

FOREWORD

Over the last decade, due to economic developments, many countries experienced reduced tax bases and declining tax revenues. As a consequence, the pressure has never been higher on Governments and tax authorities to protect domestic tax revenues without increasing tax rates. In order to increase the tax base, many countries decided to work together in the project lead by the Organisation for Economic Co-operation and Development (OECD) on Base Erosion and Profit Shifting, which came known as the BEPS-project. The BEPS-project resulted in 15 action points to increase the tax base by countering tax avoidance. With 4 action points dealing with transfer pricing, it is clear that transfer pricing has become one of the most important areas tax authorities will be focusing on going forward.

Within this context, BEPS action point 13 provides guidance to countries by establishing common minimum standards for transfer pricing documentation for midsize and large size multinational enterprises, consisting of a master file, local file and a country-by-country report. This publication provides the reader a comprehensive overview of the implementation of BEPS action 13 in domestic legislation, which not only covers documentation standards but also deals with specific local requirements on domestic exemptions, timing and penalty regimes.

PKF has a global transfer pricing practice and provides a one-stop service for multinational groups in taking care of their transfer pricing requirements across many jurisdictions. With offices in over 400 locations, we operate in more than 150 countries across our 5 regions, and specialise in providing high quality transfer pricing services to international and domestic organisations in all our markets. We can assist you in managing your transfer pricing risks and ensuring that your transfer pricing policies and documentation are BEPS-proof. Notably, our services include:

BEPS proof transfer pricing health check

A diagnostic health check will identify inappropriate BEPS transfer pricing policies and inadequate documentation from a BEPS and local standpoint. This will provide a clear summary of potential issues.

Development of transfer pricing mechanisms and policies

We will develop your transfer pricing policies and ensure they conform to OECD and local country principles and regulations.

Preparation of transfer pricing documentation based on a functional analysis

We can help you prepare robust documentation to support the arm's length pricing nature of your related party transactions, including supportive transfer pricing studies and reports.

Advance Pricing Agreements

We assist throughout the negotiation process with a tax authority to agree a specified transfer pricing method which can be applied to certain transactions and remove uncertainty.

Responses to transfer pricing questions from the authorities

We assist you in responding to tax authority queries, in any jurisdiction, where rational explanations of why your related party transactions comply with local regulations are required.

Representation and dispute resolution

We will assist you to defend against additional tax assessments resulting from administrative or legal challenges to your transfer pricing policies

Please visit our website at www.pkf.com/transferpricing to find more information on how PKF may help you with your transfer pricing requirements.

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1. Introduction

1.1 Legal context

Many changes were introduced into local legislation from 1998 onwards in relation to the treatment to be given to transactions between related parties, most of them aimed at making local rules consistent with the OECD approach. The five transfer pricing methods specified in OECD Guidelines (comparable uncontrolled price (CUP), resale price minus, cost plus, profit split, and the transactional net margin method (TNMM)) were introduced in Article 15 of Income Tax Act.

These transfer pricing methods became applicable to transactions ranging from the transfers of tangible (except when Article 8 is to be applied) and intangible property, services, financial transactions, and licensing of intangible property. Transfer pricing documentation requirements were introduced in 2000 and the requirement to file such documentation in 2001.

In Argentinean tax legislation, there are no references with regard to the OECD Transfer Pricing Guidelines. Nevertheless, in the Regulatory Decree of the Income Tax Law, the five factors of comparability are added, with a similar scope to those mentioned in the Guidelines.

Also in line with the OECD Guidelines were the clarifications on what would be considered comparable transactions in each different type of transaction (financial, intangibles, services, etc.), and the comparability adjustments that could be used to reduce the differences in comparability.

Regulations currently in effect:

- Income Tax Act art. 8, 14, 15, 15.1, 129 and 130.
- AFIP (Administración Federal de Ingresos Públicos – Inland Revenue Service) General Ruling 1122 (applicable for fiscal years beginning on 31 December 1999).

1.2 Practical context

The tax authorities are expected to become more aggressive and skilled in transfer pricing. Fiscal tax audits are expected to increase significantly, as training improves and inspectors gain experience in transfer pricing audits. As the number of audits increases, some of the main areas being examined include

intercompany debt, technical services fees, commission payments, royalty payments, transfers of intangible property, and management fees.

2. Formal requirements

2.1 Which taxpayers

Transfer pricing rules apply to:

- taxpayers who carry out transactions with related parties located abroad and who are encompassed by the provisions of Article 69 of the Income Tax Act (mainly local corporations and local branches, other types of companies, associations or partnership, trusts or similar entities);
- taxpayers who carry out transactions with individuals or legal entities located in countries with low or no taxation, whether related or not;
- taxpayers resident in Argentina, who carry out transactions with permanent establishments abroad that they own; and
- taxpayers resident in Argentina who are owners of permanent establishments located abroad, for transactions carried out by the latter with related parties located abroad.

2.2 Aggregation of transactions

A separate documentation of each business transaction is necessary. An aggregation is possible to apply each method, therefore the transactions can be assessed together.

2.3 Deadlines (timing)

- Form 742: to be submitted on the first 6-month period of the fiscal year in the 5th month after the first half-year end;
- Form 969: to be submitted every year on the immediate 15 days after the due date for general delivery of Income Tax Return (5 months after fiscal year end);
- Form 743 + Transfer Pricing Report with the certification by an independent CPA (through Form 4501) + Statutory Financial Statements (in case they have not already been filed before): to be submitted every year in the 8th month after the end of the fiscal year;
- Form 4501, in order to submit the pdf file with the Transfer Pricing Report and the certification by an independent CPA, to be submitted every year in the 8th month after the end of the fiscal year;
- Form 741: to be submitted on a half-year basis in the 5th month after each half-year end;
- Form 867: to be submitted every year in the 7th month after the end of the fiscal year;
- Form 968: to be submitted monthly before the last business day of the following month next to the month being informed;
- Record of Related Parties: must be filed since fiscal year 2014 and any update should be informed 10 business days after the related party relationship is entered into/discontinued.

Taxpayers must submit these TP Tax Returns and documentation electronically through the AFIP's website.

2.4 Materiality

All transactions with related party should be supported by TP documentation. There is no threshold below which no TP documentation is required.

2.5 Retention of documents

The statute of limitations for federal tax matters is 5 years, which consequently applies for transfer pricing. This period begins on 1 January of the year following the year in which the tax return is due. The transfer pricing documentation must be kept by the taxpayer for up to 5 years after the period established by the statute of limitations (therefore 11 years).

2.6 Frequency of documentation updates

The documentation is required for each year in which transactions with foreign related parties occur.

The tax authority requires from taxpayers to prove that they have operated under the arm's length principle.

The documentation should not only be contemporaneous but it should exist at the due date for filing informative returns. As from that moment, the documentation should be available to examiners and it should be kept until 5 years after the expiration of the statute of limitation period for the relevant tax.

The data that the local taxpayer should document and which are necessary for the Tax Administration to review or apply some of the methods set forth in Argentine legislation are:

- Taxpayer data and information about their functions or activities (production, research and development, marketing, sale and distribution, shipment, inventory, installation, after-sale service, administration, accounting, legal, personnel, information technology, finance, etc.);
- Complete information about the foreign related party and documentation, if any, indicating the nature of the relevant transaction;
- Transactions made with related parties, amounts and currency used;
- Consolidated financial statements, if applicable based on the pricing method used;
- Contracts and agreements executed;
- Information about the taxpayer's financial standing, about the enterprise's environment and the market in which it operates, commercial strategies, cost structure; and
- Information and documentation supporting the transfer pricing procedure followed.

2.7 Tax return disclosures

Transfer pricing requirements in Argentina state the obligation of the taxpayers to submit the following Informative Tax Returns:

- Form 742: for transactions with related entities located in foreign countries or companies located in non-cooperative countries (jurisdictions not mentioned in the “cooperative for fiscal transparency purposes” list, available at AFIP website in the following link <http://www.afip.gob.ar/jurisdiccionesCooperantes/>);
- Form 969: for transactions with related entities located in foreign countries or companies located in non-cooperative countries. This Form requires more detailed information than Form 743;
- Form 743: for transactions with related entities located in foreign countries or companies located in non-cooperative countries;
- Form 4501: used for filing the required Transfer Pricing Report and the certification by an independent certified public accountant (CPA), and it should contain three digital signatures: the taxpayer, the CPA involved, and the representative of the professional association where the CPA has been licensed;
- Form 741: for imports and exports of commodities with independent entities, not located in non-cooperative countries;
- Form 867: for imports and exports of tangible goods (non-commodities) with independent entities, not located in non-cooperative countries, which are jointly above ARS 1 million (approximately USD 60,000); and
- Form 968: for transactions performed between local related parties.

2.8 Burden of proof

The general rule is that the taxpayer has the burden of proof, as it is obligated to file a report with certain information related to transfer pricing regulations together with the income tax return. If the taxpayer has submitted proper documentation, AFIP must demonstrate why the taxpayer’s transfer prices are not arm’s length and propose an amount of transfer pricing adjustment in order to challenge the transfer prices of the transaction. Once the AFIP has proposed an alternative transfer pricing method and adjustment, it is up to the taxpayer to defend the arm’s-length nature of its transfer prices.

2.9 Penalties

2.9.1 General

Argentine legislation includes specific rules for penalties to be imposed as a result of events on non-compliance with the rules governing international transactions.

The penalty system is the following:

1. Failure to file tax return by the corresponding deadline:
 - Informative complementary return of import and export transactions between independents: ARS 1,500 (approx. USD 90) for individuals and ARS 9,000 (approx. USD 530) for corporations.

- Informative complementary return of transactions with foreign subjects –except for the above-: ARS 10,000 (approx. USD 590) for individuals and ARS 20,000 (approx. USD 1,180) for corporations.
2. Failure to submit informative returns of international transactions or returns with information about the taxpayer itself or about third parties as requested by the tax authority.
 - Penalties: ARS 500 (approx. USD 30) to ARS 45,000 (approx. USD 2,650). These fines are in addition to those above and the amounts depend on taxpayer's status and seriousness of the breach.
 3. Higher-income taxpayers.

When the taxpayer has an annual income of ARS 10,000,000 (approx. USD 590,000) or more, the penalty imposed upon failure to comply with the third request is 2 to 10 times the maximum amount established (ARS 45,000 or approximately USD 2,650), which shall be added to the rest.

2.9.2 Penalties in case of a TP-adjustment

Failure to pay the tax:

- General: 50% to 100% of the tax that was not paid, withheld or collected.
- International transactions: 1 to 4 times the tax that was not paid or withheld.

If the tax authorities consider that a taxpayer has manipulated its results intentionally, the fine can climb to 10 times the tax amount evaded, in addition to the penalties established by the Criminal Tax Act 24,769. The tax authorities have the discretion to analyze the transfer pricing arrangement(s) by consideration of any relevant facts and application of any methodology they deem suitable.

2.9.3 CbC-reporting

Concerning the local application of country-by-country (CbC) reporting, rulings for CbC reporting have not been enacted yet, and at least a general ruling needs to be enacted by the AFIP in order to request CbC reporting from local headquarters. AFIP is preparing the necessary regulatory changes to request the CbC reports and Master File from local MNEs' headquarters, and to request such files from local affiliates in the event that they were not provided by the jurisdiction of the parent company. But, it is not effective yet.

2.10 Interest

The general rules apply. Interest on tax payments in arrears is charged at a rate of 3% per month starting from the tax due date. No interest is due on penalties.

2.11 Use of most reliable information

Comparable information is required to determine arm's-length prices and should be included in the taxpayer's transfer pricing documentation. Argentine companies are required to make their annual accounts publicly available by filing a copy with the local authority. However, the accounts would not

necessarily provide much information on potentially comparable transactions or operations because they do not contain much detailed or segmented financial information. Therefore, reliance is often placed on foreign comparables.

The tax authorities have the power to use third parties' confidential information.

The legislation of Argentina contains provisions regarding the methods to be used in order to determine whether transactions between related parties satisfy the arm's length principle.

Income Tax Act (art. 15) stipulates that the method(s) to be used are those that are most appropriate based on the type of transaction made.

The most appropriate method to determine whether transfer prices are consistent with normal market practices between independent parties shall be the one that best reflects the economic reality of transactions. The best method shall be the one that:

- Is most compatible with the business and commercial structure.
- Has the best information – as regards quality and quantity – for an appropriate justification and application.
- Provides for the most appropriate degree of comparability between related and unrelated transactions and the enterprises involved in such comparison.
- Requires the lowest level of adjustments to eliminate the differences between comparable facts and situations.

The conclusion of the above is that the transfer pricing methodology contained in Article 15 of the Income Tax Act establishes no order of precedence for the use of the methods, with the exception of the case of commodities transactions under certain circumstances.

The taxpayer shall have to indicate the reasons why a given method has been chosen and prove that the mechanism chosen is the most appropriate for the transaction made.

2.12 Languages

The Transfer Pricing Report to be submitted to the Tax Authorities must be in Spanish. If the Transfer Pricing Report contains information in a foreign language, there is a need to attach a translation into Spanish by a national public translator, which signature must be certified by the institution of Argentina in which the translator is enrolled.

2.13 Confidentiality

With data collected in tax returns relating to transfer pricing, the AFIP can analyze the conduct of the MNEs by economic sector, analyze what is reported in relation to transfer pricing, and analyze the conduct of MNEs in relation to

specific transactions. Such information is confidential, and is used by the AFIP for research purposes in order to plan a strategy for tax audit, but also to evaluate the effectiveness of the transfer pricing regulations.

3. Standards with respect to the content of transfer pricing documentation

General Ruling 1122 provides a detail of information to keep and disclosure.

Taxpayers have transfer pricing-related obligations: to prepare, maintain and file transfer pricing documentation; and to file an information return (special tax return) on transactions with non-resident-related parties. In addition, taxpayers are required to maintain some documentation on import or export of goods between unrelated parties.

3.1 Master File

There are no special requirements for a Master File since Local file must include the information regarding MNE's when applicable.

3.2 Local File

AFIP has issued rulings requiring the documentation of the arm's-length nature of transactions entered into with related parties outside of Argentina. In this regard, the transfer pricing regulations require that taxpayers prepare and file a special tax return detailing their transactions with related parties. These returns must be filed along with the taxpayer's corporate income tax return.

The following information must be included:

1. Local entity and Corp Group

- Activities and functions performed by the taxpayer and group.
- Risks borne and assets used by the taxpayer in carrying out such activities and functions.
- Detail of elements, documentation, circumstances, and events taken into account for the analysis or transfer price study.
- Conclusions reached.

2. Controlled transactions

- Detail and quantification of transactions performed and covered by the rulings.
- Identification of the foreign parties with which the transactions being declared are carried out.
- Method used to justify transfer prices, indicating the reasons and grounds for considering them to be the best method for the transaction involved.
- Identification of each of the comparables selected for the justification of the transfer prices.

- Identification of the sources of information used to obtain such comparables.
- Detail of the comparables selected that were discarded, with an indication of the reasons considered.
- Detail, quantification, and methodology used for any necessary adjustments to the selected comparables.
- Determination of the median and the interquartile range.

3. Financial information

- Transcription of the income statement of the comparable parties corresponding to the fiscal years necessary for the comparability analysis, with an indication as to the source of the information.
- Description of the business activity and features of the business of comparable companies.

4. Country-by-Country reporting standards

Rulings for CbC reporting have not been enacted yet, and at least a general ruling needs to be enacted by the AFIP in order to request CbC reporting from local headquarters.

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1. Introduction

1.1 Legal context

Before January 1, 2016 Art 9 OECD-model convention, section 6 no 6 EStG 1988 and the according legal requirements laid down in the BAO required a proper documentation for transnational transactions. This legal frame is still in force for all companies, independent of their size.

In 2016 the "Verrechnungspreisdokumentationsgesetz" (short "VPDG") and the accompanying decree "Verrechnungspreis-dokumentationsgesetz-Durchführungsverordnung), (short "VPDG-DV") were implemented. The obligation to file the CbC Report and to establish a master and a local file was defined. This is applicable for fiscal years starting January 1, 2016 or later.

1.2 Practical context

The formal documentation has to be reorganized and new timelines and reporting requirements have to be regarded.

2. Formal requirements

2.1 Which taxpayers

Groups with over EUR 750 million turnover and the ultimate mother with its seat in Austria have to file the CbCR. A business unit with its place of management in Austria or the seat in a country not underlying the rules to publish a CbCR is required to comply with the VPDG.

A master and a local file have to be established, if during the last two years the turnover was over EUR 50 million. If the turnover is below this amount in two consecutive years, this obligation ends. If the threshold has not been exceeded for two subsequent years, it is noteworthy, that the basic documentation rules will be applicable nevertheless.

2.2 Aggregation of transactions

Following section 7 para 1 no 2 VPDG in combination with section 9 VPDG, the local file has to inform about intragroup business transactions which are material and influencing in the transfer prices and for the control of the correct pricing level.

2.3 Deadlines (timing)

For ordinary business transactions there is basically no deadline for the preparation of the documentation by the taxpayer. However, if the documentation is prepared based on data or documents collected or established much later after the respective reporting period, the fiscal authorities might challenge the documentation, because it might appear to have been prepared as subsequent justification.

Regarding extraordinary business transactions (i.e. conclusions and changes of long term agreements, which have a material effect on the income derived by the taxpayer; transfers of assets in the course of a business restructuring procedure etc.), these documentation has to be prepared on a timely basis.

CbCR:

Until the last day of the fiscal year the ultimate parent entity is obliged to inform the fiscal authority that it falls within the scope at these duties. Entities which are part of such a group have to file a declaration until the last day of its fiscal year, in which the ultimate parent entity publishing the CbCR and its home country are identified. In most the business cases, that information has to be filed the first time until December 31, 2016.

The CbCR has to be submitted electronically to the relevant fiscal authority. The deadline is 12 months after the closing of the fiscal year. In most of the cases, CbCR will have to be filed for the first time until the December 31, 2017.

The CbCR will be distributed to the other relevant fiscal authorities after 15 months of the end of the fiscal year. The first distribution may be done until 18 months after the end of the fiscal year.

Master and local file:

The master and the local file do not have to be submitted automatically. The fiscal authorities have the right to request submission after filing of the income or corporate tax return regarding the respective fiscal year. The timeline is 30 days to disclose the documents.

2.4 Materiality

In principle all transactions with associated enterprises should be supported by TP-documentation. There are no formal thresholds below, where no TP-documentation is required. However, in consideration of the basic principle that the administrative burden should be justified by the complexity and (tax)

importance of the transaction, the more complex and material the transactions are, the more extensive the TP-documentation should be.

2.5 Retention of documents

Basically, the documentations have to be retained for seven years. The retention period does not expire as far and as long as the documents are of importance for taxes for which the assessment period has not run out yet.

2.6 Frequency of documentation updates

The master file, local file and CbC-report must be updated every year, because they relate to a particular fiscal year.

For continuous business transactions (e.g. long-term loans), the company has to collect and record information even after the conclusion of the business transaction (e.g. the conclusion of the loan agreement). A significant change in the facts and circumstances could also lead to an update of the documentation.

2.7 Tax return disclosures

There is no separate disclosure to the tax returns. For filing the local and the master file, see 2.3.

2.8 Burden of proof

If the taxpayers keep appropriate TP-documentations in their records and do not have an explicitly unreasonable and unsupported point of view with respect to the used transfer prices, the tax authorities must prove that the used transfer prices are not correct. If there is no TP-documentation available or there are evident shortcomings in the documentation, the burden of proof can turn to the tax payer.

2.9 Penalties

2.9.1 *General*

Not complying with the rules regarding, the CbCR may be punished with amounts up to EUR 50.000 (section 49b Finanzstrafgesetz).

As an administrative offence can be treated:

- late filing; or
- not filing requested information or errors in the information.

Gross negligence can be punished with amounts up to EUR 25.000. Minor negligence for submitting wrong data is not punishable.

2.9.2 Penalties in case of a TP-adjustment

Apart from the rules mentioned above in chapter "2.10.1. Penalties regarding CbCR", there are no specific rules on penalties in case of a TP adjustment. As a consequence, the normal rules on the consequences of income adjustments apply including e.g. fines for thoughtless tax evasion.

2.10 Use of most reliable information

There are no specific requirements in Austria regarding the use of comparables and as to the question whether only domestic or foreign comparables will be accepted by the fiscal authorities.

2.11 Languages

The documentations have to be prepared in German or in English (section 10 VPDG).

2.12 Confidentiality

The CbCR will be submitted automatically to the relevant foreign tax authorities.

The Austrian tax authorities will treat the TP-documentation confidentially. The tax authorities can only exchange the TP-documentation with the tax authorities of another country if there is a legal basis. This legal basis can be found in the national law, a tax treaty or an EU-directive. The TP-documentation is never available to the public.

3. Standards with respect to the content of transfer pricing documentation

The TP-documentation standards are published in detail in the directive on transfer pricing 2010 (Verrechnungspreisrichtlinien 2010). Documentation standards regarding the master and the local file can be found in the VPDG-DV.

3.1 Master File

The following information has to be included in the Master File (section 6 VPDG, section 1 VPDG-DV):

1. Organizational structure

Chart illustrating the MNE's legal and ownership structure and geographical location of operating entities.

2. Description of MNE's business(es)

General written description of the MNE's business including:

- a) Important drivers of business profit.
- b) A description of the supply chain for the group's five largest products and/or service offerings by turnover plus any other products and/or services

amounting to more than 5 percent of group turnover. The required description could take the form of a chart or a diagram.

- c) A list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services.
- d) A description of the main geographic markets for the group's products and services that are referred to under b.
- e) A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used.
- f) A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.

3. MNE's intangibles (as defined in Chapter VI of the OECD Transfer Pricing Guidelines)

- a) A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- b) A list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and which entities legally own them.
- c) A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements.
- d) A general description of the group's transfer pricing policies related to R&D and intangibles.
- e) A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

4. MNE's intercompany financial activities

- a) A general description of how the group is financed, including important financing arrangements with unrelated lenders.
- b) The identification of any members of the MNE group that provide a central financing function for the group, including the country under whose laws the entity is organized and the place of effective management of such entities.
- c) A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

5. MNE's financial and tax positions

- a) The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.
- b) A list and brief description of the MNE group's existing unilateral advance pricing agreements (APAs) or similar arrangements.

3.2 Local File

The following information should be included in the Local File (section 7 VPDG, section 7 ff VPDG-DV):

1. Local entity

- a) A description of the management structure of the local entity, a local organization chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- b) A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.
- c) Key competitors.

2. Controlled transactions

For each material category of controlled transactions in which the entity is involved, provide the following information:

- a) A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licenses of intangibles, etc.) and the context in which such transactions take place.
- b) The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payer or recipient.
- c) An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.
- d) Copies of all material intercompany agreements concluded by the local entity.
- e) A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior years.
- f) An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.
- g) An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.
- h) A summary of the important assumptions made in applying the transfer pricing methodology.
- i) If relevant, an explanation of the reasons for performing a multi-year analysis.
- j) A list and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing

analysis, including a description of the comparable search methodology and the source of such information.

- k) A description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both.
- l) A description of the reasons for concluding that relevant transactions were priced on an arm's length basis based on the application of the selected transfer pricing method.
- m) A summary of financial information used in applying the transfer pricing methodology.
- n) A copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions described above.

3. Financial information

- a) Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
- b) Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- c) Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

4. Country-by-Country reporting standards

4.1 Threshold and required content

A MNE with a consolidated group revenue of more than EUR 750 million should provide the Austrian tax inspector with a CbC-report. The report contains the following information about the MNE:

- a. For each country in which the MNE is active, information about the revenue, the earnings before tax (EBT), the paid income tax, the accrued income tax, the stated capital, the accumulated earnings, the number of employees and the tangible assets other than cash and cash equivalents.
- b. A description of every group entity of the MNE mentioning the tax jurisdiction of residence, and if deviant, the state under whose law the group entity is established and the main business or operations of that group entity.
- c. Additional information which is considered as necessary or that would facilitate the understanding of the CbCR. They have to be given in English (section 11 VPDG-DV).

4.2 Notification requirement for subsidiary companies

In principle, the country report is provided by the ultimate parent company of the MNE in its state of residence. The state of residence will exchange the country report automatically with the Austrian tax authorities. An Austrian ultimate parent company needs to provide the Austrian tax inspector with the

country report. The Austrian tax authorities will automatically exchange this report with the jurisdictions in which the MNE is active and with which Austria has concluded an Agreement for automatic exchange of information.

The Austrian group entity is required to provide the Austrian tax authorities with the report if:

- 1) The foreign ultimate parent company is not required to provide the tax authorities a report in its state of residence.
- 2) The foreign ultimate parent company is required to provide the tax authorities a report in its state of residence, but there is no Agreement between that state and Austria which provides for automatic exchange of the report.
- 3) The Austrian tax authorities informed the Austrian group entity there is a structural negligence of the state of residence of the ultimate parent company.

This requirement by the Austrian group entity can be prevented, if the report is provided by a surrogate ultimate parent company, under the following conditions:

- 1) The surrogate ultimate parent company is required to provide the report in its state of residence.
- 2) There is an agreement between that state and Austria which provides for automatic exchange of report.
- 3) The state of residence of the surrogate ultimate parent company is not structural negligent in the exchange of the report.
- 4) The surrogate ultimate parent company has notified its state of residence it will act as a surrogate ultimate parent company.
- 5) The Austrian group entity has notified the Austrian tax authorities which foreign group company has taken over the requirement to provide the report.

In this way it is ensured that the Austrian tax authorities are provided with the report, either by an Austrian taxpayer or by the tax authorities of another state.

The MNE must provide the report within 12 months after the last day of the financial year of the MNE.

A subsidiary company needs to notify the Austrian tax authorities should the ultimate mother refuse to provide the information needed. The reporting then has to be done with the information available.

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1. Introduction

1.1 Legal context

The Belgian Law of 1 July 2016 formally introduced transfer pricing (“TP”) documentation rules into Belgian tax law. Those rules are laid down in article 321/1-321/7 of the Belgian Income Tax Code (“BITC”) and contain specific TP documentation requirements which may have a significant impact on “large” companies which are part of a multinational Group and which are active in Belgium.

The Belgian TP documentation rules entered into force for financial years commencing as of 1 January 2016 and include a master file (MF) and local file (LF) and a Country-by-Country report (CbC report) or CbC-notification form.

1.2 Practical context

The new documentation requirements which entered into force as of 1 January 2016 can lead to a significant administrative burden as they are applicable to every Belgian tax resident affiliate of a multinational Group which exceeds certain thresholds in the financial year preceding its most recently closed financial year according to its Belgian GAAP annual accounts on a non-consolidated basis.

It is therefore advised for all multinational taxpayers that are active in Belgium to timely and critically consider their (actual and relevant) TP documentation obligations.

2. Formal requirements

2.1 Which taxpayers

The Belgian TP documentation requirements are applicable to every Belgian tax resident affiliate of a multinational Group which exceeds one of the below criteria in the financial year preceding its most recently closed financial year according to its BE GAAP annual accounts on a non-consolidated basis:

Belgium

- Gross operational and financial turnover (excluding one-off transactions) exceeding EUR 50 million;
- Balance-sheet total exceeding EUR 1 billion;
- Average personnel exceeding 100 full time equivalents.

If the above condition is satisfied, the Belgian affiliate will have to timely file a MF and a LF with the Belgian tax authorities.

In addition and in summary, “if” the Group has a consolidated gross turnover (i.e. gross operational, gross financial and gross extraordinary turnover) of more than EUR 750 million, a CbC reporting formality will have to be satisfied. Such CbC report will, in principle, have to be filed by the parent company of the Group in the country of which this parent company is a tax resident. However, in some cases, a Belgian tax resident company of the Group can be obliged to file the CbC report in Belgium, and this within 12 months after the date on which the financial year of the parent company of the Group is closed. Every Belgian tax resident company of a “large” multinational Group will in any event have to inform the Belgian tax authorities of the identity of the company that will file the CbC report, and this before the financial year of the parent company is closed. This is the so-called CbC notification formality.

2.2 Aggregation of transactions

Strictly speaking, the premise is that TP documentation is required for each individual transaction with associated enterprises. Obviously, in practice this could lead to an unreasonable administrative burden. Therefore, it is not excluded that the Belgium tax authorities agree that if a proper aggregation of transactions is possible (for example because there is a large number of similar transactions), the transactions can be jointly assessed. In that case, it is expected from the taxpayer that he can substantiate that the used transfer prices with regard to the aggregation of transactions are at arm’s length.

2.3 Deadlines (timing)

The LF needs to be filed as an enclosure to the Belgian corporate tax returns. The first deadline for filing the local file is 27 September 2017. The MF in turn needs to be filed before the end of the financial year of the ultimate parent company. The first filing deadline is 30 December 2017.

The CbC report needs to be filed within 12 months after the date on which the financial year of the parent company of the Group is closed. The CbC notification needs to be done before the end of the financial year of the ultimate parent company. However, the first deadline for filing the notification form has been extended to 30 September 2017.

2.4 Materiality

In principle, all transactions with associated enterprises should be supported by TP documentation. There are no formal thresholds below which no TP

documentation is required. However, in light of the basic principle that the administrative burden should be justified by the complexity and (tax) importance of the transaction, the more complex and material the transactions are, the more extensive the TP documentation should be like.

Furthermore, it should be noted that Belgium tax law provides for the following thresholds as regards TP documentation reporting requirements:

- The LF contains a specific section (part 2) applicable to cross – border transactions in the hands of a business unit of a Belgium tax resident company. Specifically, part 2 only needs to be filed if the company has at least one business unit which realized cross – border intercompany transactions exceeding EUR 1.000.000 per annum ;
- In addition, the taxpayer has the option to only report transactions in part 2 of the LF exceeding a materiality threshold of EUR 25.000 per transaction.

2.5 Retention of documents

A Belgium taxpayer is required to keep its administrative records for at least 7 years whereas the retention term is 15 years if real estate is involved. Since the TP documentation is part of the records of a taxpayer, this 7 year period also applies to the TP documentation.

2.6 Frequency of documentation updates

In practice, the TP documentations should be updated every few years to account for normal business and market developments. A significant change in the facts and circumstances could also lead to an update of the documentation.

The MF, LF and CbC report must be updated every year, because they relate to a particular fiscal year.

2.7 Tax return disclosures

Belgium corporate tax payers should enclose the LF as an annex with their annual Belgium corporate tax return.

2.8 Burden of proof

It is up to the taxpayer that any applied intercompany transfer pricing is at arm's length. Hence, the need for qualitative and robust TP documentation.

2.9 Penalties

2.9.1 General

The late, incomplete or non-filing of Belgian TP documentation may give rise to administrative fines varying between EUR 1.250-EUR 25.000. These penalties may become applicable as of the second infringement.

2.9.2 Penalties in case of a TP-adjustment

In case of a TP adjustment, standard tax increases varying between 10%-200% of the adjustment may be applied.

2.10 Use of most reliable information

With regard to the benchmarking analysis to be made, the OECD prefers to use the most reliable information available. In this regard the BEPS-report states the following “The requirement to use the most reliable information will usually...require the use of local comparables over the use of regional.” (BEPS Action 13, p. 24-25). However, local comparables may not be sufficiently available. If local comparables are insufficiently available, regional comparables are allowed.

In case of Belgium, (Western) European comparables are generally accepted.

2.11 Languages

The TP reporting can be made in English or in one of the 3 Belgian official languages (being Dutch, French or German). If the TP reporting is made in English, the Belgian tax inspector may ask for a translation into one of the 3 Belgian official languages upon a tax audit.

2.12 Confidentiality

The Belgium tax authorities will treat the TP documentation confidentially. The tax authorities can only exchange the TP documentation with the tax authorities of another country if there is a legal basis. This legal basis can be found in Belgium domestic tax law, a tax treaty or a EU Directive. The TP documentation is not available to the public.

3. Standards with respect to the content of transfer pricing documentation

The Belgian TP documentation standards are published in the Belgian Law of 1 July 2016 and 3 Royal Decrees dated 28 October 2016. The Royal Decrees provide information and models regarding the forms to be filed. The English version of these models are included in sections 3.1 and 3.2. hereafter:

3.1 Master File

The following information should be included in the MF (Form 275MF):

1. Organizational structure

Chart illustrating the MNE's (multinational enterprise)'s legal and ownership structure and geographical location of operating entities.

2. Description of the MNE's business(es)

General written description of the MNE's business including:

- a) Important drivers of business profit.
- b) A description of the supply chain for the Group's five largest products and/or service offerings by turnover plus any other products and/or services amounting to more than 5 percent of group turnover. The required description could take the form of a chart or a diagram.
- c) A list and brief description of important service arrangements between members of the MNE Group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and TP policies for allocating services costs and determining prices to be paid for intra-group services.
- d) A description of the main geographic markets for the Group's products and services that are referred to under b.
- e) A brief written functional analysis describing the principal contributions to value creation by individual entities within the Group, i.e. key functions performed, important risks assumed, and important assets used.
- f) A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.

3. MNE's intangibles (as defined in Chapter VI of the OECD TP Guidelines for MNE's and Tax Administrations)

- a) A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- b) A list of intangibles or groups of intangibles of the MNE group that are important for TP purposes and which entities legally own them.
- c) A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements.
- d) A general description of the Group's TP policies related to R&D and intangibles.
- e) A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

4. MNE's intercompany financial activities

- a) A general description of how the Group is financed, including important financing arrangements with unrelated lenders.
- b) The identification of any members of the MNE Group that provide a central financing function for the Group, including the country under whose laws the entity is organized and the place of effective management of such entities.
- c) A general description of the MNE's general TP policies related to financing arrangements between associated enterprises.

5. MNE's financial and tax positions

- a) The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.
- b) A list and brief description of the MNE Group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.

3.2 Local File

The following information should be included in the LF (Form 275 LF):

1. General company information

- a) A description of the management structure of the Belgian company, i.e. a description of the departments/divisions/sections of the Belgian company and the name of the manager of each department/division/section
- b) A description of the Belgian organization structure, i.e. an overview of the direct shareholders or the head-office of the company
- c) A description of the direct shareholdings over which the company has direct control
- d) A description of the Belgian reporting structure within the Belgian company and from the Belgian company towards foreign countries
- e) A description of the most important activities of the Belgian company
- f) An overview of the most important competitors
- g) Key data of the Belgian company, i.e. ultimate parent entity, reporting structure, foreign head-office and foreign permanent establishments, restructurings
- h) Overview of transactions, both related and unrelated (only if the company is not required to submit full model accounts with the Central balance sheet Office of the National Bank of Belgium)

2. Detailed information about each business unit which exceeded the threshold for cross-border transactions with group entities in the last completed financial year

- a) A description of the activities per business unit
- b) An overview of transaction details, both related and unrelated per business unit
- c) An overview of related cross-border goods transactions per business unit during the current taxable period
- d) An overview of related cross-border service provision transactions per business unit during the current taxable period
- e) An overview of related cross-border financial transactions per business unit during the current taxable period
- f) An overview of other related cross-border transactions per business unit during the current taxable period
- g) An overview of related loans per business unit
- h) An overview of related cash pooling per business unit
- i) An overview of related trade receivables and payables per business unit

- j) A description of the TP methodology and studies per business unit and per nature of transaction
- k) An overview of cost contribution agreements, advance pricing agreements, rulings and in-house (re) insurance policies

4. Country-by-Country reporting standards

4.1 Threshold and required content

A MNE Group with a consolidated group revenue of more than EUR 750.000.000 should provide the Belgian tax authorities with a CbC report.

The following information should be included in the CbC report (Form 275 CbC):

The report contains the following information about the MNE:

- a. For each jurisdiction in which the MNE is active, information about the revenues, the earnings (losses) before tax, the amount of income tax paid, the accrued income tax, the stated capital, the accumulated earnings, the number of employees and the tangible assets other than cash and cash equivalents.
- b. A description of every Group entity of the MNE mentioning the tax jurisdiction of residence, and if different, the state under whose law the Group entity is established and the main business or operations of that Group entity.

4.2 Notification requirement for subsidiary companies

In principle, the CbC report is filed by the ultimate parent company of the MNE Group in its state of residence. The state of residence will, in turn, exchange the CbC report automatically with the Belgian tax authorities.

In principle, a Belgian ultimate parent company needs to provide the Belgian tax authorities with the CbC report. The Belgian tax authorities will automatically exchange this report with the jurisdictions in which the MNE Group is active and with which Belgium has concluded an Agreement for Automatic Exchange of Information.

In addition, a Belgian tax resident Group entity (not being the ultimate parent company) is required to provide the Belgian tax authorities with the CbC report if:

- 1) The foreign ultimate parent company is not required to provide the tax authorities a CbC report in its tax residence country, or
- 2) The jurisdiction of the ultimate parent company has at the latest 12 months after the reporting period no qualifying Exchange of Information Agreement with Belgium, or
- 3) The jurisdiction of the ultimate parent company is systematically failing to exchange CbC reports and the Belgian tax authorities have informed the Belgian group entity thereof.

Belgium

In the aforesaid 3 cases, the Belgian group entity does not have to file a CbC report after all if such report is provided by a “surrogate ultimate parent company” in the latter’s country of tax residence.

Specifically, if a Belgium tax resident affiliate of a MNE Group will not file the CbC report in Belgium, that affiliate will have to timely inform the Belgium tax authorities what (ultimate or surrogate) parent company will file the CbC report in the latter’s qualifying tax residence country.

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1. Introduction

1.1 Legal context

The main federal law regulating transfer pricing rules in Brazil is Law No. 9,430/1996. Federal Law 12,715, which was published on September 17, 2012, also introduced significant changes to the Brazilian transfer pricing rules.

To regulate Brazilian transfer pricing, the Brazilian Internal Revenue Service enacted the Normative Ruling No. 1,312/2012, and more recently the Normative Rulings No. 1,658/2016 and 1,681/2016.

Brazil's transfer pricing rules diverge from international standards, including the Organization for Economic Co-operation and Development ('OECD') Guidelines. Brazil's TP rules do not adopt the internationally accepted arm's-length principle. Instead, Brazil's TP rules define a maximum price for deductible expenses on inter-company import of goods, services, rights and interest payments and minimum gross income floors for intercompany export transactions.

Brazil's TP rules do not apply to domestic inter-company transactions.

The transactions subject to TP rules must be documented on a strict transactional basis and fixed statutory profit margins apply. The Brazilian Internal Revenue Service ('RFB') must evidence its compliance with at least one of Brazil's statutory transactional methodologies for each imported or exported product or service. Further details are provided in Section 5 below.

1.2 Practical context

While incorporating transaction-based methods, Brazilian TP rules exclude profit based methods. This makes it a challenge for entities operating in Brazil to comply with local rules and at the same time avoid double taxation issues.

Despite Brazil generally not adapting OECD standards, in August 2016, the executive branch enacted Decree No. 8,842, which enforced the OECD's

Convention on Mutual Administrative Assistance in Tax Matters as from 1 October 2016.

The RFB issued the Normative Ruling No. 1,681, which addresses Action 13 of the OECD Action Plan on Base Erosion and Profit Shifting (BEPS) by imposing a mandatory country-by-country report, which will be electronically submitted to the tax authorities through a regular administrative obligation platform ('ECF/SPED').

Another example of Brazil's convergence with OECD standards on Action 13 is Normative Ruling No. 1,669 issued late in 2016, which regulates the mutual assistance procedure (MAP) and Normative Ruling No. 1,680, which also deals with common reporting standards in accordance with Action 13 of the BEPS Action Plan.

2. Formal requirements

2.1 Which taxpayers

The rules are applicable to imports and exports of products, services and rights, charged between a Brazilian company and one of the following:

- A related party domiciled abroad;
- A third-party resident in a favourable or low tax jurisdiction (as defined in the Brazilian legislation);
- A party benefiting from a privileged tax regime.

Brazil's transfer pricing rules do not apply to domestic inter-company transactions.

The main purpose of these rules is to determine the criteria for evaluating international transactions, by assessing whether the prices agreed between the relevant parties are higher or lower than legal parameters and establishing a minimum price for export transactions and a maximum price for import of goods, services, rights and interest payments. TP rules also cover inter-company loans.

The Brazilian Internal Revenue Service has issued lists that should be used as guidance for determining which countries, jurisdictions and tax regimes are included in the legal definition of a favourable tax jurisdiction and a privileged tax regime.

2.2 Aggregation of transactions

The rules require that a Brazilian company corroborate its inter-company import and export prices on an annual basis by comparing the actual transfer price with a parameter price determined under any one of the Brazilian equivalents of the OECD's comparable uncontrolled price method (CUP method), resale price method (RPM) or cost plus method (CP method).

Taxpayers are required to elect and apply the same method, for each individual product or type of transaction consistently throughout the respective fiscal year. However, taxpayers are not required to apply the same method for different products and services.

2.3 Deadlines (timing)

The related-party transactions are required to be disclosed on the annual tax return which must be submitted by July following the calendar years in which the transactions were performed. Transfer pricing may be reviewed as part of a comprehensive tax audit or through a specific TP audit.

2.4 Materiality

In the case of export sales, the regulations provide a safe harbor whereby a taxpayer will be deemed to have an appropriate transfer price. This applies when the average export sales' price is at least 90% of the average domestic sales' price of the same property, services or intangible rights in the Brazilian market during the same period under similar payment terms.

There is a secondary compliance rule (herein referred to as the 'relief of proof rule') whereby a taxpayer may be relieved of the obligation to substantiate the export sales' price to foreign-related persons using some statutory methods.

If a taxpayer can satisfy the relief of proof rule, the taxpayer may prove that the export sales' prices charged to related foreign persons are adequate for Brazilian tax purposes using only the export documents related to those transactions.

The relief of proof rules do not apply to export transactions carried out with companies located in low-tax jurisdictions or beneficiaries of a privileged tax regime.

For inter-company import and export transactions, even if the actual transfer price is above the determined transfer price (for import transactions) or below the determined transfer price (for export transactions), no adjustment will be required as long as the actual import transfer price does not exceed the determined transfer price by more than 5% or as long as the actual export transfer price is not below the calculated transfer price by more than 5%.

2.5 Retention of documents

The statute of limitations for the taxes and contributions levied on income are 5 years from the taxable event. Therefore, Brazilian taxpayers are required to keep documents for at least 5 years. Since the TP documentation is part of the records of a tax payer, this five-year period also applies to the TP documentation.

2.6 Frequency of documentation updates

TP documentation must be updated annually in July, in relation to the transactions performed in the previous calendar year. Once documentation has been filed with the Brazilian Internal Revenue Service, no further updates are required.

2.7 Tax return disclosures

Since 1999, it has been necessary to include information concerning TP as part of the annual income-tax return (currently replaced by the ECF). Companies must provide detailed disclosure regarding their inter-company import and export transactions, the method applied to test the inter-company price for several import and export transactions, and the amount of any adjustments to income resulting from the application of the method to a specific transaction during each fiscal year.

2.8 Burden of proof

There are no statutory TP documentation requirements in place. Taxpayers are obliged to prove that they have complied with the TP regulations from the date the annual income tax return is filed.

However, the fact that the Brazilian rules allow taxpayers to choose from several methods for each type of transaction provides properly prepared taxpayers with an advantage over the tax authorities. Proper and timely preparation enables taxpayers to collect the necessary information and choose the most appropriate method in advance.

According to the legislation in force tax authorities can disregard information when considered unsuitable or inconsistent. Assuming the methodology is applied and documented correctly, taxpayers can satisfy the burden of proof and push the burden back to the tax authorities. This also applies when a taxpayer can satisfy the relief of proof rule for inter-company export transactions.

2.9 Penalties

2.9.1 General

There are no fines for not complying with TP documentation requirements. In case of a tax assessment taxpayers must present a new calculation and its supporting documentation within 30 days of the first one being disqualified. The tax authority is not required to use the most favorable method available. Consequently, tax authorities will most likely use the method that is most easily applied under the circumstances and assess income tax and social contribution at the maximum combined rate of 34%. The objective of an assessment would not necessarily result in the true arm's-length result, but would be based on an objective price determined by the regulations.

2.9.2 Penalties in case of a TP-adjustment

If the Brazilian tax authorities were to conclude that there is a deficiency and make an income adjustment, penalties may be imposed at the rate of 75% of the assessed tax deficiency. The rate may be reduced by 50% of the penalty imposed if the taxpayer agrees to pay the assessed tax deficiency within 30 days without contesting the assessment.

2.9.3 CbC-reporting

In case of failure to comply with the CbC reporting, or existence of inaccuracies or omissions, the company must provide clarification within the time limits stipulated by the tax authority and shall be subject to the following fines:

- I. By extemporaneous presentation: from BRL 500.00 (five hundred reals) to BRL 1,500.00 (one thousand and five hundred reals) per calendar month or fraction.
- II. Failure to comply with the CbC reporting or to provide clarifications within the periods stipulated by the tax authority: BRL 500.00 (five hundred reals) per calendar month; and
- III. Omission of information, provision of inaccurate or incomplete information: 3% (three percent), not less than 100.00 (one hundred reals), of the omitted, inaccurate or incomplete amount.

2.10 Interest

In case of a TP adjustment, interest would be imposed on the amount of the tax deficiency from the date the tax would have been due if it had been properly recognized. In this instance, the interest rate used is the federal rate established by the Brazilian Central Bank, known as SELIC.

2.11 Use of most reliable information

The regulations require a Brazilian taxpayer to provide the TP calculation used to test inter-company transactions conducted with foreign related parties, along with supporting documentation. If the taxpayer fails to provide complete information regarding the methodologies and the supporting documentation, the regulations grant the tax inspector the authority to make a TP adjustment based on available financial information by applying one of the applicable methods.

Companies must prepare the necessary information, and have appropriate reporting systems and controls in order to provide reliable accounting information regarding all transactions conducted with foreign-related parties in advance to properly defend against an audit.

2.12 Languages

TP documentation must be prepared in Portuguese, the official local language.

2.13 Confidentiality

The information requested by the tax authorities to evaluate the TP calculations may require the company to provide confidential data regarding the production cost per product, the prices charged in the domestic market, and the prices charged to foreign-related and independent parties. Brazilian tax authorities will treat the TP-documentation as confidential.

3. Standards with respect to the content of transfer pricing documentation

There are no statutory TP documentation requirements in place.

4. Country-by-Country reporting standards

4.1 Threshold and required content

Multinational entities in Brazil with revenues equal or greater than BRL 2,260,000,000.00 (or EUR 750 million, or equivalent on the local currency of the jurisdiction of the ultimate parent entity) must prepare the Country-by-Country reporting.

The CbC should contain various information and indicators related to the location of the MNE activities, the global allocation of income and taxes paid and due. All jurisdictions in which multinational groups operate, as well as all constituent entities (including permanent establishments) located in those jurisdictions. The economic activities they perform should also be identified.

5. Brazil's TP-methods

5.1 Import of goods, services or rights

Deductible import prices relating to the acquisition of property, services and rights from foreign-related parties should be determined under one of the following Brazilian methods:

- **Comparable independent price method (PIC)** – The Brazilian equivalent to the comparable uncontrolled price (CUP).
- **Resale price less profit method (PRL)** - The Brazilian equivalent to the resale price method (RPM). As of January 1, 2013, a 20% to 40% gross profit margin is required for diverse industries/sectors.
- **Production cost plus profit method (CPL)** - The Brazilian equivalent of the cost plus (CP). Production costs for application of the CPL are limited to costs of goods, services, or rights sold. Operating expenses, such as research and development (R&D), selling and administrative expenses, may not be included in the production costs of goods sold to Brazil.
- **Quotation price on imports method (PCI)** - This new Brazilian method, introduced by Law 12715/12, must be applied to test imports of

commodities that have a quote in a commodities' exchange, from 2013 onwards.

5.2 Export of goods, services or rights

- **Export sales price method (PVEx)** - The Brazilian equivalent of the CUP method.
- **Resale price methods - The Brazilian versions of the RPM for export transactions:**
 - A profit margin of 15%, calculated by reference to the wholesale price in the country of destination (wholesale price in country of destination less profit method, or **PVA**).
 - A profit margin of 30%, calculated by reference to the retail price in the country of destination (retail price in country of destination less profit method, or **PVV**)
- **Purchase or production cost-plus taxes and profit method (CAP)** - The Brazilian equivalent of the CP method.
- **Quotation price on exports' method (PECEX)** - This new Brazilian method, introduced by Law 12715/12, must be applied to test exports of commodities that have a quote in a commodities' exchange, as of 2013.

5.3 Intercompany loans - TP-rules in Brazil

As of January 2013, interest expenses payable to related parties outside Brazil are subject to transfer pricing deduction limits, above the thin capitalization rules. If the recipient is located in a tax haven or privileged tax regime jurisdiction, thin capitalization and transfer pricing rules apply even if the lender is not a related party.

For transfer pricing purposes, interest paid or credited to a related party located abroad will be deductible up to an amount that does not exceed the rate determined based on the following rules, plus a 3.5% spread:

- In the case of a loan denominated in US dollars and subject to a fixed interest rate: the rate corresponding to the Brazilian sovereign bonds issued in US dollars in foreign markets;
- In the case of a loan denominated in Brazilian Reals and subject to a fixed interest rate: the rate corresponding to the Brazilian sovereign bonds issued in Reals in foreign markets;
- In all other cases, LIBOR for the period of six months.

