⁴⁰	Switzerland	Turkey	United Kingdom	United States	Vietnam
	2. Amount of expense/income or price	x	x	x	x	x	x	x		x	x	x	x		x		x		x				x		x	x
	3. Identification of foreign related parties with which the taxpayer has entered into controlled transactions (including country where it is located)			x	x	x	x	x		x	x	x			x		x								x ⁵⁴	x
	4. Information on foreign related party's business activity									x					x										x	
	5. Business activity for the transaction (NACE/SIC code or other)		x	x		x																				
	6. Tested party					x		x																		
	7. Main pricing methodology	x	x	x	x	x	x	x		x	x ⁵⁵		x		x ⁵⁶		x							x		x
	8. Profitability indicator used					x		x									x									
	9. Comparable value used (if only one)	x		x		x		x																		
	10. Arm's length price obtained	x				x		x		x					x		x									
	11. Type of comparability adjustment performed							x																		
	12. Self-adjustment	x		x		x		x																		
	13. Existence of documentation		x																							
	Other information	Specific information required on non-monetary consideration paid or received from foreign related		x		x														x						x

⁵⁴ United States: For each person, form 5472 requires information on the country of citizenship, organization or incorporation and the countries under whose laws the related party files an income tax return as a resident.

⁵⁵ Indonesia: In addition to reporting the transfer pricing method used, it also requires the reason for using such method.

⁵⁶ Korea: In addition to reporting the transfer pricing methods used, it also requires the reason for using such method as well as submission of an official report explaining how the price has been calculated.

		Argentina	Australia	Brazil	Canada	Chile	China	Colombia	Ghana	India	Indonesia	Israel	Japan	Kenya	Korea	Malaysia	Mexico	New Zealand	Norway	Singapore	South Africa ⁴⁰	Switzerland	Turkey	United Kingdom	United States	Vietnam
required	parties																									
	Specific information required on employee share based remuneration		x																							
	Specific information required on disclosure of branch operations		x																							
	Specific information required on thin capitalisation		x																							
	Other information required					x ⁵⁷							x ⁵⁸		x ⁵⁹										x ⁶⁰	

⁵⁷ Chile: Statement No. 1907 requires provision of information on trading accounts among related parties.

⁵⁸ Japan: For each associated person with whom the taxpayer carries on controlled transactions, the following information needs to be submitted: number of employees, sales/operating revenues, operating costs, income before taxes, retained earnings.

⁵⁹ Korea: Under Korean transfer pricing disclosure requirements, the taxpayer has to complete and submit a form containing information on the income statement of foreign related parties.

⁶⁰ United States: Form 5472 requires under Part VI information on customs values reported for imported goods.

Sources of information for Annex 2 “Multi-country survey on transfer pricing disclosure requirements submitted with the annual tax return”

Country	Form
Argentina	<ul style="list-style-type: none"> • Form 742 (semi-annual) for related party transactions • Form 743 (annual) for related party transactions, available at http://www.afip.gob.ar/genericos/formularios/archivos/pdf/f743.pdf • Form 969 for international transactions with related companies located abroad or in countries of low or no taxation.
Australia	International Dealings Schedule, available at http://www.ato.gov.au/content/downloads/TP00318322NAT733452012.pdf
Brazil	<ul style="list-style-type: none"> • Ficha 29A – Operações com o exterior – pessoa vinculada/interposta pessoa/país com tributação favorecida • Ficha 29B – Operações com o exterior – pessoa não vinculada/ não interposta pessoa/país sem tributação favorecida • Ficha 30 - Operações com o exterior – Exportações (entrada de divisas) • Ficha 31 - Operações com o exterior – Contratantes das exportações • Ficha 32 - Operações com o exterior – Importações (saída de divisas) • Ficha 33 - Operações com o exterior – Contratantes das Importações <p>All available at http://www.anefac.com.br/Eventos/Arquivos/Painel_DIPJ_2012_PJ_Geral_Final%20-%20Ajustado.pdf (pages 57 to 63)</p>
Canada	Information return of non-arm’s length transactions with non-residents - T106 Summary form, available at http://www.cra-arc.gc.ca/E/pgb/ft/t106/t106-11e.pdf
China	Annual report form for associated business transaction of enterprise
Colombia	Information return for transfer pricing, available in Spanish at http://www.dian.gov.co/contenidos/servicios/ptrtransferencia.html
India	Form No. 3CEB – Report from an accountant to be furnished under section 92E relating to international transactions, available at http://law.incometaxindia.gov.in/DITTaxmann/IncomeTaxRules/pdf/itr62Form3CEB.pdf
Indonesia	Special attachments 3A, 3A-1 and 3A-2 (for related party transactions; and, 3B, 3B-1 and 3B-2 (for transactions with residents of tax haven countries)
Israel	Form 1385 – Declaration on International Transactions
Japan	Schedule 17(4) – Statement on foreign affiliated persons
Korea	<ul style="list-style-type: none"> • Report on transfer pricing methods • Summary of cross–border transactions with foreign related parties. • Summary of income statements for overseas related parties having cross–border transactions with the Korean entity.
Malaysia	Form C 2012 (part N), available at http://www.hasil.gov.my/pdf/pdfborang/Form_C2012_2.pdf
Mexico	Form 55 – Transactions with foreign related parties, available in Spanish at ftp://ftp2.sat.gob.mx/asistencia_servicio_ftp/publicaciones/ff_2010/forma_55_y_anA.pdf
Norway	Form RF-1123E – Controlled transactions and accounts outstanding
South Africa	IT14 Form – Income Tax Return (“International Related”), available at http://www.westerncape.gov.za/Text/2007/9/how_to_fill_in_your_it14.pdf
Turkey	Form related to Transfer Pricing, Controlled Foreign Corporation and Thin Capitalisation

<i>Country</i>	<i>Form</i>
United States	Form 5472 – Information return of a 25% foreign-owned US corporation or a foreign corporation engaged in a US trade or business, available at http://www.irs.gov/uac/Form-5472,-Information-Return-of-a-25-Percent-Foreign-Owned-U.S.-Corporation-or-a-Foreign-Corporation-Engaged-in-a-U.S.-Trade-or-Business
Vietnam	Form GCN-01/QLT (Appendix to Circular 66/2010/TT-BTC)