CHILE

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1. Introduction

1.1 Legal context

The transfer pricing rules in force after their last amendment introduced in 2012, are stated within the Article 41E of the Income Tax Law (ITL). Circular 29 of June 14, 2013, issued by the Servicio de Impuestos Internos (IRS) provide guidance on its application and operation.

The Article 41 E of ITL states, that the IRS may challenge the established prices, values or yields, or establish them if necessary, when the cross-border transactions and those arising from entrepreneurial reorganizations or restructuring, or businesses that taxpayers domiciled, resident or established in Chile, engaged with related parties abroad, and have not been carried out at normal market prices, values or returns.

The regulations shall be applied with respect to entrepreneurial reorganizations or businesses indicated when, in the opinion of the IRS, an overseas transfer has occurred entailing goods or activities susceptible to generate taxable income in the country, and it is believed that if the goods have been transferred, the rights have been ceded, the contracts have been concluded or the activities have been developed between independent parties, there would have been a different price, value or profitability agreed. To analyze these effects, the ITL proposes several methods, that will be identified later on.

Normal market prices, values or returns are those which would have been agreed on by independent parties in comparable transactions and circumstances, taking into account, for example, the characteristics of the relevant markets, the roles assumed by the parties, the specific characteristics of the goods or services contracted and any other reasonably relevant circumstance. When such operations have not been carried out at their normal market prices, values or profitability, the IRS may impugn them in accordance with the provisions of the mentioned article.

The IRS must summon taxpayers, in accordance to the Article 63 of the Tax Code, to deliver all records regarding market price, value or profitability in the context of overseas transactions with related parties. The transfer pricing methods are comparable uncontrolled price (CUP), resale price minus, cost plus, profit split, the transactional net margin method (TNMM) and the residual method.

1.2 Practical context

Chile is an OECD member country and although the Income Tax Law does not mention the OECD Guidelines they should be regarded as relevant when dealing with Chilean Transfer Pricing matters. Regarding the documentation requirements, Article 21 of the Tax Code contains a general rule stating that it is for the taxpayer to prove with the documents, accounting books or other means established in the law, as necessary or obligatory for him, the truth of his declarations or the nature of the backgrounds and amount of the operations that must be used for the tax calculation. The ITL states that taxpayers must file annually an affidavit containing information on the operations subject to transfer pricing rules. However, the IRS has not issued instructions on the specific or standard documentation to support the transfer pricing affidavit.

2. Formal requirements

2.1 Which taxpayers

Taxpayers that enter into cross border transactions with a related enterprise are required to keep available for the IRS all the documentation under which the methods stated in the ITL have been applied or elaborated.

For the purposes of challenging the respective prices, values or profitability, the IRS must notify the taxpayer, so that it provides all the background that will prove that its operations with related parties have been made at prices, values or considering normal market returns, according to methods stated in the IT which are as outlined in the OECD Guidelines. The taxpayers should use the most appropriate method considering the characteristics and circumstances of the particular case. For these effects, the advantages and disadvantages of each method must be taken into account; the applicability of the methods in relation to the type of operations and the circumstances; the availability of relevant information; the existence of comparable operations and ranges and comparability adjustments.

Taxpayers may provide to the IRS with a transfer price study on the determination of prices, values or returns of their transactions with related parties.

The application of the methods or presentation of studies is without prejudice to the obligation of the taxpayer to keep at the disposal of the IRS all documentation under which such methods have been applied or elaborated. A transfer pricing study should contain an overview of the company, an analysis of the relevant industry (or industries), a functional analysis, the basis and justification for the selected pricing method, a description of comparable companies, provide supporting documentation, and be completed in the Spanish language.

The IRS may request information from foreign authorities regarding transactions that are subject to transfer pricing control.

2.2 Deadlines (timing)

The Tax Code states several circumstances in which the IRS may ask for documentation or information. However it is important to remember that when the IRS send a notification to the taxpayer to provide all background regarding transfer pricing, the legal term to answer back is a month, expandable up to another month. Failure to answer or delay could lead to the effect that the documentation asked by the IRS cannot be considered in an eventual claim to a Tax Court.

2.3 Materiality

Annual affidavit

In accordance with Article 41E ITL an annual affidavit must be filed by the last working day of June. Following are the taxpayers subject to the transfer pricing rules that have to file an affidavit, with the information required by the IRS:

- Taxpayers who, as December 31 of the reporting year, belong to Medium or Large Business segments and that in that year have carried out operations with related parties that do not have domicile or residence in Chile, in accordance with the rules established in article 41 E of the ITL;
- Taxpayers not classified in the previous segments that have operations with people domiciled or resident in a country or territory incorporated in the list referred to in No. 2 of article 41 D of the ITL (tax havens);
- Taxpayers not included in the segments indicated above, which have reported transactions in the corresponding period with related parties without domicile or residence in Chile for amounts greater than CLP 500,000,000 (approx. USD 750.000), or its equivalent according to the exchange parity between the national currency and the foreign currency in which said transactions were carried out.

Information required

The transfer pricing affidavit includes the following information:

- Identification of the taxpayer;
- Related party information (e.g. name, country, etc.) and the features of each transaction (nature, type, currency, etc.);
- The methodology used for calculating prices, profitability and returns;
- Information concerning intra-group services, financial transactions, royalties and commissions, etc.;
- Transfer pricing adjustments, if any, either in accounting records or in the taxable income determined;
- Reveal the existence of a business restructuring affecting the taxpayer's operation in Chile.

If the amount of operations of the same type (sales, purchase, interest, etc.) by each related company is less than CLP 200,000,000 (around USD 300,000) it will not be mandatory to report all the details indicated in the affidavit.

2.4 Penalties

2.4.1 *Affidavit*

When the transfer pricing affidavit is late, not file, incomplete or incorrect, the penalty arises from 10 to 50 Annual Tax Units (approximately USD 8,500 to USD 42,500), with a maximum of 15% of the equity for tax purposes or the 5% of the effective capital, whichever is higher. A maliciously false affidavit is punished with higher penalties and jail.

2.4.2 *Penalties in case of a TP-adjustment*

In case of a tax adjustments made by the taxing authority, the IRS will send a payment order. The Payment Order will be for the tax outstanding (a single tax at a rate of 40%), inflation-linked adjustments, interest and 5% penalty over the amount adjusted. Such fine cannot be applied if the documentation requested by the IRS during the tax audit has been duly and timely delivered.

CHINA

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1. Introduction

1.1 Legal context

In 2009, the State Tax Authorities of China (“SAT”) issued a TP Circular, Guo Shui Fa [2009] No. 2 (‘Circular 2’) that became effective from 1 January 2008; it is considered a pivotal step in the development of China’s transfer pricing regime as it adopted a systematic approach and set out detailed rules on the administration of transfer pricing. One of the milestones of Circular 2 is to provide the detailed instruction on the preparation of TP documentation. Following Circular 2, the SAT issued Public Notice [2016] No. 42 (‘PN42’) on 29 June 2016. PN24 made substantial changes to the Circular 2 rules and refined the reporting of related party transactions and the administration of transfer pricing documentation. It also introduced new transfer pricing compliance obligations including Country-by-Country (CbC) reporting (in line with BEPS 13), annual reporting forms for related-party transactions (RPT Forms) and transfer pricing documentation (which now includes the completion of a master file, local file, and special issue file).

1.2 Practical context

The new TP regulations also require taxpayers to provide analysis which are specific related to the Chinese market such as labor cost saving and market premium etc. The new TP regulations constitute a milestone for localization and implementation of BPES Action 13 in China as well as provide a new land-scape of TP administration in China.

2. Formal requirements

2.1 Which taxpayers

According to China TP regulations, the thresholds for the preparation of TP documentation are listed below.

If the company meets either of the following criteria, it shall prepare a Master File

- Have cross-border related party transactions, and belong to a group which has prepared the master file, or
- The total annual related party transactions exceed RMB 1 billion.

For the Local File, the thresholds for preparing local file depend on the types of related party transactions, which are listed below:

- RMB 200 million for tangible assets transfer (in the case of tolling manufacturing, the total amount in the annual customs record including raw material should be counted);
- RMB 100 million for financial assets transfer;
- RMB 100 million for intangible assets transfer; and
- RMB 40 million for other related party transactions in total.

The special issue file is required for the taxpayers who are engaged in cost sharing agreement, or fall in the thin capitalization threshold.

The new transfer pricing compliance regulations also require the submission of country by country report if a Chinese resident company is the ultimate holding company of the group and the consolidated revenue is over RMB 5.5 billion or it is nominated as the reporting entity by the group.

The Chinese companies that only have domestic related party transactions do not need to prepare master file, local file and special issue file.

2.2 Aggregation of transactions

There is no clear rule on the separation analysis of each related party transaction. But the TP regulations do require taxpayers to present the financials by products and different type of business in the documentation. In practice, TP analysis is usually performed by the respective transaction type and some times transactions are jointly assessed.

2.3 Deadlines (timing)

The Local File and Special Issue File should be completed by 30 June the following year for related party transactions carried out in a fiscal year; the Master File should be completed within 12 months after the end of the same fiscal year of the group's ultimate holding company.

Timeframe

For the TP documentation, taxpayers should submit the transfer pricing report within 30 days upon the tax authorities' request.

For the CbC report, when the company meets the criteria in 2.1, it is filed together with the annual related party transactions forms by the end of May, the following year.

2.4 Materiality

Generally, the Chinese TP regulations set the threshold for the taxpayers to prepare the TP documentations and besides that, it did not state the exact materiality on the transaction amount. In practice, how-ever, the Chinese tax authorities often focus the investigation on taxpayers with material related party transaction amounts.

2.5 Retention of documents

According to PN42, the documentations have to be retained for ten years. When the Chinese tax authorities carry out the TP audit, it could trace back the audit period for 10 years.

2.6 Frequency of documentation updates

The TP documentation is required to be prepared on a yearly basis when the preparation threshold is met.

The CbC-reporting has to be submitted together with the annual related party transaction declaration forms and annual corporate income tax annual filing for each fiscal year when the submission criteria is met.

2.7 Tax return disclosures

China adopts stringent requirements on the related party transactions disclosure and taxpayers have to disclose related party transactions details in Related Party Transaction Forms by the end of May, the following year.

Regarding the CbC-reporting, when the taxpayer meets the reporting requirement, it needs to submit the CbC-reporting together with the annual related party transaction forms.

2.8 Burden of proof

Where the taxpayer under investigation does not provide the information in connection with a special tax investigation, or provide false or incomplete information, the tax authorities will order them to correct the information within a prescribed time limit; where they fail to make corrections within the prescribed time limit, the tax authorities shall handle the same in accordance with the relevant provisions of the Law on the Administration of Tax Levying and its implementing rules and determine the taxable income in accordance with the law.

2.9 Penalties

2.9.1 *Administrative penalties*

If a taxpayer fails to file the related party transaction reporting forms or TP documentation on time, the tax authority may require the taxpayer to make a

correction and may impose a penalty of no more than RMB 2,000. For serious situations such as continuous non-compliance, the tax authorities may impose a penalty between RMB 2,000 to RMB 10,000.

2.9.2 Penalties in case of a TP-adjustment

Where a taxpayer does not provide contemporaneous documentation and relevant materials in accordance with the relevant provisions, 5% additional charges will be added on the interest mentioned in 2.10.3.

Where an enterprise pays taxes or overdue taxes before or after receiving the Notice on Special Tax Investigation and Adjustment, the interest payable shall be calculated from June 1 of the following year of the taxable year to the date when taxes or overdue taxes are paid. Where an enterprise fails to pay overdue taxes beyond the period as required in the Notice on Special Tax Investigation and Adjustment, it is required to pay overdue fines (0.05% per day) from the next day to the date of expiration in accordance with the relevant provisions of the Law on the Administration of Tax Levying and its implementing rules, and during such period, no more interest will be levied.

2.10 Interest

Where taxpayers perform the related-party filing, provide contemporaneous documentation and other relevant materials in accordance with relevant regulations, tax authorities while making special tax investigations and collect unpaid tax, may apply the RMB benchmarking interest rate published by the People's Bank of China for loans in the year to which such tax is attributed and during the term which is equal to the period when additional tax is levied. For example, when the tax underpayment attributed to year 2015, the tax authorities will levy the delay payment interest at the rate of 4.75% per year since the due date.

2.11 Use of most reliable information

There are no specific requirements in China regarding the use of comparables and as to the question whether only domestic or foreign comparables will be accepted by the tax authorities. In practice, Chinese tax authorities do prefer Chinese comparables.

2.12 Languages

The documentation needs to be prepared in Chinese.

For the CbC-report, it also provides for the forms in English and it could be filled in both Chinese and English.

2.13 Confidentiality

After the submission to the tax authorities, the relevant information, documentation as well as the CbC-reporting are generally subject to confidential treatment by Chinese tax authorities.

3. Standards with respect to the content of transfer pricing documentation

The PN42 lists the detailed requirement for material file and local file as well as special issue files, which are elaborated in paragraph 3.1 and 3.2.

3.1 Master File

The following information should be included in the Master File:

1. Organizational structure

Global organizational structure and the global shareholding structure and the geographic locations.

2. Business of the group

- a) Description of the group's business, including the key value drivers creating profits.
- b) Description of the supply chain and major market geographic locations in relation to the group's top five products or labor services by turnover, and any other product or labor service accounting for more than 5% of the group turnover.
- c) Brief description of important intra-group related-party labor services, other than the research and development services.
- d) Analysis of the main contribution of all member entities within the group in terms of value creation.
- e) Business restructuring, the industrial structure adjustment, and the transfer of functions, risks or assets of all enterprises within the group during the fiscal year of the group.
- f) Changes in the legal forms, debt restructuring, equity acquisition, asset acquisition, mergers and divisions occurred in the group.

3. Intangible Assets

- a) Description of the group's overall strategy for developing and applying the intangible assets and determining the ownership of intangible assets.
- b) Intangible assets or intangible asset portfolios in the group which have a significant impact on the group's transfer pricing policy, and the corresponding legal owners of such intangible assets.
- c) A list of important agreements related to the intangible assets between the member entities in the group and their related parties, including costs allocation agreements, major research and development service agreements and license agreements, etc.

- d) Group's transfer pricing policies on research and development activities and intangible assets.
- e) Description of the group's transfer of the ownership of and right to use material intangible assets between related parties.

4. Financing activities

- a) Financing arrangements between related parties and major financing arrangements between non-related parties within the group.
- b) Situations of member entities performing concentrated financing functions within the group.
- c) Overall transfer pricing policies on the financing arrangements between related parties in the group.

5. Financial and tax position

- a) Group's annual consolidated financial statement for the latest fiscal year.
- b) Unilateral advance pricing arrangements and bilateral advance pricing arrangements entered into by member entities in the group and the list of other tax rulings relating to the income distribution among countries.
- c) Names and locations of enterprises that file the country-by-country report.

3.2 Local File

1. Overview of enterprises

- a) Organizational structure, including the setup, scope of responsibilities and number of employees of the enterprise's all functional departments.
- b) Management structure, including the parties to whom the enterprise's management of different levels report and the locations of principal offices of such parties.
- c) Industry description, including an overview of the industry in which the enterprise engages and its, industrial policies, trade restrictions and other major economic and legal issues that may impact the enterprise and industry, and its key competitors.
- d) Operation strategies, including the business process, operational mode and value drivers of different departments and work streams in the enterprise.
- e) Financial data, including the income, costs, expenses and profits of different types of business and products of the enterprises.
- f) Any restructuring or transfer of intangible assets which involves the enterprises or has an impact on the enterprises, and the impact analysis on the enterprises.

2. Related-party relationships

- a) Information on related parties, including any related party which directly or indirectly holds the equity of the enterprise, and which the enterprise enters into transactions with, including the names, legal representatives, composition of senior management personnel, registration places, actual business address of related parties, and the names, nationalities and residences of related individuals.

- b) Types of taxes, tax rates and any corresponding preferential tax treatments accessible with the in-come tax nature that apply to the above related parties.
- c) Changes in the enterprise's related relationships during the fiscal year.

3. Related-party transactions

- (1) Overview of related-party transactions
 - a. A description and details of related-party transactions, including relevant contracts or agreements duplicates of relevant related-party transactions, statement on their performance, characteristics of traded objects, types of related-party transactions, participants, time, transaction amount, settlement currencies, trading conditions, trade modes and differences and similarities between related-party transactions and non-related-party transactions.
 - b. Processes of related-party transactions, including the flows of the information, logistics and funds of related-party transactions, as well as their differences and similarities between the non-related-party transactions.
 - c. A description of functions and risks, including the functions performed, risks assumed and assets employed by enterprises and their related parties in various types of related-party transactions.
 - d. Factors affecting the pricing of transactions, including intangible assets involved in related-party transactions and their impacts, and geographical specific factors such as costs cutting and market premium. Geographical specific factors shall be analyzed from such aspects as labor costs, environmental costs, market size, extent of market competition, consumer purchasing powers, substitutability of goods or labor services and government control, etc.
 - e. Data of related-party transactions, including the transaction amount involved in related parties and various types of related-party transactions. Income, costs, expenses and profits of related-party transactions and non-related-party transactions shall be disclosed separately; if direct imputation cannot be conducted, they shall be allocated according to a reasonable proportion and the grounds for such allocation proportion shall be explained.
- (2) Analysis of value chain
 - a. Business flows, logistics and fund flow within the group, including design, development, manufacturing, marketing, sales, delivery, settlement, consumption, aftersales services, cyclic utilization and other process of products, labor services and other trade objects, as well as all participants.
 - b. Annual financial statements of the latest fiscal year of each participant in the above processes.
 - c. Calculation and attribution of the contribution of geographical specific elements to the value creation of the enterprise.
 - d. Allocation principles and results of group profits amongst the global value chain.

- (3) Outbound investment
 - a. General information on outbound investment, including the investment location, investment value, main business and strategic plan of outbound investment projects.
 - b. Overview of outbound investment projects, including the shareholding structure and organizational structure of outbound investment projects, employment mode of senior management personnel and the attribution of the decision-making power of outbound investment projects.
 - c. Data of outbound investment projects, including operational information of outbound investment projects.
 - (4) Transfer of related-party equity
 - a. Overview of equity transfer, including background, participants, time, pricing, payment method and other factors affecting the equity transfer.
 - b. Information on the equity transferred, including the geographical location of the equity transferred, date, method and costs for the equity acquired by the transferor, interests derived from the transfer, and other information.
 - c. Other information relevant to the equity transfer including due diligence report or asset valuation report.
 - (5) Related-party labor services
 - a. Overview of related-party labor services, including the service providers and recipients, contents, characteristics, service method, pricing principles, and payment methods of labor services, and interests gained by each party after the performance of labor services.
 - b. Imputation method, projects, amount, allocation criteria, calculation process and results of labor service costs.
 - c. Where an enterprise and the group to which it is affiliated have the same or similar kind of labor service transactions with the non-related parties, differences and similarities of the pricing principles and transaction results between related-party labor services and non-related-party labor services shall also be elaborated.
 - (6) Advance pricing arrangements entered into and other tax rulings made by tax authorities of countries other than China that are directly relevant to the enterprise's related-party transactions.
- 4. Comparability analysis**
- a) Factors taken into account for the comparability analysis, including the characteristics of the assets or labor services in transactions, functions, risks and assets of all parties involved in transactions, contractual terms, economic environment and operational strategies, etc.
 - b) Such relevant information as the functions performed, risks assumed and assets employed by the comparable enterprises.
 - c) Searching method, information source, selection criteria and rationale of comparable targets.

- d) Comparable uncontrolled transaction information selected internally and externally and the financial information of comparable enterprises.
- e) Difference adjustments made to the comparable data and the reasons therefore.

5. Selection and employment of transfer pricing methods

- a) Selection of parties under test and rationale therefor.
- b) Selection of transfer pricing methods and the reasons; whichever transfer pricing method is selected, the contribution made by the enterprise to the overall profits or surplus profits of the group shall be explained.
- c) Assumptions and judgements made for determining the prices or profits of comparable non-related-party transactions.
- d) Determining the prices or profits of non-related-party transactions by using appropriate transfer pricing methods and results of comparability analysis.
- e) Other materials to justify the transfer pricing method selected.
- f) Analysis on whether the pricing of related-party transactions complies with the arm's length principle and the conclusions thereof.

6. Special issue file

The special issue file shall include the special issue file on cost allocation agreements and on thin capitalization. Where the taxpayer enters into or perform cost allocation agreements, special issue file on cost allocation agreements shall be prepared. Where the related-party debt-to-equity ratio of a taxpayer exceeds the standard ratio and thus it is necessary to explain its compliance with the arm's length principle, special issue file on thin capitalization shall be prepared.

(1) Cost allocation agreements

Special issue file on cost allocation agreements shall include the following contents:

- Duplicates of cost allocation agreements.
- Other agreements entered into between all participants for the purpose of implementing the cost allocation agreements.
- Details on the use of agreement results by non-participants, the amount and form of the payment made by them, and the method for allocating the payment between the participants.
- Details on participants joining or exiting the cost allocation agreement during the current year, including the names, countries, related-party relationships of the participants joining or exiting, and the amount and form of payment for joining the agreement or compensation for exiting the agreement.
- Details on the amendments to or terminations of the cost allocation agreements, including the reasons for amendments or terminations, and the disposal or allocation of formed agreement results.
- The total costs arising from the cost allocation agreements during the current year and their composition.

- Details on the cost allocation by participants during the current year, including the amount, form and target of cost payment, and the amount, form and target for making or receiving compensation payments.
- A comparison of the expected income and the actual income arising from the agreement during the current fiscal year and the corresponding adjustments as per the comparison.
- The calculation of expected income, including the selection of measurement parameter indicators, calculation methods and reasons for changes.

(2) Thin-capitalization

Special issue file on thin capitalization includes the following contents:

- An analysis of the enterprise's solvency and borrowing ability.
- An analysis of borrowing ability of the group and its financing structure.
- A description of changes in registered capital and other equity investments made by the enterprise.
- The nature and purposes of the related-party debt investments and the market conditions upon acquisition of the investments.
- The types of currency, amount, interest rate, terms and financing conditions of related-party debt investments.
- Whether the non-related party is able to and willing to accept the above financing conditions, financing amount and interest rate.
- Details on security provided by the enterprise in order to obtain the debt investment and the conditions for providing such security.
- Status of the guarantors and conditions for providing the guarantee.
- Interest rate of loans of the similar type and same period and financing conditions for such loans.
- Conversion conditions for convertible corporate bonds.
- Other documents which can prove its compliance with the arm's length principle.

4. Country-by-Country reporting standards

China TP regulations require the following to be reported in CbC reporting:

Part 1: Overview of allocation of income, taxes and business activities by tax jurisdiction.

- Revenue and other operating income from business transactions with (a) third parties, (b) relate parties (c) the total of (a) and (b)
- Income taxes paid in the fiscal year
- Income taxes paid or accrued in and for the fiscal year
- Profit/loss for the year before income taxes

China

- Stated capital
- Accumulated Earnings
- Number of employees
- Tangible Assets other than Cash and Cash Equivalent

Part 2: Country-by-country information of all included entity's major business activities.

Part 3: Additional information necessary for understanding of the data in Part 1 and Part 2.

CZECH REPUBLIC

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1. Introduction

1.1 Legal context

The main tax legislation is the Czech Income Tax Act (ITA). The transfer pricing rules are contained within Section 23(7) ITA, Directives D-332, D-333, and D-334, and General Financial Directorate Decree D-10. The Czech Republic is an OECD member country and the OECD Guidelines and the Code of Conduct are generally accepted (Directive D-334). The Czech Republic follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines.

2. Formal requirements

2.1 Which taxpayers

All the taxpayers doing business in the Czech Republic should compile a TP-documentation if transactions with related parties have been realized. A related party is said to exist under the tax legislation where one party owns greater than 25% of the other (based on voting power, share capital, or common control). There is no limit where a business relationship exists predominantly for tax evasion purposes.

2.2 Retention of documents

Czech taxpayers are required to keep their administrative records for at least ten years except for particular documents. Since the TP-documentation is part of the records of a tax payer, this ten year period also applies to the TP-documentation.

2.3 Frequency of documentation updates

In practice the TP-documentation should be updated every few years to account for normal business and market developments. A significant change in the facts and circumstances could also lead to an update of the documentation.

The statute of limitations for the assessment of transfer pricing adjustments is generally three years from the tax return filing date. This extends to 10 years in cases of repeated tax audits (and further extensions may apply to companies with tax incentives and/or tax losses).

2.4 Tax return disclosures

Tax payers are not obliged to attach TP-documentation as tax return disclosures but the tax authority will probably require the TP-documentation in case of tax inspection. A taxpayer is required to file an annual transfer pricing disclosure (Form 5404/Ea). Form 5404/Ea summarizes a taxpayer's transactions with each related party (separate forms for each overseas related party having transactions with the taxpayer in the year are required to be filed electronically). Failure to submit Form 5404/Ea to the tax authority is likely to result in a transfer pricing focused tax audit.

2.5 Burden of proof

The burden of proof is laid on the tax payer, who shall provide sufficient evidence that the prices agreed between related parties comply with the arm's length principle. If there is no TP-documentation available, the tax authority shall adjust the tax payer's tax base by the difference between the agreed and "market" price.

2.6 Penalties

The filing of transfer pricing documentation is not mandatory but it is recommended. Transfer pricing documentation "should be sufficient" for substantiating the method of calculating the arm's length price (Code of Conduct). When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days.

2.7 Languages

The law does not require that the documentation is compiled in a specific language, but the information in the documentation should be accessible to the tax authorities. In respect to that, the Czech tax authorities are authorized request a TP-documentation in Czech or for the Czech translation.

2.8 Confidentiality

The Czech tax authorities will treat the TP-documentation confidentially. The tax authorities can only exchange the TP-documentation with the tax authorities of another country if there is a legal basis. This legal basis can be found in the national law, a tax treaty or a EU-directive. The TP-documentation is never available to the public.

3. Standards with respect to the content of transfer pricing documentation

When a transfer pricing study is prepared, its content should follow Chapter V of the OECD Guidelines; with an emphasis on demonstrating that related party services invoiced were actually received (a 'benefits and proof test').

The Czech tax authority does not insist on the use of local comparables in a benchmarking study or comparative analysis (although local comparables can support regional analyses). It uses the Amadeus database, and develops and maintains its own internal comparables. The tax authority focusses on the interquartile range in a transactional net margin method (TNMM) analysis and it typically accepts comparables providing averaging results covering multiple years (three or five years).

Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can lodge an appeal with the Appeal Financial Directorate. If unsuccessful, a taxpayer can then lodge an appeal with a regional court.

The Czech Republic's double tax treaty network is extensive, and the competent authority is effective in obtaining double tax relief.

Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities. There is a filing fee of CZK 10,000 (approximately USD 400).

DENMARK

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1. Introduction

1.1 Legal context

The strongly increased international trade and simultaneous development of cross-border groups in combination with very diverse taxation levels in the individual countries have entailed much more focus on the transfer pricing problem, meaning the prices of intra-group transactions (controlled transactions) and the taxation thereof. With the BEPS project (Base Erosion and Profit Shifting) from 2015 as finally approved on 23 May 2016, OECD has made material changes/clarifications of OECD's Transfer Pricing Guidelines with the aim that the taxation of controlled transactions is not moved from heavily taxed countries to lightly taxed countries.

First of all, the Danish transfer pricing rules are based on section 2 of the Danish Tax Assessment Act, which was implemented by Act no. 432 of 26 June 1998 and with effect from 28 June 1998. Before that, sections 4-6 of the Danish State Tax Act were the authority for transfer pricing correction. These rules still apply alongside section 2 of the Danish Tax Assessment Act, which lays down the so-called arm's length principle. This principle must be interpreted in compliance with OECD's Model Convention, article 9(1) and OECD's Guidelines which also form a general basis for interpretation of the Danish transfer pricing rules. The detailed documentation rules appear from section 3B of the Danish Tax Control Act. This provision was implemented by Act no. 91 of 25 February 1998 to increase the possibilities of the Danish tax office of ensuring that prices and terms of controlled transactions were determined in compliance with the arm's length principle. The rule was supplemented by the Statutory Order no. 42 of 24 January 2006.

SKAT has, however, implemented new documentation rules as a consequence of OECD's BEPS Action 13. According to these rules, transfer pricing documentation must consist of standardized information relevant for the entire group (Master File) and country-by-country documentation for each taxpayer in the group (Local File). The new rules appear from the Statutory Order no. 401 of 28 April 2016, which generally has effect for accounting periods starting on 1 January 2016. However, it also appears that for accounting periods starting in the period from 1 January 2016 up to and including 31 December 2016, the transfer pricing documentation can instead be prepared according to the old Statutory Order no. 42 of 24 January 2006. From 1 January 2017, the documentation can only be prepared according to the new rules. Additionally,

SKAT's legal guidance, section C.D.11 contains a description of the transfer pricing area. Finally, SKAT has prepared transfer pricing valuation guidelines E-no. 238 of 15 January 2013.

In the wake of the BEPS report, for large groups new rules have been implemented in section 3B(10)-(16) of the Danish Tax Control Act about a so-called country-by-country reporting (CbC). These rules apply from 1 January 2016, and their purpose is to increase transparency for cross-border controlled transactions taking place in large groups. In relation to this, Statutory Order no. 1133 of 27 August 2016 was issued on country-by-country reporting and the more detailed requirements as to the contents of the reporting.

1.2 Practical context

Both the new and the previous rules for documentation of transfer pricing transactions apply to both cross-border activities and to transactions between entities in Denmark. The new rules implement a two-tier system with standardized information relevant for the entire group documentation and country-specific documentation, which entails a larger administrative burden on the enterprises. The Danish tax authorities have also had considerably larger focus on this area for the past years, and the fine rules have been changed, so that large fines can be imposed for non-fulfilment of the documentation rules. It is therefore necessary that the enterprises have a critical focus on their transfer pricing documentation, to a much larger degree, and prepare convincing material which in fact shows all circumstances of importance to the controlled transactions. It is important too that the enterprises gain control of digital solutions that store and automate the documentation and related records.

2. Formal requirements

2.1 Which taxpayers

Section 2 of the Danish Tax Assessment Act and the documentation requirements under section 3B of the Danish Tax Control Act and the documentation statutory orders cover taxpayers

- over which natural or legal persons exercise control
- that exercise control over legal persons
- that are affiliated with a legal person
- that have a permanent establishment located abroad
- that is a foreign natural or legal person with a permanent establishment in Denmark or
- that is a foreign natural or legal person with a hydrocarbon-related business covered by section 21(1) or (4) of the Danish Hydrocarbon Tax Act.

However, the documentation requirements must not be complied with if you are a taxpayer which, alone or together with affiliated enterprises, has:

- less than 250 employees and

- either has an annual total balance sheet of less than DKK 125 million
- or annual revenue of less than DKK 250 million

This exemption does not apply to taxpayers who have controlled transactions with the following:

- Individuals or bodies corporate located in a foreign state, which does not have a double taxation treaty with Denmark and which also is not a member of the EU/EEA.
- A permanent establishment located in a foreign state, which does not have a double taxation treaty with Denmark and which also is not a member of the EU/EEA.
- A permanent establishment located in Denmark, provided that the taxpayer is resident in a foreign state, which does not have a double taxation treaty with Denmark and which also is not a member of the EU/EEA.

As a consequence, the mentioned taxpayers must prepare the TP documentation in spite of being small within the above-mentioned meaning.

Taxpayers obliged to put up a TP documentation must, according to the Statutory Order no. 401 of 28 April 2016 and OECD's BEPS Report Action 13 prepare the following:

- Standardized documentation (Master File), which i.e. contains information for the entire group, such as a description of the entire group, business activities, intangible assets, financial activities, accounting and tax positions.
- Country-specific documentation (Local File), which i.e. contains a detailed description of the enterprise, detailed information, descriptions and analyses concerning the controlled transactions in which the enterprise is involved and material about the economic, financial and accounting affairs of the enterprise.

The duty of disclosure applies whether or not the taxpayer has been affiliated with a natural or legal person for only part of the year.

The rules in section 3B(10)-(16) of the Danish Tax Control Act on the country-by-country (CbC) reporting generally apply to any multinational group's ultimate parent company, which for tax purposes is domiciled in Denmark and whose accounting year starts on 1 January 2016 or later and which has consolidated revenue of at least DKK 5.6 billion (EUR 750 million) in the financial year before the financial year for which reporting must be made. Under certain conditions, a Danish domiciled consolidated company which is not the ultimate parent company, must file the country-by-country reporting on behalf of the foreign ultimate parent company, see section 3B(11) of the Danish Tax Control Act. However, this rule only takes effect from and including accounting years starting on 1 January 2017 or later.

2.2 Aggregation of transactions

Generally, documentation rules set the stage for each individual controlled transaction being assessed individually. However, there may be instances where more transactions can be described in aggregate if they are basically similar in relation to an overall assessment of the five comparability factors, which are:

- Properties of products (goods, services, assets, intangible assets etc.);
- A functional analysis (functions, assets and risks);
- Contractual terms;
- Financial circumstances; and
- Business strategy.

It is up to the taxpayer to assess which transactions can be described and priced as aggregate.

2.3 Deadlines (timing)

The transfer pricing documentation must be prepared on an ongoing basis and be available in a completed form at the date of the tax return. Thus, documentation for each accounting year must be prepared. For enterprises that use the calendar year as the financial year, the documentation must thus be available no later than on 1 July after the end of the financial year – form no. 05.021 must be filled in at the same time, at the latest, and submitted to SKAT, so that they will be informed of the transfer pricing transactions – the form is submitted as a schedule to the tax return filed digitally through SKAT's TastSelv Selskabsskat (online corporation tax). The form must be used only if the aggregate controlled transactions exceed DKK 5 million in the accounting year. An English version is found as form no. 05.022.

At SKAT's request, the documentation must be sent to SKAT within 60 days of SKAT's request.

The country-by-country reporting must be submitted digitally to SKAT no later than 12 months after the last day of the accounting period for which reporting must be made. The rules have effect from 1 January 2016. Before the end of the accounting year for which reporting must be made, SKAT must be notified digitally of who is under an obligation to file country-by-country reporting, and SKAT must be notified in writing at the time when this obligation no longer exists. These notifications may take place in connection with the filing of the tax return.

Under section 3B(8) of the Danish Tax Control Act, SKAT may demand that the taxpayer obtains an auditor's opinion on the transfer pricing documentation, whereby the auditor must declare whether the auditor, in the work performed, has become aware of circumstances that give cause for concluding that the documentation submitted to SKAT does not give a true and fair view of the controlled transactions. The detailed rules to that effect are stipulated in Statutory Order no. 162 of 8 February 2013.

2.4 Materiality

In general, all controlled transactions must be described in transfer pricing documentation, unless the enterprise is below the minimum requirements in section 3B(6) of the Danish Tax Control Act, and there are none of the special situations in section 3B(6) of the Danish Tax Control Act. If the enterprise is covered by the documentation rules, however, documentation for immaterial controlled transactions can be omitted, namely transactions which are either one-off or of a modest economic value. However, an enterprise must state the type of these transactions which were assessed as being immaterial.

2.5 Retention of documents

Like other accounting records, the transfer pricing documentation must be kept on file for five years after expiry of the accounting year, under section 10 of the Danish Bookkeeping Act. As an extended tax assessment time limit applies to SKAT in these matters until 1 May six years after the expiry of the accounting year in question, see section 26(5) of the Danish Tax Administration Act, and as SKAT still has the possibility of effecting extraordinary reopening according to the rules of section 27 of the Danish Tax Administration Act, it is recommended that the documentation is kept on file for 10 years. It should be noted that groups operating in several countries must be able to submit the materials to the tax authorities of the countries in which they operate, observing local – possibly different – rules on filing and time-barring.

2.6 Frequency of documentation updates

The transfer pricing documentation must be prepared on an ongoing basis and be in a complete form at the tax return date so that it can be filed with SKAT on request. Thus, documentation for each accounting period must be prepared.

Country-by-country reporting must be prepared and filed to SKAT for each accounting period.

2.7 Tax return disclosures

The transfer pricing documentation should only be delivered at SKAT's request and be in a completed form at the time of the tax return. Before the same time, form no. 05.021 should be filled in for SKAT together with the tax return, so that SKAT is informed about the transfer pricing transactions – the form is sent as a schedule to the tax return, which is stated digitally through SKAT's TastSelv Selskabsskat. The form must be used only if the aggregate controlled transactions exceed DKK 5 million in the accounting year. An English version is found as form no. 05.022.

The country-by-country reporting must be submitted digitally in a fixed XLM file format to SKAT no later than 12 months after the last day of the accounting period for which reporting must be made.

Who is obliged to submit the country-by-country reporting must be stated digitally to SKAT before expiry of the accounting year for which reporting must be made, and SKAT must be given notice digitally at the time when this obligation no longer exists. This may take place in connection with the tax return.

The audit opinion which can be prepared in a template, see schedule 1 to Statutory Order no. 162 of 8 February 2013, must be submitted to SKAT no later than 90 days after the date on the order.

2.8 Burden of proof

Generally, the burden of proof lies with SKAT that the controlled transactions are not in compliance with the arm's length principle. SKAT must thus carry the burden of proof that the transfer pricing documentation is not sufficient, and that SKAT's assessment is then more true and fair. If the documentation is very defective or has not been prepared at all, then SKAT has the right to estimate and then the onus of proof turns around so that it is the taxpayer who in such case must prove that SKAT's estimate is not true and fair.

Generally, SKAT has the possibility to give notice of an ordinary tax assessment no later than on 1 May in the sixth year after expiry of the accounting year, which means that if you follow the calendar year, SKAT can give notice of the changes of the controlled transactions for the accounting year 2011 no later than on 1 May 2017. SKAT must then make a decision to that effect no later than on 1 August in the same year as the notice is given (a letter of intent). In special circumstances, SKAT can give notice of an extraordinary assessment change going further back, but that requires that a number of specific conditions are complied with, see section 27 of the Danish Tax Administration Act. You should be aware that the rules on extended time limits also apply if it is the taxpayer who wants to change the tax assessment.

2.9 Penalties

In addition to the ordinary rules on tax addition and day fines for non-submission of tax return, including non-submission of form 05.021, for the intentional or grossly negligent non-performance of the rules in section 3B of the Danish Tax Control Act on transfer pricing documentation, including also the country-by-country reporting and missing audit opinion, there is a fine, which generally is at DKK 250,000 for each individual taxpayer and for each accounting period, whether or not an income increase is made. However, the fine may be halved to DKK 125,000 if you subsequently prepare the lacking material in the required quality. The said fine can be increased by up to 10% of any amount by which SKAT may correct the taxable income as a result of non-observance of the arm's length principle. These amounts are not deductible.

2.10 Interest

If SKAT makes a correction of the taxable income, a residual tax addition is calculated for each accounting period at 4.8% in 2011, 4.3% in 2012, 3.9% in 2013, 4.6% in 2014, 3.6% in 2015 and 3.4% in 2016. These amounts are not deductible.

Further, interest is calculated depending on the period which the subsequent collection concerns. From 1 January 2016, interest of 0.5% for the accounting periods 2011-12 will be calculated, 0.4% until 31 July 2013 and then 0.7% from 1 August 2013, 0.8% for the accounting periods 2014-2015, in all cases for each month that elapses after the calculated income tax is due for payment. For the accounting period 2016, it is possible to avoid payment of interest or a percentage addition if it has been paid before 1 January 2017. If the residual tax is paid in the period from 1 January to 1 July 2017, day-to-day interest of 2.0% must be paid. If the residual tax is not paid until after 1 July 2017, no day-to-day interest must be paid, but by contrast a percentage addition of 4%. None of these amounts are not deductible.

2.11 Use of most reliable information

Denmark has no particular rules on materials to be used in connection with the preparation of the comparability analysis; however, guidance can be found in the BEPS reporting, Action 13, pages 24-25, from which it appears that the most reliable information must be used, which will often be from other either national enterprises or other European enterprises that operate under comparable conditions.

2.12 Languages

The transfer pricing documentation, including the country-by-country reporting can be prepared in Danish, English, Swedish or Norwegian. If the documentation is in another language, SKAT may demand that it is translated. For the purpose of delivery to the authorities of other countries or internal use in a number of countries, it may be an advantage to prepare the material in English.

2.13 Confidentiality

The documents which the taxpayer submits to SKAT in connection with the tax return of SKAT's requests for the purpose of processing of the tax case otherwise are covered by a strict duty of confidentiality under section 17 of the Danish Tax Administration Act, for which reason others do not have access to the material submitted by the taxpayer to SKAT, including also transfer pricing material. Nor may SKAT under the said rule state if a case is pending or has been pending at all with an actual taxpayer.

3. Standards with respect to the content of transfer pricing documentation

In general, the transfer pricing documentation must be of such a nature that it can form the basis of an assessment of whether prices and terms have been determined on arm's length terms. The more complex and comprehensive the controlled transactions are, the larger requirements can be made as to the contents of the documentation.

3.1 Transfer pricing documentation according to Statutory Order no. 42 of 24 January 2006

According to the previous Statutory Order no. 42 of 24 January 2006., which can still be used for accounting periods that begin on 31 December 2016, the transfer pricing documentation for the controlled transactions must contain the following:

A) The group and the business activities

1. The group's legal structure.
2. The group entities' geographic location.
3. The group's organizational structure.
4. Primary business activities of the taxpayer and the related entities with which the taxpayer has had TP transactions.
5. An overview of the revenue of the past three years and results of operating activities of the taxpayer and the related entities with which the taxpayer has had TP transactions.
6. A brief historical description of the group and the enterprise. Development in the number of employees.
7. Description of restructuring, purchases and sale.
8. Explanation of losses.
9. Changes in material functions and risks.
10. A brief description of industrial circumstances for the group.
11. A description of material competition parameters.

B) The controlled transactions

1. More transactions together (aggregate transactions) – which transactions are aggregate, meaning which of more transactions are so alike that they can be described together.
2. How much was transferred in the controlled transactions and between which parties.
3. Properties of the products (the items transferred).
4. A functional analysis based on functions, risks and assets.
5. Contractual terms.
6. Financial circumstances.
7. Business strategies.
8. A description of cost allocation agreements.

9. Other circumstances that may actually be of importance to the arm's length assessment, for example public law regulation or campaigns on new markets.

C) Comparability analysis

1. A description of the pricing of the controlled transactions.
2. An account of why the pricing is in compliance with the arm's length principle.
3. An account of used comparable independent transactions.
4. An account of selection of method.
5. An account of the taxpayer's own transactions with independent parties.
6. An account of choice of transactions between independent parties and other related parties' transactions with independent parties.
7. Which potential comparable transactions have been deselected and why.
8. Database examination (not mandatory, but if it has been prepared or if SKAT requests so, it must be attached).

D) An account of the implementation of the pricing principles

1. The specification of the extent to which the taxpayer or related parties have made subsequent adjustment of prices and terms of the controlled transactions in both Denmark and abroad. It must be described if these adjustments are in compliance with the arm's length principle.

E) List of any written agreements concerning the controlled transactions

1. A copy of the written agreements concerning the controlled transactions.
2. Copies of any written agreements which the taxpayer or related parties have entered into with authorities in other countries concerning controlled transactions – both retrospective and forward-looking agreements. (Does not apply to agreements to which Danish tax authorities are a party).

SKAT may impose on the taxpayer to present further information and material and request the preparation of a database examination with a deadline of between 60 and 90 days.

3.2 Transfer pricing documentation according to Statutory Order no. 401 of 28 April 2016

In sections 4 and 5, the newest documentation Statutory Order no. 401 of 28 April 2016 makes a number of requirements regarding the transfer pricing documentation, in that there is a split in the standardized documentation and the country-specific documentation. All paras and sub-sections mentioned in sections 4 and 5 of the documentation Statutory Order must be included in the standardized information relevant for the entire group documentation. If the group does not have the stated types of activities, agreements, transactions etc. specified in the paras, it must be stated positively that the group does not have such activities, agreements, transactions etc. in the documentation under the said paragraph.

The standardized documentation must generally contain the following:

- 1. A group chart showing the group's legal and organizational structure, including a specification of the countries from which the group operates**
 - a. All companies in the group must be shown individually.
 - b. Equity interests whereby the different parties are related must be shown.
 - c. Each group unit's geographic location (tax jurisdiction) must be shown.
 - d. The organizational and business activities of each unit must be stated.

- 2. A general description of the group's business activities, including a description of material drivers of business profit in the group**
 - a. A description of the group's supply chain for the five top products and/or services measured in terms of sales and for the products and/or services that constitute more than 5% of the group's consolidated revenue. The description can be illustrated by a diagram.
 - b. A list with a short description of the most material service agreements between the related parties of the group, except for research and development service agreements, and a description of the material services which the main service centers in the group handle or can handle, and the used transfer pricing policies for the allocation of service costs and determination of settling prices for the intra-group services.
 - c. A description of the largest geographical markets measured in terms of sales of products and services, see a.
 - d. A brief functional analysis that describes the primary contributions to the group's total value creation with information as to which of the individual related parties of the group contribute to this in relation to material functions, risks and assets.
 - e. A description of considerable restructurings, acquisitions and divestments occurred during the accounting year.

- 3. Information about the group's intangible assets**
 - a. A general description of the group's overall strategy for development, ownership and use of intangible assets, including geographic location of the group's primary research and development facilities and a statement of from where these activities are managed.
 - b. A list of the intangible assets or groups of intangible assets in the group of importance to transactions between related parties and with a statement of which entities of the group are the legal owners of these intangible assets.
 - c. A list of material agreements between the related parties concerning intangible assets, including primary CCA agreements (Cost Contribution Arrangements), research and development service agreements and license and royalty agreements.
 - d. A general description of the group's overall transfer pricing politics in relation to research and development activities as well as intangible assets.
 - e. A general description of all material transfers of rights in intangible assets between the related parties during the accounting year with a related

statement of which entities and countries are involved in the transfers, and the payments incidental thereto.

4. Information about the group's funding

- a. A general description of how the group is funded, including a description of the most central financial arrangements with independent lenders.
- b. Identification of all the related parties with a central financing function in relation to the group, including a statement of the countries under whose laws these entities are organized and the place from where the entities are managed.
- c. A general description of the group's transfer pricing policies in relation to the financial arrangements between the related parties.

5. Information about the group's accounting/financial and tax position

- a. The group's consolidated financial statements for the year if made for the purpose of financial reporting, internal control, tax statement or prepared in another context.
- b. A list and brief description of the group's existing unilateral APA's (Advanced Pricing Agreements), tax agreements and tax decisions with a forward-looking effect.

The country-specific documentation must include:

1. A detailed description of the organization

- a. A description of the taxpayer's management structure, a local organizational chart and a description of the persons to whom the local management reports, and a specification of the countries in which these persons have their usual office addresses.
- b. A detailed description of the enterprise and the business strategy pursued by the taxpayer, and a statement of whether the taxpayer has been involved in or effected by restructuring or transfers of intangible assets in the current accounting year and the accounting year immediately preceding the current accounting year, and an explanation of why such transactions have otherwise influenced the taxpayer.
- c. A specification of the taxpayer's most substantial competitors.

2. Detailed information, descriptions and analyses concerning the controlled transactions in which the taxpayer is involved

- a. A description of the controlled transactions (for example acquisitions, production, sale, delivery or receipt of services, loans, guarantees, purchase and sale of intangible assets, payment of royalty etc.) and a description of the context in which the controlled transactions took place.
- b. A account in terms of value of the total internal payments for each category of controlled transactions in which the taxpayer is included (for example payments for products, services, royalties, interest etc.) specified over the tax jurisdictions to and from which the payments took place.

- c. Identification of each of the related parties involved in each category of controlled transactions with the taxpayer, and a brief description of the relation to each of these parties.
- d. Copies of all material controlled agreements with which the taxpayer is included.
- e. A detailed comparability analysis and functional analysis of the taxpayer and the relevant related parties in relation to each category of controlled transactions, including a description of all changes in relation to previous years.
- f. A statement of the most suitable transfer pricing method in relation to each category of transactions and grounds for the selection of method.
- g. When it is relevant in relation to the transfer pricing method, it must be stated which of the transaction parties has been selected as the tested party, and the choice must be reasoned.
- h. A description of the conditions and assumptions that have been applied in the use of the transfer pricing method.
- i. If a multi-year analysis has been made, this approach must be reasoned.
- j. A list with a related description of the selected comparable transactions (internal and external) and information about the financial indicators (PLI's) for the independent enterprises used in the transfer pricing analysis, including a description of the selection process and the source of the information used.
- k. An account of any comparability adjustments and of whether adjustments have been made for the results with the tested party, the comparable transactions or both.
- l. An account of why it can be concluded that the relevant transactions have been priced in compliance with the arm's length principle by employing the selected transfer pricing method.
- m. An overview with a specification of the financial data/accounting data employed in the use of the transfer pricing method.
- n. A copy of existing unilateral, bilateral and multi-lateral APA's and other tax agreements and tax decisions with a forward-looking effect which the taxpayer is not a party to, but which are relevant in relation to the controlled transactions.

3. Material concerning the economic, financial and accounting data

- a. If there are audited financial statements for the taxpayer for the accounting year, they must be enclosed, and if not any existing unaudited financial statements are enclosed instead.
- b. Data and allocation forms showing how the accounting data used in the transfer pricing method can be reconciled with the financial statements of the taxpayer.
- c. Overviews and forms that show the relevant economic, financial and/or accounting data for the comparable independent transactions, or which have been used in the transfer pricing analysis, and a statement of the source of this data.

SKAT may impose on the taxpayer to present further information and material and request the preparation of a database examination with a deadline of between 60 and 90 days.

4. Country-by-Country reporting standards

4.1 Country-by-country reporting according to Statutory Order no. 1133 of 27 August 2016

The country-by-country reporting, which must be submitted digitally in a fixed XLM file format to SKAT no later than 12 months after the last day of the accounting period for which reporting must be made, must contain the following:

- Identity information of the ultimate parent company or the company with the obligation to file the country-by-country reporting.
- Table 1 which shows an overview of the allocation of income, taxes and business activities for each tax jurisdiction (the geographic location).
- Table 2 which shows a list of identification information for all consolidated companies in the group.
- Table 3 which shows other information in support of the information provided in tables 1 and 2.

ECUADOR

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1. Introduction

1.1 Legal context

Transfer pricing ruling has been effective in Ecuador since Presidential Decree No. 2430 issued on December 31, 2004, although various important changes, mainly disclosure requirements, have been implemented since then. Today, five unnumbered articles added after article 15 and the unnumbered article added after article of the Ecuadorian Tax Law, refer to the arm's length principle, criteria of comparability, methodology to establish transfer pricing, exemptions from the transfer pricing regime, and related parties' transactions. Articles 4 and 84 – 91 of the Ecuadorian Tax Ruling complement the legal context for transfer pricing. In Ecuador there have been no official statements on the implementation of the BEPS initiative, including a master file, a local file and country-by-country reporting.

1.2 Practical context

TP requirements apply to both local and foreign related parties, which lead to an important burden not only to local branches or subsidiaries of a multinational group, but also to domestic companies.

2. Formal requirements

2.1 Which taxpayers

An Ecuadorian taxpayer that performs transactions with related parties is subject to the transfer pricing regime and is required to submit the Transfer Pricing Annex, Transfer Pricing Report and/or TP-documentation with respect to those transactions. The definitions of related parties can be found in the unnumbered article added after article 4 of Ecuadorian Tax Law and article 4 of Ecuadorian Tax Ruling. The local tax authority may also determine other related parties by assumption.

Taxpayers are required to file the Transfer Pricing Annex if the accumulated transactions with related parties (domestic and foreign) exceed USD 3 million.

Taxpayers are required to submit the Transfer Pricing Integral Report (TP Report) if the accumulated transactions with related parties (domestic and foreign) exceed USD 15 million.

Exemptions from the transfer pricing regime apply to taxpayers that comply with all these conditions:

- Having a payable corporate income tax greater than 3% of their taxable revenues.
- Not performing transactions with tax havens.
- Not having government contracts related to the exploration and exploitation of nonrenewable resources.

2.2 Aggregation of transactions

The income tax return must include the total amount of transactions performed with domestic and foreign parties during the tax year, disaggregated as follows: assets, liabilities, income, and expenses.

2.3 Deadlines (timing)

Transfer pricing adjustments and related parties' transactions must be included in the corporate income tax form (Form 101), which is due on April each year.

The Related Parties' Annex and/or the Comprehensive Transfer Pricing Report should be submitted to the local tax authority up to June each year, according to the ninth digit of the tax identification number of the taxpayer.

2.4 Materiality

In principle, all transactions with related parties should be supported by appropriate transfer pricing documentation. There are no formal thresholds below which no TP-documentation is required. However, considering the basic principle that the administrative burden should be justified by the complexity and tax effect of the transaction, the more complex and material the transactions are, the more extensive the TP-documentation should be.

2.5 Retention of documents

An Ecuadorian taxpayer is required to keep its administrative records for at least seven years: tax liability prescribes in three years if the income tax return was filed accurately and on time, and in six years if the return was incomplete or filed late. Since the TP-documentation is part of the records of a tax payer, this seven-year period also applies to the TP-documentation.

2.6 Frequency of documentation updates

The documentation is required for each year in which occur the business transactions with domestic and foreign related parties that exceed the applicable transaction thresholds.

2.7 Tax return disclosures

Taxpayers must include in the income tax return (Form 101) the amount of the adjustment determined in the transfer pricing study to determine the taxable income and income tax. If adjustments are determined after filing the income tax return, the taxpayer may file an amended return to pay income tax plus corresponding interest.

Also, as commented in 2.2, the taxpayer must include the total amount of transactions performed with domestic and foreign related parties during the tax year.

2.8 Burden of proof

In practice, the burden of proof lies with the taxpayer for filing the transfer pricing annex and the transfer pricing report.

2.9 Penalties

2.9.1 *General*

If a taxpayer does not submit the annex and/or the report or does submit incomplete, altered, false or incorrect documentation, is subject to a penalty of up to USD 15,000.

The local tax authority issues a document that establishes penalties according to the seriousness of the fault or misdemeanor. Based on this document, late filing of the Transfer Pricing Report and/or the Annex could imply a penalty of up to USD 333.

Assessments of any kind, including transfer pricing adjustments, must charge interest (around 13% per year) for the time between the moment when the taxes were payable (typically, April of the year after the transactions were held) and the time when the tax is finally paid. In addition, a 20% surcharge on the assessment will be applied.

2.9.2 *Penalties in case of a TP-adjustment*

Apart from the rules mentioned above in chapter "2.9.1 General", there are no specific rules on penalties in case of a TP-adjustment.

2.9.3 *CbC-reporting*

There is no CbC-reporting requirements in Ecuadorian Tax Law and Ruling.

2.10 Interest

Interest is not charged on penalties.

2.11 Use of most reliable information

Only the current tax year should be considered for identifying comparable companies.

Although Ecuadorian companies are required to disclose their audited annual financial statements by filing a copy with the local commercial regulator (“Superintendencia de Compañías”), this information is generally insufficient and limited to be used as a resource of comparable transactions. Consequently, foreign comparables are accepted by the local tax authority for transfer pricing purposes. Tax legislation also allows the local tax authority to use secret comparables.

2.12 Languages

The Ecuadorian tax law requires the documentation to be filled only in Spanish.

2.13 Confidentiality

The Ecuadorian tax authorities will treat the TP-documentation confidentially. The tax authorities can only exchange the TP-documentation with the tax authorities of another country if there is a legal basis. This legal basis can be found in the national law or a tax treaty. The TP-documentation is never available to the public.

3. Standards with respect to the content of transfer pricing documentation

However, current requirements for filing the Comprehensive Transfer Pricing Report are the following:

- The report should be filed in a non-recordable compact disc, in PDF, and must comply with the following structure: executive summary, scope and objective, content and conclusions.
- Description of each intercompany transaction.
- Characteristics of the transactions.
- The background and functions performed by the group the taxpayer belongs to.
- The background, functions performed, risks borne and assets used by the taxpayer on its business.
- Contractual terms.
- Market analysis.
- Economic analysis.

- Listing of selected comparables that were rejected, stating the reasons for such consideration.
- Listing quantification and methodology used to practice adjustments necessary on selected comparable.
- Median and the interquartile range.
- Profit and loss statement of the comparable entities corresponding to the commercial years considered for the economic analysis, indicating the source of information.
- Conclusions.
- Additional information.

The same electronic file must include the annexes and working papers of the TP Report in Microsoft Excel.

3.1 Master File

Unclear if this is mandatory.

3.2 Local File

Unclear if this is mandatory.

4. Country-by-Country reporting standards

4.1 Threshold and required content

Ecuador has not signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports.

4.2 Notification requirement for subsidiary companies

Ecuador has not signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports.

EGYPT

MEMBER FIRM

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1. Introduction

1.1 Legal context

Egyptian TP documentation rules are laid down in law no.91 for the year 2005 effective from 9 June 2005. These Egyptian requirements effective from 2005 originate from the time before the OCED BEPS project started and thus cannot be regarded as being based on the mentioned OECD principle. Egypt has not yet made changes to law no.91 for the year 2005 to reflect the requirements of OECD – BEPS action point 13, e.g. master files and local files. Furthermore, CBC reporting has not been introduced yet.

1.2 Practical context

In practice, the comparable uncontrolled price method is the method preferred by the Egyptian tax authority. As well as that, the tax payer is supposed to submit the TP contract and policy to the tax authority to obtain their approval that the price is at arm's length before conducting any transactions with the associated parties to minimize the likelihood that the price will be rejected by the tax authority in the case of a tax inspection. A tax inspection can take place within 5 years of the date of submission of the tax return. Additionally, if the tax authority sends a notification within the 5 years period to the taxpayer requesting them for tax inspection, the 5 years period will start on the date on the notification.

As an example: The normal inspection period for the year ended 31/12/2010 is up to 31/12/2015. However, if the tax authority sends a notification to the taxpayer on 30/12/2015 requesting them for tax inspection, the inspection period for the year ended 31/12/2010 will be extended to 30/12/2020.

2. Formal requirements

2.1 Which taxpayers

Based on law no.91 for the year 2005 an Egyptian taxpayer that enters into transactions with an associated enterprise is required to have TP documentation with respect to those transactions.

2.2 Aggregation of transactions

The general rule is that TP documentation is required for each individual transaction with associated enterprises, but in practice this could lead to an unreasonable administrative burden. If a proper aggregation of transactions is possible, for example because there is a large number of similar transactions, the transactions can be jointly inspected. In that case it is expected from the taxpayer that they can substantiate the used transfer price with regard to the aggregation of transactions to be at arm's-length.

2.3 Deadlines (timing)

The premise is that the TP documentation is available from the time the transaction is entered into by the taxpayer. The taxpayer should give consideration to whether the transfer pricing is appropriate for tax purposes before the pricing is established and should confirm the arm's length nature of its financial results at the time of filing the tax return.

If the TP documentation is not available upon inspection by the tax authority, the Egyptian tax authority may estimate the amount and it can be unfavorable to the taxpayer.

2.4 Materiality

In principle all transactions with associated enterprises should be supported by TP-documentation. There are no formal thresholds below which no TP-documentation is required. However, the complex and material the transactions are, the more extensive the TP documentation should be.

2.5 Retention of documents

Period does not expire as far and as long as the documents are of importance in case of a tax inspection.

2.6 Frequency of documentation updates

There is no explicit requirement on the frequency of updates. However, the documentation is required for each year in which the above- mentioned business transactions with foreign countries occur. Moreover, for continuous business transactions, the taxpayer has to collect and record information even after the conclusion of the business transaction in order to enable the tax authority to carry out the tax inspection.

2.7 Tax return disclosures

Up to the fiscal year 2016, there are no disclosure and documentation in the tax return.

2.8 Burden of proof

Generally, the regular rules apply regarding the burden of proof. The taxpayer has the obligation to cooperate with the tax authority in the case of a tax inspection and to provide all the supporting documents.

Moreover,

- if a taxpayer fails to provide documentation, *or*
 - in case the documentations is essentially unusable
- there is a presumption that the taxpayer Egyptian income for the inspection of which the documentation should serve is higher than the declared income. The Egyptian tax authority may estimate the amount and it can be unfavorable to the taxpayer.

Even if the taxpayer submitted usable documentation to the tax authority, the same applies if there is evidence that the taxpayer's income were higher if he had complied with arm's length principle.

2.9 Penalties

There are no specific rules on penalties in case of a TP adjustment. As a consequence, the normal rules on the consequences of "Tax Inspection Differences" apply.

2.10 Use of most reliable information

There are no specific requirements in Egypt regarding the use of comparables and as to the question whether only domestic or foreign comparables will be accepted by the tax authorities.

2.11 Languages

Generally the documentation has to be prepared in Arabic.

2.12 Confidentiality

After the submission to the authorities, the documentation is protected by the normal Egyptian rules and thus generally is subject to confidential treatment by the Egyptian authorities.

3. Standards with respect to the content of transfer pricing documentation

Transactions between related parties require a policy for TP at arm's length. The documentation requires documentary the following information:

- a) The method of calculating the TP at arm's length and the reason for choosing that method.
- b) Any changes to the TP at arm's length.

- c) The company's organizational structure.
- d) Details of each transaction.
- e) Assumption, policies and regulations implemented when using the method.
- f) Any other significant information related to the transaction.

GERMANY

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1. Introduction

1.1 Legal context

German TP documentation rules (regarding CbC-reporting, cf. below) are laid down in sec. 90 (3) AO (German fiscal code) and – regarding the rules relevant for 2016 and prior years – additionally in the related ordinance regarding the documentation of profit allocations (Gewinnabgrenzungsaufzeichnungsverordnung - GAufzV). Regarding the details of this ordinance, the Federal Ministry of Finance has published the central administrative order administrative principles – procedures (Verwaltungsgrundsätze-Verfahren). These German requirements effective for 2016 originate from the time before the OECD-BEPS project started and thus cannot be regarded as being based on the mentioned OECD principles. However, in many respects, the mentioned German requirements are already in line with the current OECD rules, although they e.g. do not require the distinction between Master and Local files.

With effect from 2017 onwards, Germany made changes to sec. 90 (3) AO to reflect the requirements of OECD-BEPS action point 13, e.g. Master Files and Local Files. The update of the above-mentioned ordinance is still under discussion (discussion draft as of February 21, 2017).

Furthermore, CbC-reporting legislation was introduced in sec. 138a AO coming into effect

- for fiscal years starting on or after January 1, 2016 regarding the primary mechanism (i.e. for MNE with German ultimate parent entities)
- one year later regarding the secondary mechanism (i.e. for other German entities).

1.2 Practical context

Despite the afore-mentioned discrepancies between the German legislation and the OECD rules for years up to and including 2016, when dealing with groups of companies from more than two countries, a combination of a centralized documentation containing basic facts (basically equivalent to the Master File) and decentralized documentations of country-specific data (basically equivalent to the Local File) has often proven to be useful from the taxpayers perspective. As the documentation technique of master file and local files often is customary or even mandatory in other countries involved in the business transactions under investigation, such documentation structure may also be beneficial be favorable or even compulsory if only one single documentation is required to fulfil both the German and the foreign requirements.

From 2017 onwards, the general distinction between Master files and Local files is mandatory under German law as well.

Regarding CbC-reporting, Germany has not published specific guidance yet so that as a consequence, in practice reference will have to be made e.g. to the OECD report.

2. Formal requirements

2.1 Which taxpayers

German law requires the taxpayer has to prepare documentation (i.e. (a) at all for years up to and including 2016 and (b) for 2017 onwards a Local file) for business transactions involving foreign countries ("mit Auslandsbezug"), i.e. basically if related parties or permanent establishments are used for cross-border business transactions. For income other than that from agriculture, trade/business and self-employment as well as for small enterprises, these documentation requirements are deemed to be fulfilled by the provision of adequate information and already existing documents if the respective deadlines are kept.

In this respect a small enterprise is an enterprise for which (together with its domestic related companies within the meaning of sec. 13, 18 and 19 Betriebsprüfungsordnung (central administrative order on tax audits)

- neither the sum of charges for the purchase/sale of goods from business transactions with related parties exceeds EUR 6m
- nor the sum of charges for other services/supplies from business transactions with related parties exceeds EUR 600k

during the current fiscal year. If these amounts are exceeded in one fiscal year, the exemption will not be applicable during the following fiscal year. Reciprocally, the exemption is applicable in the following fiscal year, if the respective amounts fall below the mentioned thresholds.

A Master file is mandatory (for 2017 onward) if a Local file has to be prepared and the non-consolidated turnover of the entity was at least EUR 100m in the preceding fiscal year.

CbC-reporting legislation applies to entities as part of multinational groups with a (consolidated) annual turnover of at least EUR 750m in the preceding year. A German entity has to submit such CbC reporting if it is (a) the ultimate parent, (b) a German entity commissioned by a foreign ultimate parent to produce such reporting (commissioned entity) or (c) a German entity whose foreign parent has not submitted a CbC-report.

2.2 Aggregation of transactions

Basically, a separate documentation of each single business transaction is necessary. However, an ag-aggregation is possible

- if (a) the transactions are similar in terms of functions and risks functions and risks, (b) the trans-actions have been divided into groups according with predetermined and transparent rules and (c) if these transactions are

identical or equivalent or if the aggregation is common between third parties as well or

- if the transactions are linked in respect of their cause or
- if the transactions are partial services/ supplies of an overall transaction and if for the appropriateness of its price, the overall transaction is more relevant than the partial service/ supply.

2.3 Deadlines (timing)

For ordinary business transactions there basically is no deadline for the preparation of the documentation by the taxpayer. However, if the documentation is prepared based on data or documents collected or established long after the respective reporting period, the fiscal authorities might challenge the documentation because they appear to have been prepared as subsequent justification e.g. of long-term losses incurred by one of the entities.

Regarding extraordinary business transactions (i.e. conclusions and changes of long term agreements which have a material effect on the income derived by the taxpayer; transfers of assets in the course of a business restructuring procedure etc.), documentation has to be prepared on a timely basis, which is considered to be within six months after the end of the fiscal year in which the business transaction has taken place.

The submission of the documentation (i.e. from 2017 onwards: Local Files and Master Files) to the fiscal authorities shall regularly only be required by the fiscal authorities for the conduction of a field audit. The submission shall be required by the authorities giving a time frame of 60 days (in case of extraordinary-nary transactions being involved: 30 days). These time frames may be extended under special circumstances.

A German ultimate parent entity is required to submit the CbC report electronically to the Bundeszentralamt fuer Steuern ("BZSt" - Federal Central Tax Authority) within one year after the respective fiscal year for which the CbC-reporting is performed. For the secondary mechanism, basically the same applies, i.e. a German entity not being the ultimate parent of a multinational group has to submit the CbC-report for one fiscal year within one year of the end of the relevant year. However in case a domestic entity could assume that the CbC-report would be submitted in due time by the foreign ultimate entity, and if it is subsequently found that this was not done but not the fault of the domestic company, the domestic entity must fulfill its obligations within one month after being notified.

2.4 Materiality

Basically, the German documentation requirements are not limited explicitly to business transactions with material impact on the taxpayer's income. As a consequence, there are neither relative nor absolute limits regarding the documentation requirement (cf. above chapter "2.1. Who (incl. PEs) +

thresholds”, however). In practice, however, the fiscal authorities often limit their scope of investigation on business transactions with such material impact.

Regarding the Master File (i.e. for years 2017 onwards), however, the current discussion draft of the mentioned ordinance update states that for the Master File, information is to be prepared based on reasonable commercial assessment.

2.5 Retention of documents

Basically, the documentations have to be retained for ten years. The retention period does not expire as far and as long as the documents are of importance for taxes for which the assessment period has not run out yet.

2.6 Frequency of documentation updates

There is no explicit requirement on the frequency of updates. However, the documentation (from 2017 onwards regarding Master Files and Local Files) is required for each year in which the above-mentioned business transactions with foreign countries occur. Moreover, for continuous business transactions (e.g. long-term loans), the taxpayer has to collect and record information even after the conclusion of the business transaction (e.g. the conclusion of the loan agreement) in order to enable the tax authorities to investigate whether, and if so, from which point in time third parties would have adjusted the business transaction (e.g. changed the interest rate). This is especially relevant in the case of tax losses which third parties would not have tolerated, or in the case of price adjustments at the expense of the taxpayer.

The CbC-reporting has to be performed for each fiscal year in which the respective preconditions (cf. “2.1. Which taxpayers”) are met.

2.7 Tax return disclosures

Up to the fiscal year 2015, there are no disclosures on documentation in the tax return.

Regarding the CbC-reporting, however, German legislation requires a domestic enterprise / a domestic p.e. to disclose whether it is a German ultimate parent, a commissioned entity or a domestic entity included in the CbC-report of a foreign parent (and if so, which parent will submit a CbC-report to which fiscal authority).

2.8 Burden of proof

Generally, the regular rules apply regarding the burden of proof. This includes the principle that if a tax-payer fails to meet his obligation to cooperate, the investigation obligations of the fiscal authorities diminish accordingly.

Moreover,

- if a taxpayer fails to provide the documentation, *or*
 - in case the documentation is essentially unusable *or*
 - if the documentation of extraordinary business transactions has not been prepared on a timely basis (cf. above chapter “2.3 Deadlines (timing)”),
- there is a rebuttable presumption that the taxpayer’s German income for the investigation of which the documentation should serve is higher than the declared income. If in such cases the fiscal authorities have to make estimates which can only be specified within certain limits (especially based on price ranges), the German fiscal authorities may estimate the amount most unfavorable to the taxpayer.

Even if the taxpayer submitted usable documentation to the fiscal authorities, the same applies if there is evidence that the taxpayer’s income were higher if he had complied with the arm’s length principle and if the doubts cannot be removed because a foreign related person does not fulfill its obligation to cooperate or provide information.

2.9 Penalties

2.9.1 *Administrative penalties*

Unless the non-compliance with the requirement to submit usable documentation on time is excusable or if it is caused only by slight negligence on the part of the taxpayer, the following rules apply:

- If the taxpayer does not submit documentation (from 2017 onwards: Local file) for a controlled transaction or in case the submitted documentation is essentially unusable, an amount of 5 to 10 percent of the additional income (but at least EUR 5k) will be further added to the income.
- If the taxpayer submits the documentation for a controlled transaction later than permitted, a penalty of up to EUR 1m, but at least EUR 100 per day of delay will be assessed.

For the non-compliance with the requirements regarding the Master file, no specific rules apply. As a backup, the general administrative measures (such as “Verzögerungsgeld” – fine for delay) may be applied.

Failure to file CbC-reports, filing of incomplete reports or late filing will be treated as an administrative offense and the taxpayer will be fined up to EUR 10k. In cases where the non-filing, the incomplete or late filing is considered to be caused by the taxpayer not taking due care in meeting his fiscal obligations (“leichtfertige Steuerverkuerzung”), the limit is EUR 50k.

2.9.2 *Penalties in case of a TP-adjustment*

Apart from the rules mentioned above in chapter “2.10.1. Administrative penalties”, there are no specific rules on penalties in case of a TP adjustment. As a consequence, the normal rules on the consequences of income adjustments apply including e.g. fines for frivolous tax evasion.

2.10 Interest

There are no specific rules on interest charged on subsequent tax payments in TP cases. As a consequence, the general rules apply, which normally means that interest is charged at a rate of 0.5 percent per month (generally starting 15 months after the end of the relevant calendar year).

2.11 Use of most reliable information

There are no specific requirements in Germany regarding the use of comparables and as to the question whether only domestic or foreign comparables will be accepted by the fiscal authorities.

2.12 Languages

Generally, the documentations have to be prepared in German. The taxpayer may apply for an exception at any time before the documentation is due for submission but no later than immediately after he has been requested by the tax authorities to submit them. As regards extraordinary business transactions, the application has to be made at a date which still enables the timely preparation of the respective documentation (cf. above chapter “2.3. Deadlines (timing)”).

2.13 Confidentiality

After the submission to the fiscal authorities, the documentation as well as the CbC-reporting is protected by the normal German rules and thus generally is subject to confidential treatment by the German fiscal authorities. Exemptions relate especially to the international exchange of information e.g. under the relevant Double Taxation Agreements, the MCAA or the EU directives on administrative cooperation.

3. Standards with respect to the content of transfer pricing documentation

Pre-BEPS TP-documentation and new Local file / Master file concept.

3.1 Content up to and including 2016

The following list shows the information required to be documented under section 4 of the ordinance mentioned above with regard to the allocation of profits. Under specific circumstances (e.g. changes in the business strategy or in allocation of functions and risks), however, it will have to be accompanied by additional information regarding these aspects (cf. sec. 5 of the above-mentioned ordinance).

General information on ownership, operational and organizational structure

- Information on shareholdings in the taxpayer and its related parties with whom the taxpayer has business transactions either directly or indirectly (via intermediaries)
Often, this data is given by the taxpayer as a structure chart or a list of shareholdings. The information should cover the whole period under report including changes during the year(s).
- Information on circumstances which could lead to parties being regarded as related parties apart from direct or indirect shareholdings
This information may e.g. comprise a description of economic or other interrelations between these parties.
- Description of the organizational and operational group structure as well as their changes during the documentation period, including permanent establishments and partnership interests
Often, this description is given by means of organizational and/or structure charts showing the regional structure, the legal form of the entities involved as well as their tasks within the organization.
- Description of the taxpayer's sectors of economic activity, e.g. rendering of services, production or sale of goods, research and development
This information is normally aggregated. Information included in centralized documentation may of course also be included in the respective decentralized documentation.

Business transactions with related parties

- Description of the business transactions with related parties, overview of the nature and extent of these business transactions (e.g. purchasing of goods, rendering of services, loans and other usage assignments) and overview of the agreements on which these business transactions are based as well as their changes in the documentation period
The required presentation should give an overview of the nature and the amounts charged for the respective transactions together with an overview list of the underlying contracts and their changes.
- Compilation (list) of the taxpayer's material intangibles used in the business transactions with related parties or for which he grants the right to use to related parties
The meaning of "intangibles" in this context is not limited to intangibles shown on the balance sheet, but also comprises e.g. self-made "know-how". Whether such intangibles are material for an entity's business must be determined on a case by case basis.

Analysis of functions and risks

- Information on (a) the relevant competitive and market conditions (b) the business strategy, (c) the functions performed and risks taken by the taxpayer and his related parties in the course of the business transaction as well as their changes, (d) the contractual conditions of the business transactions and (e) the use of the relevant intangible

For this part of the documentation tables ("star-charts") may used with additional written explanations.

- Description of the value chain and the value contribution of the taxpayer in comparison to the related parties also involved in the business transaction

While the function and risk analysis basically deals with the individual group companies, the value chain regularly refers to cross-company / cross-entity processes within the group / enterprise. Often the taxpayer's value contribution is apparent from the functional and risk analysis and the information documenting the adequacy of the transfer price chosen. If this is not the case, the taxpayer has to submit an additional description.

Analysis of transfer prices

- Description of the selected method of transfer pricing and justification of the suitability of the selected method
- Attachment of documents relating to the calculation of transfer prices
- Analysis of the prices and financial data of independent enterprises that are used for comparison (comparables) and documentation of any adjustments made

To the extent the mentioned comparables are available to the taxpayer, to his related parties or on the market at the time at which the business transactions are agreed upon, the taxpayer has to include such comparables in his documentation. However at present, mere database screenings are regularly not regarded as adequate by the German fiscal authorities and thus will lead to the documentation being classified as essentially unusable (for the consequences, cf. above chapters "2.8 Burden of proof" and "2.9.1. Administrative penalties").

3.2 Content required for 2017 onwards

The following information is based on the above-mentioned current discussion draft for the update of the ordinance regarding the documentation of profit allocations.

A. Local File content

General information on the structure of the entity and on the business / the business strategy

- Description of the management structure of the local entity, a local organization chart, and a description of the individuals to whom local management reports including the countries in which such individuals maintain their principal offices
- Description of the business and business strategy pursued by the local entity

This description should be detailed and must include an indication whether the local entity has been involved in or affected by business restructurings or transfers of intangibles in the present or preceding year. Further it must contain an explanation of those aspects of such transactions which affect the local entity.

Analysis of functions, risks, and intangibles

- Information on (a) the relevant competitive and market conditions (b) the business strategy, (c) the functions performed and risks taken by the taxpayer and his related parties in the course of the business transaction as well as their changes, (d) the contractual conditions of the business transactions and (e) the use of the relevant intangibles
As a new aspect compared to the version of the ordinance currently applicable, the mentioned discussion draft expressly requires a weighting of functions and risks and the used assets to be quantifiable and verifiable. Furthermore, the relevant decision-makers must be indicated in the analysis of functions and risks.
- Description of the value chain and the value contribution of the taxpayer in comparison to the related parties also involved in the business transaction

Analysis of transfer prices

- Description of the selected method of transfer pricing and justification of the suitability of the selected method
- Attachment of documents relating to the calculation of the transfer prices
- Analysis of the prices and financial data of independent enterprises used for comparison (comparables) and documentation of any adjustments made
As a new element, the discussion draft for the update of the ordinance expressly states that in case of database studies, the search process must be traceable for the tax authority and the authorities must be granted access to the same version and data as used in the taxpayer's data-base study.

B. Master File content

Basic Information on ownership, organizational and legal structure

- Graphical description of the organizational group structure (legal and ownership structure) as well as the geographical distribution of the entities of that group
- Summary of significant mergers, acquisitions, sales and restructurings

Overview of the business

- Description of the main geographical markets for the products / services of the group
- Overview of important factors having an impact on the overall profit of the group
- Description of supply chains
Such description should be provided for the five products and / or services of the group which generate the highest sales revenues as well as for all

other products and / or services, which account for more than 5% of the group's revenues

- List and summarizing description of material service agreements between entities of the group (except for agreements with R & D entities)
The data provided should include (a) the capacity of the main facilities which provide material services, (b) a description of the TP policy adopted for the allocation of costs for those services and for the determination of the considerations to be paid for these services.

Comprehensive functional analysis

- This analysis should describe the main contributions that the individual entities make to the value creation, i.e. key functions, important risks and material assets

Intangibles, Research and Development

- Description of the group's overall strategy for intangibles
Information is required about the development, ownership, protection and use of intangibles. It should further include the locations of the most important R & D facilities and of the facilities managing R & D activities.
- List of intangibles relevant for TP purposes and of the entities which are the owners of those intangibles
- List of important agreements involving intangibles
This information should include cost-sharing arrangements, material research service agreements and licensing agreements.
- Specification of intra-group financial transactions
This should comprise information on relevant financial concepts such as financial intermediation, interest rate benchmarking, cash pooling and loan guarantees.
- General description of the TP policy regarding R & D and intangible assets
- General description of all important transfers of rights to intangible assets
This information should include the entities involved in such transfers, their countries and the considerations paid.

Financial operations

- General description of how the group is financed
This should include the description of significant financing relationships with third parties.
- Indication of the entities performing central financial, cash or asset management functions
This should include an indication of the law under which the entity is organized and its effective place of management.
- General description of the TP strategy for financing relationships

Attachment of consolidated financial statements (if such statements have been put up)

List and brief description of APAs regarding TPs and international income / cost allocation

4. Country-by-Country reporting standards

German law requires the following:

Part 1: Country-by-country indication of:

- Revenue and other operating income from business transactions with (a) third parties, (b) related parties and (c) the total of (a) and (b)
- Income taxes paid in the fiscal year
- Income taxes paid or accrued in and for the fiscal year
- Profit/loss for the year before income taxes
- Equity
- Retained profit
- Number of employees
- Material assets

Part 2: Country-by-Country information of all included entity's major business activities.

Part 3: Additional information necessary for understanding of the data in Part 1 and Part 2.

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1. Introduction

1.1 Legal context

The legal framework prescribing the rules for Transfer pricing documentation is contained in two bodies of law (codified laws), namely, Law 4172/2013 which constitutes the Greek Income Tax Law (ITC) and the Tax Procedures Code (4174/2013, or TPC). With the L 4172/2013, the OECD guidelines for Transfer Pricing are introduced as the application tool and interpretation framework. Any changes to OECD guidelines have immediate effect. The relevant authority to emanate, adopt or issue rules and guidelines is the General Secretariat of Public Revenue (GSPR). Several Transfer Pricing guidelines have been issued by the GSPR such as Decision 1097/2014 (as amended by Decision 1144/2014) which provides the mandatory content of the Transfer Pricing Documentation File (TPDF) for related party (intercompany) transactions and Decision 1284/2013 which provides guidance on Advance Pricing Agreements (APAs). The main TP Interpretation, the Decision 1097/2014 provides guidance on the file structure, requiring a Master file (basic file containing information on a group of entities, common for parent and components, only when foreign companies are present in the group) and a local file (Greek file containing information on the Greek tested parties, and domestic groups) and provides guidance for the content as well.

Subsequent decisions provide guidance on the acceptable comparables database, database's edition, years to include and period of coverage, use of quartiles etc.

An additional requirement is the preparation of summarization table of all the tested transactions, the Summary Information Table (SIT), to be uploaded in the appropriate IT platform, containing the key points of the transactions and information in the tested parties.

1.2 Practical context

The existing legal framework although appears to be sufficiently detailed lacks of clarity in a number of practical issues, and this is magnified by an evident lack of experience especially when it comes to complex projects involving a variety of jurisdictions. In addition, the Greek TP guidelines include domestic groups as well without any exception for the documentation requirements while

the APA procedure is reserved only for cross-border transactions with a notable administrative cost.

2. Formal requirements

2.1 Which taxpayers

Tax payers, who enter into a transaction with an associated entity, are required to document this transaction. The obligation exists even when the associated party is not a legal but a physical person and irrespectively for both domestic and foreign entities and for small, medium and big enterprises as well. The definition of the association is given in article 2 of L4172/2013 where association exists when there is a direct or indirect participation capable to control the management. Both the aforementioned article and subsequent ministerial circulars provided quantitative and qualitative criteria for the determination of the association status e.g. the possession of the 33% of the voting rights or the existence of dominative influence between the entities.

However, there are specific thresholds that trigger the obligation for TP documentation. More specifically, the obligation exist when the cumulative value of the transaction exceeds the EUR 100.000 in case the taxpayers' turnover is less than EUR 5 million, and the cumulative value of EUR 200.000 when the taxpayers' turnover is over EUR 5 million.

2.2 Aggregation of transactions

Each transaction can be examined for arm's length purposes, however, especially when transactions of common type occur, it is possible to provide documentation for this common transaction type, taking into accounts the characteristics of the transactions as well. In practice the transactions to be tested can be grouped into categories, by nature of transaction. Moreover, the threshold used to establish the obligation the obligation for TP documentation, is examined with regard to the transaction category. An indicative typology of the transaction can be found in the guidelines for the preparation of the summarization table to be uploaded at the end of every fiscal year.

2.3 Deadlines (timing)

For the Master and the local file, the deadline for the preparation also is the deadline for the annual tax returns. However, the competent authority grants one month time limit to present the TPDF starting from the day of the formal request for audit. Notwithstanding, the additional requirement of the Summary Information Table should be uploaded within the strict deadline for the tax return.

2.4 Materiality

Once the obligation to provide TP documentation is triggered (see above par. 2.1) the taxpayer is obliged to document every transaction regardless of the amount.

2.5 Retention of documents

The statute of limitations for the assessment of transfer pricing adjustments is five years from the tax year end in which the annual corporate income tax return was filed (containing the adjustment). Please note, under certain circumstance it is 20 years.

2.6 Frequency of documentation updates

The TPDF contains a special chapter where the taxpayer describes all facts and circumstances justifying changes in the market conditions with regard to the previews fiscal year. The TPDF remains valid for the next fiscal year including the updates deemed as necessary. However, if the taxpayer proves that the operating conditions remained substantially unaltered, would be authorized to keep the same comparables for the maximum period of three (3) years.

2.7 Tax return disclosures

There are no direct disclosures in the tax returns, but as mentioned in par. 1.1, the Greek tax authorities go beyond a simple tick mark in the tax return and require from the taxpayer to declare, through the SIT, a quite detailed information on the all the key points. The SIT, to be uploaded together with the tax return, contains information on the company names, country, nomenclature used (e.g. NACE 2nd revision), VAT number, existence of tax model convention, type of transaction, amount and TP method used, risk, functions and assets.

2.8 Burden of proof

The taxpayer is obliged to provide the necessary documentation within the prescribed deadlines and should be complete and accurate in terms of content and usable information allowing the tax authority to perform recalculations. In case data is missing constituting the TDPF unusable and these inefficiencies cannot be cured with additional information during the tax audit, the TDPF will be considered inadmissible leading to penalties. The SIT should be complete and accurate as well, and the information contained should agree with the TPDF otherwise will be considered inadmissible, leading to penalties.

2.9 Penalties

According to art. 56 of TPC 4174/2013 as amended, there are three main categories of penalties:

1. late submission of the Summary Information Table (SIT): 0,1% of the value of the tested transactions with a minimum of EUR 500,00 and an maximum of EUR 2.000,00
2. Timely submission of the Summary Information Table (SIT) but with incorrect information: If the error or incorrectness exceeds the 10% of the value of the tested transaction, then a 0,1% of the value of error is calculated, with a minimum of EUR 500,00 and an maximum of EUR 2.000,00
3. Non submission of the Summary Information Table (SIT): 0,1% of the value of the tested transactions that should have been declared with a minimum of EUR 2.500,00 and an maximum of EUR 10.000,00
4. Amended SIT: penalties are applicable only with strict regard to values declared and the amendment of the value exceed the EUR 200.000 compare to what was previously reported. In this case a penalty is calculated amounting to 0,1% of the tested (amended) transaction with a minimum of EUR 500,00 and an maximum of EUR 2.000,00
5. Non submission of the TPDF: the penalty is one-off payment calculated in relation of the time passed from the deadline, ranging as following
 - from 31 -60 days of delay: EUR 5.000,00 penalty,
 - from 61 – 90 days: EUR 10.000,00
 - over 90 days or not submission at all: EUR 20.000,00

Although the penalty for TPDF with incorrect or inaccurate information is abolished, it is believed accepted that the incorrect TPDF is equivalent to non submission.

Furthermore, when the tax authority reaches the conclusion that there is tax evasion, additional penalties and fines will be calculated as in all tax evasion cases. In this case other implications might emerge such as breaches to the anti-laundering money legislation.

2.10 Interest

The calculation of late payment interest with regard to additional taxes that emerged after the TP tax audit, follows the general rule of late payment interest which is currently set at 8,51% year rate (0,71% monthly). Interests is not capitalized.

2.11 Use of most reliable information

The tax authority, in line with the OECD guidelines requires the use of most reliable information, without posing specific criteria. When external comparables are required, no specific transfer pricing comparables database is preferred by the tax authority. The tax authority normally focuses on the interquartile range in a transactional net margin method (TNMM) analysis.

The use of benchmarking studies, must follow certain rules with regard to the period covered and the data handling. More specifically:

- When the CUP method is the selected method, the data to be used should refer to uncontrolled transactions that took place within the same period.

In this case the comparables search should be executed in database version covering a period starting from two month before the year end up to the deadline for the submission of the tax returns (usually by the end of June)

- When the CUP method is not the selected method, the taxpayer should retrieve the data from the weighted average of the three years preceding the tested year
- The values of the sample must be sorted in ascending order before the construction of the quartiles
- The database version used will be binding for the Tax Authority in case of assessment.

2.12 Languages

Greek or English are the languages to be used for the Master file. Any other official language can also be used but must be accompanied with a Greek translation. The Local file, instead will be prepared in Greek language.

2.13 Confidentiality

The general rule of confidentiality on the citizens tax affairs, is applied. The right to confidentiality is restricted when information is requested by other public officers, justice, foreign tax authorities (EU 2011/16).

3. Standards with respect to the content of transfer pricing documentation

3.1 Master File

To be prepared only when there is a foreign company in a Group of companies (MNE). Not required for domestic groups:

- A general description of the taxpayers activities and strategy, including changes made in relation to the previous tax year,
- A general description of its organizational, legal and operational structure (including the Group's chart, the list of its components, permanent establishments, a description of the association relationship and the changes as compared with the previous tax year, on the ownership of intangible assets, of the financial transactions and the taxable income of the group,
- A general description of the associated entities or/and their permanent establishments involved in the transactions to be documented,
- A general description of the transactions to be documented involving the associated entities, i.e. a general description of:
 - i. the nature of the transactions (sale of goods, provision of services, financial transactions, intangible assets, etc.),
 - ii. the flow of invoices; and
 - iii. the amount of the transactions

- A general description of the functions performed, the risks being dealt with and the changes that may exist to the operations and risks in relation to the previous tax year,
- The ownership of intangible assets (patents, trademarks, trade names, know-how, etc.) and the payment or collection of rights,
- A description of its pricing policy that explains the arm's length principle for the intra-group transactions,
- A list of cost allocation agreements, pre-approval decisions of intra-group pricing methodology and court decisions concerning group members, with regard to price setting of intra-group transactions,
- A description of the transactions carried out during the fiscal year, with entities with which the taxpayer became associated or the association was terminated in the same tax year, before or after the association, in order to be able to verify if these transactions meet the criteria of comparability and can be used as comparative data.

3.2 Local File

- A detailed description of the taxpayer and his strategy, including changes made in comparison with the previous tax year,
- A detailed description of the transactions to be documented, including:
 - i. the nature of the transactions (sale of goods, provision of services, financial transactions, intangible assets, etc.)
 - ii. the flow of invoices
 - iii. the amount of the transactions
 - iv. a description of extraordinary transactions or events, including those arising from the transfer of operations as defined by the provisions of Article 51 of Law 4172/2013
 - v. in particular in the case of the sale / purchase or transfer of intangible assets to or from a related party, additional information (relating to such transactions) for compliance with the arm's length principle, i.e. the price at which an independent entity would be willing to sell or transferring the value to which an independent entity would be prepared to acquire that intangible asset under comparable circumstances, taking into account the expected benefits and usefulness for his business
- Comparative analysis, i.e.:
 - i. characteristics of the assets and services and related information on internal and / or external comparative data, if available. Special factors should be taken into account in order to justify the comparability of intangible assets and the arm's length principle such as: expected benefits, geographical constraints, transfer of exclusive rights or not, participation of the acquirer in future development
 - ii. functional analysis (performing functions, assets used, business risks),
 - iii. contractual terms,
 - iv. economic conditions; and
 - v. specific business strategies

- An explanation of the choice and method of applying the intra-group transaction pricing method(s)
- A description of the implementation of the taxpayer's policy when setting the intra-group transaction prices,
- The commitment of the taxpayer to provide any additional information relating to its intra-group transactions at the request of the Tax Administration within a reasonable time, particularly in the case of a tax audit,
- Explanations on the method of adjustments made when the taxpayer has adjusted its taxable profits in order to comply with the arm's length principle.
- A description and a detailed justification for any adjustments made to achieve comparability,
- Additional information on transactions with related parties established or having their tax domicile in non-cooperative countries, which in the case of a group will also include the balance sheet and the income statement of the associate entity/entities,
- A flow chart of transactions, including extraordinary transactions
- Copies of the contracts governing the transactions to be tested.

4. Country-by-Country reporting standards

Although Greece has signed a multilateral authority agreement on the automatic exchange of Country by Country reports, the competent authority has not issued yet the necessary circulars and guidelines. This is expected to take place by the end of 2017.

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1. Introduction

1.1 Legal context

Currently, the Hong Kong Inland Revenue Ordinance ("IRO") does not contain any specific transfer pricing ("TP") rules or legislation addressing non-arm's length transactions between associated enterprises. As such, the Hong Kong Inland Revenue Department ("IRD") has been relying on a number of general provisions stipulated in the IRO, non-legally binding IRD's Departmental Interpretation and Practice Notes ("DIPN") as well as case law to deal with TP issues.

Relevant general provisions in the IRO governing TP include (a) section 16(1) which restricts the deduction of outgoings or expenses to the extent to which they are incurred in the production of assessable profits; (b) section 17(1)(b) which prohibits deductions for any disbursements or expenses not being money expended for the purpose of producing such profits; section 17(1)(c) which disallows deductions for any expenditure of a capital nature; and section 61A which combats transactions entered into for the sole and dominant purpose of obtaining a tax benefit.

As regards related party transactions with treaty jurisdictions, section 49 of the IRO gives effect to the Comprehensive Double Taxation Agreements ("CDTA") entered into between Hong Kong and overseas jurisdictions which allow the IRD to make TP adjustments if a transaction between associated enterprises does not conform to the arm's length principle.

There is no statutory and/or mandatory TP documentation requirement currently in place in Hong Kong. Notwithstanding that, the IRD issued its DIPN No. 46 entitled "TP Guidelines – Methodologies and Related Issues" in December 2009 setting out its views and practices on the methodologies of TP in Hong Kong and related issues. DIPN 46 provides a framework of guiding principles which the IRD will follow when determining whether or not a TP adjustment is applicable. It outlines some key issues including the application of the arm's length principle, elimination of double taxation, the rules on attribution of profits of the permanent establishment of a non-Hong Kong enterprise, the acceptance of TP methodologies, the TP documentation that taxpayers are expected to

retain to support their TP arrangements, and how intra-group service fees income/expenses should be arranged in order to comply with the arm's length principle. Similar to other DIPNs issued by the IRD, DIPN 46 does not have the force of law and is not legally binding, i.e. it does not affect a person's right of objection and appeal to the Commissioner, the Board of Review or the Courts. Nonetheless, DIPN 46 still provides useful guidelines to taxpayers regarding what TP documentation that taxpayers are expected to maintain and produce upon an enquiry, tax audit or investigation raised/conducted by the IRD.

Further to Hong Kong's joining of the Organization for Economic Co-Operation and Development's ("OECD") Base Erosion and Profit Shifting ("BEPS") Inclusive Framework and its commitment to implement the BEPS package in June 2016, the Hong Kong Government launched a Consultation Paper on Measures to Counter BEPS ("the Consultation Paper") on 26 October 2016. The Consultation Paper sets out the Government's intent and priorities in relation to the implementation of the BEPS package in Hong Kong. According to the Consultation Paper, priority in the context of TP will be given to the following measures, namely (1) TP regulatory regime, (2) TP documentation and country-by-country ("CbC") reporting, (3) Multilateral Instrument and (4) cross-border dispute resolution mechanism.

As far as TP documentation is concerned, the Consultation Paper proposes to introduce comprehensive TP legislation under which new TP documentation requirements in Hong Kong based on the OECD's three-tiered standardized approach (i.e. mater file, local file and CbC report) will be put in place upon the enactment of the relevant legislation.

1.2 Practical context

On 31 July 2017, the Hong Kong Government released its Consultation Report on the measures to codify the minimum standards of BEPS into the domestic legislation in response to the Consultation Paper dated 26 October 2016. Although the relevant laws have not yet been enacted and no detailed guidelines have yet been published, it is widely expected that the new TP rules or legislation will come into effect by the end of 2017 or in early 2018. Thus, MNEs are recommended to review their operating structures and TP compliance status to cope with the new requirements.

2. Formal requirements

2.1 Which taxpayers

Hong Kong adopts a territorial taxation basis. The IRD has long adopted the OECD model and all enterprises that carry on a trade or business in Hong Kong (including a Hong Kong incorporated company, branch or permanent establishment) are required to meet the arm length's standard in transactions between associated enterprises. The definition of an associated enterprise follows Article 9 of the OECD model convention. It has a very wide meaning without being expressed solely in terms of control but in terms of one enterprise

participating directly or indirectly in the management, control or capital of an enterprise of the other contracting state or the same persons participating in both enterprises. However, no threshold has been prescribed in DIPN 46 or any current legislation to define an associated enterprise from a Hong Kong TP perspective.

The new TP rules and documentation requirements stipulated in the Consultation Paper will apply to the same taxpayers as mentioned above and the definition of an associated enterprise is expected to remain the same. Furthermore, the new TP rules would cover not only transactions of assets and services, but also financial or business arrangements like the making of loans between intra-group companies. However, there is no intention to introduce thin capitalization rules at this stage.

All enterprises that carry on a trade or business in Hong Kong which engage in transactions with associated enterprises will be required to prepare the master file and local file, except enterprises which meet either one of the following exemptions stipulated in the Consultation Report:

A) Exemption based on size of business

Enterprise which satisfies any two of the three conditions below will not be required to prepare master file and local file:

- i. Total annual revenue of not more than HKD 200 million;
- ii. Total assets of not more than HKD 200 million; and
- iii. No more than 100 employees.

B) Exemption based on related party transactions

If the amount of a category of related party transactions for the relevant accounting period is below the proposed threshold, an enterprise will not be required to prepare a local file for the particular category of transactions (*note*):

- i. Transfer of properties (other than financial assets and intangibles): HKD 220 million;
- ii. Transaction of financial assets: HKD 110 million;
- iii. Transfer of intangibles: HKD 110 million; and
- iv. Any other transaction (e.g. service income and royalty income): HKD 44 million.

Note: If the enterprise is fully exempted from preparing a local file by reason of its related party transactions of all categories are below the prescribed thresholds, it will not be required to prepare the master file either.

The CbC report will be required to be prepared by enterprises which have their ultimate parent entities in Hong Kong with annual consolidated group revenue of EUR 750 million or more. Nevertheless, a Hong Kong constituent entity will be relieved from filing a CbC report if the IRD can receive the report from another jurisdiction or another Hong Kong constituent entity that is authorized to file the report on behalf of the MNE.

2.2 Aggregation of transactions

Based on current practice, transactions between associated enterprises with similar nature should be allowed to be aggregated for determining whether an arm's length principle is conformed.

2.3 Deadlines (timing)

Under current laws and DIPN 46, there is no statutory TP documentation requirement in Hong Kong. Although the IRO does not expressly require taxpayers to prepare documents showing compliance with the arm's length principle, it does require taxpayers to keep records in sufficient details that enable the IRD to readily verify (i) the quantities and values of the goods and the identities of the sellers or buyers and (ii) the services that result in receipts and payments. DIPN 46 also mentions that as a matter of good business practice, enterprises are encouraged to prepare TP documentation. Upon an enquiry, tax audit or investigation raised by the IRD, the taxpayer should produce the relevant documents within a reasonable timeframe depending on the complexity and scale of the case.

The new TP documentation preparation and/or submission deadline for master file and local file is not yet stipulated by the IRD. The Consultation Paper proposes that CbC reports will be required to be filed within 12 months after the end of the relevant accounting period commencing on or after 1 January 2018, which means that the first CbC reports will be filed in 2019.

2.4 Retention of documents

A Hong Kong taxpayer is required to keep its business records for at least 7 years. As TP documentation is part of the records of a taxpayer, this 7-year period requirement also applies to TP documentation including master files and local files.

2.5 Frequency of documentation updates

Once the new TP laws have been enacted, the master file, local file and CbC-report should be prepared for each fiscal year.

2.6 Tax return disclosures

An enterprise, including a company, branch and sole proprietary which carry on a trade or business in Hong Kong would generally need to file an annual profits tax return with the IRD. Currently, an enterprise would need to disclose in the tax return about (i) whether it has conducted business with a closely connected non-resident person (whose definition is similar to non-resident associated enterprise), (ii) what jurisdiction the closely connected non-resident person is located in, and (iii) amount of fees paid or accrued to closely connected non-resident person.

Details of the new TP rules and documentation requirements are not yet released. It is unclear that whether taxpayers in future have to further disclose its TP documentation as part of the tax return filings.

2.7 Burden of proof

The burden of proof lies with the taxpayer in Hong Kong. Taxpayers are required to keep sufficient documentation and may be requested to justify their transfer prices and profits or losses upon an enquiry, tax audit or investigation raised by the IRD.

2.8 Penalties

2.9.1 *General*

There is no statutory TP documentation requirement currently in place. The Consultation Paper proposes to enforce the new TP documentation requirements by introducing penalty provisions in the IRO.

2.9.2 *Penalties in case of a TP-adjustment*

Currently, no specific penalty regime is provided in the IRO in relation to TP adjustments. General penalty provisions will apply in such case and the extent of these penalties would depend on the degree of the offence. In the event that a taxpayer's TP arrangements are successfully challenged by the IRD and the taxpayer does not have a reasonable excuse, the maximum penalties under current tax laws that may imposed are HKD 10,000 plus 300% of underpaid tax. If the taxpayer willfully intended to evade tax, the offence is subject to a fine of HKD 50,000, penalties of up to 300% of underpaid tax and 3 year imprisonment.

2.9.3 *Master file and local file*

The Consultation Paper proposes that if a taxpayer does not comply with the requirements relating to master file and local file without reasonable excuse, the proposed penalty upon conviction is a fine at level 6 (HKD 100,000 at present).

2.9.4 *CbC-reporting*

The Consultation Paper proposes that if a taxpayer does not submit CbC-reports without reasonable excuse, the proposed penalty upon conviction is a fine at level 6 (HKD 100,000 at present). In case of a continuing offence after conviction for failure to comply, a further fine of HKD 500 will be imposed for each day of offence.

2.9 Interest

The Consultation Paper does not mention that interest will be imposed in the case of a TP adjustment.

2.10 Use of most reliable information

DIPN 46 provides detailed coverage on the selection of TP methods, which are similar to those contained in the OECD TP Guidelines. Acceptable TP

methodologies include the traditional transaction methods (i.e. the comparable uncontrolled price method, the resale price method and the cost plus method) and the transactional profit methods (i.e. the profit-split method and the transactional net margin method).

As regards comparable data in a benchmarking exercise, no official guidance is provided by the IRD on the sources of data. Nonetheless, comparable data is generally available in various databases including the Bureau van Dijk (BvD) Electronic Publishing SA's OSIRIS database which is currently subscribed by the IRD.

2.11 Languages

Under the new TP documentation requirements as set out in the Consultation Paper, master files, local files and CbC-reports should be prepared in either Chinese or English.

2.12 Confidentiality

The IRD will treat the TP documentation confidentially. The IRD can only exchange the TP documentation with tax authorities of another jurisdiction where there is a legal basis. There has to be a bilateral agreement (i.e. CDTA or Tax Information Exchange Agreement ("TIEA")) or a multilateral agreement (i.e. the Multilateral Convention on Mutual Administrative Assistance in Tax Matters) between the jurisdictions concerned to provide the legal basis for exchange of tax information. Also, the competent authorities have to enter into a Competent Authority Agreement to allow automatic exchange of tax information. Similar to other jurisdictions, the TP documentation will never be available to the public.

3. Standards with respect to the content of transfer pricing documentation

There is no statutory TP documentation requirement currently in place. Pursuant to DIPN 46, the taxpayer may need to provide the following documentation to the IRD upon an inquiry, audit or investigation:

- i. Details of any relevant commercial and financial relations that fall within the scope of closely connected non-resident persons or transactions designed to avoid tax.
- ii. The nature, terms, prices and quantum of relevant transactions, including transactions that form a series and any relevant offsets.
- iii. The method(s) by which the nature, terms and quantum of relevant transactions were arrived at, including any study of comparables undertaken.
- iv. The way the selected method has resulted in arm's-length terms, or where it has not, the computational adjustment required and how it has been calculated, which usually includes an analysis of market data or other information of third party comparables.

- v. The terms of relevant commercial arrangements with both third party and group customers, which should include contemporaneous commercial agreements (e.g., service or distribution contracts, loan agreements) and any budgets, forecasts or other papers containing information relied on in arriving at arm's-length terms, etc.
- vi. Other appropriate documentation based on the OECD TP Guidelines.

Under the Consultation Paper, the master file and local file should follow the recommendations of the OECD and the contents of which should be similar to the standard templates published by the OECD.

3.1 Master File

The following information is expected to be included in the Master File:

1. Organizational structure

Chart illustrating the MNE's legal and ownership structure and geographical location of operating entities.

2. Description of MNE's business(es)

General written description of the MNE's business including:

- a) Important drivers of business profit.
- b) A description of the supply chain for the group's five largest products and/or service offerings by turnover plus any other products and/or services amounting to more than 5 percent of group turnover. The required description could take the form of a chart or a diagram.
- c) A list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and TP policies for allocating services costs and determining prices to be paid for intra-group services.
- d) A description of the main geographic markets for the group's products and services that are referred to under b.
- e) A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used.
- f) A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.

3. MNE's intangibles (as defined in Chapter VI of the OECD Transfer Pricing Guidelines)

- a) A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- b) A list of intangibles or groups of intangibles of the MNE group that are important for TP purposes and which entities legally own them.
- c) A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements.

- d) A general description of the group's TP policies related to R&D and intangibles.
- e) A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

4. MNE's intercompany financial activities

- a) A general description of how the group is financed, including important financing arrangements with unrelated lenders.
- b) The identification of any members of the MNE group that provide a central financing function for the group, including the country under whose laws the entity is organized and the place of effective management of such entities.
- c) A general description of the MNE's general TP policies related to financing arrangements between associated enterprises.

5. MNE's financial and tax positions

- a) The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.
- b) A list and brief description of the MNE group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.

3.2 Local File

The following information is expected to be included in the Local File:

1. Local entity

- a) A description of the management structure of the local entity, a local organization chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- b) A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.
- c) Key competitors.

2. Controlled transactions

For each material category of controlled transactions in which the entity is involved, provide the following information:

- a) A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licenses of intangibles, etc.) and the context in which such transactions take place.
- b) The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and

- receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payer or recipient.
- c) An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.
 - d) Copies of all material intercompany agreements concluded by the local entity.
 - e) A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior years.
 - f) An indication of the most appropriate TP method with regard to the category of transaction and the reasons for selecting that method.
 - g) An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.
 - h) A summary of the important assumptions made in applying the TP methodology.
 - i) If relevant, an explanation of the reasons for performing a multi-year analysis.
 - j) A list and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the TP analysis, including a description of the comparable search methodology and the source of such information.
 - k) A description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both.
 - l) A description of the reasons for concluding that relevant transactions were priced on an arm's length basis based on the application of the selected TP method.
 - m) A summary of financial information used in applying the TP methodology.
 - n) A copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions described above.

3. Financial information

- a) Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
- b) Information and allocation schedules showing how the financial data used in applying the TP method may be tied to the annual financial statements.
- c) Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

4. Country-by-Country reporting standards

4.1 Threshold and required content

There is no statutory TP documentation requirements currently in place. According to the Consultation Paper, a MNE in Hong Kong with annual

consolidated revenue of EUR 750 million or above should file the CbC-report. The contents of the CbC-report should follow the recommendations of the OECD:

- a. For each jurisdiction in which the MNE is active, information should be provided in relation to the revenue, profit before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and the tangible assets other than cash and cash equivalents.
- b. A description of every group entity of the MNE mentioning the tax jurisdiction of residence, and if deviant, the state under whose law the group entity is established and the main business or operations of that group entity.
- c. Categorization of main business activities of every group entity of the MNE in the relevant tax jurisdictions.

4.2 Notification requirement for subsidiary companies

Under the new TP rules, the ultimate parent entity of the MNE group is responsible for filing the CbC-report in its jurisdiction of tax residence in normal circumstances. A Hong Kong ultimate parent company would need to file its CbC-report with the IRD within 12 months after the end of the relevant accounting period. The IRD will automatically exchange this report with the jurisdictions in which the MNE is active and with which Hong Kong has concluded relevant agreements for automatic exchange of tax information. In line with recommendations of the OECD, the Consultation Paper proposes a secondary filing mechanism and surrogate filing mechanism for special circumstances.

The IRD will be empowered to mandate a constituent of the group in Hong Kong to file the CbC-report if:

- 1) The foreign ultimate parent company is not required to provide the tax authorities a report in its jurisdiction of residence; or
- 2) The foreign ultimate parent company is required to provide the tax authorities a report in its jurisdiction of residence, but there is no agreement between that jurisdiction and Hong Kong which provides for automatic exchange of the report.

Despite the above, the Hong Kong constituent will be relieved from filing a CbC-report if the IRD can receive the report from another jurisdiction or another Hong Kong constituent that is authorized to file the report on behalf of the MNE.

To avoid MNEs being asked to submit a CbC-report concurrently in different jurisdictions, it is proposed that the MNE may authorize a Hong Kong constituent to file a CbC-report to the IRD on its behalf, which will then be exchanged with tax authorities in other jurisdictions. There will be a transitional filing option to allow parent surrogate filing whereby the ultimate parent entity of a MNE in Hong Kong will be allowed to voluntarily submit its CbC-reports for accounting periods commencing between 1 January 2016 up to the date before the proposed legislation comes into effect.

While details of the new TP rules and documentation requirements are not yet released, it is expected that a subsidiary company would need to notify the IRD which entity of the MNE or in which jurisdiction it will submit the CbC report on behalf of the MNE.

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1. Introduction

1.1 Legal context

Article 18 of the Act LXXXI of 1996 on Corporate Tax and Dividend Tax Act (CTA) was introduced in 2001 as the domestic codification of Article 9 of the OECD-model convention. A decree No 22/2009 of the Minister of Finance (MoF-decree) contains a general documentation requirement for all transactions between associated companies (both domestic and foreign companies) with respect to the applied Transfer Prices. According to the provisions of the MoF-decree the documentation requirements can be fulfilled by preparing joint TP docs or separate ones. (Joint docs consist of two parts: master file for the whole group and a local file for the Hungarian entity, separate doc means only the local file.)

New standardized documentation requirements for multinational enterprises (MNE's) are included in the Act XL of 2017 which have been built in Act XXXVII of 2013 on International Mutual Executive Cooperation Concerning Specific Rules on Tax and Other Public Burdens. These requirements are the implementation by the Hungarian government of Action 13 of the OECD/G20-project Base Erosion and Profit Shifting (BEPS). These new documentation requirements include liability for submitting Country-by-Country Report (CbC-report), the first time application of which concerns financial years starting January 01, 2016 or later.

1.2 Practical context

The new CbC-reporting requirements can lead to a significant administrative burden for MNE's. Although only MNE's are effected directly by the new reporting requirements, the BEPS-project will likely have effect for all taxpayers, since the focus of tax authorities will shift more and more to TP-issues. Practice learns that many taxpayers do not meet the minimum TP-requirements.

As the Hungarian Tax Authority (HTA) has a very formalistic approach, and penalties for failure are high, it is therefore recommended for all taxpayers to take a critical look at its TP-documentation and deadlines for reporting.

2. Formal requirements

2.1 Which taxpayers

Based on article 18 para (5) of the CTA, a Hungarian taxpayer that enters into transactions with an associated enterprise is required to have TP-documentation with respect to those transactions. The definition of an associated enterprise in article 4 point 23 means:

- a) the taxpayer and the person in which the taxpayer has a majority control - whether directly or indirectly - according to the provisions of the Civil Code,
- b) the taxpayer and the person that has majority control in the taxpayer - whether directly or indirectly - according to the provisions of the Civil Code,
- c) the taxpayer and another person if a third party has majority control in both the taxpayer and such other person - whether directly or indirectly - according to the provisions of the Civil Code, where any close relative holding a majority control in the taxpayer and the other person shall be recognized as third parties;
- d) a nonresident entrepreneur and its domestic place of business and the business establishments of the nonresident entrepreneur, furthermore, the domestic place of business of a nonresident entrepreneur and the person who maintains the relationship defined under points a)-c) with the nonresident entrepreneur;
- e) the taxpayer and its foreign branch, and the taxpayer's foreign branch and the person who maintains the relationship defined under points a)-c) with the taxpayer; or
- f) the taxpayer and other person if between them dominating influence is exercised relating to business and financial policy having regard to the equivalence of management.

As a result, in Hungary only majority control (more than 50 % of shares or votes) or fully consistence of the management create an affiliated company.

Only micro and small entities are exempt of TP-rules. Definition of micro and small sized enterprises follows the wording of article 2 of Annex to the 2003/361/EC Commission Recommendation.

The threshold of HUF 50 million of transactional amount is also exempt of the preparation of TP doc according to the article 1 para (3f) of the MoF-decree. Nevertheless if

- the subject of the contracts is the same and conditions are similar or differences are insignificant, or
 - transactions significantly correlate with each other,
- documentation requirement can be fulfilled with a 'consolidated doc' and the threshold of HUF 50 million should be calculated altogether.

Transactions of low value-added services not exceeding HUF 150 million might have a simplified documentation liability according to article 6 para (1) of the

MoF-decree, if these services are negligible comparing to the net revenue (less than 5 % of the total sales) or the full expenditures (not exceeding 10 % of it) of the taxpayer preparing TP doc.

At present preparing a joint documentation is optional. Joint doc consists of a master file and a country-specific (local) one.

MNE-group with a consolidated group revenue of more than EUR 750 million is liable to submit CbC report (CbCR). First CbCR must be submitted about FY starting 01.01.2016 or later. The deadline for submitting is 12 months after the last day of FY 2016. The global ultimate owner (GUO) is liable for the submission if it is seated in Hungary and other entity is not appointed otherwise. Hungarian group members should declare their membership and GUO, appointed by the group as a responsible for CbCR entity and the last day of the FY to the HTA until 31.12.2017.

2.2 Aggregation of transactions

TP-documentation is required for each individual transaction with associated enterprises, but if it would lead to an unreasonable administrative burden without jeopardizing comparability, preparation of a consolidated TP doc is accepted.

2.3 Deadlines (timing)

According to theoretical expectations of the HTA TP doc should be prepared by the time taxpayer enters into the controlled transaction and be based upon information reasonably available at the time of the transaction otherwise it is not supported, that applied prices have an arm's length nature. Notwithstanding these expectations only missing after the submission of CIT return TP docs can be penalized. So, TP doc must be prepared and be available by the date of the submission of the taxpayer's CIT return as a latest. (Prepared TP docs should not be attached to the CIT return, but within 3 working days after an explicit request of the HTA should be delivered.) This means that each of the TP doc related to FY 2016 (starting 01.01.2016, ending 31.12.2016) must be ready by 31 May 2017. (If FY is differed from the calendar year, CIT return should be submitted within five months after the last day of the decided FY.)

The MNE liable for CbCR must submit report within 12 months after the last day of the FY of the MNE. For FY ending 31 December 2016, the CbC-report should be provided before 31 December 2017 for the first time.

2.4 Materiality

Although all transactions with associated enterprises should be supported by TP-documentation above the mentioned threshold, as a general principle (article 2 para (2) of the MoF-decree) preparation of TP doc may not result in extreme and needless costs for the taxpayer. In practice, it means that HTA can

dispense with data base researches if arm's length prices are supported by other ways well, or taxpayer applies logical simplifications.

For example, using an expensive data base for financial transactions can be ignored if public statistical figures of the Hungarian National Bank are used and some adjustments are made, and the value of the controlled transaction is not significant in the course of business.

2.5 Retention of documents

As a main rule, a Hungarian taxpayer is required to keep its administrative records for at least five years after the year end of submitting of tax returns. (For FY 2016 CIT return should be submitted by 31 May 2017, so records should be kept by 31 Dec 2022.) Since the TP-documentation is part of the records of a taxpayer, this almost-six-year period also applies to the TP-documentation. As reservations have been made to the international conventions, in case of cross border transactions there are no special terms of limitations at present.

2.6 Frequency of documentation updates

In practice, the documentation requirements based on article 1 para (2) of the MoF-decree should be updated every tax year because they relate to a different fiscal years. A significant change in the facts and circumstances could also lead to an update of the documentation.

2.7 Tax return disclosures

Some boxes in the annual CIT return relate to the TP docs which cannot be completed properly if TP docs are not ready (but the tax payer is not required to disclose its TP-documentation as part of the tax return filing). For example, joint (master + local) file and the CIT-base adjustment for TP purposes should be indicated in the CIT return separately.

2.8 Burden of proof

If the taxpayer keeps appropriate TP-documentation in its record and does not have an explicitly unreasonable and unsupported point of view with respect to the used transfer prices, the tax authorities must proof the used transfer prices are not correct. If there is no TP-documentation available or there are evident shortcomings in the documentation, the tax inspector could reverse the burden of proof to the tax payer.

2.9 Penalties

2.9.1 General

If prepared doc does not contain all the obligatory items listed in the checklist, or a doc is missing, a default penalty is levied by the HTA up to HUF 2 million for each of the mistakes, and yearly. In case of repeated malpractice, the maximum penalty is HUF 4 million per doc and per FY. If a failure to prepare

the same TP doc repeatedly happens, the maximum penalty could be as high as four times the general penalty. The exact amount may depend on the type and importance of the mistake (an incomplete market overview or a missing tax number is “valued” less strictly than a false TP-method).

2.9.2 Penalties in case of a TP-adjustment

If the HTA makes a TP-adjustment, and as a result tax base is increased, a tax penalty is applied. The amount of the penalty is up to 50 % of the tax shortage. Late payment interest is also payable in addition to the tax shortage.

2.9.3 CbC-reporting

If a taxpayer does not comply to deliver the CbCR, or submits later, or it contains false information, or some data are missing, a default penalty can be levied. The maximum amount is HUF 20 million. The HTA dispense with penalty if the taxpayer acted in good faith or proceeded as it is reasonable expected.

2.10 Interest

Late payment interest is five times the central bank base rate (which means 5x0.9 % at present). Interest is calculated on daily basis.

2.11 Use of most reliable information

Regarding the benchmarking analysis to be made, the OECD prefers to use the most reliable information available. As local comparables are hardly available or poor, regional comparables are allowed. V4-region or EU28 is generally accepted.

2.12 Languages

According to the MoF-decree (article 3 para (6)) TP doc can be prepared in a language other than Hungarian. Nevertheless upon request of the HTA professional translation should be made by the taxpayer if the used language is not German, French or English. In practice HTA demands professional translations almost in any cases.

2.13 Confidentiality

The HTA treats the TP-documentation confidentially. The tax authorities can only exchange the TP-documentation with the tax authorities of another country if there is a legal basis. This legal basis can be found in the national law, a tax treaty or a EU-directive. The TP-documentation is never available to the public.

3. Standards with respect to the content of transfer pricing documentation

TP-documentation standards are published in the MoF-decree, applicable methods are determined in the CTA. CTA also refers to the OECD TP-directive and Action Plan 5 BEPS as implemented provisions. No other detailed guidelines are issued.

3.1 Master File

Master file contains

- general description of the business strategy of the whole group, including YtY changes,
- structure of the group (including organigram), list of the members, legal and operational description of them, including entities operating within the EU and 3rd countries, too,
- general review and type of controlled transactions (ie supply of goods or services, development of IPs, financial transactions, including its values),
- presentation of risks undertaken, assets invested, functions provided and YtY changes,
- legal information about IPs, received or sold royalties,
- TP policy applied within the group,
- cost contribution agreements concluded among the group members, APA resolutions and judges (if any).

3.2 Local File

The minimum requirement of the local file is

- to indicate and identify associated companies involved in the controlled transactions;
- to describe business strategy followed by the taxpayer preparing TP doc;
- to present subject of controlled transactions (terms, conditions, values, modifications) – concluded agreement as an attachment is highly appreciated;
- to analyze characteristics of the transaction (risks, functions, assets as contributions of the taxpayer to the value chain);
- the benchmark study;
- to release TP policy of the group, including applied method, and
- the date when TP doc is finalized.

4. Country-by-Country reporting standards

4.1 Threshold and required content

A MNE with a consolidated group revenue of more than EUR 750 million should provide a CbCR. The report contains the following information about the MNE:

- a. name of the group for each jurisdiction in which the MNE is active,
- b. relevant FY,
- c. for each jurisdiction: main business activity (characters are listed), the state under whose law the group entity is established, and tax jurisdiction of residence, if deviant.

Further fiscal information is required by countries about applied currency, revenue (originating from independent and related parties, total sum), the earnings before tax (EBT), the paid income tax, the accrued income tax for the present year, the registered capital, the accumulated earnings, the number of employees and the tangible assets other than cash and cash equivalents.

CbCR should be submitted electronically in a blank which will be introduced by the HTA.

4.2 Notification requirement for subsidiary companies

In principle, the country report is provided by the ultimate parent company of the MNE in its state of residence. The state of residence will exchange the country report automatically with the tax authorities. A Hungarian ultimate parent company needs to provide the country report to the HTA. The HTA will automatically exchange this report with the jurisdictions in which the MNE is active and with which Hungary has concluded an Agreement for automatic exchange of information. (This list will be maintained and updated by the Ministry of Foreign Affairs and Trade.)

The Hungarian entity is required to provide CbCR, if:

- 1) the foreign ultimate parent company is not obliged to provide the tax authorities a report in its state of residence, or
- 2) the foreign ultimate parent company is required to provide the tax authorities a report in its state of residence, but there is no Agreement between that state and Hungary which provides for automatic exchange of the report, or
- 3) due to a malfunction of the data exchange system HTA calls the Hungarian entity for submitting CbCR, and
- 4) there is no any other group member who completes CbCR within the EU.

This requirement by the Hungarian GUO can be prevented if the report is provided by an appointed other entity within the group, under the following conditions:

- 1) state of residence of the appointed company has adopted CbCR-system,
- 2) there is an Agreement between that state and Hungary to provide automatic exchange of report,
- 3) the state of residence of the appointed company is not structural negligent in the exchange of the report,
- 4) the appointed company has notified its state of residence until the end of the relevant FY, that it will act as an appointed for CbC reporting entity, and

- 5) the HTA has got a notification which group company has taken over the requirement to provide the report.

The MNE must provide the report within 12 months after the last day of the financial year of the MNE.

A subsidiary company needs to notify the HTA which entity of the MNE will submit the country report on behalf of the MNE. This notification requirement applies to each entity. The notification will be made through an online webform. The deadline for submission of the notification is the last day of the applicable financial year of the MNE. For the (first) year 2016, the deadline for the notification is twelve months after the FY 2016 ends (mainly 31 Dec 2017). Non-compliance with the notification requirement can result in severe penalties. Reference is made to paragraph 2.9.3 above.

INDIA

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1. Introduction

1.1 Legal context

Transfer Pricing regulations in India are governed through Chapter – X of Indian Income Tax Act, 1961 and related rules which govern the International transactions with Associated Enterprises at Arm's Length Price (ALP) for tax purposes. It also lays down the computational provisions, documentation requirements, assessment procedures, dispute resolution mechanism, etc.

Though India is not an active member of OECD, it has been an active participant in the implementation of the BEPS initiative. It has made certain amendments since 2016 in its Transfer Pricing regime to be in line with the OECD guidelines for Multinational Enterprises and Tax Administration, which includes:

- Introduction of Country-by-Country-Reporting (CbCR)-Requirement for entities, being part of an International Group, and
- Prescribing the requirement to maintain master file as part of TP documentation in respect of details of the group entities

1.2 Practical context

The earlier existing laws required every person to maintain documents and information relating to the cross border transactions entered into by it and certain master information relating to the enterprises of the Multinational group of which the person is a member, with which it has entered into transactions. Now, with the OECD guidelines specifying the list of information to be included in the local file and master file as a part of TP documentation, the tax authorities have been empowered to frame rules to implement the same in the country. (Rules are yet to be notified) With respect to Country-by-Country (CbC)-Reporting, a new section (Section 286 of the Income Tax Act, 1961) has been introduced which mandates every constituent or parent entity of an international group to furnish a report that contains the details similar to the template given in the OECD guidelines. (Procedures yet to be prescribed) These amendments will increase the compliance burden on the entities covered by the regime, however, will enable the tax administration to perform a transfer pricing risk assessment analysis.

2. Formal requirements

2.1 Which taxpayers

Every person who has entered into a cross border transaction with an associated enterprise will be required to maintain a local file containing all the relevant information and documents pertaining to that transaction. Exemption is provided to a person if the aggregate of all cross border transactions in a year with the associated enterprises does not exceed INR 10 million (USD 155,450) (Refer Note), subject to the condition that the onus of proof is on the taxpayer that the transactions are valued at ALP.

Every constituent entity of an international group will be required to keep and maintain such information and document in respect of an international group as may be prescribed. The rules in this regard are yet to be notified.

Every entity, being a part of an international group whose consolidated group revenue exceeds a threshold limit, will be required to furnish a report in a prescribed format.

The report of an international group shall include:

- a. The aggregate information in respect of the amount of revenue, profit or loss before income tax, amount of income tax paid/accrued, stated capital, accumulated earnings, number of employees and tangible assets not being cash or cash equivalents, with regard to each country or territory in which the group operates.
- b. Details of constituent entities of the international group, their country of residence and incorporation.
- c. Details of main business activities of the constituent entities.

An Indian Parent entity will have to report the above details which are in line with the template prescribed by OECD.

An Indian constituent entity, if not a parent entity, will notify the particulars of the parent entity and the country of its residence.

2.2 Aggregation of transactions

Documentation will be pertaining to each type of international transaction with an Associated Enterprise. Fresh documentation need not be prepared year-on-year relating to same transaction unless there is a significant change in any factor which could influence the transfer price of the transaction. In case of any such change, fresh documentation relating to the impact on the transfer price would suffice.

2.3 Deadlines (timing)

All documents relating to the international transactions entered into in a fiscal year will have to be finalized and made available at least by the due date of

filing the Income tax returns for that year (8 months from the end of fiscal year i.e., Nov 30th). The documents will have to be furnished within 30 days from the notice from the tax authorities in this regard which may further be extended by another 30 days.

The CbC-report for a year will have to be furnished by the reporting entity within the due date for filing the Income tax returns for that year.

2.4 Materiality

The documentation requirement, as specified earlier, will not be applicable to those persons, the value of whose aggregate cross border transactions does not exceed INR 10 million (USD 155,450). However, there is no other materiality recognition with respect to TP documentation.

2.5 Retention of documents

The documents and all information specified in the local file and master file shall be maintained and preserved for a period of 9 years from the end of the fiscal year.

2.6 Frequency of documentation updates

Generally, documentation relating to cross-border transactions will be prepared for a fiscal year. If a transaction takes place for more than a year then unless there is any significant change in the factor which could influence the price of transaction, no fresh documentation will be required.

2.7 Tax return disclosures

There are no specific disclosures pertaining to transfer pricing in the tax returns except for the details of the accountant who furnishes a report under Form 3CEB and the date of issue of such report.

Form 3CEB is the format of audit report furnished to be prepared by an accountant who reports the list of cross-border transactions entered into by the taxpayer and the basis for determining the ALP. The form contains the following details :

- a. Basic details of the taxpayer and the relevant fiscal year in respect of which the report is furnished.
- b. List of Associated Enterprises (AE), their relationship with the taxpayer and a description of their business.
- c. AE-wise details of cross-border transactions – under the following categories :
 - i. Transactions in respect of tangible property – materials consumed, traded goods, Purchase or sale of any other tangible property.
 - ii. Transactions in respect of Intangible property.
 - iii. Transactions in respect of Services.

- iv. Transactions in respect of Borrowing/Lending of money.
- v. Transactions in respect of Guarantee.
- vi. Transactions in respect of Shares & Securities.
- vii. Transactions in respect of Allocation/Appportionment of common costs.
- viii. Transactions arising out of Business reorganization.
- ix. Any other transaction having a bearing on profits, income, losses or assets of the taxpayer.
- x. Deemed international transaction. (Transaction with AE through an unrelated person)

The details contain the amount of transaction, ALP computed by the taxpayer and the method used in such computation

2.8 Burden of proof

The primary responsibility of proving the transfer price of a transaction will be on the taxpayer during the assessment proceedings. After taking into account all relevant materials the Transfer Pricing Officer shall determine the ALP in relation to the international transaction and send a copy of his order to the Assessing Officer and to the Company based on which TP adjustment may be done by the Assessing Officer.

2.9 Penalties

2.9.1 *General*

Non-maintenance or failure to maintain documentation in the manner prescribed, or maintaining incorrect information relating to the international transaction or failure to submit the information in response to the notice calling for information, will attract a penalty of 2% of the value of all international transactions.

Non-furnishing of information in respect of the international group to the prescribed authority will attract a penalty of INR 500,000 (USD 7,770).

2.9.2 *Penalties in case of a TP-adjustment*

There is no penalty on account of addition made to taxable income by the tax authorities due to the difference between transaction price and ALP determined by Transfer Pricing Officer.

However, if TP addition is made on account of transactions not reported willfully by the taxpayer, but identified during the assessment proceedings, then penalty to the extent of 200% on the tax impact due to such addition may be levied by the Tax authorities.

2.9.3 *CbC-reporting*

Failure to furnish the report within the due date prescribed in the format will attract a penalty of INR 5,000 (USD 78) per day of default up to 30 days and INR 15,000 (USD 233) per day beyond 30 days up to the date of furnishing.

The prescribed authority may call for submitting the relevant details to verify the accuracy of information in the report furnished by issuing a notice. Failure to respond to the notice within 30 days may attract a penalty of INR 5,000 (USD 78) per day of default.

Continuing default even after an order to pay the above penalty is received, will attract a severe penalty of INR 50,000 (USD 777) per day of default from the date of order.

Providing inaccurate information in the report willfully, or failure to inform the authority after discovering the inaccuracy within 15 days will attract a penalty of INR 500,000 (USD 7,772).

2.10 Interest

TP adjustment will require an entry in the books of accounts of the taxpayer and its AE to show the amount to the extent of adjustment as advance made by the taxpayer and calculate imputed interest if the amount is not received within a period of 90 days from making such adjustment.

2.11 Use of most reliable information

The use of relevant comparables has always been a subject matter of litigation and is subjective in nature. There are no solid regulations prescribing the mode, source and type of information to be used as comparables.

2.12 Languages

There is no prescription as to the language to be used in the documentation by legislature. As a matter of practice, English being the common business language in India, all the documents and information are prepared and maintained in English.

2.13 Confidentiality

Though not explicitly provided in the law, there is an inherent responsibility for the authorities to use the rights given to obtain information in a rational manner. The tax authorities must ensure the confidentiality of information acquired in exercise of their powers and shall not make them available for public.

3. Standards with respect to the content of transfer pricing documentation

3.1 Master File

The information to be maintained as part of master file, the manner and the procedures relating to maintenance of Master file are yet to be prescribed.

3.2 Local File

The information and documents to be maintained by every person having entered into international transaction are listed below:

1. Local entity

- a. Details of Ownership structure of the taxpayer.
- b. Broad description of the business and the industry in which the taxpayer operates.

2. Controlled transactions

- a. Basic details of the associated enterprises with which the taxpayer has entered into cross border transactions.
- b. Nature and terms of each transaction, details of goods transferred or services rendered, quantum and value of each transaction.
- c. Description of the functions performed, risks assumed by the parties to the transaction and the assets employed.
- d. Details of the uncontrolled transactions considered for comparing with the controlled transaction, nature, terms and conditions relevant to the uncontrolled transactions.
- e. A record of the analysis on comparability of uncontrolled transactions with the controlled transactions.
- f. Methods adopted to determine the ALP with respect to each transaction, an explanation on the reasons for selecting the method as the most appropriate method.
- g. Actual working of ALP determined, comparable data used and any adjustments made on account of differences between controlled and comparable transactions.
- h. Adjustments made to taxable income on account of difference between the transaction price and ALP of the controlled transaction.

3. Financial information

- a. Economic and market analyses, forecasts, budgets and any other estimated prepared by the taxpayer.
- b. Relevant financial information of the taxpayer and of the associated enterprises for the determination of the ALP.

4. Country-by-Country reporting standards

4.1 Threshold and required content

Threshold is yet to be officially notified. A parent entity resident in India shall submit the report which shall contain the following:

- a. The aggregate country-wise information on Revenue, Profit before taxes, Tax payable and paid, Stated capital, Accumulated earnings, no. of employees and tangible assets excluding cash and cash equivalents.
- b. Details of constituent entities of the international group, their country of residence and incorporation.
- c. Details of main business activities of the constituent entities.

4.2 Notification requirement for subsidiary companies

Every Indian company, which is not the parent company for the group shall notify either whether it is the alternate reporting entity for the group or the details of the parent entity or the alternate reporting entity and their country of residence.

If the parent reporting entity is a resident in the country with which India does not have an agreement for the exchange of CbCr, or if there is a systemic failure to provide the information despite having an agreement and on communication of the same by the Indian tax authorities to the member entity in India, the Indian member entity shall be responsible for filing the report as it would have reported if it had been the Parent entity for the group.

The above shall not apply if the alternate reporting entity has furnished the report on behalf of the group, subject to the conditions that:

- a. The alternate reporting entity is a resident of the country with which India has an agreement for exchange of report and any systemic failure in such country has not been communicated to the entity resident in India.
- b. The report has been furnished in accordance with the laws prevalent in that country for the time being.
- c. The tax authorities of the respective country and India have been informed about the position.

If there are more than one constituent entities, not being a parent, resident in India of the same group, the reporting responsibility will be of that entity which has been designated by the international group to report on behalf of all the Indian resident entities and such information in writing has been communicated to the Indian tax authority.

Note:

Amount in INR is converted in USD terms based on an assumed exchange rate of 1 USD = INR 64.33. The USD figures may change due to change in exchange rates.

ITALY

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1. Introduction

1.1 Legal context

Tax Authority and law

The key provision ruling Italian Transfer pricing legislation is laid down in Article 110 of Presidential Decree n. 917/1986 (Italian Income Tax Code); such article states that for fiscal purposes transactions with foreign related parties have to be executed basing on the arm's length principle. Tax authorities are entitled to adjust the taxable income of an Italian entity which entered transactions which do not comply with the arm's length principle. Such article has been recently amended by the Law Decree April 24, 2017, No. 50 replacing the Italian previous concept of "normal value" with a specific reference to the arm's length principle. The normal value concept was similar to the OECD arm's length principle, although not the same and potentially open to various interpretation.

With reference to TP documentation, Legislative Decree n. 78 of 31 May 2010 introduced an optional transfer pricing documentation regime in the Italian tax law. Article 26 outlines that if the taxpayer provides tax authorities with proper transfer pricing documentation during a tax assessment, no tax penalties will be applied on possible tax adjustments, should the tax authority determine the intercompany transactions are not in compliance with the arm's length standard.

Regulations, ruling and guidelines

- Circular No. 32/1980 that transfer pricing transactions should occur between an Italian entity and a foreign entity;
- Circular No. 53/1999, Southern Italy firms, which benefit from tax benefits figured in the Consolidated Code on the Laws for Interventions in Southern Italy, are subject to transfer pricing audits;
- Law-decree No. 78 dated 31 May 2010, converted into law No. 122 of 30 July 2010 harmonizing the Italian landscape with the OECD Transfer Pricing Guidelines;

- Decision of the Commissioner of the Italian Revenue Agency No. 2010/137654 dated 29 September 2010 providing the transfer pricing documentation requirements;
- Circular No 58/E dated 15 December 2010, which provides clarification on the expected documentation;
- Circular No. 21/E dated 5 June 2012, settlement of international tax disputes.
- Italy has enforced the Arbitration Convention 90/436/EEC on the elimination of double taxation in connection with transfer pricing. This procedure is much more efficient than the MAP procedure based on Art. 25 of the OECD Model Convention, however only European Companies can avail of this regulation.

Moreover, Italian Law introduced a CbCR obligation for MNE Groups to submit an annual report starting from the Fiscal Year (FY) commencing on January 1st 2016.

Italian subsidiaries of an MNE Group with a consolidated annual turnover in the FY preceding the reporting period of at least EUR 750 million are required to file a CbC report, if the foreign parent entity is resident for tax purposes in a country that: (i) has not implemented the CbCR; or (ii) does not have a Qualifying Competent Authority Agreement in place with Italy for the automatic exchange of information contained in the CbC report; or (iii) has incurred a systemic failure to exchange the information contained in the CbC report received by the parent company resident in its jurisdiction.

Moreover, by the due date of the tax return (by the end of the ninth month subsequent to the end of the fiscal year: for companies with a calendar fiscal year, the deadline is the end of September of the following year) related to the first reporting period, Italian resident entities of MNE Groups are required to notify the Italian tax administration of:

- a. Their own status as UPE (ultimate parent entity), SPE (surrogate parent entity) or EU designated entity, or
- b. The identity and tax residency of the UPE, SPE or EU designated entity.

1.2 Practical context

Actually in Italy Tax Authorities are strongly focused on scrutinizing intercompany transactions looking for TP adjustments. The focus of Tax Authorities should be centered on transactions with counterparts located in Countries with a tax rate lower than the Italian one; they propose instead strong adjustment also on TP transactions which cannot be qualified as a consequence of tax planning considering that such transactions lead to transfer of taxable income into countries with a tax rate aligned or even higher than the Italian one.

For these reasons, even though transfer pricing documentation in Italy is not mandatory but at present is only an option, there are always more companies compliant to this optional regime.

Moreover, as transfer pricing is a very technical matter, in our experience Tax Court are not very experienced and this can cause an uncertainty on the outcome of the litigations. For this reason, in case of assessment, companies are more encouraged to try to reach an agreement with the Tax Authorities.

2. Formal requirements

2.1 Which taxpayers

At present, in Italy there is no mandatory request for transfer pricing documentation. Instead an optional transfer pricing documentation regime, relevant for penalty protection, was introduced.

On the other hand, CbC report is mandatory when the taxpayer meets the requirements described in the specific paragraph below.

Article 110, paragraph 7, states that components of the income statement of an enterprise derived from operations with non-resident corporations that have direct or indirect control, that are subsidiaries or are fellow affiliates should be valued on the basis of the arm's length principle.

Concept of control is defined in accordance to Art. 2359 of the Italian Civil Code:

- Having the majority of the votes during a shareholders meeting.
- Being able to benefit from a sufficient amount of votes to exercise a dominant influence during the shareholders meeting.
- A company is under the influence of another company by virtue of a contractual obligation.

Moreover, the following definitions are applicable in the Italian transfer pricing regulations:

- a) "Holding Company belonging to a Multinational Group" shall mean a company resident, for fiscal purposes, within the territory of the State, which:
 - Is not controlled by another commercial company or enterprise, that is an entity having a juridical nature, which carries out commercial activities, wherever resident;
 - Controls, even by means of a sub-holding, one or more companies not resident for fiscal purposes within the territory of the State;
- b) "Sub-holding Company' belonging to a Multinational Group" shall mean a company resident, for fiscal purposes, within the territory of the State, which:
 - Is controlled by another commercial company or enterprise or by another entity having a juridical nature, which carries out commercial activities, wherever resident;

- In turn, controls one or more non-resident companies, for fiscal purposes, within the territory of the State;
- c) “Controlled Company belonging to a Multinational Group” shall mean a company or enterprise resident for fiscal purposes, within the territory of the State, which;
 - Is controlled by another commercial company or enterprise or by another entity having a juridical nature, which carries out commercial activities, wherever resident;
 - Does not control other companies or enterprises not resident for fiscal purpose, within the territory of the State.

The above definitions are necessary in order to understand what type of transfer pricing documentation shall be prepared by the company (either Master file or Local file documentation).

2.2 Aggregation of transactions

All transfer pricing documentation shall be disclosed to the tax authorities. Intercompany transaction volumes shall also be disclosed. Provided that the taxpayer shall give disclosure for each transaction, a proper aggregation of transactions is possible, for example because there is a large number of similar transactions.

2.3 Deadlines (timing)

Documentation for penalty protection has to be prepared by the tax return filing date relevant to the fiscal year being covered, that is by the end of the ninth month following the end of the fiscal year (for companies with a calendar fiscal year, the deadline is the end of September of the following year). Taxpayers shall communicate to the Italian Revenue Agency the availability of proper documentation by checking a specific box in the annual income tax return.

The submission of the proper documentation upon request of the tax authorities has to be executed within 10 days. In case, during an audit or any other assessment activity, supplementary information is needed, it has to be provided either within seven days of a request (or in a longer time period depending on the complexity of the transactions under analysis), to the extent that the period is consistent with the time of the audit.

2.4 Materiality

In principle all transactions with associated enterprises should be supported by TP-documentation. Being optional, there are no formal thresholds above which TP-documentation is required.

Once the taxpayer has decided to be compliant and prepare the transfer pricing documentation, all transactions shall be indicated in the report. Only irrelevant

transaction can be omitted, even though the legislator gave no practical definition of irrelevant transaction.

2.5 Retention of documents

Documentation shall be kept at least within the assessment period, which is the following:

An Italian taxpayer is liable to tax assessment within:

- 31 December of the fifth year following the year of tax return submission;
- 31 December of the seventh year following the year in which the tax return should have been submitted (omitted tax return).

It is important to keep in mind that in case of assessment relevant for criminal penalties, assessment period is doubled.

2.6 Frequency of documentation updates

For compliance purposes, Transfer pricing documentation has to be prepared each year. Small and medium companies, defined as those with a turnover of less than EUR 50 million, may update the benchmark analysis every three years, provided there has been no significant change in the business and that the economic analysis is based on publicly available databases. All the other sections of the report have to be updated each year even for small and medium enterprises.

2.7 Tax return disclosures

Transfer pricing documentation for penalty protection purposes shall be prepared by the tax return filing date, relevant to the fiscal year being covered.

Italy does not require the documentation to be filed with the tax return; however, taxpayers have to check a box in the tax return to inform the tax authorities whether the taxpayer has opted to prepare transfer pricing documentation for penalty protection purposes.

Moreover, in the tax return taxpayer shall indicate the overall amount of transactions and the type of control in which the company lays.

2.8 Burden of proof

As a general rule, Italian Tax Authorities shall prove and support the correctness of their tax claim; this general principle shall also be valid for transfer pricing purposes. Despite this, lately there are some Court sentences that reverse the burden of proof to the tax payer and this has caused some uncertainty on the part that shall bear the burden of proof.

2.9 Penalties

2.9.1 General

Being not mandatory, Italian tax law does not foresee penalties for the mere fact that TP documentation is not available.

2.9.2 Penalties in case of a TP-adjustment

When a taxpayer is compliant with the law and prepares the transfer pricing documentation, based on the condition that the documentation is considered valid and complete, no penalties shall be applied on an eventual TP-adjustment.

On the other hand, when a TP-adjustment is made and the taxpayer has not prepared the transfer pricing documentation, penalty protection does not apply and can be imposed penalties from 90% up to 180% of the tax deriving from the TP-adjustment.

2.9.3 CbC-reporting

The omitted or untrue or not correct filing of the Reporting implies an administrative penalty from EUR 10.000 to EUR 50.000.

2.10 Interest

In case of a TP-adjustment, interest is due on the higher ascertained tax. No interest is due on penalties.

2.11 Use of most reliable information

With regard to the benchmarking analysis to be made, the OECD prefers to use the most reliable information available. In this regard the BEPS-report states the following "The requirement to use the most reliable information will usually...require the use of local comparables over the use of regional." (BEPS Action 13, p. 24-25). However, local comparables may not be sufficiently available.

In Italy, as principle, the presence of local comparables in a benchmarking set is preferred, although it is recognized that the choice between local comparables and broader sets depends on the comparability of economic circumstances, including characteristics of the market of reference for the transaction under analysis.

2.12 Languages

Both the Master File and the National File have to be written in Italian. The Master File of a sub-holding can be presented in English when presenting the Master File of a non-resident company. Attachments can also be presented in English. Attachments in any language other than Italian or English have to be translated into Italian.

2.13 Confidentiality

The Italian tax authorities will treat the TP-documentation confidentially. The tax authorities can only exchange the TP-documentation with the tax authorities of another country if there is a legal basis. This legal basis can be found in the national law, a tax treaty or a EU-directive. The TP-documentation is never available to the public.

3. Standards with respect to the content of transfer pricing documentation

In order to obtain penalty protection, the documentation has to be prepared in accordance with the provisions and the structure of Article 26 of Law Decree n. 78 of May 2010. Documentation rules are contained in the decision of the Commissioner of Italian Revenue Agency dated 29 September 2010, that outlines a rigid formal structure and detailed information on the content of the transfer pricing documentation. The structure of the documentation makes also reference to the guidance provided by the European Union (EU) Code of Conduct on Transfer Pricing Documentation. Consequently, the documentation must follow the EU definition of "master file/country specific documentation" concept, depending on the qualification of the company (i.e. holding, sub-holding or subsidiary).

3.1 Master File

The following information should be included in the Master File:

1. A general description of the multinational group (history, recent developments, business sectors in which it operates and overview of relevant markets of reference).
2. Multinational Group Structure
 - a) Organizational Structure [including an organization chart, a list of group members, their legal nature, including reference to their shareholding percentages].
 - b) Operational Structure [this paragraph contains a general description of the role that each of the associated enterprises carries out with respect to the multinational group's activities].
3. Business strategies pursued by the Multinational Group [with specific reference to its development and consolidations strategies] including potential changes to the overall business strategies if compared to the previous tax year.
4. Transaction flows [in this paragraph an overview of the general transaction flows as described in the following chapter 5 must be provided for, including the invoicing flows and the amounts thereof and describing the underlying legal

and economic reasons on the basis of which the activity has been structured as shown in the transaction flows. The transaction flows will have to be described in a flow-chart encompassing also those pertaining transactions not falling into the ordinary management activity].

5. Intra-group transactions:
 - a) Sale of tangible or intangible assets, provision of services, financial services transactions [each of the following paragraphs shall provide, for each set of transactions, (i) a description of the underlying nature of the intragroup transactions, with the option of excluding those involving transfer of goods or services between associated enterprises both resident for tax purposes in countries other than the European Union; (ii) a list of the entities part of the multinational group, between those indicated in the previous chapter 2, amongst which the transactions involving the above described goods and services were carried out. Similar categories of goods and services may be aggregated in accordance with the guidance provided for by the OECD Transfer Pricing Guidelines].
 - b) Intra-Group Services [each of the following paragraphs shall provide in detail the features of intra-group services carried out by one or more associated enterprises to the benefit of one or other associated enterprises and the entities part of the multinational group, between those listed at chapter 2, between which the said services are carried out].
 - c) Cost contribution arrangements [in this chapter a list regarding the actual cost contribution arrangements shall be provided, with an indication, for each arrangements, of the scope, duration, members of the arrangement, areas of activity and projects covered].
6. Functions performed, assets used and risks assumed [in this chapter the taxpayer will have to provide a general description of the functions performed, assets used and risks assumed by each of the enterprises involved in the transactions and of potential changes occurring in the functions, assets and risks if compared to the prior taxable year, with specific reference to changes triggered by business restructuring transactions].
7. Intangible assets [in this chapter a list of the intangible assets owned by each associated enterprise will have to be provided for, with a separate identification of any royalty payment, separated per recipient or payer respectively, and paid as a result of the exploitation of them].
8. Transfer Pricing policy of the Multinational Group [in this chapter a description of the multinational group's transfer pricing policy will have to be provided for, and of the underlying rationale that should support its consistency with the arm's length principle. In order to substantiate this information, it will be necessary to briefly refer to the contractual arrangements underlying the above mentioned transfer pricing policy].

9. Relationships with the tax administrations of the Member States of the European Union regarding the Advance Pricing Arrangements (APAs) and transfer pricing rulings [in this paragraph a brief description of the APAs and rulings signed by or released from the tax administrations of the countries in which the multinational group operates will have to be submitted, by describing the scope, content and duration of each agreements. The paragraph should be structured per country].

3.2 Local File

The following information should be included in the Local File:

1. General description of the enterprise (history, recent evolution and general overview of the relevant markets of reference).
2. Business Sectors.
3. Enterprise's organization chart [the paragraph contains a general overview of the role that each of the enterprise's business units carries out within the general activity"].
4. General business strategies pursued by the enterprise and potential changes compared to the previous tax year's [the paragraph contains information regarding also specific strategies on specific sectors or markets].
5. Controlled transactions (sale of tangible or intangible goods, provision of services, financial services transactions) [the current chapter can be divided in a number of paragraphs (from 5.1. to 5.n and corresponding subparagraphs) corresponding to the different type of transactions carried out between members of the multinational group. Consistent categories of transactions may be aggregated in a manner consistent to the guidance endorsed by the OECD Transfer Pricing Guidelines. In each of these paragraphs the nature of transactions involving goods and/or services above mentioned will have to be described in detail, including the intra-group services. In the introductory part of the chapter a list of the transactions described in the following paragraphs together with a detailed chart of the transactions' flows have to be submitted, including the amounts, describing the underlying economic and legal reasons on the basis of which the activity has been structured as described in the flowchart].
 - a) Type 1 transactions
 - i. Description of the transactions [this section shall also indicate a list of the group members counter-part in the transactions. It will have to be expressly mentioned the circumstance whereby the same or similar transactions have been taking place between independent parties] .

- b) Comparability analysis
 - i. Characteristics of property or services;
 - ii. Analysis of the functions performed, risks assumed and assets used [in this section an indication of potential changes in the functions performed, assets used and risks assumed compared to the previous tax year will have to be provided for, with specific reference to changes if occurred in the context of a business restructuring];
 - iii. Contractual terms [this section requires to report the key elements of written contracts regarding the transactions, specifying if they have general validity among the group];
 - iv. Economic circumstances [this section shall contain references to the general features of the relevant markets, irrespective if they are relevant for supply, transit or distribution];
 - v. Business strategies.
- c) Selection of the transfer pricing method: description of the selected transfer pricing method and of the underlying reasons determining its consistency with the arm's length principle [this section shall also report the outcome of the comparability analysis that has determined the selection of the transfer pricing method deemed to be the most appropriate to the circumstances of the case. Should a transactional profit method be selected when a traditional transactional method could be applied in an equally reliable manner, it should be explained why the latter had been excluded. The same explanation applies in case of a selection of a method other than the CUP method, in the event the latter could potentially be chosen by the taxpayer]. Criteria for the application of the selected transfer pricing method [within this section an accurate description of the procedure followed by the taxpayer for the selection of comparable transactions will have to be provided for and, if needed, a clear description of the underlying reasons for identifying a specific arms' length range].

Results deriving from the application of the selected transfer pricing method.

- 6. Intra-group transactions (Cost Contribution Arrangements or "CCAs" to which the enterprise is part of).
 - a) Participants, scope and terms;
 - b) Activities' framework and projects covered;
 - c) Method used for the determination of the expected benefits for each participant, including expected results, partial outcomes and divergences;
 - d) Form and amount of each participant's contribution to the arrangement, including methods and criteria to determine them accordingly;

- e) Formalities, procedures and consequences arising from the entry and withdrawal from the CCA by associated enterprises participating to it, including the termination thereof;
- f) Contractual arrangements concerning balancing payments or amendments to the CCA stemming from a change of circumstances;
- g) Changes occurred during the validity period of the CCA.

4. Country-by-Country reporting standards

4.1 Threshold and required content

The report must be prepared by parent companies of multinational groups with a consolidated turnover of over EUR 750 million (in the tax period before the one referred to in the report), and that are the entities ultimately required to prepare group consolidated financial statements and are not controlled by anything other than individuals.

The report must be submitted to the tax authorities in the country of residence, and eventually will be shared with the tax authorities of other countries through exchange of information tools.

CbCR contains two different sections:

Part 1: a first section containing information on the allocation of an MNE's income and resources by tax jurisdiction and, in particular:

- Revenues, profits (or losses) before income taxes.
- Total current taxes expenditures in each country, both in terms of tax accrued and tax paid.
- Total equity of all entities resident for tax purposes in each tax jurisdiction.
- Total accumulated earning of all entities resident for tax purposes in each tax jurisdiction.
- Number of employees working in the various countries in which the group operates
- Net book value of tangible assets, other than cash and cash equivalent.

Part 2: a second section containing information on the individual group entities, both permanent establishments and subsidiaries operating in the different countries including:

- Tax jurisdiction of residence.
- Tax jurisdiction of residence of the entity at the time of incorporation.
- Type of activity performed by each group entity. Permanent establishments shall be listed by Tax jurisdiction, specifying the legal entity to which they belong.

4.2 Notification requirement for subsidiary companies

In principle, the obligation to file the Country-by-Country Reporting is of the ultimate parent entity (i.e. the entity preparing the consolidated SFS).

However, the Italian subsidiary might be requested to file the CbCR with the tax authorities (so-called "local filing"), should one of the following circumstances be met:

- a) the ultimate parent entity is not obliged to file the CbCR in its jurisdiction;
- b) it is not in place a specific agreement for the automatic exchange of CbCR data between the countries, despite the existence of an international treaty;
- c) the Italian tax authorities have announced the suspension or the breach in the exchange of information for the CbCR purpose in the ultimate parent entity jurisdiction.

The CbCR has to be filed within twelve months subsequent to the financial year-end. A regulation stating the detailed data to be included in the Reporting is expected (in addition to the ones stated by 2016 Budget Law; please refer to the above introduction).

JAPAN

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1. Introduction

1.1 Legal context

The transfer pricing rules are contained within Articles 66-4/66-4-2 and 68-88/66-88-2 Special Taxation Measures Law (STML), STML Enforcement Orders 39-12, 39-12-2/39-112, and 39-112-2, STML Enforcement Regulation Articles 22-10, 22-10-2 / 22-74 and 22-75, and, STML Circulars 66-4-(1)-1 to 66-4-(9)-2, 68-88(1)-1 to 68-88(9)-2. In addition, several Commissioner Directives have been issued providing further guidance.

1.2 Practical context

Based on the recommendations of OECD's Base Erosion and Profit Shifting (BEPS) Project (Action 13: Guidance on Transfer Pricing Documentation and Country-by-Country Reporting), the Act on Special Measures Concerning Taxation was partially revised as part of the tax reform in FY2016.

All Japanese corporations and foreign corporations with permanent establishments in Japan (hereinafter referred to as "PE") that are Constituent Entities of a multinational enterprise group (MNEs) with a total consolidated revenue of 100 billion yen or more in the preceding fiscal year (Specified MNEs) must submit a Notification for Ultimate Parent Entity, a Country-by-Country Report (CbC report), and a Master File to the national tax authorities (NTA).

2. Formal requirements

2.1 Which taxpayers

Ultimate Parent Entity, a Country-by-Country Report, and a Master File:

All Japanese corporations and foreign corporations with PE in Japan, that as Constituent Entities of MNEs with a total consolidated revenue of 100 billion yen (approx EUR 750 Million.) or more in the previous fiscal year (Specified MNEs) must submit a notification for three documents to NTA through the online national tax return filing and tax payment system ("e-Tax").

Local file:

Corporations engaged in below-listed transactions with one or more foreign-related party must prepare and archive documents considered as necessary to calculate arm's-length prices for the controlled transactions.

- The total amount of overseas related transactions (for previous fiscal year) is 5 billion yen or more.
- Total amount of intangible asset transactions (for previous fiscal year) is 300 million yen or more.

2.2 Aggregation of transactions

Regarding the transaction unit in the transfer pricing taxation system, basically, it is necessary to calculate an arm's-length prices between independent companies for each overseas related transaction.

However, it is able to calculate an arm's-length prices as a single transaction, if it is deemed reasonable to calculate an arm's-length prices as a single transaction for several overseas related transactions.

For example:

- Setting a price considering a plurality of overseas related transactions belonging to the same product group or a plurality of overseas related transactions belonging to the same business segment.
- Purchasing as a single transaction an asset and a license such as manufacturing know-how using the asset.

As stated above, when it is deemed reasonable to calculate a product group unit, a business segment unit, or a plurality of overseas related transactions as a unit for an arm's-length prices

2.3 Deadlines (timing)

Notification for Ultimate Parent Entity:

The submission deadline is the last day of the fiscal year of the ultimate parent entity,

CbC report and Master File:

The submission deadline is within one year from next day of the ultimate parent entity's fiscal year end.

Local File:

Regular submission deadlines are not determined. However, it must be submitted within the following period, if examiner will request Local File.

- In case transactions that match the conditions of 2.1 above.
Deadline for Local File is by the day designated by the tax examiner which comes within 45 days. Deadline for documents considered as important to calculate arm's-length prices is by the day designated by the tax examiner which comes within 60 days.

- In case transactions that don't match the conditions of 2.1 above. Deadline for documents equivalent to Local File is by the day designated by the tax examiner which comes within 60 days. Deadline for documents considered as important to calculate an arm's-length prices is by the day designated by the tax examiner which comes within 60 days.

2.4 Materiality

NTA does not mention the materiality clearly. Basically, all documents related overseas transaction are needed.

2.5 Retention of documents

Local file is prescribed to be stored at the domestic office that has engaged in overseas related transactions for 9 years from the day following the deadline of the final return. It is not clearly defined how many years other documents (CbC-report, Master File, etc.) are needed to store.

2.6 Frequency of documentation updates

As described in 2.3 above, documents with the deadline are required to be updated by the deadline. Regarding the update of the Local File, there is no explicit definition. Practically, in order to conduct a reliable comparability analysis, it is desirable to select comparative transactions and update information every year. However, if the status of business in overseas related transactions and comparable transactions does not change, it is acceptable to review the selection of comparative transactions every three years.

2.7 Tax return disclosures

It is necessary to make a schedule 17(4) (Detailed Statement Concerning Foreign Affiliated corporations and Applied Transfer Pricing Methods).

2.8 Burden of proof

Regarding the burden of proof in the transfer pricing taxation(in principle is the burden of proof that NTA is responsible for the existence or nonexistence of the taxation requirement fact), is decided by considering the purpose and structure prescribed for each requirement, fairness among parties, difficulty of proof, etc.

2.9 Penalties

2.9.1 General

CbC report and Master File:

Fine of up to 300,000 yen if corporations fail to submit a CbC Report to the District Director by the deadline without good reason (same as for Master Files)

Notification for Ultimate Parent Entity and Local File:

There is no explicit penalty provision.

2.9.2 Penalties in case of a TP-adjustment

Penalties are not clarified, especially in transfer pricing. There is a case in which NTA imposes additional tax on under-reporting.

2.10 Interest

Interest is not charged on penalties. but interest is payable when a refund is due to the taxpayer. The same rate used for delinquent tax is applied.

2.11 Use of most reliable information

There are not specific rules about use of most reliable information. the comparable uncontrolled pricing method, the cost basis method, the resale price method and the cost plus method are prioritized.

2.12 Languages

Documents	Languages
CbC report	English
Master File	Japanese or English*
Other	Not specified *

* However, in cases other than written in Japanese, NTA can require corporations to submit translated text in Japanese

2.13 Confidentiality

Confidentiality of information submitted by taxpayers is protected in accordance with national laws and treaties relating to information disclosure.

3. Standards with respect to the content of transfer pricing documentation

3.1 Master File

The following information should be included in the Master File:

1. Organizational structure

Names of Constituent Entities of the Specified MNE's, the location of their head office or principal offices, and a chart illustrating the relationships between the Constituent Entities.

2. Description of MNEs business

General description of business of Constituent Entities of the Specified MNE Group, including the following (Article 22-10-5 Paragraph 1):

- a) Sales, income, and other important sources of profit of Constituent Entities of the Specified MNE's.
- b) Outline of the supply chain for the Specified MNE's five major goods, products or services (which refer to the succession of logistic processes

that lead up to consumers; this also applies to c)) as well as of geographical markets in which such goods, products or services are provided.

- c) Outline of the supply chain for the Specified MNE's goods, products or services that represent 5% of total sales, revenues, or profits in its category or more as well as of geographical markets in which such goods, products and services are provided (excluding the items listed in b)).
- d) List of important agreements on the provision of services between Constituent Entities of the Specified.
- e) MNE's (excluding those related to research and development; this also applies to d)) and the outline of the agreements (including the outline of policy to set the amount of compensation for the provision of services, that of policy to share the amount of expenses for the provision of services, and that of the functions of major bases where services are provided).
- f) Outline of the major functions fulfilled by Constituent Entities of the Specified MNE's when creating value added, serious risks assumed by them (possible increases or decreases in profit or loss due to factors such as fluctuations in exchange markets and market interest rates and changes in economic situations), and major roles played by Constituent Entities when creating important assets to be used and other types of value added.
- g) Outline of important business mergers, splits, transfers, and other acts involving Constituent Entities of the Specified MNE's.

3. MNEs intangibles (as defined in Chapter VI of the OECD Transfer Pricing Guidelines)

- a) Outline of the Specified MNE's comprehensive strategy for research and development, ownership, and use of its intangible fixed assets and other intangible assets (hereinafter referred to as "Intangibles" in sections up to e) below) and the location of major facilities used for research and development of Intangibles and that of sites where such research and development are managed.
- b) List of important Intangibles used for transactions between Constituent Entities of the Specified MNE's and of Constituent Entities that possess the Intangibles.
- c) List of important agreements between Constituent Entities of the Specified MNE's on the sharing of expenses related to research and development of Intangibles, a list of important agreements on the provision of services for major research and development projects for the Intangibles, a list of important agreements on consent to use of the Intangibles, and a list of other important agreements on Intangibles between Constituent Entities.
- d) Outline of policy to set the amount of compensation for transactions related to R&D and Intangibles between Constituent Entities of the Specified MNE's.
- e) Names of Constituent Entities of the Specified MNE's which are involved in the transfer of important Intangibles (including equity for the Intangibles; this also applies to the rest of this item) between them, the

location of their head office or principal offices, and the content of the Intangibles transferred, the amount of compensation, and other details of the transfer between the Constituent Entities.

4. MNEs intercompany financial activities

- a) Outline of methods for Constituent Entities of the Specified MNE's to procure funds (including the outline of important agreements on fund procurement from entities other than the Constituent Entities) .
- b) Names of those of Constituent Entities of the Specified MNE's which fulfill pivotal financial functions in the group and the location of their head office or principal offices (including the name of the country or territory where laws and ordinances that govern the establishment of the Constituent Entities are enacted and that of the country or territory where sites are located in which their business is managed and controlled) .
- c) Outline of policy to set the amount of compensation for financing between Constituent Entities of the Specified MNE's.

5. MNEs financial and tax positions

- a) Profits/losses and financial condition included in the consolidated financial statements of the Specified MNE's (documents stating the profits/losses and financial condition of the Specified MNE's if consolidated financial statements are not available).
- b) Outline of arrangement for the method to calculate the amount of compensation for transactions between Constituent Entities of the Specified MNE Group that reside in different countries and other items related to the allocation of income between such Constituent Entities if such arrangement is made only by the competent authorities in the country where one of the Constituent Entities resides.

3.2 Local File

The following information should be included in the Local File:

1. Local entity

Documents describing the content of business, business policy, and organizational structure of corporations as stipulated in Article 66-4 Paragraph 1 of the Act and foreign-related parties related thereto.

2. Controlled transactions

- a) Documents describing details of assets and the content of services related to the Controlled Transactions.
- b) Documents describing items related to the functions fulfilled by corporations as stipulated in Article 66-4 Paragraph 1 of the Act and foreign-related parties related thereto (which refer to foreign-related parties as stipulated in the same paragraph; this also applies to the rest of this paragraph) in the Controlled Transactions and risks (which refer to possible increases or decreases in the profits or loss of the Controlled Transactions due to fluctuations in exchange markets and market interest rates, changes in economic situations, and other factors; this also applies

to the rest of this paragraph) assumed by the corporations and the foreign-related parties in the Controlled Transactions (If, due to the restructuring of the corporations' or foreign-related parties' business (which refers to mergers, splits, transfer of businesses or important business assets, and changes in business structure for other reasons; this also applies to the rest of (b)), a change takes place to the functions fulfilled by the corporations or the foreign-related parties in the Controlled Transactions or the risks assumed by the corporations or the foreign-related parties in the Controlled Transactions, the documents must include a description of the content of the business restructuring and that of changes in the functions and the risks).

- c) Documents describing the content of intangible fixed assets and other intangible assets used by corporations as stipulated in Article 66-4 Paragraph 1 of the Act or foreign-related parties related thereto in the Controlled Transactions.
- d) Agreements related to, or documents describing the content of agreements on, the Controlled Transactions.
- e) Documents describing details of the amount of compensation received or paid by corporations as stipulated in Article 66-4 Paragraph 1 of the Act from or to foreign-related parties related thereto in the Controlled Transactions, the method to set the amount of compensation received or paid, and the content of negotiations about such setting, as well as documents describing the method to calculate arm's length prices (which refer to those stipulated in the same paragraph; this also applies to the rest of this article) for the amount of compensation received or paid and the content of arrangement of items related to the Controlled transactions (including other transactions closely related thereto) if such arrangement is made by the competent authorities in countries or territories other than Japan (excluding cases in which such arrangement is made by the regional commissioner of the regional taxation bureau or the district director who has jurisdiction over the place where the corporations pay income tax)
- f) Documents describing details of profits/losses for corporations as stipulated in Article 66-4 Paragraph 1 of the Act and foreign-related parties related thereto in the Controlled Transactions and the process in which the amount of profits/losses is calculated.
- g) Documents describing whether there are other transactions closely related to the Controlled Transactions as well as the content of the transactions and the circumstances under which the transactions are closely related to the Controlled Transactions.

3. Financial information

Documents describing analyses of markets (including analyses of the effects of the characteristics of the markets on the amount of compensation and profits/losses in the Controlled Transactions) related to the sale or purchase of assets, the provision of services, and other transactions in the Controlled Transactions and other items related to the markets

4. Country-by-Country reporting standards

4.1 Threshold and required content

Items to be reported on a tax jurisdiction-by-tax jurisdiction basis where the Constituent Entities of a Specified MNE's conduct business are:

1. Amounts of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, and tangible assets other than cash and cash equivalents, as well as the number of employees.
2. Names, Tax jurisdiction of organization or incorporation if different from tax jurisdiction of residence, and major business activity(ies) of the Constituent Entities.
3. Items that are deemed as useful for those listed above

4.2 Notification requirement for subsidiary companies

Required documents are different in case.

Case1: If the Ultimate Parent Entity (or Surrogate Parent Entity) is located in Japan

- a. Japanese Ultimate Parent Entity
- b. Japanese subsidiary Corporation
- c. P.E.

Case 2: If the Ultimate Parent Entity (or Surrogate Parent Entity) is located in a foreign country

- d. Japanese subsidiary Corporation
- e. P.E.

Notification		a.	b.	c.		d.	e.	
Notification for Ultimate Parent Entity	In principle	○	○	○	In principle	○	○	
	Exception	○ (One representative corporation)			Exception	○ (One representative corporation)		
CbC report	In principle	○	×	×	Direct Filing			
					In principle		×	×
					Local filing			
					In principle		○	○
Exception		○ (One representative corporation)						

Master File	In principle	○	○	○	In principle	○	○
	Exception	○ (One representative corporation)			Exception	○ (One representative corporation)	

KENYA

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1. Introduction

1.1 Legal context

Section 18 (3) of the Kenyan Income Tax Act (“ITA”) and the Transfer Pricing (“TP”) Rules, 2006 require resident entities transacting with non-resident related parties to transact at arm’s length prices. The TP Rules also detail circumstances under which an entity is considered to be related to resident entities for TP purposes and provides guidance on development of TP Policies.

Currently, Action 13 of the OECD/G20-project Base Erosion and Profit Shifting (“BEPS”) has not been adopted under the TP rules. However, there are plans to overhaul the current ITA and adoption of BEPS Action Points is one of the key changes expected to be included in the proposed Income Tax Bill.

1.2 Practical context

Whereas Action 13 has not been adopted in the TP rules, the additional TP documentation recommended under the Action Point will definitely result in significant administrative burden for Multinational Enterprises (“MNEs”) once adopted.

2. Formal requirements

2.1 Which taxpayers

The TP rules are applicable to all taxpayers and it is anticipated they will be amended once recommendations provided by BEPS Action points are adopted in Kenya.

2.2 Aggregation of transactions

TP rules in Kenya do not specify precise grounds for aggregation or itemization of transactions for TP purposes. However, determination of arm’s length price is done for individual transactions and documented as such in the TP policy.

2.3 Deadlines (timing)

The TP Rules do not provide any timelines or requirement to submit the TP policy to the Kenya Revenue Authority (“KRA”) but the TP policy should be provided to KRA on request.

There are instances where KRA gives taxpayers reasonable period (3 to 4 weeks) to avail TP documentation if not available.

There are no timelines for submission of the master and local file as well as Country-By-Country (“CbC”) reports since Action 13 is yet to be adopted in Kenya.

2.4 Materiality

The Kenyan TP rules require all transactions with non-resident related parties should be documented in a TP Policy regardless of the transaction volumes involved. There are no provisions stipulating formal thresholds under which TP documentation is not required. However, in light of the basic principle that the administrative burden should be justified by the complexity and (tax) importance of the transaction, the more complex and material the transactions are, the more extensive the TP documentation should be.

2.5 Retention of documents

The Tax Procedures Act, 2015 (“TPA”) requires a taxpayer to retain their records for a period of five years with an exception to instances where there are ongoing tax audits or investigations. TP related documentation forms part of records to be retained and it is therefore important to retain them for a period of five years.

2.6 Frequency of documentation updates

Kenyan TP Rules do not stipulate the frequency of TP policy updates. However, it is recommended to have the TP policy reviewed and updated every few years in order to account for normal business and market developments. A significant change in the transactions and business circumstances could also lead to an update of the TP Policy.

2.7 Tax return disclosures

Taxpayers are required to disclose related parties in their annual Income Tax Self Assessment Return.

2.8 Burden of proof

There is no guidance on burden of proof under the Kenyan TP Rules. However, provisions under the TPA and Tax Appeals Tribunal Act (“TATA”) places burden of proof on taxpayers in demonstrating KRA’s decision is incorrect, excessive, or should not have been made or should have been made differently.

2.9 Penalties

The TP Rules do not provide any penalties for failing to have a TP policy in place or for not availing it to KRA on time. However, the TPA provides for a penalty of 10% of the tax payable or about USD 1,000 (KES 100,000) whichever is higher for failing to retain, or maintain documents as required under tax laws.

Income Tax penalties and interest will be applicable where TP adjustments are made by KRA.

2.10 Use of most reliable information

The TP Rules recommends application of the most appropriate TP methods taking into account the nature of transaction, or class of transaction, or class of related persons or functions performed by such persons in relation to the transaction.

With regards to the benchmarking analysis to be made, the OECD prefers to use the most reliable information available. In this regard the BEPS-report states the following “The requirement to use the most reliable information will usually...require the use of local comparables over the use of regional.” (BEPS Action 13, p. 24-25). However, local comparables may not be sufficiently available. If local comparables are insufficiently available, regional comparables are allowed.

Due to absence of local and regional comparables, comparables from other regions are generally accepted. However, there are instances where KRA uses local comparables which are un-available to taxpayers which creates tax disputes.

2.11 Languages

The TPA requires documents be maintained in either of the official languages (that is English or Kiswahili) which includes TP documentation. The TPA empowers the Commissioner to reject documents in any language which is not an official language. It is therefore recommended to have TP documentation be maintained in English or Kiswahili.

2.12 Confidentiality

The Commissioner is required to maintain utmost confidentiality of documents or information obtained from taxpayers. However, Kenyan tax law allows the Commissioner to share taxpayers' information or documents with various government authorities as well as foreign governments or international organization having an agreement to exchange information with Kenya.

3. Standards with respect to the content of transfer pricing documentation

The Kenyan TP Rules are contained in the ITA and BEPS Action points have not been adopted. We however anticipate adoption of BEPS Action Points in the proposed Income Tax Bill which is currently underway.

KOREA (SOUTH KOREA)

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1. Introduction

1.1 Legal context

Statutory rules bearing on the transfer pricing documentation requirements in Korea are prescribed in Article 11 of the Law for the Coordination of International Tax Affairs ("LCITA"), which was initially introduced on January 1, 1996, and in Article 21-2 of Presidential Enforcement Decree ("PED") of LCITA. LCITA has been synced up with OECD Transfer Pricing Guideline for Multinational Enterprises and Tax Administrations ("OECD Guideline") ever since its inception and major updates and/or amendments to OECD guideline have been codified into LCITA constantly.

The LCITA was amended so as to implement the new transfer pricing documentation requirements in line with Action 13 of the OECD BEPS project (the "BEPS Action 13 Report"). On April 6 2016, the Korean Ministry of Strategy and Finance (the "MOSF") announced the final regulation on the local and master files, which were introduced by the BEPS Action 13 Report, going into effect as of January 1, 2016. The local and master files along with Country-by-Country report are collectively referred to as the Combined Report of International Transaction Information (the "CRITI"). On April 14 2016, the MOSF also issued an administrative notice setting forth the detail information as to how and by whom the local and master files may be prepared and filed. As for the Country-by-Country Report ("CbC-report"), MOSF released a proposal of details in relation to CbC-report on December 2016 and finally it introduced the final regulation thereabout on March 21 2017.

By having these documentation requirements set forth in the BEPS Action 13 Report enacted into the Korea statutory law, South Korea has synced up with other OECD countries in international tax arena.

1.2 Practical context

From a practical point of view, the number of those MNEs satisfying the new threshold set by the Korean government in connection with the BEPS Action 13 Report is relatively small compared to the population number of companies engaging in cross-border intercompany transactions on a regular basis.

Therefore, those MNEs subject to the new documentation regulations will bear more burdens but the rest of companies will remain the same in terms of their compliance effort. This being said, the advent of BEPS and new documentation regulations itself drew lots of attentions from most taxpayers in Korea and it would entail many taxpayers to stay alert on their international tax and transfer pricing issues more than ever before.

2. Formal requirements

2.1 Which taxpayers

The amended LCITA and its PED requires the corporate taxpayers in Korea i.e., domestic corporations and Korea branches of foreign corporations file both the local and master files if all of the following thresholds are satisfied:

- Annual aggregate volume of intercompany transaction(s) exceeds KRW 50 billion; and
- Annual revenue exceeds KRW 100 billion

In case there is more than one Korean taxpayer satisfying the foregoing conditions within the same group, the regulation expressly states that any of these taxpayers is permitted to file the master file as a representative of their group.

For CbC report, when the Korean taxpayer is an ultimate parent company of its group / MNE and satisfies the following threshold, then it is required to submit CbC report to Korean tax authorities:

- Sales revenue exceeding KRW 1 trillion (approx. EUR 750 million) per consolidated financial statements for the preceding year

For those corporate taxpayers that do not satisfy the thresholds above, they still may have to declare the transfer pricing method applied to their annual tax return package if one of following requirements is met:

- Total transaction amount of goods with all foreign related parties during a given fiscal year exceeds KRW 5 billion and the total service transaction amount with all foreign related parties during a given fiscal year exceeds KRW 1 billion; or
- Total transaction amount of goods with each foreign related party during a given fiscal year exceeds KRW 1 billion and the total service transaction amount with each foreign related party during a given fiscal year exceeds KRW 200 million

In case taxpayers satisfy one of the foregoing requirements and therefore subject to the reporting regulation for transfer pricing method via their corporate tax return filings, then it may have to be supported by the transfer pricing documentation as taxpayers are required to submit the transfer pricing documentation within sixty days from the date on which Korean tax authorities request such information.

2.2 Aggregation of transactions

As the name implies, Transactional Net Margin Method (“TNMM”), which is the most frequently applied transfer pricing method in practice, should be applied on a transaction-by-transaction basis but in real practice, when it is unreasonable to measure the price or net margin on a stand-alone basis on account of the close interconnection or link between transactions, taxpayers are allowed to consolidate different type of transactions to derive arm’s length price pursuant to Article 6 (8) of PED of LCITA.

2.3 Deadlines (timing)

LCITA requires that both the master and local files be submitted on an annual basis, at the time of filing the corporate income tax return starting from the tax year 2016 (that is, the first local and master files should be filed by 31 March 2017 for the tax year ended 31 December 2016). However, the filing date for local and master files may be extended up to 1 year upon prior approval by the tax office having jurisdiction over the taxpayer. The request for the extension must be made at least 15 days prior to the original due date.

As for the CbC report, in case the Korean taxpayer is an ultimate parent company of its group, the CbC report is due within 12 months of the fiscal year-end, i.e. the first CbC report should be filed by December 31 2017 for the tax year ended 31 December 2016.

In addition, when taxpayers must submit their contemporaneous transfer pricing documentation, which is usually prepared to get an exemption for 10% penalty on any additional assessment by tax authorities in case of tax audit, within thirty days from the date on which Korean tax authorities request such information.

2.4 Materiality

Please refer to 2.1.

2.5 Retention of documents

Pursuant to the Article 116 of Corporate Income Tax Law of Korea, all supporting docs to substantiate transactions, e.g. transfer pricing documentation, occurred during a given fiscal period should be maintained for 5 years from the due date of tax return filing.

2.6 Frequency of documentation updates

The master file, local file and CbC-report must be updated every year, because they relate to a particular fiscal year.

For taxpayers that do not meet the thresholds for CRITI, they may want to prepare transfer pricing documentation due to the 10% penalty waiver. In this case, the contemporaneous transfer pricing documentation should be updated

with new benchmarking every two to three years but financial update has to be performed every year.

2.7 Tax return disclosures

Korean corporate taxpayers should attach the International 9 (Gap) annex form, which includes the amount of cross-border related party transaction by transaction type, to their annual tax return if they have ever transacted with overseas related parties during a given fiscal year. Also, taxpayers should attach the international 1-3 annex form, which is for the declaration of transfer pricing method applied, to their annual tax return if the amount of related party transaction with foreign related parties exceeds the threshold we provided in section 2.1.

2.8 Burden of proof

If the taxpayer keeps appropriate TP-documentation in its record and does not have an explicitly unreasonable and unsupported point of view with respect to the used transfer prices, the tax authorities must prove the used transfer prices are not correct. If there is no TP-documentation available or there are evident shortcomings in the documentation, the tax inspector could reverse the burden of proof to the taxpayer.

2.9 Penalties

2.9.1 *General*

The taxpayer shall be subject to a penalty up to KRW 10 million should there be either a failure to file the CRITI partially or entirely or a falsification of the information therein.

For those taxpayers who do not meet the threshold for CRITI, a penalty of up to KRW 100 million may be imposed for failure to provide transfer pricing documentation within 60 days (one 60-day extension allowed) upon the request by Korean tax authorities.

2.9.2 *Penalties in case of a TP-adjustment*

Underreported tax penalty is 10 percent (40 percent in cases of fraud) of the additional assessment by Korean tax authorities. From January 1, 2015 onwards, a penalty rate of 60 percent may be applied to the additional assessment in cases of fraudulent acts involving cross-border transactions.

2.9.3 *CbC-reporting*

The taxpayer shall be subject to a penalty up to KRW 10 million should there be either a failure to file the CRITI partially or entirely or a falsification of the information therein.

2.10 Interest

No interest is charged on penalties. However, there is a penalty similar to interest in concept called additional tax for unfaithful payment, which is 0.003% per day.

2.11 Use of most reliable information

The OECD Guideline suggests using the most reliable information available and, in line with this, per page 24 and 25 of the BEPS Action 13 Report, it also put the use of local comparables over the use of regional comparables in priority. In Korean practice, only Korean local comparables are accepted by the Korean tax authorities and Korean taxpayers are expected to use database called "Kisline".

2.12 Languages

Under the new documentation submission requirements, the local file must be submitted in Korean. The master file may be submitted in English, but a Korean translation must be submitted within one month.

2.13 Confidentiality

The Korean tax authorities are mandated to treat the TP documentation of the taxpayer confidentially. The tax authorities can only exchange the TP documentation with the tax authorities of other countries when the agreement for the exchange of tax information exists.

3. Standards with respect to the content of transfer pricing documentation

3.1 Master File

The following information should be included in the Master File:

1. Group's Organizational structure

It should include overview of the group, group's legal ownership structure, and group's control structure.

2. Description of MNE's business(es)

General written description of the MNE's business including:

- a) Important drivers of business profit.
- b) Description of top five goods or services in the supply chain that are above 5% of total sales
- c) List of important service agreements between the entities within the MNE
- d) Description of Geographical Markets for the Goods and Services abovementioned in b)

- e) Functional analysis to explain the proportion of value-adding contribution by each entity within the MNE
- f) Important business restructuring transactions, acquisition, or divestiture occurred during the fiscal year, if any

3. MNE's intangibles (as defined in Chapter VI of the OECD Transfer Pricing Guidelines)

- a) A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- b) A list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and which entities legally own them.
- c) A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements.
- d) A general description of the group's transfer pricing policies related to R&D and intangibles.
- e) A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

4. MNE's intercompany financial activities

- a) A general description of how the group is financed, including important financing arrangements with unrelated lenders.
- b) The identification of any members of the MNE group that provide a central financing function for the group, including the country under whose laws the entity is organized and the place of effective management of such entities.
- c) A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

5. MNE's financial and tax positions

- a) The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.
- b) A list and brief description of the MNE group's existing unilateral advance pricing agreements (APAs) and other tax rulings in regard to the profit allocation among countries

3.2 Local File

The following information should be included in the Local File:

1. Summary of Submitting Local entity

- a) Introduction to the submitting entity.
- b) Business structure and organizational chart
- c) List of persons who receives management-related reporting
- d) Business operation and strategy of the submitting entity

- e) Main competitors.

2. Description of the Related Party Transactions

- a) Current details of foreign related parties
- b) Legal ownership structure of foreign related parties
- c) Ownership structure
- d) A description of material related transactions and the context in which such transactions take place
- e) The amount of related party payments and receipts in related party transactions
- f) Details of each type of related transaction and relationship among foreign related parties
- g) Detail comparability analysis and functional analysis of taxpayer and foreign related party with regard to the related party transactions
- h) Most appropriate transfer pricing method for each transaction type and reasons for selecting such method
- i) Tested party selected and reasons for the selection
- j) A summary of the important assumptions made in applying the transfer pricing methodology.
- k) If relevant, an explanation of the reasons for performing a multi-year analysis.
- l) A list and description of selected comparable uncontrolled transactions (internal or external), if any
- m) A description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both
- n) A summary of financial information used in applying the transfer pricing methodology.
- o) The result of Analysis

3. Financial information and Agreements

- a) Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
- b) Copy of existing unilateral and bilateral/multilateral APA Applications and other tax rulings, if any, which the taxpayer applied to other than the local tax authorities with regard to the related party transactions described above
- c) Copies of All Material Related Party Agreements Executed by the Submitting Entity
- d) Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.

4. Country-by-Country reporting standards

4.1 Threshold and required content

For CbC-report, when the Korean taxpayer is an ultimate parent company of its group / MNE and satisfies the following threshold, then it is required to submit CbC-report to Korean tax authorities:

- Sales revenue exceeding KRW 1 trillion (approx. EUR 750 million) per consolidated financial statements for the preceding year

Unlike local and master files, the information contained in CbC-report is very concise and simple. In accordance with the BEPS guidance on CbC-report, it should include the basic information about the entity submitting the report such as the name of entity, business registration number, address, the name of the MNE it belongs to, etc. The key information to be included in CbC-report is the Earnings Before Tax ("EBT") figure and tax paid thereon, the number of employees, etc. in each jurisdiction in which the MNE has business presence. Moreover, main activities or functions, e.g. R&D, procurement, manufacturing, sales, management support, etc., each constituent entity in each jurisdiction engages in or performs should be included.

4.2 Notification requirement for subsidiary companies

The reporting entity notification form is required to be submitted within six months of the fiscal year end (e.g., for fiscal years ending 31 December, the deadline would be 30 June of the following year) by the ultimate parent company located in Korea and a domestic entity or branch whose parent company resides in a foreign country. If the parent company of the Korean corporate taxpayer resides in a country that does not require a CbC-report, or does not facilitate the exchange of the CbC-report, the Korean entity is required to submit the CbC-report to Korean tax authorities on behalf of its foreign parent company.

MEXICO

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1. Introduction

1.1 Legal context

In Mexico, the legislation on transfer pricing is found within the Mexican Income Tax Law ("MITL"), in the Regulations of the Income Tax Law ("RITL") and in the Federal Tax Code ("FTC").

The new requirements for the presentation of the Annual Returns of Related Parties, which are based on Action 13 of the OECD/G20 Base Erosion and Profit Shifting Project (BEPS), are formalized in the Miscellaneous Fiscal Resolution for 2017, which includes the presentation of the Master File, Local Report and the Country-by-Country Report of the multinational enterprise group.

1.2 Practical context

The practical application of the OECD regulations on transfer pricing is supported by the last paragraph of Article 179 of the MITL.

"For the interpretation of the provisions of this Chapter, the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations apply, approved by the Council of the Organization for Economic Co-operation and Development in 1995, or those that replace them, insofar as they are consistent with the provisions of the Mexican Law and the treaties carried out by Mexico."

2. Formal requirements

2.1 Which taxpayers

Pursuant to Article 76, sections IX, X and XII, all taxpayers who carry out operations with related parties to foreign or domestic residency, are obliged to obtain and maintain supporting documents, with the exception of taxpayers

did not exceed 13,000,000.00 MXN, as well as taxpayers whose income derived from the provision of professional services did not exceed 3,000,000.00 MXN in that year, except those referred to by the penultimate paragraph of Article 179 of the LISR (related parties located under preferential tax regimes or tax heavens). LISR is the equivalent to the English abbreviation MITL.

For the purposes of compliance with the provisions of Article 76-A, sections I and III of the Mexican Income Tax Law, when a group of taxpayers that enter into transactions with related parties is referred to by any of the cases indicated in Article 32- H, sections I, II, III and IV of the FTC and are part of the same multinational enterprise group, they may jointly submit one single Annual Information Declaration, in which it will suffice for any obligated taxpayer belonging to the multinational enterprise group that will be submitting the declaration, to select in said declaration, the option of joint declaration and state the name or business name and the code in the RITL of the taxpayers who submit the declaration jointly.

For the purposes of article 76-A, first paragraph, section III, second paragraph, subsection b) of the MITL, a business entity residing in national territory or resident abroad with permanent establishment in the country designated by the business entity in control of the multinational enterprise group as responsible for providing the country-by-country reporting, complies with the obligation to present the notice of its designation to the tax authorities, when, in the format for the Annual Country-by-country Report, it provides the information requested in said declaration within the established terms.

2.2 Aggregation of transactions

Obtaining and maintaining documentation supporting transactions with related parties must be done for each transaction, in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations of the OECD.

However, when there are a large number of similar transactions, transactions can be evaluated together, provided that the taxpayer can demonstrate that the transfer prices used in connection with the aggregation of transactions were agreed upon under fully competitive conditions.

2.3 Deadlines (timing)

In Mexico, the taxpayer has three occasions to submit information on transfer pricing to the tax authority; the first is March 31 as the deadline for submitting Annex 9 of Related Parties for the Multiple Information Declaration (DIM); the second is June 30, as the deadline for submitting Annex 16, 17 and the Accountant Questionnaire for Transfer Pricing of the Fiscal Report Submission System (SIPRED), or through the Presentation System of the Fiscal Situation Information Declaration (DISIF) or through the System of Presentation of the Alternative Information to the Judgement (SIPIAD), depending on the fiscal status of the taxpayer; finally, the third occasion is December 31, as the

deadline to deliver the Master File, the Country-by-Country Report and the Local Report, through the Portal of the Tax Administration System (SAT) through a tool that is yet to be defined.

2.4 Materiality

In Mexican legislation on transfer pricing, there is no criterion that delimits the materiality to obtain and maintain supporting documentation regarding transfer pricing.

2.5 Retention of documents

The Tax Authority has a Statutory Limit of 5 years to request every Tax Document, but it is quite complicated to calculate exactly when the 5 years expire as it depends on whether the company submitted or not amended returns (in which a case the 5 years period starts again) or if any of the actions taken by the taxpayer should be consider as "tax fraud" in which a case the 5 years period does not expire. Therefore, in practice, the taxpayer is obligated to retain the supporting documentation until requested by the tax authority.

2.6 Frequency of documentation updates

The taxpayer is required to obtain supporting documentation on transactions with related parties for each fiscal year in which they have carried out such transactions.

2.7 Tax return disclosures

The tax return for individual taxpayers, has a deadline of April 30 of each fiscal year; business entities have a deadline of March 31, and those who have fiscally assess their financial statements or do so optically, have a deadline of June 30.

2.8 Burden of proof

In accordance with the procedures established by the authority, when revisions of documentation of related party transactions are made, the burden of proof lies with the taxpayer and they must have solid and well documented evidence of information regarding transactions with related parties.

2.9 Penalties

2.9.1 General

If the taxpayer does not submit the information declaration with related parties, which is submitted together with the declaration of the fiscal year, or if it is submitted with errors or omissions, the taxpayer will be penalized with a fine ranging from 68,590.00 MXN to 137,190.00 MXN, in accordance with Article 81, section XVII and Article 82, section XVII, of the FTC.

If the taxpayer does not comply with the obligation to submit the annual declarations corresponding to the Master File, Country-by-Country Report or Local Report, or if they do so in an incomplete manner, or with errors, inconsistencies or in any way other than indicated, it may result in a fine ranging from 140,140.00 MXN to 200,090.00 MXN; the foregoing is based on Articles 81, section XL and 82, section XXXVII of the FTC.

2.9.2 Penalties in case of a TP-adjustment

If the tax authority determines an adjustment to the transfer price, it has the power to require the following:

- Tax omitted;
- Update due to inflation; and
- Surcharges, which is equivalent to applying a certain interest rate for a tax credit

2.9.3 CbC-reporting

Under Mexican law there is no specific penalty related to the Country-by-Country Report, except as established in section 2.9.1. General, in relation to the delivery of the annual informative declarations.

2.10 Interest

Reference is made to section 2.9.2 Penalties for adjustment of Transfer Pricing.

2.11 Use of most reliable information

Article 180 of the MITL establishes a priority order to apply the methods in order to obtain the highest degree of reliability in the documentation of operations between related parties; this priority order is as follows:

“Taxpayers shall first apply the method provided in Section I of this Article (Comparable uncontrolled price method), and may only use the methods set forth in Sections II, III, IV, V and VI of the Article, when the method provided in Section I is not appropriate for determining that the transactions carried out are at market prices in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations referred to in the last paragraph of Article 179 of this law.”

“For the purposes of the application of the methods provided in Sections II, III and VI (Resale Price, Cost Plus and Transactional Net Margin Method) of this article, the methodology shall be deemed to be met, if it is demonstrated that the cost and the sale price are at market prices. For these purposes, market prices are understood as prices and fees that may have been used with or among independent parties in comparable transactions or when the taxpayer has been granted a favorable decision under the terms of article 34-A of the Tax Code of the Federation. It shall be demonstrated that the method used is the most appropriate or the most reliable method according to the available information, with preference given to the methods provided in Sections II and III of this article.”

With regard to the consideration of comparable, more reliable companies, there are no specific requirements on the use of comparables, and whether the tax authorities will only accept domestic or foreign comparables. Therefore, the companies established in Article 179 of the Mexican Income Tax Law will be considered comparable companies:

“For the purposes of this Law, it is understood that operations or companies are comparable, when there are no differences between them that significantly affect the price or fee or profit margin referred to in the methods established in Article 180 of this law, and when such differences do exist, they are eliminated through reasonable adjustments. In order to determine such differences, the pertinent required elements, according to the method used, shall be taken into account, considering the following elements, among others...”

2.12 Languages

Verification documentation with related parties must be in the Spanish language and Mexican pesos (MXN), except in the following situations:

Taxpayers obligated to file the Master File Report, whose content is in line with the Final Report of Action 13 of the BEPS initiative, may submit the information prepared by a foreign entity that is part of the same multinational enterprise group, as long as it is submitted by the obligated taxpayer in Spanish or English using the tool provided by the SAT for these purposes.

The information corresponding to the Country-by-Country Report may be presented in a currency other than the national currency. If the information was obtained in foreign currency and converted to national currency, the exchange rate, date of conversion and source must be indicated.

2.13 Confidentiality

Pursuant to Article 69 of the FTC, the official personnel involved in the various documentation related to the application of the tax provisions is obligated to maintain absolute discretion regarding the declarations and data provided by the taxpayers or related third parties, as well as information obtained during the verification process.

3. Standards with respect to the content of transfer pricing documentation

In accordance with Article 76-A of the MITL, these declarations must contain the following information, either by line of business or in general:

3.1 Annual Declaration of Related Parties of the Multinational Enterprise Group

Legal organizational structure of each of the business units regardless of their category of parent, holding, subsidiary, associate, affiliate, central office or permanent establishment and the structure of the capital stock ownership ratio, taking into account the percentages of share ownership of each of the entities within the multinational enterprise group, identifying each of the legal operating entities that are part of that group, and their geographical and fiscal locations.

3.2 General description of multinational enterprise group activity

1. Description of the multinational enterprise group's business model, consisting of the core business strategy and operation components that create and provide value to both clients and the company, including strategic decisions about products and services, business partners and distribution channels, as well as structure of costs and revenue streams that demonstrate the viability of the business.
2. Description of the multinational enterprise group's value generators, consisting of the conditions or attributes of the business that effectively generate significant value, which are manifested through intangibles created or utilized through comparability factors that define a competitive business advantage.
3. Description of the supply chain, i.e. the sequence of processes involved in the production and distribution of the multinational enterprise group's five principal types of products or services, as well as other types of products or services that represent more than 5% of the multinational enterprise group's total income.
4. List and description of the relevant aspects of the principal intra-group service agreements (other than research and development services), including the description of the capabilities of the main centers providing relevant services such as transfer pricing policies used to allocate the costs for services and determine the prices to be paid for the provision of intra-group services.
5. Description of the principal geographic markets where the multinational business enterprise markets its main products or services referred to in number three of this subsection.
6. Description of the main functions carried out, assumed risks and assets utilized by the various legal entities that make up the multinational enterprise group.
7. Description of operations related to business restructuring, as well as the business acquisitions and disposals carried out by the multinational enterprise group in the declared fiscal year. For these purposes, a business restructuring refers to a cross-border reorganization of financial and commercial relationships among related parties, including the termination or significant renegotiation of existing agreements.

Intangibles of the multinational enterprise group consisting of the following:

1. Description of the global strategy for the development, ownership and utilization of intangibles, i.e. elements that are not a physical or financial asset and which may be the object of ownership or control for use in commercial activities, and whose use or transmission would be remunerated if it occurred during a transaction between independent companies in comparable circumstances, including the location of both the principal research and development centers and the management and administration of research and development of the multinational enterprise group.
2. List of intangibles or sets of the multinational enterprise group's intangibles that are relevant to transfer pricing purposes, including the name or business name of the legal owners.
3. List of principal intra-group agreements involving intangibles, including cost-sharing and research service arrangements and licenses for the use of intangibles.
4. General description of transfer pricing policies on research and development and intangible assets of the multinational enterprise group.
5. Description of the principal transfers of rights to intangibles made between related parties during in the declared fiscal year, including the name or business name of the entities involved, fiscal residence, and amount(s) of the fee(s) for said transfers.

Information related to the multinational enterprise group's financial activities, consisting of the following:

1. Description of how the multinational enterprise group obtains financing, including major financing agreements with independent parties.
2. For the purpose of identifying the main financing agreements with independent parties, the top five amounts of the most significant financing agreements will be considered.
3. Denomination or corporate name of the legal entities of the multinational enterprise group who perform centralized financing functions for the group, including the fiscal residence and management center of said legal entities.
4. Description of multinational enterprise group policies on transfer pricing for finance transactions with related parties.

Financial and fiscal position of the multinational enterprise group, consisting of the following:

1. Consolidated financial statements for the declared fiscal year.
2. List and description of advance arrangements for unilateral transfer pricing and other agreements or resolutions related to the allocation of income between countries, which include the legal entities that form part of the multinational enterprise group.

3.3 Information from the Annual Informative Local Declaration of Related Parties

Information on structure and activities of the obligated taxpayer, consisting of the following:

1. Description of their administrative and organizational structure, as well as the list of individuals upon whom the local administration hierarchically depends and the country(ies) in which said individuals have their main office.
2. Detailed description of the business activities and strategies of the obligated taxpayer, including, if applicable, if they have participated in or been affected by business restructuring, whether of a cross-border or local nature, transfer of ownership, or rights to intangibles during the declared fiscal year or the prior fiscal year. For the purposes of this paragraph, an explanation of how these restructurings or transfers of property affected the taxpayer must be provided.
3. Description of the value chain of the group to which the obligated taxpayer belongs, identifying the location and participation of the obligated taxpayer in said value chain, describing at each stage of said chain the specific activities, and whether they are routine or value-added activities, and the description of the policy of allocation or determination of profits along the value chain.
4. List of the obligated taxpayer's main competitors.

Information on related party transactions consisting of the following:

1. Detailed description of the operations carried out by the obligated taxpayer with related parties residing in the national territory and abroad, including the nature, characteristics and amount by type of operation.
2. Description of the transfer pricing policies associated with each type of transaction that the obligated taxpayer carries out with related parties. For the purposes of this rule, transfer pricing policies shall include the related information on methodology for the determination of prices in transactions between related parties whether for financial and/or tax purposes, whose formulation includes business strategies and economic circumstances, among others.
3. Description of the strategy for the development, improvement, maintenance, protection and utilization of the intangibles of the group to which the obligated taxpayer belongs.
4. Copy in Spanish or English of the contracts entered into by the taxpayer with its related parties, applicable to transactions with related parties during the declared fiscal year.
5. Justification of the selection of the party analyzed and reasons for rejection of the counterparty as a party analyzed in the analysis(es) of the transaction(s) carried out by the obligated taxpayer with related parties residing in national territory and abroad, as well as the name or business name of the party analyzed.
6. Analysis of the performed functions, assumed risks and assets utilized by the obligated taxpayer and by its related parties for each type of operation analyzed, as well as the corresponding analysis of comparability for each

type of transaction analyzed, which should also include analysis of the functions of development, improvement, maintenance, protection and utilization of intangibles carried out by the obligated taxpayer and its related party that may be a counterparty in each transaction analyzed.

7. Justification of the selection of the transfer pricing method applied in the analysis(es) of the transaction(s) carried out by the obligated taxpayer with related parties residing in national territory and abroad, as well as explanation of the detail of the relevant assumptions considered in the application of said methodology.
8. Detail and justification of the use of financial information of comparable companies that covers more than one fiscal year in the analysis(es) of the transaction(s) carried out by the obligated taxpayer with related parties residing in national territory and abroad.
9. Detail of the search and selection process of comparable companies or transactions, including the source of information, list of operations or companies considered as potential comparables, with the criteria of acceptance and rejection; selection of profitability indicator(s) considered in the analysis of the transaction(s) carried out by the obligated taxpayer with related parties residing in national territory and abroad; description and detail of the application of comparability adjustments; results and conclusion(s) of the analysis(es). The information regarding the business description of the companies considered comparable can be presented in English.
10. Financial information (segmented) of both the obligated taxpayer and/or analyzed party, as well as the comparable company(ies) considered for such analysis(es).
For these purposes, the step-by-step detail of the calculation of the indicator(s) of the level of profitability will be provided for both the analyzed party and each of the companies used as comparables in the analyses, including the mathematical processes utilized for each one, the formula(s), and the decimals used, clarifying if they were truncated or rounded.
11. List of unilateral, bilateral or multilateral advance pricing agreements, as well as other resolutions, in which the Mexican tax authority is not a party and which relate to any transactions carried out with related parties during the declared fiscal year, and provide copies of those created.

Financial information consisting of the following:

1. Individual and consolidated financial statements, as the case may be, corresponding to the declared fiscal year of the obligated taxpayer and/or analyzed party selected; and if necessary, clarify whether they have been decreed.
2. Financial and tax information of foreign related parties that are counterparties to each transaction analyzed, consisting of current assets, fixed assets, sales, costs, operating expenses, net income, taxable base and tax payment, specifying the currency in which such information is provided.

3. Financial information of the obligated taxpayer and/or selected analyzed party used to apply the transfer pricing methods in the declared fiscal year.
If segmented financial information is used, all segments that include the typologies of transactions with the obligated taxpayer and/or analyzed party with related parties, whose summation matches the information in numeral 1, must be included.
Likewise, the obligated taxpayer must identify in each segment, which transactions with related parties are included in each one of them, and explain and exemplify how the segmentation of the financial information was carried out.
4. Relevant financial information of the comparable companies utilized, as well as the sources of said information and the date of the database utilized to search for it.

4. Country-by-Country reporting standards

4.1 Threshold and required content

For the purposes of Article 76-A, Section III of the ISR Law, the Country-by-Country Information Declaration of the multinational enterprise group must contain the following information regarding the declared fiscal year of the multinational controlling entity, in aggregate form and for each country or fiscal jurisdiction:

- a. Total revenue of the multinational enterprise group, disaggregating the revenue obtained with related parties and third parties. These correspond to net income, which includes income from the sale of inventory and properties, shares, services, royalties, interest, premiums and other items, but without including income from dividends.
- b. Profits or losses before the ISR for the declared tax year.
- c. ISR actually paid. This item corresponds to the ISR or corporate tax that the entity has caused and paid effectively in its tax jurisdiction of residence and in any other tax jurisdiction, including that related to withholdings by related parties and third parties. For these purposes, the ISR actually paid does not include the ISR that would have been covered by accreditations or reductions made under the terms of the tax provisions, except when the payment was made through compensation. For this purpose, compensation is understood as defined in Article 23 of the Tax Code of the Federation. When corporate taxes other than ISR are declared, the nature of the tax in question must be clarified in the additional information addendum.
- d. Amount of ISR accrued. This item corresponds to the ISR or corporate tax caused for tax purposes of the declared fiscal year. When corporate taxes other than ISR are declared, the nature of the tax in question must be clarified in the additional information addendum.
- e. Amount for accounting purposes of the accumulated profits or losses of prior fiscal years on the date of conclusion of the declared fiscal year. This amount does not include the amount for permanent establishments.

- f. Amount of capital stock or equity registered and paid at the end of the declared fiscal year. This corresponds to the amount of capital stock or equity reported by the end date of the fiscal year in the tax jurisdiction in question, therefore if there were changes such as increases, decreases, updates and net of any reserve, the last amount recorded at the end the declared fiscal year must be reported. This amount does not include the amount for permanent establishments.
- g. Number of employees in the declared fiscal year. This must include full-time employees. Independent contractors, i.e. self-employed persons, who participate in ordinary operational activities should be reported as employees. For this purpose, the number of employees can be declared at the end of the declared fiscal year, or, the value obtained from an annual average, which will be calculated by dividing the sum of the number of employees on the last day of each month of the fiscal year, by the number of months in the fiscal year. If other calculations are used to determine the annual average, the calculation utilized will be declared as part of the additional information.
- h. Material assets. These assets correspond to the sum of the net accounting values of inventory and fixed assets, without including cash, instruments equivalent to cash, intangibles, financial assets and net receivables. For these purposes, the net accounts receivable corresponds to the result of subtracting the estimate of uncollectible accounts from the accounts receivable.
- i. List of titles or corporate names of legal entities residing in each tax jurisdiction where the multinational enterprise group is present, including the identification of permanent establishments and indicating the principal business activities performed by each one, as requested in the corresponding form.
- j. All relevant additional information and its explanation, if necessary, of the source and integration of the data included in the Country-by-Country Information Declaration.

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1. Introduction

1.1 Legal context

Article 8b of the Corporation Tax Act 1969 (CTA 1969) was introduced in 2002 and is the domestic codification of Article 9 of the OECD-model convention. Article 8b CTA 1969 contains a general documentation requirement for all transactions between associated companies (both domestic and foreign companies) with respect to the applied Transfer Prices.

As of 1 January 2016 new standardized documentation requirements are included in the CTA 1969 (Articles 29b to 29h) for multinational enterprises (MNE's). These requirements are the implementation by the Dutch government of Action 13 of the OECD/G20-project Base Erosion and Profit Shifting (BEPS). These new documentation requirements include a master and local file and a Country-by-Country Report (CbC-report).

1.2 Practical context

The new documentation requirements as of 1 January 2016 can lead to a significant administrative burden for MNE's. Although (mainly) MNE's are effected by the new TP-documentation requirements, the BEPS-project will likely have effect for all taxpayers, since the focus of tax authorities will shift more and more to Transfer Pricing. Practice learns that many taxpayers do not meet the minimum TP-requirements. It is therefore recommended for all taxpayers to take a critical look at its TP-documentation.

2. Formal requirements

2.1 Which taxpayers

Based on article 8b of the CTA 1969 a Dutch taxpayer that enters into transactions with an associated enterprise is required to have TP-documentation with respect to those transactions. The definition of an associated enterprise in article 8b of the CTA 1969 follows the wording of article 9 of the OECD-model convention.

The new documentation requirements as of 1 January 2016 with respect to the master and local file apply to any MNE with a (corporation) tax presence in the Netherlands and which is part of a group of companies with an annual group turnover that exceed the minimum threshold of EUR 50 million. A MNE which is part of a group with a consolidated group revenue of more than EUR 750 million should also have the group parent provide the Dutch tax inspector with a CbC-report.

The new documentation requirements will be applicable to financial years starting on or after 1 January 2016.

2.2 Aggregation of transactions

The premise is that TP-documentation is required for each individual transaction with associated enterprises, but in practice this could lead to an unreasonable administrative burden. If a proper aggregation of transactions is possible, for example because there is a large number of similar transactions, the transactions can be jointly assessed. In that case it is expected from the taxpayer that he can substantiate that the used transfer prices with regard to the aggregation of transactions are at arm's-length.

2.3 Deadlines (timing)

The premise is that the TP-documentation based on article 8b of the CTA 1969 is available from the time the transaction is entered into by the taxpayer, whereby the documentation should be based upon information reasonably available at the time of the transaction. Thus, a taxpayer ordinarily should give consideration to whether its transfer pricing is appropriate for tax purposes before the pricing is established and should confirm the arm's length nature of its financial results at the time of filing its tax return.

If the TP-documentation is not available upon request of the tax authorities, a reasonable period (minimal 4 weeks, up to 3 months in complex cases) is given to the taxpayer to deliver the requested documentation.

The master and local file must be included in the records before the tax return is due (standard 6 months after the end of the fiscal year, but a longer period is possible). This means that the master and local file for the fiscal year 2016 must be ready by June 30, 2017 at the earliest.

The MNE must provide the tax inspector the CbC-report within 12 months after the last day of the financial year of the MNE. For financial years ending 31 December 2016, the CbC-report should be provided before 31 December 2017.

2.4 Materiality

In principle all transactions with associated enterprises should be supported by TP-documentation. There are no formal thresholds below which no TP-documentation is required. However, in light of the basic principle that the

administrative burden should be justified by the complexity and (tax) importance of the transaction, the more complex and material the transactions are, the more extensive the TP-documentation should be.

2.5 Retention of documents

A Dutch taxpayer is required to keep its administrative records for at least seven years. Since the TP-documentation is part of the records of a tax payer, this seven year period also applies to the TP-documentation. In certain cross border cases the tax authorities may impose an additional assessment within twelve years after the date on which the tax debt arose. It is therefore recommended to keep TP-documentation for twelve years.

2.6 Frequency of documentation updates

In practice the documentation requirements based on article 8b of the CTA 1969 should be updated every few years to account for normal business and market developments. A significant change in the facts and circumstances could also lead to an update of the documentation.

The master file, local file and CbC-report must be updated every year, because they relate to a particular fiscal year.

2.7 Tax return disclosures

Dutch (corporate) tax payers should tick a box in their annual tax return if they have paid associated enterprises for the use of tangible or intangible assets and they should briefly specify these transactions in a separate appendix to the tax return. Hence, the tax payer is not required to disclose its TP-documentation as part of the tax return filing.

2.8 Burden of proof

If the taxpayer keeps appropriate TP-documentation in its record and does not have an explicitly unreasonable and unsupported point of view with respect to the used transfer prices, the tax authorities must prove the used transfer prices are not correct. If there is no TP-documentation available or there are evident shortcomings in the documentation, the tax inspector could reverse the burden of proof to the tax payer. Dutch Case law shows it to be difficult for a tax payer to overcome the burden of proof.

2.9 Penalties

2.9.1 *General*

Dutch tax law does not provide for penalties for the mere fact that TP documentation is not available or not available in time.

2.9.2 Penalties in case of a TP-adjustment

In case of a TP-adjustment the penalty can be up to 100% of the TP-adjustment if the TP-adjustment is a result of intentional noncompliance of the taxpayer with regard to the TP-documentation.

2.9.3 CbC-reporting

If a taxpayer does not comply to deliver the CbC-report, this is regarded as a criminal offence and is punishable with penalties up to EUR 8.200 (or imprisonment). If the taxpayer's noncompliance is intentional the penalties can be up to EUR 820.000 or imprisonment. The legislator has indicated that criminal prosecution is only reserved for the most serious cases.

2.10 Interest

In case of a TP-adjustment interest is due if the additional assessment is imposed after 1 July of the year following on the year in question. The interest rate is 8,00% (2016). No interest due is on penalties.

2.11 Use of most reliable information

With regard to the benchmarking analysis to be made, the OECD prefers to use the most reliable information available. In this regard the BEPS-report states the following *"The requirement to use the most reliable information will usually...require the use of local comparables over the use of regional."* (BEPS Action 13, p. 24-25). However, local comparables may not be sufficiently available. If local comparables are insufficiently available, regional comparables are allowed

In case of the Netherlands (Western) European comparables are generally accepted.

2.12 Languages

The law does not require the documentation based on article 8b CTA 1969 to be in a specific language, but the information in the documentation should be accessible to the tax authorities. If the documentation is not in Dutch, the tax inspector can ask for a translation. In practice the tax inspector does not ask for a translation if the documentation is in English. So it is recommended that the documentation is in Dutch or English.

The Master and Local File and the CbC-report should be in Dutch or English.

2.13 Confidentiality

The Dutch tax authorities will treat the TP-documentation confidentially. The tax authorities can only exchange the TP-documentation with the tax authorities of another country if there is a legal basis. This legal basis can be found in the national law, a tax treaty or a EU-directive. The TP-documentation is never available to the public.

3. Standards with respect to the content of transfer pricing documentation

The Dutch TP-documentation standards are published in detail in the *Regulation on additional transfer pricing documentation requirements*. This regulation includes models for both the group's master file as for each group members local file. These models are included in paragraph 3.1 and 3.2.

3.1 Master File

The following information should be included in the Master File:

1. Organizational structure

Chart illustrating the MNE's legal and ownership structure and geographical location of operating entities.

2. Description of MNE's business(es)

General written description of the MNE's business including:

- a) Important drivers of business profit.
- b) A description of the supply chain for the group's five largest products and/or service offerings by turnover plus any other products and/or services amounting to more than 5 percent of group turnover. The required description could take the form of a chart or a diagram.
- c) A list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services.
- d) A description of the main geographic markets for the group's products and services that are referred to under b.
- e) A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used.
- f) A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.

3. MNE's intangibles (as defined in Chapter VI of the OECD Transfer Pricing Guidelines)

- a) A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- b) A list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and which entities legally own them.

- c) A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements.
- d) A general description of the group's transfer pricing policies related to R&D and intangibles.
- e) A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

4. MNE's intercompany financial activities

- a) A general description of how the group is financed, including important financing arrangements with unrelated lenders.
- b) The identification of any members of the MNE group that provide a central financing function for the group, including the country under whose laws the entity is organized and the place of effective management of such entities.
- c) A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

5. MNE's financial and tax positions

- a) The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.
- b) A list and brief description of the MNE group's existing unilateral advance pricing agreements (APA's)

3.2 Local File

The following information should be included in the Local File:

1. Local entity

- a) A description of the management structure of the local entity, a local organization chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- b) A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.
- c) Key competitors.

2. Controlled transactions

For each material category of controlled transactions in which the entity is involved, provide the following information:

- a) A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licenses of intangibles, etc.) and the context in which such transactions take place.

- b) The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payer or recipient.
- c) An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.
- d) Copies of all material intercompany agreements concluded by the local entity.
- e) A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior years.
- f) An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.
- g) An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.
- h) A summary of the important assumptions made in applying the transfer pricing methodology.
- i) If relevant, an explanation of the reasons for performing a multi-year analysis.
- j) A list and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information.
- k) A description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both.
- l) A description of the reasons for concluding that relevant transactions were priced on an arm's length basis based on the application of the selected transfer pricing method.
- m) A summary of financial information used in applying the transfer pricing methodology.
- n) A copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions described above.

3. Financial information

- a) Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
- b) Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- c) Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

4. Country-by-Country reporting standards

4.1 Threshold and required content

A MNE with a consolidated group revenue of more than EUR 750 million should provide the Dutch tax inspector with a CbC-report. The report contains the following information about the MNE:

- a. For each state in which the MNE is active, information about the revenue, the earnings before tax (EBT), the paid income tax, the accrued income tax, the stated capital, the accumulated earnings, the number of employees and the tangible assets other than cash and cash equivalents.
- b. A description of every group entity of the MNE mentioning the tax jurisdiction of residence, and if deviant, the state under whose law the group entity is established and the main business or operations of that group entity.

4.2 Notification requirement for subsidiary companies

In principle, the country report is provided by the ultimate parent company of the MNE in its state of residence. The state of residence will exchange the country report automatically with the Dutch tax authorities. A Dutch ultimate parent company needs to provide the Dutch tax inspector with the country report. The Dutch tax authorities will automatically exchange this report with the jurisdictions in which the MNE is active and with which the Netherlands has concluded an Agreement for automatic exchange of information.

The Dutch group entity is required to provide the Dutch tax inspector with the report if:

- 1) The foreign ultimate parent company is not required to provide the tax authorities a report in its state of residence.
- 2) The foreign ultimate parent company is required to provide the tax authorities a report in its state of residence, but there is no Agreement between that state and the Netherlands which provides for automatic exchange of the report.
- 3) The Dutch tax inspector has informed the Dutch group entity there is a structural negligence of the state of residence of the ultimate parent company.

This requirement by the Dutch group entity can be prevented if the report is provided by a surrogate ultimate parent company, under the following conditions:

- 1) The surrogate ultimate parent company is required to provide the report in its state of residence.
- 2) There is an Agreement between that state and the Netherlands which provides for automatic exchange of report.
- 3) The state of residence of the surrogate ultimate parent company is not structural negligent in the exchange of the report.
- 4) The surrogate ultimate parent company has notified its state of residence it will act as a surrogate ultimate parent company.

- 5) The Dutch group entity has notified the Dutch tax inspector which foreign group company has taken over the requirement to provide the report.

In this way it is ensured that the Dutch tax inspector is provided with the report, either by a Dutch taxpayer or by the tax authorities of an other state.

The MNE must provide the report within 12 months after the last day of the financial year of the MNE.

A subsidiary company needs to notify the Dutch tax office which entity of the MNE will submit the country report on behalf of the MNE. This notification requirement applies to each entity. The notification can be made through an online web form. The deadline for submission of the notification is the last day of the applicable financial year of the MNE. For the (first) year 2016, the deadline for the notification is 1 September 2016. Non-compliance with the notification requirement can result in severe penalties. Reference is made to paragraph 2.9.3 above.

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1. Introduction

1.1 Legal context

Section 108 & 109 of the Income Tax Ordinance (ITO 2001) read with Rules 20-27 of Income Tax Rules 2002 (ITR 2002) were introduced and are the domestic codification of Article 9 of the OECD-model convention. It contains a general documentation requirement for all transactions between associated companies (both domestic and foreign companies) with respect to the applied Transfer Prices.

As of July 1, 2016 new standardized documentation requirements are included in the ITO 2001 (Section 108(3)) with complete detail in Draft rules promulgated on 5th June 2017 vide SRO 421(1)/2017. These requirements are the implementation by the Pakistan Government of Action 13 of the OECD/G20-project Base Erosion and Profit Shifting (BEPS). These new documentation requirements include a master and local file and a Country-by-Country Report (CbC-report).

1.2 Practical context

The new documentation requirements can lead to a significant administrative burden for MNE's. Although (mainly) MNE's are affected by the new TP-documentation requirements, the BEPS-project will likely have effect for all taxpayers, since the focus of tax authorities will shift more and more to Transfer Pricing. Practice learns that many taxpayers do not meet the minimum TP-requirements. It is therefore recommended for all taxpayers to take a critical look at its TP-documentation.

2. Formal requirements

2.1 Which taxpayers

Based on above legal provisions a Pakistani taxpayer that enters into transactions with an associated enterprises required to have TP-documentation with respect to those transactions. The definition of an associated enterprise in ITO 2001 follows the wording of article 9 of the OECD-model convention.

The new documentation requirements with respect to the Local File apply to transactions above PKR 50 million and constituent entity of MNE group with minimum turnover of one hundred million Rupees shall maintain Master File. A constituent entity of MNE group with consolidated group revenue of more than EUR 750 million or an equivalent amount in Pakistan Rupees (PKR) should also have to provide the Pakistani tax authorities with a CbC-report.

2.2 Aggregation of transactions

The TP-documentation is required for each individual transaction with associated enterprises above minimum threshold 50 Million Rupees, which cannot be regarded as burden on Tax Payer hence question of aggregation does not arise.

2.3 Deadlines (timing)

The premise is that the TP-documentation is available from the time the transaction is entered into by the taxpayer, whereby the documentation should be based upon information reasonably available at the time of the transaction. Thus, a taxpayer ordinarily should give consideration to whether its transfer pricing is appropriate for tax purposes before the pricing is established and should confirm the arm's length nature of its financial results at the time of filing its tax return.

The local file must be available with Tax authorities any time after the due date of filing of Tax Return (standard 6 months after the end of the fiscal year).

The MNE group entity must provide the tax authorities the CbC-report within 12 months after the last day of the financial year of the MNE group.

2.4 Materiality

As mentioned before, all transactions above minimum threshold of PKR 50 million with associated enterprises should be supported by TP-documentation.

2.5 Retention of documents

A Pakistani taxpayer is required to keep its administrative records for at least six years. Since the TP-documentation is part of the records of a tax payer, this six year period also applies to the TP-documentation.

2.6 Frequency of documentation updates

In practice the documentation requirements based on Section 108 & 109 of the Income Tax Ordinance (ITO 2001) read with Rules 20-27 of Income Tax Rules 2002 (ITR 2002) should be updated every few years to account for normal business and market developments. A significant change in the facts and circumstances could also lead to an update of the documentation.

The master file, local file and CbC-report must be updated every year, because they relate to a particular fiscal year.

2.7 Tax return disclosures

Pakistani (corporate) tax payers should attach Financial Accounts when filing Income Tax Returns. The Financial Accounts disclose information regarding transactions with associated companies/persons. Hence, the tax payer is not required to disclose its TP-documentation as part of the tax return filing.

2.8 Burden of proof

If the taxpayer keeps appropriate TP-documentation in its record and does not have an explicitly unreasonable and unsupported point of view with respect to the used transfer prices, the tax authorities must prove the used transfer prices are not correct.

2.9 Penalties

2.9.1 *General*

Failure to maintain or furnish documents by the taxpayer required to be maintained shall be to penalty or penalties under section 182 of the ITO 2001.

2.9.2 *Penalties in case of a TP-adjustment*

In case of a TP-adjustment the penalty is provided under section 182 of ITO 2001.

2.9.3 *CbC-reporting*

If a taxpayer does not comply to deliver the CbC-report, the penalty is provided under section 182 of ITO 2001.

2.10 Interest

Default surcharge is 12% per annum.

2.11 Use of most reliable information

With regard to the benchmarking analysis to be made, the OECD prefers to use the most reliable information available. In this regard the BEPS-report states the following “*The requirement to use the most reliable information will usually...require the use of local comparables over the use of regional.*” (BEPS Action 13, p. 24-25). However, local comparables may not be sufficiently available. If local comparables are insufficiently available, regional comparables are allowed.

2.12 Languages

The law does not require the documentation based on Section 108 & 109 of the Income Tax Ordinance (ITO 2001) read with Rules 20-27 of Income Tax Rules 2002 (ITR 2002) to be in a specific language, but the information in the documentation should be accessible to the tax authorities. If the documentation is not in English, the tax authorities can ask for a translation. In practice the tax authorities does not ask for a translation if the documentation is in English. So it is recommended that the documentation is in English.

The master and local file and the CbC-report should be in English.

2.13 Confidentiality

The Pakistan tax authorities will treat the TP-documentation confidentially to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

3. Standards with respect to the content of transfer pricing documentation

The Pakistan TP-documentation standards (drafts) are published in detail in the *Regulation on additional transfer pricing documentation requirements*. This regulation includes models for both the group’s master file as for each group members local file. These models are included in paragraph 3.1 and 3.2.

3.1 Master File

The following information should be included in the Master File:

1. Organizational structure

Chart illustrating the MNE’s legal and ownership structure and geographical location of operating entities.

2. Description of MNE’s business(es)

General written description of the MNE’s business including:

- a) Important drivers of business profit.

- b) A description of the supply chain for the group's five largest products and/or service offerings by turnover plus any other products and/or services amounting to more than 5 percent of group turnover. The required description could take the form of a chart or a diagram.
- c) A list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services.
- d) A description of the main geographic markets for the group's products and services that are referred to under b.
- e) A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used.
- f) A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.

3. MNE's intangibles (as defined in Chapter VI of the OECD Transfer Pricing Guidelines)

- a) A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- b) A list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and which entities legally own them.
- c) A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements.
- d) A general description of the group's transfer pricing policies related to R&D and intangibles.
- e) A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

4. MNE's intercompany financial activities

- a) A general description of how the group is financed, including important financing arrangements with unrelated lenders.
- b) The identification of any members of the MNE group that provide a central financing function for the group, including the country under whose laws the entity is organized and the place of effective management of such entities.
- c) A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

5. MNE's financial and tax positions

- a) The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.

3.2 Local File

The following information should be included in the Local File:

1. Local entity

- a) A description of the management structure of the local entity, a local organization chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- b) A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.
- c) Key competitors.

2. Controlled transactions

For each material category of controlled transactions in which the entity is involved, provide the following information:

- a) A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licenses of intangibles, etc.) and the context in which such transactions take place.
- b) The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payer or recipient.
- c) An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.
- d) Copies of all material intercompany agreements concluded by the local entity.
- e) A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior three years.
- f) An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.
- g) Detailed information on transfer pricing methods applied including comparable searches criteria, results of searches and application of transfer pricing method;
- h) Information regarding periodically updating and refreshing comparable searches and the period after which such comparable searches are updated and refreshed;
- i) List of all existing unilateral and bilateral or multilateral advance pricing agreements and copies thereof and other tax rulings to which Pakistan is not a party and which are related to controlled transactions described as aforesaid;

3. Financial information

- a) Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
- b) Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- c) Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

4. Country-by-Country reporting standards

4.1 Threshold and required content

A resident MNE with consolidated group revenue of more than EUR 750 million or Pakistan Rupees equivalent should provide the Pakistan tax authorities with a CbC-report. The report contains the following information about the MNE:

- a. For each state in which the MNE is active, information about the revenue, the earnings before tax (EBT), the paid income tax, the accrued income tax, the stated capital, the accumulated earnings, the number of employees and the tangible assets other than cash and cash equivalents.
- b. A description of every group entity of the MNE mentioning the tax jurisdiction of residence, and if deviant, the state under whose law the group entity is established and the main business or operations of that group entity.

4.2 Notification requirement for subsidiary companies

In principle, the country report is provided by the ultimate parent company of the MNE in its state of residence. The state of residence will exchange the country report automatically with the Pakistan tax authorities. A Pakistani ultimate parent company needs to provide the Pakistan tax authorities with the country report. The Pakistan tax authorities will automatically exchange this report with the jurisdictions in which the MNE is active and with which the Pakistan has concluded an Agreement for automatic exchange of information.

The Pakistan group entity is required to provide the Pakistan tax authorities with the report if:

- 1) The foreign ultimate parent company is not required to provide the tax authorities a report in its state of residence.
- 2) The foreign ultimate parent company is required to provide the tax authorities a report in its state of residence, but there is no Agreement between that state and the Netherlands which provides for automatic exchange of the report.
- 3) The Pakistani tax authorities has informed the Pakistani group entity there is a structural negligence of the state of residence of the ultimate parent company.

This requirement by the Pakistan group entity can be prevented if the report is provided by a surrogate ultimate parent company, under the following conditions:

- 1) The surrogate ultimate parent company is required to provide the report in its state of residence.
- 2) There is an Agreement between that state and the Pakistan which provides for automatic exchange of report.
- 3) The state of residence of the surrogate ultimate parent company is not structural negligent in the exchange of the report.
- 4) The surrogate ultimate parent company has notified its state of residence it will act as a surrogate ultimate parent company.
- 5) The Pakistani group entity has notified the Pakistani tax authorities which foreign group company has taken over the requirement to provide the report.

In this way it is ensured that the Pakistani tax authorities is provided with the report, either by a Pakistani taxpayer or by the tax authorities of an other state.

The MNE must provide the report within 12 months after the last day of the financial year of the MNE.

A subsidiary company needs to notify the Pakistani tax office which entity of the MNE will submit the country report on behalf of the MNE. This notification requirement applies to each entity.

PERU

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1. Introduction

1.1 Legal context

The regulations related to transfer pricing are found in:

- Chapter V article 32°-A of the Income Tax Act (incorporated by article 22°, Legal Decree No. 945, 2003),
- Chapter XIX articles 108° to 119° of Income Tax Act Regulations (chapter incorporated by article 3°, Supreme Decree N° 190-2005-EF, 2005),
- Legal Decree N° 1112, 1120 y 1124 that modifies article 32°-A of the income tax law,
- Supreme Decree N° 258-2012-EF that modifies Income tax regulation (articles 31° to 41°); and,
- In resolutions issued by the National Superintendence of Tax Administration SUNAT.

The main objective of the resolutions are to provide guidelines to taxpayers for determining the Income tax market value for transactions between related parties (either international or domestic). The Income tax market value should apply to transactions performed from, to or through low or nil tax jurisdictions (either international or domestic), and shall correspond to prices and the consideration that may have been agreed with or between independent parties in comparable transactions, in equal or similar conditions.

Where issues are not expressly regulated by the national legislation, the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations issued by the OSCE in accordance with sub-section h) article 32°-A of the Income Tax Act provide further guidance.

Following the release of the OSCE's Base Erosion and Profit Shifting ('BEPS') Legislative Decree 1312 modified the income tax law to incorporate action N° 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting for fiscal year 2016.

1.2 Practical context

The new documentation requirements applicable from 1 January 2017 can impose a significant administrative burden for both national entities and 'MNE's'. Although MNE's are effected by the new TP documentation requirements, BEPS will likely effect all taxpayers, as the focus of the tax authorities shifts more and more to Transfer Pricing. Our experience shows that many taxpayers do not meet the minimum TP requirements. It is therefore recommended for all taxpayers to take a critical look at their TP documentation.

2. Formal requirements

2.1 Which taxpayers

A Peruvian taxpayer that enters into transactions with related parties is required to have TP documentation with respect to those transactions. The definition of related parties is in article 24 of the Peruvian Tax Regulation.

The new local file documentation requirements, which come in from 1 January 2017, apply to any company that performs transactions with related parties or performed from, to or through low or nil tax jurisdictions with annual income of 2,300 UIT (Unidad Impositiva Tributaria = eng. Annual Tax Unit; 1 UIT = approx. PEN 4,050.00) PEN 9.3 million soles (c. USD 2.8 million).

Likewise, the new documentation requirements as of 1 January 2018 apply to any Peruvian or MNE which is part of an economic group, providing the Peruvian company register an annual income of 20,000 UIT: PEN 81 million soles (c. USD 24.5 million).

2.2 Aggregation of transactions

In theory TP documentation is required for each individual transaction with associated enterprises, but in practice this could lead to an unreasonable administrative burden. If a proper aggregation of transactions is possible, for example, because there is a large number of similar transactions, the transactions can be jointly assessed. In this case it is expected that the taxpayer can substantiate the transfer pricing with regards to the aggregation of transactions are an arm's length price.

In addition, companies must undertake a test of benefit that separate: i) core business services and ii) low value-added services. The core business services must be analyzed according to transfer pricing rules based on a comparison analysis and for low value services, the margin over the cost must not exceed 5%.

2.3 Deadlines (timing)

The transfer pricing documentation for a fiscal year (January to December) must be completed by June of the following year. The exact submission date depends on the company ID number.

2.4 Materiality

The Peruvian documentation requirements have no explicit materiality levels. In practice, however, the fiscal authorities often limit their scope of investigation to business transactions with a material impact.

2.5 Retention of documents

In Peru, the expiration date to retain income tax documents is five years. Unfortunately, this rule does not apply for transfer pricing which does not have a specific expiration date.

2.6 Frequency of documentation updates

There is no explicit requirement on how often documentation should be updated.

2.7 Tax return disclosures

No disclosures are required in the tax return.

2.8 Burden of proof

If the taxpayer keeps appropriate TP documentation records and does not have an unreasonable and unsupported point of view with respect to the transfer prices used, the tax authorities must prove the transfer prices are not reasonable. If there is no TP documentation available or there are evident shortcomings in the documentation, the tax inspector could reverse the burden of proof to the tax payer.

2.9 Penalties

2.9.1 *General*

The penalty for not submitting a master file and local file and/or not providing the supporting documentation if it is requested by the Tax Authority, is 0.6% of the net income. However, each penalty will be not lower than PEN 405 soles or higher than PEN 101,250 soles (c. USD 123 and c. USD 30,682).

2.9.2 Penalties in case of a TP-adjustment

A penalty would be 50% of the tax omitted. However, if the fine is paid voluntarily before being detected by the tax administration, the fine would be reduced to 10% of the 50% of the tax omitted.

2.9.3 CbC-reporting

The penalty for not submitting country by country report and/or not providing the supporting documentation if it is requested by the Tax Authority is 0.6% of the net income. However, each penalty will be not lower than PEN 405 soles or higher than PEN 101,250 soles (c. USD 123 and c. USD 30,682).

2.10 Interest

There are no specific rules on interest charged on subsequent TP tax payments.

2.11 Use of most reliable information

There are no specific requirements in Peru regarding the use of comparable data or whether only domestic or foreign comparables will be accepted by the fiscal authorities.

2.12 Languages

The TP documentation must be in Spanish.

2.13 Confidentiality

The Peruvian tax authorities will treat the TP documentation confidentially. The tax authorities can only exchange the TP documentation with the tax authorities of another country if there is a legal basis. This legal basis can be found in the national law or a tax treaty. The TP documentation is never available to the public.

3. Standards with respect to the content of transfer pricing documentation

The regulation of the law that establish the submission of the master file, local file and CbC-report is not yet published.

4. Country-by-Country reporting standards

The regulation of the law that establishes the submission of the master file, local file and CbC-report is not yet published.

PORTUGAL

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1. Introduction

1.1 Legal context

For fiscal years starting on or after 1 January 2002, Portugal has implemented detailed transfer pricing (TP) legislation that broadly follows the OECD guidelines.

Article 63 of the Corporate Income Tax (CIT) Code, complemented by the Regulatory Order 1446 C/2001, published in 2001 and producing effects as from 2012, are the domestic codification of Article 9 of the OECD model convention. Such legislation contains specific documentation requirements for all transactions between associated companies (both domestic and foreign companies) with respect to the applied Transfer Prices.

In 2008, the CIT Code was amended with article 138 which defines the terms and conditions to conclude Advance Transfer Pricing Agreements between a taxpayer and the Tax Authorities.

In 2016 article 121-A was introduced in the CIT code, imposing the elaboration of the Country by Country (CbC) report, in the context of Action 13 of the OECD/G20-project Base Erosion and Profit Shifting (BEPS).

1.2 Practical context

Since 2012, companies whose annual turnover in the preceding year exceeded EUR 3 million are required to produce and keep a TP file with detailed information, namely: (i) disclosure of transactions with related parties as well as the associated amounts; (ii) copy of contracts; (iii) group transfer pricing policies; (iv) functional and economic analysis. This documentation must be concluded until July 15th of the following year.

Taxpayers are required to confirm in their Annual Tax Return (IES) whether the TP documentation has been duly prepared and the methods used to test transfer prices.

As a general practice, the TP documentation is normally subcontracted to a professional external consultancy firm and the economic analysis normally requires the use of a proper database.

2. Formal requirements

2.1 Which taxpayers

Companies whose turnover in the previous tax year exceeds EUR 3 million must prepare a TP file with the requirements mentioned in the point 3.2 below.

Additionally, all companies that enter into transactions with related entities, even if not obliged to prepare a TP file, must fill out additional information as part of their Annual Tax Return.

The CbC-report is required for resident companies in the following circumstances:

- A company holding or controlling one or more entities in overseas jurisdictions and required to prepare consolidated accounts, when the consolidated turnover exceeds EUR 750 million, except if held by an entity that present itself such report;
- A company held or controlled by one or more overseas entities that are not require to comply with such obligations on their jurisdictions, but that would be required to do so should they be resident in Portugal.

Furthermore, a company resident in Portugal that is part of a group that includes an entity obliged to file a CbC-report is required to submit an electronically form with the identification of the CbC-reporting entity and its country.

2.2 Aggregation of transactions

The premise is that TP file is required for each individual transaction with associated companies, but in practice this could lead to an unreasonable administrative burden or will not possible and when the information on comparable operations does not exist or when such information is not sufficient. If a proper aggregation of transactions is possible, for example because there is a large number of similar transactions. The transactions can be jointly assessed. In that case it is expected from the taxpayer that he can substantiate that the used transfer prices with regard to the aggregation of transactions are at arm's-length.

2.3 Deadlines (timing)

Documentation must be prepared by the 15th day of the seventh month following the tax-year end. Delivery of documentation is only obligatory upon notification by the Tax Authorities, usually 10 days upon request.

The date for submission and the official format of the CbC-report have not yet been published.

2.4 Materiality

In principle all transactions with associated enterprises should be supported by a TP file. There are no formal thresholds below which the TP file is required. However, in light of the basic principle that the administrative burden should be justified by the complexity and (tax) importance of the transaction, the more complex and material the transactions are, the more extensive the TP file should be.

2.5 Retention of documents

The taxpayer is expected to maintain the TP file for a period of ten years.

2.6 Frequency of documentation updates

Taxpayers are expected to update every year their TP documentation, as long as their annual turnover exceeds EUR 3 million.

2.7 Tax return disclosures

The main disclosure requirements at TP level are contained in annexes A and H of the Annual Tax Return where the following information must be stated:

- Amount of transactions conducted with each of the related parties;
- Confirmation that the annual TP file has been prepared on a timely basis and is currently retained by the Company.

The deadline for the submission of such return is the 15th day of the seventh month after the corresponding tax year end. Taxpayers have to state in good faith in that Annual Return that they have complied with their annual documentation requirements.

There are no specific TP returns. As mentioned above, part of the TP information is disclosed on the Annual Tax Return and the TP documentation consist in a file containing the information required by law.

2.8 Burden of proof

If the taxpayer keeps appropriate TP-documentation in its records and does not have an explicitly unreasonable and unsupported point of view with respect to the used transfer prices, the tax authorities must proof the used transfer prices are not correct. If there is no TP-documentation available or there are evident shortcomings in the documentation, the tax inspector may promote transfer pricing adjustments under the TP methods present in the law, based on the elements and information to which the Tax Authorities have access without being required to identify the elements and information used as comparable.

2.9 Penalties

2.9.1 *General*

The specific penalty in force for not having the TP file organized ranges from EUR 1,000 to EUR 10,000. Additionally, a 5% fine for each day of delay is also levied.

2.9.2 *Penalties in case of a TP-adjustment*

The tax authorities have four years to raise additional CIT adjustment due to Transfer Pricing in intragroup transactions. If a TP adjustment leads to additional tax liability, a Company must pay compensatory interest to the Portuguese Tax Authorities at year rate of 4% plus a fine for incorrect CIT return (EUR 375).

2.9.3 *CbC-reporting*

Companies that fail to submit the CbC-report within the time frame imposed by the tax authorities face a penalty between EUR 1,000 and EUR 10,000. Additionally, a 5% fine for each day of delay is also levied.

2.10 Interest

There are no specific rules on interest charged in TP adjustment cases. The general compensation rate of 4% per year is levied.

2.11 Use of most reliable information

With regard to the benchmarking analysis to be made, the OECD prefers to use the most reliable comparable information available. Given the relative small dimension of the Portuguese market, often local comparables may not be sufficiently available. In such cases, the use of Spanish comparables is often used. In general, the use of Western Europe comparable will be accepted, but a taxpayer must be in position to support the comparability of the information used.

2.12 Languages

All TP documentation must be made and presented in Portuguese language. If requested by the Tax Authorities, all TP relevant support documentation written in a foreign language must be translated into Portuguese language.

2.13 Confidentiality

The TP documentation is made only for the Company to which the report refers and will only have to be presented to the Tax Authorities if and when requested. All Tax Authorities employees are obliged by the General Tax Law to keep confidentiality about the information presented in the TP file.

3. Standards with respect to the content of transfer pricing documentation

According to the last legislation, the Masterfile concept on TP documentation for associated enterprises is not yet adopted by the Portuguese legislation. However, new legislation in this respect may be published in a near future.

The TP documentation file should include the following information and documentation:

- A description of any special relations that exist with any entities with which commercial, financial or other transactions are carried out;
- A record of the corporate relationship by which the special relationship arose, including any documents that demonstrate a subordination or dependency relationship as mentioned above;
- A description of the activities carried out during the controlled transactions, a detailed list of amounts recorded by the taxpayer over the past three years and, where appropriate, the financial statements of the associated enterprises;
- A detailed description of the goods, rights or services involved in controlled transactions and of the terms and conditions agreed if such information is not disclosed in the respective agreements;
- A description of the activities performed, the assets used and the risks assumed, both by the taxpayer and the associated enterprises involved in the controlled transactions;
- Technical studies on essential areas of the business, namely investment, financing, research and development, marketing, restructuring and reorganization of activities, as well as forecasts and budgets connected with the global business and business by division or product;
- Guidelines regarding the TP policy of the company, containing instructions on the methods to be applied, procedures for gathering information (particularly on internal and external comparable), analysis of the comparability of transactions, cost accounting policies and profit margins obtained;
- Contracts and other legal instruments concluded with both associated enterprises and third parties, together with any other document that may govern or explain the terms, conditions and prices under those transactions;
- An explanation of the method or methods applied to determine arm's-length prices for each controlled transaction and the rationale for the selection;
- Information regarding comparable data used;
- An overview of business strategies and policies, particularly regarding commercial and operational risks that might have a bearing on the determination of transfer prices or the allocation of profits or losses for the transaction;
- Any other information, data or documents considered relevant for determining an arm's-length price, the comparability of transactions or the adjustments made.

The methods accepted by the Tax Authorities to be used in the economic analysis of comparable are:

- The comparable uncontrolled price method;
- The resale price method;
- The cost plus method;
- The profit split method;
- The transactional net margin method;
- Other methods when the methods mentioned above cannot be applied or if these methods do not give a reliable measure of the terms that independent parties would apply.

Additionally, regarding intragroup services agreements, the taxpayer must maintain the following documentation:

- A copy of the agreement;
- A description of the services covered by the agreement;
- A description of the recipient of the services;
- A description of the costs of the services and the criteria applied for their allocation.

Although there is no specific mention in the Portuguese TP legislation, it's widely usual to put the following additional information in the TP file

- Macroeconomic environment;
- Sector context;
- Worldwide and national group presentation;
- Detailed description of the Company's business, of its goods and services provided
- Description of the Company's geographic organization;
- Company and group organizational chart;
- Economic analysis of the Company;
- Company's assets analysis;
- Key clients and competitors;
- Key financial accounts of the comparable companies.

4. Country-by-Country reporting standards

4.1 Threshold and required content

Action 13 of the OECD Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan) has been implemented through the State Budget Law for 2016. Under this law, the CbC-report is required for resident companies in the following circumstances:

- A company holding or controlling one or more entities in overseas jurisdictions and required to prepare consolidated accounts, when the consolidated turnover exceeds EUR 750 Million, except if held by an entity that present itself such report;

- A company held or controlled by one or more overseas entities that are not required to comply with such obligations on their jurisdictions, but that would be required to do so should they be resident in Portugal.

For these companies, the CbC-report must contain the following information:

- Gross revenue segregated by related third-party revenues;
- Earnings before CIT and other tax due on income;
- CIT due and paid;
- Share Capital and Equity value;
- Accumulated earnings;
- Net book value of the tangible assets;
- No. of employees;
- List of entities / branches by jurisdiction;
- Activities carried out by each entity / branch.

The CbC report must be filed until the end of the 12th month after the closing of the fiscal year.

4.2 Notification requirement for subsidiary companies

Any entity resident in Portugal that is part of a group that includes an entity obliged to file a CbC-report is required to submit an electronically form to the Portuguese tax authorities with the following information:

- Identification of the CbC reporting entity;
- Tax residence of such entity.

However, at the date (September 2017) the official form or template to fulfill this new obligation has not yet been published.

ROMANIA

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1. Introduction

1.1 Legal context

Article 11 of the Law 227/2015 regarding the Fiscal Code, as subsequently completed and amended in Government Decision 1/2016 for the approval of the norms for the application of Law 227/2015 regarding the Fiscal Code, states the obligation of the tax authorities to adjust the price of a transaction at the median value of market price (i.e. central trend on the market) when deviations from the market value are noticed.

The Romanian Fiscal Code and the related norms provide that the tax authority should also consider the OECD Guidelines when analyzing the prices applied in related-party transactions. In addition, the legislation on transfer pricing documentation requirements in Romania refers to the European Union Code of Conduct on Transfer Pricing Documentation (C176/1 of 28 July 2006).

As of February 2, 2016 new standardized documentation requirements are included in the National Agency for Fiscal Administration's (NAFA = Romanian tax authorities) Order on Transfer Pricing File (442/2016), regarding the values of transactions, the content, deadline for preparation, and conditions for the request of the transfer pricing file, and the procedures for adjustments/estimates of transfer prices.

On June 13, 2017, the Government Emergency Ordinance No.42 (GEO 42) was published in order to implement country-by-country (CbC) reporting requirements in Romania, amending the Fiscal Procedure Code. The Ordinance is transposing the provisions of Directive (EU) 2016/881 dated May 25, 2016 into the national legislation. The new CbC-reporting provisions follow the OECD Base Erosion and Profit Shifting (BEPS) Project Action 13 initiative.

1.2 Practical context

The new documentation requirements as of February 2, 2016 can lead to a significant administrative burden for MNE's. Whilst large tax payers will or should be aware of the Transfer pricing requirements and will have persons able to deal with such matters, small to medium enterprises may not have these resources and should be aware of the requirements. They may be called upon for them to comply with these rules at some time in the future in the event of a tax audit. In the case of any transaction between related parties, the tax authority may adjust/estimate the amount of the respective income or expenses of either party as necessary to the level considered to reflect the central tendency of the market (i.e., median), either in the case that the tax authority determines that the arm's-length principle is not observed for the respective transaction or that the taxpayer does not provide to the tax authority sufficient evidence to establish whether the arm's-length principle was observed.

On the other hand, the BEPS-project will likely have effect for all taxpayers, since Romania has become associate member of the BEPS-project on June 9, 2017 when Law no 124/2017 came into force. Given that the transfer pricing area is currently one of the most targeted by tax authorities in Romania in tax audits, participation in the implementation of the OECD BEPS action package represents an alignment with transfer pricing international practices.

2. Formal requirements

2.1 Which taxpayers

According to Article 7 point 26 of the Fiscal Code, two legal persons are related parties if:

- One legal person holds, directly or indirectly (through the shareholding of related entities) a minimum of 25 percent of the number/value of shares or voting rights of the other legal person, or it effectively controls the other legal person; or
- One person holds, directly or indirectly (through the shareholding of related entities) a minimum of 25 percent of the number/value of shares or voting rights in the two entities or the person effectively controls both legal entities.

An individual is a related party to a legal entity if she/he holds, directly or indirectly, including the shareholding of related entities, a minimum of 25 percent of the number/ value of shares or voting rights of the legal person, or she/ he effectively controls the legal person. Two individuals are related parties if they are spouses or relatives up to the third degree.

The NAFA's Order on Transfer Pricing File (442/2016) adopted on 2nd of February divides the taxpayers/entities in three categories:

1. The large taxpayers that meet some annual thresholds on transactions with affiliates (EUR 350.000 for goods, EUR 250.000 for services and

- EUR 200.000 for interest) and have to prepare the Transfer pricing file (TPF) annually.
2. The large taxpayers that doesn't meet the first thresholds, and the medium taxpayers, that meet other thresholds (EUR 100.000 for goods, EUR 50.000 for services and EUR 50.000 for interest) and have to prepare the TPF on the request of the fiscal authorities.
 3. All other taxpayers, that do not have to prepare a TPF, but only have to comply with the standard arm's-length principle, according to the general rules of accounting and taxation.

The new documentation requirements as of February 2, 2016 are applicable for the Transfer Pricing Files prepared for the financial years starting with 2016.

2.2 Aggregation of transactions

The aggregation of transactions is not defined by domestic law. Basically, a separate documentation of each single business transaction is necessary, but in practice this could lead to an unreasonable administrative burden.

2.3 Deadlines (timing)

The Transfer Pricing File for the taxpayers, described above at 2.1., point 1, has to be submitted within maximum 10 days of the request made by the fiscal authorities. Nevertheless, the request could not be addressed earlier than 10 days after the term of submitting the profit tax return (generally March 25 of next year).

For the taxpayers described above at 2.1., point 2, the Transfer Pricing Files should be presented upon request addressed by the fiscal authorities. The term for presenting the Transfer Pricing Files to the fiscal authorities shall be between 30 and 60 calendar days, with a one-off extension option, upon a request in writing of taxpayers/payers, to extend the term of presentation for a maximum 30 calendar days.

According to the new CbC-report legislation, a Romanian tax-resident reporting entity, as defined by GEO 42, has to file a CbC-report with the Romanian tax authorities within 12 months of the last day of the MNE group's reporting fiscal year.

2.4 Materiality

In principle, all transactions with associated enterprises should be supported by proper documentation, even if they are below the thresholds set for TP-documentation. If these thresholds are not met the medium and small taxpayer do not have to prepare the Transfer Pricing documentation at all, yet they have to provide supporting documents that attest the compliance with the arm's length principle, in case of a tax inspection, according to the effective provisions of the general accounting and fiscal regulations.

2.5 Retention of documents

According to general accounting and fiscal regulations, a Romanian taxpayer must keep its accounting and fiscal documentation for at least ten years. Since the TP-documentation is part of the fiscal documentation of a tax payer, this ten years period also applies to the TP-documentation.

2.6 Frequency of documentation updates

Starting 2016, the annual obligation for the preparation of the transfer pricing file is applicable only to taxpayers that engage in intragroup transactions exceeding certain thresholds, as described above at 2.1.,point 1. There is no legal binding regulation with regard to the updating of TP documentation, but the threshold on transactions should be analyzed annually and, if the threshold is reached, a new TP documentation should be prepared for that year.

CbC-report must be submitted every year, because it relates to a particular fiscal year, if the conditions described at 4.1 below are met.

2.7 Tax return disclosures

Romanian (corporate) tax payers are not required to disclose their TP-documentation as part of the tax return filing. The tax return does not include any information related to transactions concluded with affiliated parties; however, this information is included in the taxpayer's notes to financial statements. The TP documentation should be submitted separately upon request to fiscal authorities, in the conditions mentioned above (see point 2.3).

2.8 Burden of proof

If the taxpayer keeps appropriate TP-documentation in its record and does not have an explicitly unreasonable and unsupported point of view with respect to the used transfer prices, the tax authorities must prove the used transfer prices are not correct. If there is no TP-documentation available or the documentation is incomplete or inaccurate, the tax inspector could reverse the burden of proof to the tax payer.

2.9 Penalties

2.9.1 *General*

The taxpayers failing to provide the transfer pricing documentation to the tax authority upon request are sanctioned with a penalty between RON 12.000 and RON 14.000 for the large and medium taxpayers, respectively, and between RON 2.000 and RON 3.500 for small taxpayers.

2.9.2 *Penalties in case of a TP-adjustment*

Transfer prices adjustments/estimates to a company's profits are subject to 16 percent corporate income tax and late payment interest and penalties. A penalty is applied for late payment of the additional corporate income tax assessed, at

a rate of 0,01 percent per day of delay. Also, for tax liabilities due starting from 2016 onward, penalties for failure to report (currently 0,80 percent per day) would also be applicable. If this type of penalty is applicable, then it is a substitute for the late payment penalty (only one type of penalty can be applied). If the tax claims are paid within a specific term after the tax decision assessing the tax liabilities is issued, then this penalty is reduced by 75%; however, if the tax liabilities are the result of tax evasion, then this penalty is increased by 100%.

2.9.3 CbC-reporting

According to GEO 42, there are monetary penalties in case an entity fails to report the information in a complete, timely and accurate manner (of up to RON 30.000 – 50.000), or could be triggered when a Romanian entity fails to report the required information (of up to RON 70.000 – 100.000).

2.10 Interest

In case of a TP-adjustment interest is due if the additional assessment is imposed, after the profit tax for the year in question is due. Interest is applied for late payment of the additional corporate income tax assessed, at a rate of 0,02 percent per day of delay.

2.11 Use of most reliable information

With regard to the benchmarking analysis to be made, the NAFA Order 442/2016 provides that: “The comparability analysis will take into account the territorial criteria in the following order: national, European Union, pan-European, international”.

2.12 Languages

The transfer pricing documentation has to be prepared in Romanian language. If the transfer pricing documentation is prepared in a foreign language, it should be translated and provided to the tax authority in Romanian (including any other documents to be attached to the transfer pricing documentation, as formally requested by the Romanian transfer pricing regulations, e.g., intercompany agreements).

As the CbC-Report is new in domestic legislation and the template and the content for CbC-reports, including the notification template, is to be published by a National Agency for Fiscal Administration Order, there is no specification about the language of CbC-report to be submitted by the taxpayers. The new legislation provides that CbC-reports could be exchanged by the Romanian tax authorities with other member states in the Romanian language or in any other official language of the European Union.

2.13 Confidentiality

The Romanian tax authorities will treat the TP-documentation confidentially. The tax authorities can only exchange the TP-documentation with the tax

authorities of another country if there is a legal basis. The TP-documentation is never available to the public.

3. Standards with respect to the content of transfer pricing documentation

In Romanian legislation, there is no Master File and Local File, but the Transfer Pricing File must have two parts:

- Description of the Group/Information on the Group (meaning the activity of the Group, the entities with their description and place of carrying their activity, the functional analysis, the most important transactions, etc.); and
- Description of the Company/Information on the Company (activity, related parties transaction, functional analysis, economic comparability, conclusions)

Starting the publishing of GEO 42, CbC-Report will be the third part of the transfer pricing documentation.

3.1 Information about the Group

1. The organizational, legal and operational structure of the group (list of all entities within the group, including the permanent establishments and their identification data), the geographical location of the component entities specifying the shareholdings at the level of the group, during the period for which the transfer pricing documentation file has been prepared;
2. Overview of the group's activities, its business strategy, including the changes in the business strategy within the period for which the transfer pricing documentation file has been prepared;
3. Description of any transfer pricing policy at the level of the group, if the case;
4. General description of transactions carried out between related parties;
5. General description of functions performed, risks assumed and assets employed in the transactions carried out between related parties (functional analysis), including the changes in the functional profile of the entities within the group, during the period for which the transfer pricing documentation file has been prepared;
6. General description of functions performed, risks assumed and assets employed, at the level of the group, that contribute significantly and definitive to the value-adding processes undertaken, taking into consideration each entity part of the group;
7. Description of owners of intangibles and property rights pertaining, within the group (patent, license, trade name, brand, logo, knowhow, etc.), if the case;
8. General description of transfer pricing policy regarding financial arrangements (intra-group financing services) between related parties, if the case;

9. Description of any business restructuring within the group, during the period for which the transfer pricing documentation file has been prepared;
10. General description of research and development activities within the group, if the case;
11. Description of advance pricing arrangements entered into by the taxpayer/payer or by other entities part of the group, except for those issued by the National Agency for Tax Administration.

3.2 Information about the taxpayer

1. The organizational, legal and operational structure of the taxpayer/payer (a list of its related parties, including their permanent establishments and identification data), the geographical location of the related parties, specifying the direct and indirect affiliation relations of the taxpayer/payer, during the period for which the transfer pricing documentation file has been prepared, highlighting the occurred changes;
2. General description of activities performed by the taxpayer/payer, business strategy, including any changes within the business strategy during the period for which the transfer pricing documentation file has been prepared;
3. General description of transactions carried out between each related party as well as the context surrounding them;
4. Description of the transfer pricing policy established at the level of the taxpayer/payer;
5. Description of the implementation procedure when applying the transfer pricing methodology for the transactions carried out between the taxpayer/payer and its related parties;
6. Description of research and development activities at the level of the taxpayer/payer, if the case;
7. General description of the transfer pricing policy regarding the intra-group financing services of the taxpayer/payer with related parties, along with the presentation of financing agreements concluded both with related parties and independent lenders, if the case;
8. Description of the agreements concluded between the taxpayer/payer and its related parties, regarding cost contribution arrangements;
9. Description of intra-group transactions consisting in provision of services, detailing the allocation keys, if the case, describing the services which have a significant and definitive contribution to the value-adding processes undertaken;
10. Presenting the main outlets for tangible goods delivery/services provision of the taxpayer/payer with its related parties;
11. Description of transactions related to any business restructuring that involve the taxpayer/payer, during the period for which the transfer pricing documentation file has been prepared;
12. Detailed description of the transactions carried out with related parties: a) flow of transactions; b) invoicing flow; c) amount of transactions carried out with the related party/parties; d) amount of payments/receipts

- associated with each transaction performed by the taxpayer/payer with each related party.
13. Detailed presentation of the functional analysis and comparability analysis:
 - a) characteristics of tangible and intangible goods or services, including the financing services subject to the transaction/transactions with related parties;
 - b) specific business strategies (e.g. market penetration strategies, extraordinary events, etc.);
 - c) functions performed, risks assumed and assets employed by the taxpayer/payer and by the related party/parties within the transaction(s) carried out;
 - d) contractual terms of the transaction(s), with attached copies of the contracts/agreements acting as legal framework of the transaction(s) carried out with related parties;
 - e) particular economic circumstances of the transaction(s);
 - f) comparability analysis: information regarding the external or internal comparable transactions (description of search strategy for comparable companies and of the information sources, presenting the values of the financial indicators used for the comparability analysis, description of possible comparability adjustments that were made, presenting the comparable entities list as well as the list of rejected entities from the comparable sample as a result of the manual search, with the provision of the rejection reasons, etc.). Justification of the arm's length principle shall be based on reasonable availability of data for the taxpayer/payer at the moment the identification/preparation of the transfer pricing documentation, by presenting documents which support the justification;
 - g) presentation of critical assumptions that formed the basis for establishing the transfer pricing policy;
 - h) presentation of reasons for using a multiannual or annual analysis of data, as the case;
 14. Description of the method used for determining the transfer prices for each transaction and validation of the selection criteria; if using transfer pricing methods that involve the selection of the tested party, the rationale for its selection shall be presented;
 15. Presentation of unilateral or bilateral/multilateral advance pricing agreements, related to the transaction(s) carried out, for which the National Agency for Tax Administration does not take part;
 16. Description of other relevant information for the taxpayer/payer.

4. Country-by-Country reporting standards

4.1 Threshold and required content

According to the new provisions, a MNE with a consolidated group revenue of more than EUR 750 million should submit a CbC-report. The report contains the following information about the MNE:

- a. For each state in which the MNE is active, information about the revenue, the earnings before tax (EBT), the paid income tax, the accrued income tax, the stated capital, the accumulated earnings, the number of employees and the tangible assets other than cash and cash equivalents.
- b. A description of every group entity of the MNE mentioning the tax jurisdiction of residence, and if deviant, the state under whose law the group entity is established and the main business or operations of that group entity.

4.2 Notification requirement for subsidiary companies

The Romanian legislation also provides for filing of CbC reporting by a surrogate parent entity, i.e. a Romanian tax-resident entity may be appointed by the MNE group to file a CbC report in Romania on its behalf.

In addition, other Romanian resident entities (than the parent company of the group) will be required to file a CbC report if one of the criteria below is met:

- The ultimate parent entity of the group does not have the obligation to file a CbC report in its own jurisdiction of tax residence;
- The jurisdiction in which the ultimate parent entity is resident for tax purposes has a current international agreement in which Romania is part but does not have a qualifying competent authority agreement in effect in which Romania is part;
- There is a persistent failure in the automatic exchange procedure with the competent authority of the ultimate parent company required to file CbC reporting.

The MNE must provide the report within 12 months after the last day of the financial year of the MNE. The legislation will apply to fiscal years beginning on or after 1 January 2016.

Romanian resident entities part of MNE groups have to notify the Romanian tax authorities if they are the ultimate parent, the surrogate parent or other Romanian resident entity required to file the CbC report. Alternatively, the Romanian resident entity has to notify the Romanian tax authority regarding the identity of the MNE member filing the CbC report and its residency.

According to the new law, this notification is due by the last day of the MNE group's reporting fiscal year, but no later than the deadline for filing a tax return for the respective constituent entity for the preceding fiscal year.

Non-compliance with the notification requirement can result in severe penalties. Reference is made to paragraph 2.9.3 above.

RUSSIA

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1. Introduction

1.1 Legal context

In Russia the transfer pricing and tax control of related party transactions have been governed by Sections V.1 and V.2 of Part 1 of the Russian Tax Code since 2013.

The BEPS plan was signed in October 2015. So far the following efforts have been taken in Russia to implement the provisions of BEPS plan Action 13 on transfer pricing issues:

1. A legal bill (the “draft bill”) on amending the Russian Tax Code has been developed. This draft bill incorporates the three-level system of preparing TP documentation (Local file, Master file and CbC-Report, as per Action 13 of the BEPS Plan) into the national tax law.
As of September 2017 this draft bill has been submitted to the Russian State Duma (the Russian parliament). The plan is to review and adopt it by the end of 2017. In this case the requirements for filing new reporting forms to the tax authorities (in particular the CbC-Report and Master File) will apply with respect to financial years starting from 2018. Taxpayers are free to file such forms for earlier periods on a voluntary basis.
2. Russia has joined the multilateral Agreement of competent authorities on automatic exchange of CbC-Reports. The Russian Federal Tax Service will be included into the exchange of CbC-Reports with competent authorities from foreign states and will use all information contained in them for pre-inspection analysis. Russian taxpayers will also be able to file CbC-Reports on a centralized basis, in particular, with respect to group companies that are tax residents of foreign countries.

1.2 Practical context

Introduction of the three-level system for preparing TP documentation is expected to affect large multinational companies. Parent companies of MNE (multinational entities) that are tax residents of the Russian Federation will bear this additional burden. They will have to prepare and file CbC Reports to tax authorities and prepare a Master File relating to transactions within their group.

As for subsidiaries operating in Russia, which are part of major international groups, the effects for them are not so significant. In many respects, the Russian Tax Code provisions currently in effect were developed based on OECD recommendations. In particular, the currently effective Russian Tax Code provisions on the content of documentation on controlled transactions do not significantly differ from the recommended content of Local files. The alignment of Russian law with the BEPS plan in this respect would not lead to material changes in the regulatory framework.

2. Formal requirements

2.1 Which taxpayers

Controlled transactions are:

1. Related party transactions (as defined in the Russian Tax Code). Some exceptions are provided, in particular for transactions of up to a certain amount between Russian companies (see p. 2.4 of this Review).
2. The following non-related party transactions:
 - related party transactions concluded using independent intermediaries
 - foreign trade transactions for the following commodities traded in global stock exchange trading (oil, ferrous and non-ferrous metals, precious metals and stones, mineral fertilizers);
 - transactions with persons and companies registered in offshore zones (tax havens). The list of such states is designated by the Russian Ministry of Finance.

Taxpayers who enter into transactions with related parties (controlled transactions) are obliged to file the respective notification to the tax authority on an annual basis. The controlled transaction notification and its completion procedure are approved by the Russian Federal Tax Service. Also the tax authority may request documents evidencing the pricing procedure and the market level of prices in controlled transactions.

Under the draft bill based on Action 13 of the BEPS Plan, the list of taxpayers who must report controlled transactions will remain virtually unchanged.

2.2 Aggregation of transactions

Taxpayers are free to compile information on controlled transactions and review a group of homogeneous transactions, meaning transactions with identical (homogeneous) goods (work, services), entered into in comparable commercial and/or financial conditions.

However, it is noteworthy that the Russian Tax Code establishes very broad and detailed provisions on comparability of the subject and conditions of transactions, which are difficult to conform with in practice.

2.3 Deadlines (timing)

According to applicable Russian Tax Code provisions:

1. The controlled transaction notice should be filed on or before May 20 of the year immediately following the calendar year when the controlled transactions were concluded.
2. The documents for tax control purposes for a particular transaction (group of transactions) are provided on a separate request from the competent tax authority. Documents may not be requested from the taxpayer before June 1 of the year immediately following the calendar year when the controlled transactions were entered into. Documents shall be provided by the taxpayer within 30 days from the request.

The draft bill based on Action 13 of the BEPS Plan establishes the deadlines for filing additional reports:

1. Taxpayers participating in a multi-national enterprise (“MNE”) file the Notice of participation in the MNE to the tax authority within 8 months from the end of the last fiscal year for the parent company (see p. 4.2 of this Review).
2. The CbC-Report is filed by the parent company of the MNE or its authorized participant (which is a tax resident of the Russian Federation) within 12 months from the end of the fiscal year for which the consolidated statements of the group are filed. Also the tax authority in established cases (see p. 4.2 of this Review) may send a request to the Russian company participating in the MNE for provision of the CbC-Report within a period of time that may not be less than three months.
3. The Master file is provided by the taxpayer on the separate request from the competent tax authority within three months. The Local file is also provided on the separate request of the tax authority and must be provided within 30 days from the request.

2.4 Materiality

The general provision of the Russian Tax Code is that controlled transactions are transactions between related parties. However, there are some materiality thresholds. In particular, transactions between Russian companies using the general taxation system are recognized as controlled transactions only if the total income under transactions between them during the calendar year

exceeds RUB 1 billion. For companies that apply a preferential tax regime, the thresholds are lower (the lowest such threshold is RUB 60 million).

Related party transactions where one party is not a Russian tax resident are controlled, irrespective of the amount.

As concerns the volume and the level of detail of the information disclosed to a tax authority, the Russian Tax Code contains a general recommendation to the taxpayer that the degree of detail and comprehensiveness of the documents presented to the tax authorities shall be proportionate to the degree of complexity of the transaction and the manner in which the transaction price is determined.

2.5 Retention of documents

General provisions of the Russian Tax Code establish that taxpayers are obliged to maintain for four years the accounting data and documents required for tax assessment and payment, in particular, documents evidencing the generation of revenues, incurring of costs and tax payments.

2.6 Frequency of documentation updates

The Russian Tax Code does not contain special provisions concerning the procedure for, and frequency of, updating the information.

However, as the controlled transaction notification is filed annually and information on the transactions entered into in a certain calendar year is requested in the course of the tax audit, the recommendation is that the taxpayers should update information on intra-group transactions annually.

According to the draft bill based on Action 13 of the BEPS Plan, the CbC-Report, Master file and Local file are also to be prepared and updated annually.

2.7 Tax return disclosures

TP documentation on controlled transactions are not part of tax statements. The mere entering into controlled transactions is not disclosed in the income tax return. However, a separate report form (the controlled transaction notification) is filed with the tax authority.

If prices in related party transactions do not comply with market prices, resulting in the understatement of taxes, the taxpayer is free to independently and voluntarily adjust the taxable base and tax amounts in the annual return for the respective tax. The information that identifies the transaction, with respect to which the taxpayer independently adjusted the taxable base and the tax amount, is shown in explanations to the tax returns.

2.8 Burden of proof

When the tax authority implements control procedures in connection with related party transactions, the general rule is that the burden of proof is on the tax authority. For instance, if the taxpayer in assessing revenues in related party transactions reasonably applied one of the methods specified in the Russian Tax Code, the tax authority should apply the same method during the audit. Application of another method is only possible if the tax authority proves that the method the taxpayer applied does not enable one to determine if the conditions of the controlled transaction are comparable with those of arm's length transactions.

However, if a taxpayer did not file the requested documents on controlled transactions or if the filed documents are clearly insufficient and unreasonable, the tax authority may apply its own more suitable method in the course of its audit. In the future, the burden of disputing the conclusions and additional tax amounts based on the tax audit shall pass to the taxpayer.

2.9 Penalties

2.9.1 *General*

According to Russian Tax Code non-provision of the controlled transaction notification when due, or provision of a notification containing unreliable information, entails a RUB 5,000 penalty.

According to the bill based on the Action 13 BEPS Plan penalties for non-filing of the new report forms are much higher:

1. Non-filing of the Notice of participation in an MNE or filing a notice with unreliable information – RUB 50,000 penalty.
2. Non-filing of the Master file or Local file at the request of the tax authority and when due – RUB 100,000 penalty.

2.9.2 *Penalties in case of a TP-adjustment*

If the tax audit detects that the prices in related party transactions do not conform to those in arms' length transactions, and this resulted in underpayment of taxes, the penalty is 40% of the underpaid tax amount but not less than RUB 30,000. The taxpayer shall be released from this liability if he submitted the documents substantiating the market level of the applied prices under controlled transactions in the course of the audit to the tax authority.

2.9.3 *CbC-reporting*

According to the draft bill, based on the Action 13 of the BEPS Plan, non-filing of the CbC Report when due or filing of a report with unreliable information shall entail the imposition of a RUB 100,000 penalty.

2.10 Interest

If in connection with the non-market level of prices in controlled transactions the taxpayer adjusts the taxable base and the tax amount voluntarily and

independently and pays the shortage on taxes on or before the profit tax payment date for the respective tax period, then no penalty interest is imposed.

If the assessment of the taxable base and underpayment of taxes were detected during a tax audit, the general provisions of the Russian Tax Code impose penalty interest for the untimely payment of taxes in the amount of 1/300 of the refinancing rate of the Russian Central Bank applicable at that time for each day of delay.

2.11 Use of most reliable information

The Russian Tax Code does not contain direct indications on the detailed content and sources of information used for analysis. Besides information on specific deals, information in public domain on the established level of the market prices and stock exchange quotations as well as data of information and pricing agencies can be used. Tax authorities recommend that links to documents and other information sources should be added to TP documentation on controlled transactions.

2.12 Languages

Under the general provisions of the Russian Tax Code, the statements, information and documents are filed to the tax authorities in Russian.

The CbC-Report may be filed in a foreign language if the parent company of an MNE is not recognized as a Russian tax resident.

2.13 Confidentiality

According to the general provisions of the Russian Tax Code, any information on a taxpayer received by the tax authorities constitute tax secrets (except for certain information expressly stated in law).

The bill based on the Action 13 of the BEPS Plan contains special provisions with respect to information received from CbC-Reports: the competent authority is entitled to transfer CbC-Reports to competent authorities of foreign countries as part of the automatic exchange of information allowed under multinational treaties to which Russia has signed up.

3. Standards with respect to the content of transfer pricing documentation

3.1 Master File

1. Organizational structure

Information on the ownership structure of the MNE, listing the persons who are participants and the countries where they operate (as a chart).

2. Description of MNE's business(es)

General description of business of the group of companies, including:

- a) The main factors influencing the financial performance;
- b) A description of the supply chain and the main suppliers of manufactured products and services;
- c) List and summary of the main intra-group service contracts, including the description of functional options of the main group participants involved in provision of these services and pricing approaches as part of the provided services of the group;
- d) A summary functional review of business of the group participants that influence the financial performance, in particular, description of the main performed functions, the assets in use, and the economic (commercial) risks undertaken;
- e) Information on the main transactions related to the restructuring of business, and the purchase and disposal of assets in the fiscal year under review.

3. MNE's intangibles (as defined in Chapter VI of the OECD Transfer Pricing Guidelines)

- a) A description of the group's strategy on development, possession and use of intangibles, in particular, placement of the main R&D centers and their management;
- b) A description of intangibles having a material impact on the pricing methods and the list of group participants holding such assets;
- c) A list of contracts related to intangibles as concluded between the group's participants;
- d) A general description of the pricing method related to development, possession and use of intangibles;
- e) A general description of transactions involving the transfer of rights to intangibles between the group participants in the fiscal year under review, indicating such participants and the remuneration for such transfers.

4. MNE's intercompany financial activities

- a) A summary of the group's financing system (including financing raised from persons other than group participants);
- b) An indication of the participants who act in the interests of the other participants of the group, including the countries (territories) that are the place of registration of such participants and their place of management;
- c) A general description of the pricing method related to financing of the group's participants.

5. MNE's financial and tax positions

- a) Consolidated financial statements for the most recent fiscal year (if not available, any consolidated statements for management, tax and other purposes);
- b) A list and summary of pricing agreements and tax explanations from competent authorities, applied in transactions between the group participants and related to revenue allocation between states.

3.2 Local File

So far, the procedure for preparing these documents is to a certain extent described in Section V.1 of Part 1 of the Russian Tax Code. Documents shall be a set of documents or single document drafted in a free format and containing the following information:

- 1) **On the taxpayer's business related to this transaction:**
 - a) The list of persons, who entered into the controlled transaction, a description of the controlled transaction, its conditions, including description of the pricing method
 - b) The functions of parties to the transaction, the assets in use, and the economic (commercial) risks undertaken
- 2) **Information on transfer pricing methods:**
 - a) Substantiation of the reasons for selection of the method being used;
 - b) Indication about the information sources used;
 - c) Calculation of the market price interval (profitability range) for the controlled transaction, with description of approach, and selection of the comparable transactions used;
 - d) Amount of received revenues (profit) and/or total incurred costs (losses) resulting from the controlled transactions;
 - e) Adjustments of the taxable base made by the taxpayer and amounts of tax (or losses) etc.

According to the draft bill on the basis of Action 13 BEPS Plan, for Russian companies participating in an MNE, for which the total revenues meet the established criterion (RUB 50 billion, see p. 4.1 of this Review), the Local file should additionally contain the following information:

1. **Local entity**
 - a) Information on the taxpayer's management structure as well as on other persons to whom the management reports are to be filed and countries (territories) where such persons carry out their core lines of business;
 - b) Information on the taxpayer's operations and market strategy, as well as information on conducted restructuring and transfer (receipt) of intangibles;
 - c) Existing market competition level (main competitors, consumers of manufactured products, suppliers of raw and materials) and the impact of particular features of the competitive environment on pricing processes.
2. **Controlled transactions**
 - a) Description of reasons based on which it was concluded that the price used in the controlled transaction meets the market price;
 - b) Description of adjustments made to align the transaction conditions;
 - c) Copies of material intra-group agreements that influence the pricing in controlled transactions;

- d) Copies of pricing agreements, tax explanations of competent authorities, applied in transactions between the group participants related to the controlled transactions under review.

3. Financial information

- a) Auditor's report on the financial statements (accounts) of the taxpayer for the most recent reporting period (if any).

4. Country-by-Country reporting standards

4.1 Threshold and required content

In the bill based on the Action 13 of the BEPS Plan:

The requirement to submit a CbC-Report (also to prepare a Master file and expanded Local file) applies to taxpayers being participants in a global group of companies (MNE), for which the overall revenues according to consolidated financial statements for the fiscal year exceeds RUB 50 billion, if the parent company of the group is a Russian tax resident. If the parent company of the MNE is not a Russian tax resident, the limit established in laws of the foreign country where the parent company is tax resident is used, if higher.

The CbC-Report shall contain information on:

- 1) the overall income/revenues from transactions for the fiscal year, in particular including a breakdown of the overall amount of income/revenues for transactions with group participants and associated enterprises and total income/revenues from transactions with other persons;
- 2) the pre-tax profit/ loss for the fiscal year;
- 3) income tax paid in the fiscal period for which the report is drafted;
- 4) assessed income tax for the fiscal period, for which the report is drafted;
- 5) share capital as of the fiscal year end date
- 6) accumulated profit as of the fiscal year end date;
- 7) headcount for the fiscal year;
- 8) tangibles as of the fiscal year end date;
- 9) identity information for each group participant, indicating the state, according to the laws of which such participant was established, the state of its tax residency and the core lines of business of each group participant.

The CbC Report is submitted to the tax authority in the established format in electronic form (which has not yet been officially approved).

4.2 Notification requirement for subsidiary companies

As for subsidiaries operating in Russia which are part of major global groups, whose overall revenues exceed the established RUB 50 billion threshold, the draft bill based on the Action 13 of the BEPS Plan introduces the requirement

to file a Notice of participation in the MNE, which contains the following information:

- 1) Name and identity data of the taxpayer being a participant in a global group of companies;
- 2) Information on whether or not the taxpayer that files the notice is a parent company or an authorized participant in a global group of companies;
- 3) Name and identity data of the parent company and the state of its tax residency;
- 4) Name and identity data of any other participant that has filed a CbC-Report, being an authorized participant in a global group of companies, and the reasons substantiating its right to file a CbC-Report;
- 5) The date of the last day of the period for which the consolidated financial statements are prepared.

As per the general rule, the CbC-Report is filed by the parent company of the MNE or its authorized participant. However, a tax authority may require that a Russian taxpayer which is a group participant file this report in the following cases:

- 1) If the tax authority has received information from competent authorities of foreign states that the parent company or the authorized representative of the group has defaulted on its legal duty to submit the CbC-Report;
- 2) If the state, whose tax resident is the parent company or the authorized participant of the group, is included in the list of countries that constantly default on their duties to automatically exchange CbC-Reports, as approved by the competent federal executive body (the Russian Ministry of Finance).

SLOVAKIA

MEMBER FIRM

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1. Introduction

1.1 Legal context

Corporate income tax

Income tax in the Slovak Republic is governed by Act 595/2003 Coll. on Income Tax, as amended. Section 17(5) of the Act states that differences between prices agreed in related party business transactions includes differences reducing taxable income which are caused by what can be translated as “off-market transfer pricing”.

Section 18 of the Income Tax Act requires compliance with the arm's length principle in related party transactions and the use, in particular, of methods based on either a comparison of prices (comparable uncontrolled price method, resale price method and cost plus method) or methods based on a comparison of profits (profit split method and transactional net margin method).

Related parties are defined in the Income Tax Act, specifically in Sections 2(n) and 2(r), as a close person or a person with economic, personal or other ties. All controlled transactions by both non-resident related parties, as defined by Section 2(r) and related parties within The Slovak Republic are tested for such compliance.

Taxpayers are required to maintain transfer pricing documentation that covers controlled transactions and describes the valuation method used in these transactions, with the content and scope of such transfer pricing documentation defined by the Minister of Finance of the Slovak Republic in Guidance MF/014283/2016-724.

Value added tax

Value added tax charged in the Slovak Republic is governed by Act 222/2004 Coll., as amended, with Section 22(8) specifically providing rules for mark-to-market. When goods or services are supplied by related parties, the taxable amount is determined by open market value.

Tax Code

An important rule regarding tax audits is contained in Section 3(6) of the Tax Code, Act 563/2009 Coll. on Tax Administration, where the tax authorities will not take artificial arrangements into consideration which do not reflect economic reality and whose only purpose is to obtain a tax advantage.

Country-by-country reporting

The Slovak Republic has implemented Council Directive (EU) 2016/881, amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation. The implemented EU Directive is a tool for combating tax evasion and aggressive tax planning.

Implementation of the Directive is provided in Slovak Act 43/2017 Coll., amending Act 442/2012 Coll. on International Assistance and Cooperation by the Tax Authority. This Act requires multinational enterprise (MNE) groups to provide country-by-country (CbC) reporting annually.

Double taxation treaties

The Slovak Republic is a signatory to a total 66 double taxation treaties, including in particular all EU and OECD countries. These double taxation treaties have been drafted on the basis of the OECD Model Tax Convention on Income and on Capital, so also Article 9 – Associated Enterprises with regard to the arm's length principle.

1.2 Practical context

Whenever the tax authorities conduct a tax audit, they will review whether the method and calculation of transfer pricing differences is correct and based on the arm's length principle. In any tax audit announced after the tax period has ended and the tax return has been filed, taxable entities will be required to submit transfer pricing documentation within 15 days of having received notice of the audit.

In practice, the Slovak tax authorities will require taxpayers to produce evidence of their transfer pricing policies, so it is advisable for transfer pricing documentation to have been prepared in advance to support the taxable entity's assertions.

2. Formal requirements

2.1 Which taxpayers

All undertakings are obliged to prepare transfer pricing documentation. This includes natural persons, legal entities and permanent establishments in the Slovak Republic (related parties as defined in Section 2(n) and 2(r) of the Income Tax Act). The public sector (national, municipal and city governments) is only required to prepare transfer pricing documentation to a limited extent. Controlled transactions are defined as transactions between related parties. Transfer pricing documentation must cover all domestic controlled transactions as well as foreign controlled transactions.

Controlled transactions are defined in Section 2(ab) of the Income Tax Act as transactions between associated enterprises, in the meaning of a legal relationship or other similar relationship between two or more related parties as

defined by Section 2(n) and 2(r), at least one of whom is either a taxpayer with income defined under Section 6 or a taxable income generating legal person (income from business activities or disposal of property).

2.2 Aggregation of transactions

Transfer pricing documentation is prepared for each material transaction either separately or as an aggregation of controlled transactions. Controlled transactions are aggregated for several controlled transactions with the same related party in the following cases:

- a. When they are of the same type and concluded under comparable conditions;
- b. When they are closely interconnected and interdependent; or
- c. When they are comparable in terms of the assets used, functions and risks

Transfer pricing documentation is prepared for an aggregation of controlled transactions whenever it provides a more reliable picture of the valuation methods used. Transfer pricing documentation should also indicate the reasons for aggregating the controlled transactions.

2.3 Deadlines (timing)

Transfer pricing documentation should be pre-prepared prior to the start of the tax period so that over the course of the year controlled transactions are measured with respect to the arm's length principle. Data for the current year can be refined (e.g. with a determination of materiality and of the structure and volume of controlled transactions) to consider subsequent events after the close of the tax year.

The tax authorities are allowed under Section 18(11) of the Income Tax Act to request transfer pricing documentation even after the deadline for filing tax returns for the tax period ended – normally three calendar months after the end of the tax period covered in the submitted transfer pricing documentation or after the extended deadline for submitting the tax return.

2.4 Materiality

Materiality is defined in words and numbers. Section 17(9) of Act 431/2002 Coll. on Accounting, as amended, considers information to be material if its absence could affect the decision-making of a person using the information. However, the materiality level in the case of transactions and the aggregation of transactions is EUR 1,000,000 in the relevant tax period.

In practice, materiality is quantified as 1% of turnover, 0.5% of net income or 0.5% of total assets, or all three indicators in conjunction. Materiality is set for each taxable entity individually in such a way as to logically justify it.

2.5 Retention of documents

Section 35 of the Accounting Act generally sets the basic retention period for financial statements and accounting documents at ten years. Section 69 of the Tax Code permits tax audits to be conducted by the authorities for ten years (5 + 5 years) after the filing of the year's tax return. Finally, Section 76 of the Value Added Tax Act also requires documents pertaining to VAT to be retained for ten years. For these reasons, transfer pricing documentation should be retained for ten years, too.

2.6 Frequency of documentation updates

The tax period is technically the same as the calendar year; therefore transfer pricing documentation is prepared independently for each tax period (either the calendar year or the entity's fiscal year). In the absence of new facts affecting the valuation of controlled transactions, information from the previous tax period can be used in preparing new transfer pricing documentation.

2.7 Tax return disclosures

The deadline for filing tax returns for the current year is March 31st of the following year. Any taxable entity can ask for a three-month extension of the deadline with a simple notice to the tax authorities, with no need to undergo any consent procedures. The extension can even be up to six months if there is income from foreign sources.

Tax returns include information about related party transactions, which are entered in Table 1 of the return. This table shows the volume of related party transactions by transaction type.

2.8 Burden of proof

The burden of proof is on the taxable entity to prove to the tax authorities the data it declares on its tax return. Transfer pricing documentation is in essence precautionary evidence that the valuation of controlled transactions is consistent with the arm's length principle.

Tax audits are conducted by the tax authorities on a specific taxable entity, which has the burden of proof during such audits. It is recommended for transfer pricing documentation to be prepared separately for each specific legal entity. Clearly, the same transaction between different legal entities should be described and justified to reflect a transaction between a seller and buyer that are related parties.

2.9 Penalties

Two types of penalties are levied for incorrect information provided on a tax return: the penalty itself and interest on tax arrears. In The Slovak Republic, the

penalty is 10% of subsequently assessed tax and interest is charged at a rate of 15% per annum on the amount of tax paid late. The tax authorities can forgive penalties at the taxable entity's request and for legitimate reasons, such as if there is a risk of economic collapse due to the assessed tax or if the error was caused by complicated or unclear tax regulations.

2.9.1 General

Sections 154 and 155 of the Tax Code provide for a general civil fine ranging from EUR 60 to EUR 3,000 for failure to comply with any non-pecuniary obligation under tax law. This fine can also be imposed for failure to submit transfer pricing documentation as such a duty is provided in Section 18(1) of the Income Tax Act.

2.9.2 Penalties in case of a TP-adjustment

No separate penalties are provided for transfer pricing adjustments. The penalties presented in the above sections 2.9 and 2.9.1 would apply in the same way to transfer pricing adjustments.

2.9.3 CbC-reporting

The Slovak Republic has implemented the relevant European directives covering CbC-reporting into its laws concerning international assistance and cooperation in tax administration (see 1.1). The law requires MNE groups to provide CbC-reporting annually which, among other things, contains information enabling an overview of the amount of taxes paid in individual countries.

Ultimate parent entity means a constituent entity of a MNE group that owns directly or indirectly a sufficient interest in one or more other constituent entities and is required to prepare consolidated financial statements in its jurisdiction of tax residence (and is not included in any higher-level consolidation). Any ultimate parent entity that is tax resident in the Slovak Republic will file CbC reporting with the Financial Directorate within twelve months of the final day or the MNE group's reported financial year.

Surrogate parent entity means a constituent entity which has been appointed by an MNE group as a sole substitute for the ultimate parent entity to file CbC-reporting in the jurisdiction of tax residence if the ultimate parent entity is not obliged to do so.

Constituent entity means a separate legal entity in a MNE group that is either included in the consolidated financial statements or would be so included there if it were not excluded on the grounds of size, and permanent establishments or business units for which separate financial statements are prepared. A constituent entity with tax residence in the Slovak Republic is required to inform the Financial Directorate of whether it is an ultimate parent entity, surrogate parent entity or a constituent entity, at latest by the deadline for filing its tax return for the reported tax year.

The automatic exchange of information will operate with the Financial Directorate forwarding CbC-reporting to the jurisdiction of tax residence for the constituent entity and will receive CbC-reporting from individual member states of the European Union.

The tax authorities are not allowed to adjust the taxable income due to a breach of transfer pricing principles solely based on information in CbC-reporting provided by individual countries. Information from CbC-reporting will not be disclosed and will be used mainly for selecting companies for tax audits, so transfer pricing documentation should be available as a preventive measure to cover against a possible tax audit.

The tax authorities will levy a fine of up to EUR 10,000 for failure by a taxable entity liable for tax in the Slovak Republic to submit CbC-reporting and a fine of up to EUR 3,000 for failure by such an entity to inform the tax authorities that it is a constituent entity in an MNE group.

Ultimate parent entities and surrogate parent entities are required to submit first-time CbC-reporting to the Ministry of Finance after February 28th 2017 for the MNE group's financial year beginning during the 2016 calendar year.

Only those multinational enterprise groups that meet the threshold of consolidated revenue for the MNE group of at least EUR 750,000,000 are required to submit CbC-reporting.

2.10 Interest

There are no separate interest penalties provided to cover transfer pricing documentation. The penalties presented in the above sections 2.9 and 2.9.1 would apply in the same way with respect to interest.

2.11 Use of most reliable information

Transfer pricing documentation is prepared to reflect the arm's length principle, using the valuation methods provided by Slovak law – methods based on either a comparison of prices (comparable uncontrolled price method, resale price method and cost plus method) or methods based on a comparison of profits (profit split method and net trading margin method) or other methods that follow the arm's length principle (such as the transactional net margin method – proving costs are covered with a margin reasonable for the sector). Taxable entities preferably use whatever method ensures compliance with the arm's length principle.

The arm's length principle is established on a comparison of conditions agreed in controlled transactions between related parties with terms that would have been agreed between independent entities in comparable transactions under comparable circumstances in relevant periods.

Comparison takes the activities performed by the comparators into account, in particular production, assembly, research and development, purchasing and sales, and the like, as well as the range of business risks, the properties of the

asset or service being compared, negotiated terms, the economic environment of the market and business strategy. Conditions are comparable if there is no significant difference between them or if the effect of these differences can be eliminated.

2.12 Languages

Section 18(11) of the Income Tax Act requires primary use of the national language (Slovak) in transfer pricing documentation to be submitted to the tax authorities. However, both the tax authorities and the Financial Directorate allow transfer pricing documentation to be submitted in another language at the request of the taxable entity.

2.13 Confidentiality

Tax administration staff members are bound by Section 11 of the Tax Code to treat all matters concerning tax administration as confidential and so transfer pricing documentation is also covered by tax secrecy provisions. The Penal Code defines threats to tax secrecy as a criminal act. Access to tax returns and other documents covered by tax secrecy is only made available to other entities or persons that have received written permission from the taxable entity.

Tax returns are not accessible to the public and subject to tax confidentiality, where another entity or person is only allowed to view the return with the written consent of the taxable entity. Documents which are accessible to the public are financial statements, annual reports and the auditor's report.

3. Standards with respect to the content of transfer pricing documentation

Tax entities have a legal obligation to provide transfer pricing documentation. Mandatory content of transfer pricing documentation is provided in Ministry of Finance Guidelines (see 1.1); compliance with such mandatory content is recommended, particularly concentrating on the selection of an appropriate valuation method and the justification for it, while transfer pricing documentation should not include unnecessarily extensive theoretical material.

3.1 Master File

1. Organizational structure

Aggregate related parties are required to be identified and this information should additionally describe property and personal connections. This should be a transparent organizational chart and summary of ownership among the group of related parties.

There are three levels of transfer pricing documentation prescribed in the Slovak Republic based on the scope of information provided: brief, general and full. Brief documentation is prepared (a) by individuals, (b) micro-enterprises

and (c) legal entities whose controlled transactions are confined to The Slovak Republic. Full transfer pricing documentation is prepared by selected taxable entities such as large enterprises whose financial statements are presented under International Financial Reporting Standards (IFRS), entities doing business with a person or entity from a country with no double taxation treaty with the Slovak Republic and entities which have deducted a high tax loss or applied a specific tax abatement that was provided to them as an incentive to invest in the country.

2. Description of multinational enterprises (MNE's)

General transfer pricing documentation in the Master File must identify the individual MNE members including their legal forms, describe the MNE's organizational and ownership structure and provide a general description of the functions each member of the MNE has along with foreseeable or anticipated risks at all members.

In the case of full transfer pricing documentation, the Master File must additionally describe the MNE group's business activities and commercial strategy, identify the sector where it operates, business relationships and MNE group activities in the sector including changes from the previous tax period. The Master File also should contain the MNE group's planned commercial strategy, expected future activities and its projects and targets including any changes from the previous tax period. Any other information that contributes toward proving compliance with the arm's length principal should also be the Master File.

3. MNE intangibles (as defined in Chapter VI of OECD Transfer Pricing Guidelines)

Assets which the related party uses for the purpose of a controlled transaction are required to be included in transfer pricing documentation, and as such also intangible assets if they exist.

4. MNE intercompany financial activities

Transfer pricing documentation also must include a description of the related party's business activities in which it engages for the purpose of a controlled transaction, hence also financial activities such as providing credit, if the related party does so.

5. MNE financial and tax positions

MNE financial and tax positions are only presented if this information contributes toward clarifying the arm's length principle in the valuation of controlled transactions.

3.2 Local File

1. Local entity

General transfer pricing documentation in the Local File must identify the local entity including its legal form, describe its organizational and ownership structure, business activities and commercial strategy, identify the sector where

it operates and provide a general description of the local taxable entity's operations, assets it uses and any foreseeable or anticipated risks for it. There should also be a list of controlled transactions (especially the subject of the transactions, persons or entities, financing capacity and terms, a description of the local entity's transfer pricing system (especially the method selected and the rationale behind it) and information about payments in cash and in kind which were provided on behalf of the taxable entity to healthcare providers.

In the case of full transfer pricing documentation, the Local File must additionally describe the local entity's business activities and commercial strategy including changes from the previous tax period. The Local File also should contain the local entity's planned commercial strategy, business plan, expected future activities and its projects and targets including any changes from the previous tax period. Other items that should be included in the Local File are an overview of the intangible assets which the local entity owns and uses (patents, trademarks, brands, commercial names, know-how and the like) along with how and to what extent they are utilized, a list of previous valuations agreed by the local entity such as the valuation method, a list of cost contribution agreements (CCAs) where the local entity shares costs and any other transfer pricing decisions, information on intragroup financial transactions (both direct and indirect lending relationships), cash pooling, guarantees and accordingly the use of derivative and other financial instruments including hybrid instruments accompanied by changes from the previous tax period. Finally, the Local File should also have internal and external comparative data about related parties and a comparability analysis (Information on the factors determining the comparability of controlled transactions with uncontrolled transactions, the nature of assets and services, a functional analysis, contractual terms, economic environment and specific business strategies).

2. Controlled transactions

Controlled transactions are all transactions (e.g. merchandise, services, interest, licenses) between two enterprisers that are associated enterprises with respect to each other. In Slovak law these are both related parties in the jurisdiction of tax residence and non-resident entities. Transfer pricing documentation must include a list of controlled transactions.

3. Financial information

A local taxable entity provides financial information in its transfer pricing documentation only if this information contributes toward clarifying the arm's length principle in the valuation of controlled transactions. In practice, this information is often calculated from the financial statements, which is subsequently used in the comparability analysis. For instance, cost-effectiveness (profits to costs) or sales margins (sales revenue to cost of sales).

4. Country-by-Country reporting standards

4.1 Threshold and required content

Only those multinational enterprise groups that meet the threshold of consolidated revenue for the MNE group of at least EUR 750,000,000 are required to submit CbC-reporting.

CbC-reporting consists of the following mandatory data: aggregated amounts of revenue, before tax income, income tax paid, current tax, registered capital, retained earnings or accumulated losses, number of employees and tangible assets other than cash and cash equivalents for every country of tax residence in which the MNE group operates, and includes the currency in which these amounts are expressed. In addition, CbC-reporting includes a list of core entities by country of establishment and the nature of their principal economic activities.

4.2 Notification requirement for subsidiary companies

Subsidiaries established in the Slovak Republic are required to notify the Financial Directorate of the Slovak Republic about CbC-reporting.

SPAIN

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1. Introduction

Spain is an OECD member country and its transfer pricing rules follow the arm's length principle, the OECD Guidelines, and the work of the European Union Joint Transfer Pricing Forum.

Spanish tax authorities: Agencia Estatal de la Administración Tributaria (State Agency of Tax Administration, or AEAT) and Dirección General de Tributos (Directorate General of Taxation, or DGT).

Spanish Tax Law: Corporate Income Tax Law (CITL).

1.1 Legal context

Currently, Spanish transfer pricing regulations are contained in Law 27/2014, approved on 27 November 2014, Article 18, which has entered in force for tax periods starting on and after, January 1, 2015. In addition, the documentation requirements are included in Articles 13 to 16 of the Corporate Income Tax Regulation (CITR), published by Royal Decree 634/2015, approved on 10 July 2015. The regulations set for new informational requirements are applicable for periods starting on and after, January 1, 2016.

The new requirements are the implementation by the Spanish government of Action 13 of the OECD/G20 – project Base Erosion and Profit Shifting (BEPS). It regulates the need for a Country by Country Report (CbC-Report) in addition to the Master File and Local File.

In the past, general transfer pricing documentation requirements was introduced in Spain in 2006 (Law 36/2006), applicable for tax periods starting on and after January 1, 2006. Mainly, prior documentation requirements have stated the obligation for any taxpayer, subject to the CITL, to prepare and have at the disposal of the Tax Administration the transfer pricing documentation that reflects that the intragroup transactions (with domestic and foreign companies) were performed under the arms' length principle. At that point, the burden of

proof was also changed to the taxpayer, and the arm's length nature could be tested with one of the transfer pricing methods specified in the law.

Furthermore, the Royal Decree 1793/2008 was published, and new specific transfer pricing documentations requirements arrived for intercompany transactions performed as from 19 February 2009. It was referred to the content of the Master file and the Local file. Later, the Royal Decree 897/2010 and the Royal Decree -Law 13/2010 introduced certain amendments for exemptions to transfer pricing documentation requirements. Those rules are governing the period February 2009 to December 2015.

1.2 Practical context

The new documentation requirements as of January 1, 2016, can lead to a significant administrative burden for MNE's. Therefore, documentation requirements have been simplified for groups with a global turnover below EUR 45 million (significant less content of information).

On the other hand, CbC Report is mandatory for groups with a global turnover exceeding EUR 750 million. Spain has signed the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of CbC-Reports.

2. Formal requirements

2.1 Which taxpayers

Based on Article 18.3.5^o, letter d, CITL, a transfer pricing documentation is required if the local taxpayer carries out related transactions (both domestic and international) with a total value higher than EUR 250.000. Article 18 defines the nature of related parties (persons and entities), where the related party connection for partners or shareholders, is defined starting 25 percent.

Transactions within the same consolidated tax group are exempted, as well as others listed by Article 18.3 CITL.

The annual corporate income tax return (Form 200) requires the disclosure of information relating to the related party transactions which were undertaken during the fiscal year (including the amount, Tax ID of the related entity, the relationship of each related party with the taxpayer, the transfer pricing methodology applied to test the related party prices applied, among others).

2.2 Aggregation of transactions

Transfer pricing documentation is theoretically due to be under direct/individual analysis. However, an aggregation is possible in case of similar transactions (in terms of functions, risk, products), if the transactions are linked (by a proved reason), etc.

2.3 Deadlines (timing)

Transfer pricing documentation should be available to the Tax Administration at the end of the period at which the Corporate Income Tax Return is filed. (i.e. for tax periods ending December 31, the deadline is July 25 of the next fiscal period).

Regarding the CbC-Report, the deadline of its fulfilment is before the end of the fiscal year for which the information will be prepared (Form 231).

2.4 Materiality

Concerning materiality, all transactions with associated enterprises should be supported by TP-documentation if the company overcomes the abovementioned threshold of EUR 250,000.

In practice, the fiscal authorities often focus their scope of investigation on business transactions with a material impact (i.e. management services expenses, royalties, among others).

2.5 Retention of documents

In general, Spanish taxpayers of the Corporate Income Tax are required to maintain the Transfer Pricing documentation for four years, at least. Notwithstanding, it changes to 10 years, if corporate tax losses of previous years are applied. The retention period starting the day after the end of the due period to present declaration or self-assessments, corresponding to the fiscal year in which the right to compensate was generated (Article 26.5 CITL).

2.6 Frequency of documentation updates

The transfer pricing documentation must include all transactions undertaken during the whole fiscal year (usually, from January 1st to December 31st). If said documentation, prepared for a single fiscal year, is still valid for next periods, a new transfer documentation is not necessary, without prejudice of the necessary updates.

The CbC-Report must be updated every year as they might change from one year to another.

2.7 Tax return disclosures

Up to fiscal year 2015, Spanish legislation does not consider any special/separate tax return for Transfer Pricing. As mentioned before, the annual corporate income tax return (Form 200) requires the disclosure of information relating to the related party transactions which were undertaken during the fiscal year.

For tax periods starting on and after January 1, 2016 this information will be presented in a separate form (Form 232 is pending government approval).

2.8 Burden of proof

In the Spanish case, we must make a time division regarding the burden of proof:

- Concerning fiscal years before 1/12/2006, the burden of proof was with the Tax Administration, who was the one to determine and justify that the transactions undertaken were not made at market value and hence did not follow the arm's length principle.
- Regarding fiscal years after 1/12/2006, the burden of the proof is now to the Company, which must argue that its operations have been made at market value and they hence comply with the arm's length principle.

2.9 Penalties

For fiscal periods between 2009 and 2014:

- If the tax authorities do not make a transfer pricing adjustment, a tax penalty of 1,000 euros per item or EUR 10,000 per group of omitted, or misleading documentation may be imposed.
- When the tax authorities adjust the pricing of a transaction, penalties may be up to 15% of the gross adjustment, with a minimum threshold of double the penalty that could be applied if the documentation were lacking or incomplete.

For fiscal periods as from 2015, specific penalties are included in the law (Article 18.13 CITL), which derive from not having correct documentation to apply the arm's length principle (i.e., operations do not occur at market value):

- Per fact, a penalty of EUR 1,000 is established, if a tax adjustment does not take place.
- Penalties per group of omitted, inaccurate or false facts are of EUR 10,000.
- When the tax authorities adjust the pricing of a transaction, penalties may be up to 15% of the gross adjustment.

Tax regulations also consider "secondary adjustments": in those transactions where both values will have, for the related parties, the tax treatment that corresponds with the nature of the profit realized.

2.10 Interest

Article 19 CTR states the existence of interests for TP adjustments, which are calculated from the end of the due date for the presentation of self-assessments of each of fiscal years in which the related-party operation has produced effects, or if the regularization gave place to devolution and the self-assessment was presented out of time from the date of the ex-temp presentation of the self-assessment.

Interests will be calculated, in its case, until the date in which the settlement (or the self-assessment) is practiced.

2.11 Use of most reliable information

Regarding the benchmarking analysis to be made, the OECD prefers to use the most reliable information available (“...usually...require the use of local comparable over the use of regional”. BEPS Action 13, p. 24-25). Notwithstanding, the Spanish Tax authority has not expressed a preference towards the use of local comparables in a benchmarking study and Spanish or pan-European comparables are accepted. Secret comparables are not used by the tax authority. The AEAT uses the pan-European Amadeus / Catalyst transfer pricing database and external comparatives in analyzing transfer price.

2.12 Languages

There is no specific rule regarding the language of the Transfer Pricing documentation. If provided in English, a Spanish translation could be requested during a tax audit process.

2.13 APA

Unilateral, bilateral, and multilateral Advance Pricing Agreements (APA) can be negotiated with the tax authorities (there is no filing fee).

The new regulation has extended the valid term to a six-year period (prior regulation was four years, and six year period could include the previous year, when the time limit for filing the tax return has not yet expired, the current year and the next four years).

2.14 Confidentiality

The Spanish tax authorities will treat the TP-documentation confidentially. The tax authorities can only exchange the TP-documentation with the tax authorities of another country if there is a legal basis. This legal basis can be found in the national law, a tax treaty or a EU-directive. The TP-documentation is never available to the public.

3. Standards with respect to the content of transfer pricing documentation

The Spanish transfer pricing documentation standards are incorporated in articles 13-16 CITR. The CITR specify the documentation requirements for the group and the local entity, in articles 15 and 16, respectively; while the standards regarding the CbC-Report are detailed in articles 13 and 14.

As mentioned before, the regulations set for new informational documentation requirements are applicable for periods starting on and after, January 1, 2016.

3.1 Master File

The following information should be included in the Master File:

- 1. Information about the structure and organization of the group**
 - a) General description of the organizational, legal and operative structure of the group, as well as any relevant change in them.
 - b) Identification of the different entities belonging to the group.
- 2. Information about the group activities**
 - a) A description of the main activities of the group, as well as a description of the main geographic markets in which the group operates, its main profit sources and the supply chain of those goods and services representing, at least, a 10 percent of the net business turnover of the fiscal year.
 - b) A general description of the functions performed, risks assumed and main assets used by the group entities, including changes in comparison to the previous fiscal year.
 - c) A description of the group's transfer pricing policy including the price fixing method(s) adopted by the group.
 - d) A list and brief description of the cost sharing agreements and of the relevant services agreements between group entities.
 - e) A description of the business restructuring transactions, acquisitions or divestitures occurring during fiscal year.
- 3. Information about the group's intangible assets**
 - a) A general description of the group's overall strategy for the development, ownership and exploitation of intangibles, including location of main R+D facilities where activities are made, as well as their addresses.
 - b) A list of the group relevant intangibles for transfer pricing purposes and which entities legally own them, as well as a general description of the group transfer pricing policy related to them.
 - c) The amount of the intercompany transactions, involving intangibles, identifying the associated enterprises related to intangible and their tax residence territories.
 - d) A list of agreements between the group entities related to intangibles, including cost contribution agreements, principal research services agreements and license agreements.
 - e) A general description of any relevant transfer of interest in intangibles among associated enterprise carried out during the fiscal year concerned, including the entities, countries and compensation involved.
- 4. Information about the financial activity**
 - a) A general description of how the group is financed, including the main financing agreements subscribed with non-related persons or entities.
 - b) The Identification of any member of the Multinational Enterprise (MNE) group that provide a central financing functions for the group, including

the country under whose laws the entity is organized and the place of effective management of those entities.

- c) A general description of MNE group transfer pricing policies, related to financing agreements between associated entities.

5. Financial and fiscal situation of the group

- a) The MNE's annual consolidated financial statements for the fiscal year concerned, whenever prepared for compulsory reasons or voluntary purposes.
- b) A list and brief description of MNE group existing unilateral advance pricing agreements (APAs) and any other tax ruling regarding to the allocation of income between countries.

3.2 Local File

The following information should be included in the Local File:

1. Information about the taxpayer

- a) A description of the management structure of the local entity, a local organization chart, and a description of the individuals to whom local management reports about the evolution of taxpayer's activities, indicating the countries or territories in which those have their tax residence.
- b) A description of taxpayer's business activities, its business strategy and, if appropriate, including an indication whether the local entity has been involved in or affected by business restructuring or intangibles transfers in the fiscal year.
- c) Main competitors.

2. Information about controlled transactions

- a) A detailed description of the nature, characteristics and amount of the controlled transactions.
- b) An identification (name, business name, tax address and tax identification number) of the taxpayer as well as the related persons or related-party entities regarding the intercompany transaction.
- c) A detailed comparability analysis, in terms of Article 17 of this Regulation.
- d) A description of the transfer pricing method selected, including the reasons for selecting that method, its application process, the set of comparables, and the value or range of values provided by them.
- e) If applicable, information regarding the expenses sharing criteria linked to services jointly rendered in benefit of various related-party persons or entities, as well as the corresponding agreements, if there are, and the cost sharing agreements in terms of Article 18 of this Regulation.
- f) A copy of existing unilateral advance pricing agreements (APAs) and any other tax ruling regarding to the related-party operations described above.
- g) Any other relevant information at the taxpayer's hand, that have been used to determine the valuation of its related-party operations.

3. Economic-financial information of the taxpayer

- a) The taxpayer's annual financial statements.
- b) Reconciliation between the financial information used in applying the transfer pricing methodology and the annual financial statements, if necessary and relevant.
- c) The financial information of the set of comparables and the source they come from.

3.3 Special considerations – Spanish case

- Spanish Permanent Establishment (PE) of foreign resident taxpayers are also obligated to prepare a Local file in Spain (Article 13.2.b CITR).
- The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- Other generally accepted methods and valuation techniques (distinct from the transactional gross and net margin method), that are in line with the arm's length principle, can be applied (Article 18.4 CITL).
- It must be said that the Master file requirements will not be compulsory to those groups with a net turnover below 45 million euros (Article 18.3 CITL and Article 16.4 CITR). If applicable, the specific documentation will contain the following simplified content:
 - a. A detailed description of the nature, characteristics and amount of the controlled transactions.
 - b. An identification (name, business name, tax address and tax identification number) of the taxpayer as well as the related persons or related-party entities regarding the intercompany transaction.
 - c. Identification of the transfer pricing method selected,
 - d. The set of comparables, and the value or range of values provided by them.
- In addition, there is a separate regulation for taxpayers complying Article with 101 CITL (small companies with a Turnover less than EUR 10 million). In this case, they should present an standardized documentation (Article 16.4 CITR).

4. Country-by-Country reporting standards

A novelty introduced by the new CITR (2015) is the requirement of information for those company groups whose consolidated group turnover is more than EUR 750 million. According to Article 14 CITR, the CbC Report must include:

1. Information regarding gross group income, with separate information between the related-party entities and the third-party ones.
2. The Earnings Before Interests and Taxes (EBIT) or results or other with similar nature or concept.
3. The Corporate Income Tax paid (or other with similar nature or concept), including withholdings payments.
4. The accrued Corporate Income Tax (or other with similar nature or concept), including withholding payments.
5. The amount of equity and other existing funds at the end of the fiscal year.
6. The average number of employees.

Spain

7. Material assets and real estate investments other than treasury and accounts receivable.
8. A list of resident entities, including permanent establishments, and main activities undertaken by each of them.
9. Other information that is considered relevant and an explanation, where appropriate, of the information included.

As a summary of the transfer pricing documentation requirements in Spain, please see the following table:

Turnover (million euros)	CbC-Report	Master File	Local File	Simplified Local documentation	Standardized documentation
<10					X
10 to 45				X	
45 to 750		X	X		
>750	X	X	X		

SWITZERLAND

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1. Introduction

1.1 Legal context

On 23 November 2016, the Federal Council adopted the dispatch on the multilateral agreement on the exchange of country-by-country reports and the federal act required for its implementation. If Parliament approves the proposal and a referendum is not held, the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country (“CbC”) Reports (“CbCR”) and the Federal Act on the International Automatic Exchange of CbCRs of Multinational Enterprises (“MNE”) could enter into force at the end of 2017, implying that qualifying MNEs operating in Switzerland would start having to prepare CbCRs from the fiscal year 2018 onwards with automatic exchange of CbCRs starting in 2020.

The legislation proposal does not adopt the three-tiered approach to transfer pricing documentation consisting of a master file, local file and CbCR (i.e. currently only a CbCR must be submitted).

Switzerland does not currently have any other transfer pricing requirements and does not plan to make transfer pricing documentation compulsory in the future, but it is expected to monitor the situation.

1.2 Practical context

Given the minimum consolidated turnover threshold of the equivalent of EUR 750 million as of 1 January 2015, an estimated 200 Swiss MNE groups will be affected.

Currently, it is not anticipated that Switzerland will implement other recommendations included in the BEPS Action 13 Report, such as the preparation of the transfer pricing Master file and Local file. However, Swiss MNEs are well-advised to protect their intercompany arrangements by establishing and maintaining appropriate transfer pricing documentation.

Provided that entry into force will occur as scheduled, MNEs may voluntarily choose to submit CbCRs even for earlier tax years than 2018, which would be exchanged by the Swiss Federal Tax Administration (SFTA) with competent tax authorities of the partner jurisdictions as from 2018.

2. Formal requirements

2.1 Which taxpayers

The legislation proposal would require Swiss-parented multinational entities (MNEs) with annual consolidated group revenue of the equivalent of EUR 750 million (CHF 900 million) or more to submit the first CbCR for fiscal years beginning on or after 1 January 2018.

In the following circumstances, Swiss group entities (other than Swiss-parented MNEs) also would be obliged to file CbCRs:

- The jurisdiction in which the ultimate parent entity is resident for tax purposes does not have a qualifying competent authority agreement in effect to which Switzerland is a party for filing the CbCR for the reporting fiscal year.
- There has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity and the SFTA has notified the relevant Swiss taxpayer.
- The Swiss company was elected (by the MNE Group) as a substitute for the ultimate parent company, and acts as 'Surrogate Parent Entity' for CbC-reporting purposes.

2.2 Deadlines (timing)

The CbCR must be submitted by the Swiss taxpayer to the SFTA within 12 months of the group's financial year-end. Thus, the CbCR for 31 December 2018 year-ends must be submitted on 31 December 2019 at the latest. Hence, Swiss CbC reporting is expected to be exchanged starting in the first half of 2020.

2.3 Tax return disclosures

The proposed law would provide two options to the Swiss-resident ultimate parent MNEs to submit on a voluntary basis CbCRs with 2016 and 2017 financial information:

- Option 1 is to file the CbCR to the SFTA, which then would exchange the CbCR with other tax jurisdictions based on the existing double tax

- treaties. Hence, the information in a voluntarily submitted CbCR should be protected by the confidentiality provisions as per the applicable treaty.
- Option 2 provides the MNE the possibility to submit the CbCR directly through its local affiliate. This option 2 was specifically introduced in the proposed law in order not to breach article 271 of the Swiss Penal Code (this article makes so-called “unlawful activities on behalf of a foreign state” a crime).

2.4 Penalties

Under the draft law, failure to provide the CbCR or providing an incorrect or incomplete CbCR would trigger a penalty of up to TCHF 250. In addition, penalties of up to TCHF 50 could be imposed for non-cooperation with the SFTA during the CbC reporting examination process.

2.5 Languages

The Swiss country-specific report will have to be prepared in either German, French, Italian or English. Financial information must be stated in one single currency, either Swiss francs or the foreign functional currency adopted by the MNE.

3. Standards with respect to the content of transfer pricing documentation

The minimum standard only concerns the CbCRs and their automatic annual exchange. Preparation of the master and local files are not covered.

4. Country-by-Country reporting standards

The exact filing method, content, and form of the Swiss CbCR is still to be confirmed. Further information from SFTA is expected, but it is anticipated that Switzerland will follow the respective OECD guidelines in the BEPS Action 13 Report and the published user guide for tax administrations and taxpayers (OECD, March 2016, Version 1.0).

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1. Introduction

1.1 Legal context

Article 39 of Tax Code of Ukraine requires that some transactions are recognized as “controlled transactions” (CT). CT are subject to control by the tax authorities and which must be performed under the arm’s length principle.

According to information provided by the Ministry of Finance of Ukraine, Ukraine joins the implementation of Base Erosion and Profit Shifting (BEPS) action plan from 1 January 2017.

The official letter with Ukraine’s commitment to implement the BEPS plan was handed by the Finance Minister of Ukraine to the OECD Secretary General on November 22, 2016. At the time of writing no changes to the effective tax legislation of Ukraine have been drafted to implement the above actions of the BEPS plan. If such changes are passed during 2017, the changes will not apply earlier than from 2018.

1.2 Practical context

Ukrainian companies need to review if their transactions meet the threshold specified in Tax code (both quantitative and qualitative) and prepare thorough transfer pricing (TP) documentation (only in the Ukrainian language or supported by official translation) so as to confirm that the arm’s length principle has been applied to such transactions.

2. Formal requirements

2.1 Which taxpayers

According to the law, the following business transactions carried out by Ukrainian taxpayers are deemed to be controlled:

- Transactions with non-resident related parties;
- International transactions on the sale of goods through non-resident commission agents;

- Transactions with non-residents that do not pay corporate profit tax ("CPT") and/or which are not tax residents of the country where they have been registered as legal entities and which incorporated with specific legal forms (there is a list of such legal forms of non-residents approved by the Cabinet of Ministers of Ukraine)
- Transactions with non-residents (both related and non-related parties) registered in a jurisdiction listed by the Cabinet of Ministers of Ukraine, i.e.:
 - a state where the income tax rate is lower than in Ukraine by 5% or more;
 - a state which does not publicly disclose information on legal entity ownership;
 - a state which is not a party to international agreements with Ukraine containing provisions on information exchange.

2.2 Aggregation of transactions

The criteria for grouping several controlled transactions for transfer pricing purposes is prescribed in 39.3.8 of Article 39 of Tax Code of Ukraine.

The grouping principle allows the pooling of transactions together to apply resale price method, cost-plus method, transactional net margin method and profit split method if they are closely interrelated, continuations of each other, or consecutive or regular. Such transactions may include, but are not limited to:

- goods/services under long-term agreements (in particular those performed throughout the entire reporting period);
- with rights for the use of different intangibles associated with a goods/services;
- a series of closely related products (product group) and/or services;
- different goods/services, provided that one good/service, or a group thereof, create demand for the other good/service, or a group thereof.

2.3 Deadlines (timing)

Since 2017 the deadline for submitting the report on controlled transactions is stated as 1 October of the year following the reporting year.

TP documentation should be submitted at the request of the Ukrainian tax authorities within one month.

2.4 Materiality

Generally, all transactions within defined thresholds should be supported by TP documentation. There are no formal thresholds below which no TP documentation is required.

The value criteria for the abovementioned transactions are deemed to be controlled if both of the following conditions are met:

- 1) the annual income of a taxpayer from any activities, defined in accordance with the accounting standards, exceeds UAH 150 million (net of indirect taxes) for the reporting year;
- 2) the volume of such transactions of the taxpayer with one counterparty, as defined under the accounting standards, exceeds UAH 10 million (net of indirect taxes) for the reporting year.

2.5 Retention of documents

It is established by the Tax Code of Ukraine that the documents and information for TP must be retained for 7 years.

2.6 Frequency of documentation updates

There are no specific requirements for updating the TP documentation. However, where TP documentation is requested to be submitted to the tax authorities it should be prepared in line with current legal requirements.

2.7 Tax return disclosures

Taxpayers must complete a special appendix to the corporate income tax return to disclose any transfer pricing adjustments.

2.8 Burden of proof

The burden of proof is formally set on the tax administration. However, the taxpayer must provide the tax administration with all the required transfer pricing documentation so as not to give the tax administration reason to adjust the tax base.

Prices in controlled transactions are assumed not to be at arm's length, unless otherwise proved by the taxpayer. Companies must also prove that the commercial and economic conditions of a controlled transaction are comparable to those for transactions between unrelated parties. The burden of proof, thus, shifts from the tax authorities to taxpayers engaged in controlled transactions

If the Ukrainian tax authorities undertake an audit of a controlled transaction, they are required to use the same price determination methods as the taxpayer has used to determine the price payable in relation to the transaction.

If the tax authorities can prove that the method of calculation used by the taxpayer did not allow the taxpayer to correctly determine the price payable in relationship to the controlled transaction; then the tax authorities are able to challenge the method that the tax payer has chosen and are able to use an alternative method to calculate the arm's length price.

2.9 Penalties

2.9.1 *General*

Penalties are based on Subsistence minimum for persons capable of working (SM) as of January 1 of the reporting year.

Non-compliance	Penalty
Non-submission of report on CTs	300 SM
Failure to declare a CT in report on CTs	1% of amount of CT that was not declared in the report but not more than 300 SM (for all undeclared CTs)
Failure to submit TP documentation	3 % of amount of CT for which no documentation was submitted but not more than 200 SM
Failure to declare a CTs or TP documentation upon expiration of 30 calendar days following the last day of the deadline for payment of penalties for non-submission	5 SM for each calendar day of non-submission after expiration of 30 calendar days
Delayed submission of report of CT in report on CTs	1 SM for each calendar day of delay but not more than 300 SM
Delayed declaration submission of on CTs	1 SM for each calendar day of delay but not more than 300 SM
Delayed submission of TP documentation	2 SM for each calendar day of delay but not more than 200 SM

* Subsistence minimum for persons capable of working as at 01/01/2017 is UAH 1 600 (about USD 62) per month.

2.9.2 *Penalties in case of a TP-adjustment*

No specific guidance is available.

2.9.3 *CbC-reporting*

No specific guidance is available.

2.10 Interest

Interest is charged at the National Bank of Ukraine discount rate (set at 14.00% as of January 2017) multiplied by 120%.

2.11 Use of most reliable information

According to the provisions of the Tax code, any sources containing information that compare the commercial and financial terms of transactions may be deemed a source of information for transfer pricing purposes.

The State Fiscal Service of Ukraine in letter No. 24927/6/99-99-15-02-02-15 dated 18 November 2016 noted that sources of public information used to analyze comparable transactions may be, among others, commercial databases, namely Bureau Van Dijk (Orbis, Amadeus, RUSLANA) and Interfax (Spark) databases. The State Fiscal Service of Ukraine is not authorized to determine what is included in the list of sources.

The State Fiscal Service of Ukraine in letter No. 24576/6/99-99-15-02-02-15 dated 15 November 2016 state that the information about the prices applied in non-controlled comparable transactions provided by expert evaluation may be used as a source of information for transfer pricing purposes.

It also noted that state authorities are not entitled to use information, which is not publicly available to compare the conditions of controlled transactions with the conditions of non-controlled transactions (including information available only to state authorities).

2.12 Languages

The TP documentation should be prepared in Ukrainian. If the documentation contains documents in foreign languages the taxpayer is obliged to provide the tax authorities with the translation into Ukrainian.

2.13 Confidentiality

General rules apply. No specific guidance is available.

3. Standards with respect to the content of transfer pricing documentation

3.1 Master File

The transfer pricing documentation should contain the following information:

- Comprehensive information about related parties, including information on entities, which are owned 20 percent or more by the taxpayer either directly or indirectly;
- Information about the group (structure, description of activities, group transfer pricing policies, information on entities which the taxpayer provides with local management reports (names of the countries in which these entities hold their head offices);
- Description of the management structure of the taxpayer, its organizational structure scheme;

- Information about the taxpayer's participation in business restructuring or transfer of intangible assets during the reporting or preceding year, with an explanation of the aspects of those operations that had or still have an impact on the operations of the taxpayer;
- Description of the transaction (terms and conditions) and copies of the agreements (contracts);
- Description of goods (work, services), including physical characteristics, quality and reputation in the market, country of origin and manufacturer, trademarks, etc.;
- Information about the payments actually made in the controlled transaction (amounts and currency of payment, date, payment documents);
- Factors that impact the price;
- Functional analysis and risk analysis;
- Economic and comparable analysis (transfer pricing method applied, its substantiation, amount of income or expenses, profitability level calculation of the arm's-length price and profitability range, approach to selection of comparables, sources of information, description and calculation of comparability adjustments of terms and financial results in a controlled and not controlled transaction; description of an algorithm of allocating supplier's costs incurred during the performance of the transactions that are considered when calculating the profit level indicator);
- Information about corresponding adjustments made by the taxpayer (if any).

4. Country-by-Country reporting standards

No specific guidance is available. Ukraine has not yet adopted relevant legislation and regulations.

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1. Introduction

1.1 Legal context

The UK's current transfer pricing rules are contained in the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010), Part 4.

The UK is a member of the OECD and prescribes to the OECD Guidelines. UK transfer pricing legislation explicitly requires that the transfer pricing rules should be interpreted so as to ensure consistency with the OECD Guidelines. In July 2017, the OECD released the 2017 edition of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. Treasury assent is required in order for the UK legislation to incorporate each new edition of the Guidelines.

The UK government has implemented legislation to give effect to Country by Country Reporting (CbCR) as per Action 13 of the OECD/G20-project Base Erosion and Profit Shifting Plan (BEPS). The legislation is contained in Finance Act 2015 section 122, Statutory instrument 2016 no 237 and Statutory instrument 2017 No 497. Further details on the CbCR-rules are detailed below.

1.2 Practical context

Her Majesty's Revenue and Customs (HMRC) are the taxing authority in the UK.

HMRC publish guidance on its interpretation of the transfer pricing rules on its website. The guidance is contained in the international tax manual as well as technical notes. The UK does not have a rulings process for transfer pricing outside of an APA.

At present the UK has not implemented any specific legislation to require the Masterfile and Countryfile form of documentation as per Action 13 BEPS.

The UK requirement therefore remains unchanged and taxpayers must have documentation to confirm compliance with the arm's length principle. HMRC has published guidance on the type of documentation that it would expect a taxpayer to keep including primary accounting records, tax adjustment records and evidence of compliance of the arm's-length principle.

It should be noted that HMRC refer taxpayers to OECD Transfer Pricing documentation guidance as an example of best practice documentation.

2. Formal requirements

2.1 Which taxpayers

The UK transfer pricing rules require that transactions made or imposed between parties by means of a transaction or series of transactions are consistent with the arm's-length principal. The rules are widely drafted and are intended to cover almost every kind of transaction, including UK to UK transactions.

There is an exemption from the UK transfer rules for small and medium sized enterprises (SMEs). The definition of an SME is a modification of the European recommendation (2003/361/EC). An entity qualifies as either small or medium if it meets the staff headcount ceiling for that class and one (or both) of either the annual turnover limit or the balance sheet limit which are contained in the following table:

		And less than one of the following limits:	
Enterprise	Maximum number of staff	Annual turnover	Assets
Small	50	EUR 10 million	EUR 10 million
Medium	250	EUR 50 million	EUR 43 million

The limits must be calculated with reference to the whole group of associated enterprises and not the UK entity alone.

There are some exceptions the main one being the SME exemption does not apply to transactions with parties in non-qualifying territories (countries where there is no UK double tax treaty with appropriate non-discrimination article).

The CbCR-requirements apply to UK entities that are part of a multinational enterprise (MNE) with a consolidated group revenue of at least EUR 750 million or more for an accounting period commencing before and ending on or after December 31, 2015, or commencing on or after January 1, 2016. The CbC-

report must be filed in respect of the accounting period immediately following that in which the threshold requirement is met.

2.2 Aggregation of transactions

HMRC guidance refers to OECD guidelines when considering whether aggregation of transactions is possible. Aggregation may be accepted if the taxpayer can demonstrate that at arm's-length a trader would do the same.

2.3 Deadlines (timing)

Evidence to support an arm's length price should be available when the relevant tax return is submitted to HMRC. The documentation does not need to be submitted with tax return but should be available should HMRC later request it.

If the transfer pricing documentation is not available upon request of the tax authorities, a reasonable period is given to the taxpayer to deliver the requested documentation. Not having the documentation may have penalty implications (see below).

If the UK entity is required to file a CbC-report it must file the report within twelve months of the end of the relevant accounting period. From April 20, 2017, an additional notification has been implemented requiring a UK entity in each MNE group to submit an annual notification to HMRC, stating which entity in the MNE group will file the CbC-report. To avoid penalties the notification to HMRC must be made by the end of the period being reported. As the notification requirements were introduced late, for periods ending before September 1, the timeframe for making the notification was extended to September 1, 2017.

2.4 Materiality

In principle, all transactions with associated enterprises should be supported by transfer pricing documentation. There is no de-minimums level below which documentation would not be required.

In practice, however, HMRC often limit their scope of enquiry to transactions with such material impact. For example, HMRC have expressed that they have no desire to tie up resources investigating UK-to-UK transactions where the tax risk is low.

2.5 Retention of documents

HMRC require companies to keep records for six years from the end of the last company financial year they relate to, or longer in certain circumstances such as when a tax return has been filed late or there is an ongoing tax enquiry.

2.6 Frequency of documentation updates

Contemporaneous transfer pricing documentation is required for each accounting period and evidence should be available to support the arm's length price included in a tax return. In practice, a light touch review should be undertaken each year to update the documentation for any changes in the business and market developments. A significant change in the facts and circumstances would merit a more detailed update of the documentation.

The CbC-reports and relevant notifications to HMRC should be completed each year.

2.7 Tax return disclosures

There are no tax return disclosure requirements or transfer pricing specific returns. UK entities are required to self-assess their compliance with the arm's length principle in filing tax returns. Where an entity would have lower taxable profits or greater allowable losses calculated using their accounting records than if calculated on arm's-length terms then they must identify and make transfer pricing adjustments when submitting their tax returns.

2.8 Burden of proof

In the UK, the burden of proof that inter-company transactions follow arm's length principles is the responsibility of the taxpayer through the submission of their self-assessment return.

Where HMRC consider there has been a UK tax advantage resulting in lost revenue, the burden of proving that this was a result of the taxpayer's negligence or carelessness falls on HMRC.

2.9 Penalties

2.9.1 *General*

The general self-assessment rules relating to the imposition of penalties for incorrect returns apply to errors in a return that relate to transfer pricing. A penalty of up to GBP 3,000 can be levied if the company fails to keep and preserve accurate records.

2.9.2 *Penalties in case of a TP-adjustment*

The general self-assessment rules relating to the imposition of penalties for incorrect returns apply to errors in a return that relate to transfer pricing. The level of penalty depends on whether the error is careless or deliberate. The penalties are tax geared at up to 100% of the potential lost revenue figure.

Where a company is loss-making, a penalty may be charged of up to 10% of any transfer pricing adjustment which HMRC makes in respect of the losses.

HMRC have stated that where an 'honest and reasonable' attempt to comply with the arm's length standard has been made, they will not seek to levy penalties on the tax payer.

2.9.3 CbC-reporting

Failure to notify HMRC or to submit a CbC-report will result in an automatic penalty of GBP 300. If a penalty is assessed and the failure to submit continues, then the entity is liable to a further penalty for each subsequent day on which the failure continues, of an amount not exceed GBP 60 a day. A tribunal can increase this penalty to GBP 1,000 per day.

If inaccurate information is provided to HMRC, and this was known at the time provided or the inaccuracy is discovered and no reasonable steps to inform HMRC are taken, then a penalty of up to GBP 3,000 may be levied.

Notice of an appeal against any penalties must be given in writing within 30 days.

2.10 Interest

There are no specific rules on interest charged on subsequent tax payments in transfer pricing cases. Interest is normally charged on tax underpaid and is calculated from the day on which the tax was originally due at a rate of 2.75%.

2.11 Use of most reliable information

The UK legislation closely follows the OECD guidance on comparability. This generally consists of both UK comparables and pan-European searches. However, there are no specific requirements and as such relevant global, regional or non-UK transfer pricing reports may be accepted.

2.12 Languages

The transfer pricing documentation must be provided in English.

HMRC have not yet specified a language in respect of country by country reporting, we expect this will be required in English.

2.13 Confidentiality

HMRC are bound by confidentiality considerations in respect of information obtained through transfer pricing. The tax authorities can only exchange the transfer pricing documentation with the tax authorities of another country if there is a legal basis such as through a tax treaty, a EU-directive or international exchange of information agreement. The transfer pricing documentation is never available to the public.

There is no UK requirement for CbC-reports to be made publicly available. However, the legislation contains enabling provisions which give the Treasury

powers to issue regulations requiring groups to publish CbC-reporting information in the future.

3. Standards with respect to the content of transfer pricing documentation

At present the UK has not implemented any specific legislation to require the Masterfile and Countryfile form of documentation as per Action 13 BEPS. It should be noted that HMRC refer taxpayers to OECD Transfer Pricing documentation guidance as an example of best practice documentation.

HMRC has published guidance on the type of documentation that it would expect a taxpayer to keep including primary accounting records, tax adjustment records and evidence of compliance of the arm's-length principle. Documentation relating to evidence of compliance with the arm's-length principle is to follow the OECD Guidelines.

HMRC transfer pricing specialists do have some guidance which is published on the HMRC website on the types of information to request from taxpayers. This list is reproduced here:

- Identification of relevant connected party transactions, with details of products or services provided
- A group structure globally and for the UK
- An overview of the activities and recent history of the business
- Details of the products and/or services provided
- Documents which the business has prepared for CTSA (corporation tax self-assessment) transfer pricing requirements, including any transfer pricing reports with details of any comparability studies and of any searches for comparables
- Any further evidence the business has of arm's length pricing
- The business's own transfer pricing manual or policy document(s)
- Details of the transfer pricing methodologies including clear details of how the prices are calculated and of the impact this has on the parties' profit levels
- A functional analysis detailing the functions performed by the parties to the transactions, the assets used and risks assumed by each
- An outline of the key transactional flows in the business, both internally and with third parties, together with a discussion of contractual terms
- A volume breakdown of relevant intercompany transactions
- Accounts for all parties relevant to the transactions (wherever located) with a segmental split of the relevant figures where appropriate
- Agreements and contracts governing the transactions
- Details of the main profit generating activities and assets in the group together with details of where they are located
- Details of the key intellectual property used in the business, the entities which have developed or acquired it and currently own and use it, and of any payments related to it
- Details of the intra-group funding arrangements

4. Country-by-Country reporting standards

4.1 Threshold and required content

There is a requirement for UK headed MNE's with a consolidated group revenue of more than EUR 750 million to provide HMRC with an annual country-by-country report for accounting periods commencing before and ending on or after December 31, 2015, or commencing on or after January 1, 2016. The CbC-report must be filed in respect of the accounting period immediately following that in which the threshold requirement is met.

When the accounting period of an MNE group is less than 12 months the EUR 750 million should be reduced proportionately. Where the MNE's accounts are not prepared in euro's the equivalent of the reporting currency using the average exchange rate for the accounting period should be used.

A UK entity for the purposes of these rules is an entity which is resident in the UK for tax purposes or has a UK permanent establishment. The rules also apply to partnerships with the jurisdiction of tax residence being treated as the jurisdiction in which the partnership is formed and organized.

4.2 Notification requirement for subsidiary companies

The entity which must notify HMRC and the entity which will file the report will depend on where the ultimate group parent company is resident.

Ultimate parent

A UK ultimate parent company needs to provide HMRC with a country report. HMRC will automatically exchange this report with the jurisdictions in which the MNE is active and with which the UK has concluded an agreement for automatic exchange of information.

As such, in this circumstance the UK ultimate parent entity must also notify HMRC that it is responsible for filing the report and provide the names and unique tax reference numbers for all UK subsidiaries.

Overseas parent company

Under OECD principles, the country by country report is provided by the ultimate parent company of the MNE in its state of residence. The state of residence should exchange the country report automatically with other tax authorities. Where the MNE is resident in a country that doesn't require country by country reporting or, doesn't exchange reports with HMRC in accordance with an effective multilateral competent authority agreement, the top UK entity in the MNE will also be required to file a report in respect of its sub-group

Where the ultimate parent company is overseas there is also a separate notification required. A UK entity in each MNE group is required to submit an annual notification to HMRC stating which entity in the MNE group will file the CbC-report and what jurisdiction it operates in. The notification should also include details of the names and the tax reference numbers of all the UK tax resident companies.

Voluntary filing

An entity which is not the ultimate parent of the group may file a country-by-country report on behalf of the MNE if the entity is UK tax resident, is authorized by the ultimate parent entity of the group to file a country-by-country report on behalf of it and the parent has notified HMRC of that authority in writing on or before the filing deadline.

Exceptions

There are two main exceptions from CbC reporting.

The first exemption applies where:

- before the filing deadline a member of the MNE has filed a country-by-country-report in respect to the period and
- that report includes the information required to be contained in the United Kingdom report.

Provided that before the filing deadline HMRC are provided with details of the entity which has filed the report and the date the report was filed then no further UK report is required.

The second exemption applies where:

- an entity has filed a report in a jurisdiction other than the UK and
- the report is the equivalent of a country by country report and
- includes the information required to be contained in the UK report and
- the appropriate authority of the jurisdiction in which the report was filed has entered into exchange arrangement with HMRC and
- HMRC has not notified the UK entity that the arrangements are not operating effectively.

Again, providing that the UK entity provides details of the entity that filed, the jurisdiction in which the report was file and the date the report was filed then no UK report should be required.

Notification format

All UK entities are required to make a notification. One entity can report on behalf of others, but, in these circumstances it remains the obligation for every entity to provide details of the entity providing the notification.

HMRC require that notification must be made under a prescribed spreadsheet format available on their website. Notification must be made to a group's customer relationship manager (where one is assigned) and by email to notification.cbccfiling@hmrc.gsi.gov.uk. If notification is not received in the specified format it will be treated as having not been filed.

Required content of report

The report must contain the following information about the MNE in respect of each tax jurisdiction in which they do business:

- The amount of revenue, profit before income tax and income tax paid and accrued
- The total employment, capital, retained earnings and tangible assets.

MNE's are also required to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of business activities within a selection of broad areas which each entity engages in.

Requesting information

The legislation stipulates that before the reporting deadline the UK entity must request from the ultimate parent all the filing information would need to file a country by country report before the deadline and if receives files the information.

If the UK entity does not receive the information before the filing deadline, it must notify HMRC in writing that it has not provided this information and file a UK only report.

Anti-avoidance provisions

Anti-avoidance provisions apply where the MNE enters into any arrangements where the main purpose of one of the main purposes is to avoid any obligation under these regulations. Under these circumstances then the provisions have effect as if the arrangements had not been entered into.

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1. Introduction

1.1 Legal context

Section 482 of the Internal Revenue Code (“IRC”) of 1986 (“Section 482 Regulations”) outlines the regulatory guidance for intercompany transactions among members of multinational enterprises (“MNEs”). Section 482 allows the United States (“U.S.”) Treasury to prevent the evasion of taxes or to reflect the income of U.S. members of MNEs and provides that income related to intangible property transactions be commensurate with the income attributable to the intangible. The basis to ensure that the intercompany transfer price for goods, services and intangible property clearly reflect income for U.S. Federal Tax purposes in the Section 482 Regulations is the arm’s-length standard.

Section 6662 of the IRC (“Section 6662 Regulations”) outlines the ten transfer pricing documentation requirements and the penalty regime that may be imposed for large transfer pricing adjustments.

1.2 Practical context

The U.S. has not enacted the Master File nor the Local File as most of the elements of both are already covered in the existing Section 482 of the IRC and Section 6662 Regulations. Despite that, the U.S. Treasury has enacted Country-by-Country (“CbC”) reporting and has created Form 8975 and Schedule A (“Form 8975”) so that MNEs headquartered in the U.S. may file the CbC-report alongside of the federal tax return. As a result, the U.S. Treasury is negotiating information sharing agreements with all tax treaty partners to eliminate the need for secondary filings in other tax jurisdictions.

2. Formal requirements

2.1 Which taxpayers

Transfer pricing documentation must be maintained in any case of two or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interest, with controlled transactions between these related entities. Controlled transactions may include tangible property, intangible property, loans, and/or services to or from foreign affiliates in exchange for payment. These transactions must be at a price that is consistent with an arm's length price.

Effective June 30, 2016 annual CbC-reporting is required for all U.S.-parented MNE groups with annual revenue for the preceding reporting period of USD 850 million or more by filing of Form 8975.

2.2 Aggregation of transactions

Treasury Regulation Section 1.482-1(f)(2)(i) of the IRC provides that multiple transactions (generally within the same product grouping) may be aggregated when they are so interrelated that it is necessary to view them as a whole. Treasury Regulation Section 1.482-1(f)(2)(ii) of the IRC provides that controlled transactions will be evaluated based on the structure of the actual transaction, and will not be treated as if the transaction had been structured differently. However, alternatives may be considered that were available to the taxpayer in determining whether the terms of the controlled transactions would be acceptable to an uncontrolled taxpayer faced with similar alternatives.

2.3 Deadlines (timing)

Contemporaneous transfer pricing documentation is recommended for taxpayers to avoid penalties under the Section 6662 Regulations. The existence of this documentation need not be either disclosed on, or provided with the taxpayer's federal tax return, but the documentation must be complete as of the date of the federal tax return filing. Taxpayers must submit transfer pricing documentation to the IRS within 30 days of a formal Information Document Request to avoid penalties.

Intercompany transactions with foreign affiliates need to be disclosed on Forms 5471, 5472, 8858, and 8865 which are filed with the federal income tax return. The deadline for corporate federal income tax returns is the 15th day of the fourth month following the close of the tax year (April 15 for calendar-year taxpayers). Corporate tax payers may request an automatic six-month extension of time to file will extend the deadline six months (October 15 for calendar-year taxpayers). The deadline for partnership federal income tax returns is the 15th day of the third month following the close of the tax year (March 15 for calendar-year taxpayers). Partnerships may also request an automatic six-month extension (extended deadline of September 15 for

calendar-year taxpayers). As mentioned above, Form 8975 is required to be filed with a U.S.-based taxpayer's federal tax return.

2.4 Materiality

There are no formal thresholds recommended for contemporaneous documentation to be maintained by taxpayers with controlled transactions. However penalties described in Section 6662(e) of the IRC apply wherever there is an underpayment of tax attributable to a valuation misstatement, subject to certain thresholds. In any year, no penalty is imposed under these rules unless the underpayment of tax attributable to all valuation misstatements exceeds a dollar limitation of USD 5,000 in the case of an individual, S corporation, and personal holding companies (Section 6662(e)(2)).

Filing the Form 8975 is required by the ultimate parent entity of a U.S. MNE group with annual revenue for the preceding reporting period of USD 850 million or more.

2.5 Retention of documents

Retention of transfer pricing documents is three to six years from the filing date of the associated tax return. A general statute of limitations applies in the U.S. which is three years from the later of either the tax return due date or the date the return was actually filed. The statute is extended to six years for substantial understatements of income and indefinitely if there is fraud.

2.6 Frequency of documentation updates

Transfer pricing documentation should be updated annually to account for normal business and market developments. If the facts have not significantly changed, previous documentation can be relied upon. Form 8975 must be filed annually, if applicable.

2.7 Tax return disclosures

Tax Forms 5471, 5472, 8858, 8865, and 8975 require disclosure details on controlled transactions with foreign entities. If a company enters into cost sharing as defined under Treasury Regulation Section 1.482-7(k)(4), it requires a controlled participant to file a cost sharing statement with the IRS within 90 days after the first occurrence of intangible development costs, and to make specified disclosures on its annual tax return.

Regulations issued in 2010, require taxpayers to also disclose their uncertain tax positions ("UTPs") on Schedule UTP. Undocumented or uncertain controlled transactions are considered UTPs for the purposes of this schedule. On this schedule taxpayers must provide details such as the ranking of the positions by the size of their reserves and descriptions of the tax positions. As of 2014, the UTP disclosures are required by corporations with assets of USD10 million or more.

2.8 Burden of proof

For penalty avoidance purposes, a taxpayer is considered to have satisfied the documentation requirement if it maintained certain documentation that substantiates the taxpayer's assertion that it has reasonably concluded that, given the available data and the applicable pricing methods, the method and its application provided the most reliable measure of arm's length result under the principles of the best-method rule.

2.9 Penalties

2.9.1 *General*

There is no penalty for failure to have documentation if there is no adjustment. While the existence of a contemporaneous documentation report will not guarantee that a transfer pricing penalty will not be assessed, it will help a U.S. taxpayer avoid penalties if a transfer pricing adjustment is assessed.

2.9.2 *Penalties in case of a TP-adjustment*

Per the Section 6662 Regulations, taxpayers may be liable for either a 20 percent or 40 percent penalty for an underpayment of tax attributable to a substantial or gross valuation misstatement, respectively (Section 6662(a) and Section 6662(h)). The penalties are calculated as a percentage of the total transfer pricing adjustment. In addition, the IRS may apply a penalty to an asset valuation misstatement. (Section 6662(e)).

2.9.3 *CbC-reporting*

The U.S. Treasury enacted CbC reporting for fiscal years ending after January 1, 2017 and created Form 8975 for U.S.-based MNEs to file with their tax returns. Penalties under Section 6038(b) of the IRC may apply for failure to report the information required on the form.

2.10 Interest

Because the penalties described in Section 6662 Regulations is in addition to tax, underpayment interest accrues on the penalty in the same manner as on the tax itself. The interest rate on such underpayment is established under Section 6621(a)(2) of the IRC and is the sum of the Federal short-term rate plus three percentage points.

2.11 Use of most reliable information

The arm's length result of a controlled transaction must be determined under the method that, under the facts and circumstances, provides the most reliable measure of an arm's length result. There is no strict priority of methods, and no method will invariably be considered to be more reliable than others. An arm's length result may be determined under any method without establishing the inapplicability of another method, but if another method subsequently is shown

to produce a more reliable measure of an arm's length result, such other method must be used.

Data based on the results of transactions between unrelated parties provides the most objective basis for determining whether results of a controlled transaction are arm's length. The relative reliability of a method based on the results of transactions between unrelated parties depends on the degree of comparability between the controlled transaction or taxpayers and the uncontrolled comparables, taking into account the factors described in Treasury Regulation Section 1.482-1(d)(3).

2.12 Languages

Documentation is required to be in English and cannot be submitted in any other language.

2.13 Confidentiality

The IRS will treat the transfer pricing documentation confidentially. All information received will be treated confidentially and prohibit any parties from using any of the information other than for the administration of taxes. Confidentiality should be maintained even when disclosure is required for public court proceedings or judicial decisions. Taxpayers' information should only be disclosed to the extent needed for the court or judicial decisions.

With respect to the information provided on Form 8975, the CbC-Report will be exchanged under bilateral Competent Authority arrangements for the exchange of CbC-Reports between the U.S. and applicable foreign jurisdictions.

3. Standards with respect to the content of transfer pricing documentation

The regulations associated with U.S. transfer pricing documentation do not require taxpayers with controlled transactions among foreign affiliates to maintain a Master File and/or a Local File as defined in the OECD guidelines. However, the documentation required under Section 6662 of the IRC requires similar information to the information in the Master File and Local file. The information required under Section 6662 of the IRC is as follows:

- An overview of the taxpayer's business, including economic and legal factors that affect pricing of its property or services. *Treasury Regulation Section 1.6662-6(d)(2)(iii)(B)(1)*.
- A description of the taxpayer's organizational structure, including all related parties whose activities are relevant to transfer pricing. *Treasury Regulation Section 1.6662-6(d)(2)(iii)(B)(2)*.
- Any document explicitly required by the regulations under section 482 (e.g., documentation of non-routine risks, cost sharing agreements, etc.). *Treasury Regulation Section 1.6662-6(d)(2)(iii)(B)(3)*.

- A description of the method selected and the reason why it was selected. *Treasury Regulation Section 1.6662-6(d)(2)(iii)(B)(4)*.
- A description of the alternative methods that were considered and an explanation of why they were not selected. *Treasury Regulation Section 1.6662-6(d)(2)(iii)(B)(5)*.
- A description of the controlled transactions (including terms of sale) and any internal data used to analyze them. *Treasury Regulation Section 1.6662-6(d)(2)(iii)(B)(6)*.
- A description of the comparables used, how comparability was evaluated, and what adjustments were made. *Treasury Regulation Section 1.6662-6(d)(2)(iii)(B)(7)*.
- An explanation of the economic analysis and projections relied on in developing the method. *Treasury Regulation Section 1.6662-6(d)(2)(iii)(B)(8)*.
- A description or summary of any relevant data that the taxpayer obtains after the end of the year and before filing a tax return. *Treasury Regulation Section 1.6662-6(d)(2)(iii)(B)(9)*.
- An index of principal and background documents. *Treas. Reg. § 1.6662-6(d)(2)(iii)(B)(10)*.

4. Country-by-Country reporting standards

4.1 Threshold and required content

For fiscal years beginning on or after June 30, 2016, certain U.S. persons that are the ultimate parent entity of a U.S. MNE group with annual revenue for the preceding reporting period of USD 850 million or more are required to file Form 8975. Form 8975 are used by filers to annually report certain information with respect to the filer's U.S. MNE group on a CbC-basis. The filer must list the U.S. MNE group's constituent entities, indicating each entity's tax jurisdiction (if any) country of organization and main business activity, and provide financial and employee information for each tax jurisdiction in which the U.S. MNE does business. The financial information includes revenues, profits, income taxes paid and accrued, stated capital, accumulated earning, and tangible assets other than cash.

4.2 Notification requirement for subsidiary companies

There are no notification requirements for subsidiary companies as Form 8975 must be filed with the IRS with the income tax return of the ultimate parent entity of a U.S. MNE group. There is no secondary filing requirement for U.S. subsidiaries of foreign ultimate parent entities.

