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[Via e-mail TransferPricing@oecd.org](mailto:TransferPricing@oecd.org)

Dear Sirs,

On 30 January 2014, Working Party No. 6 of the Committee on Fiscal Affairs of the OECD released a ***Discussion Draft on Transfer Pricing Documentation and CbC Reporting***, for interested parties to provide written comments.

A3F is pleased to respond to the OECD's request for comments on this discussion draft.

A3F background

A3F (French Women Tax Experts Association - Association Française des Femmes Fiscalistes) was founded in 2005. A3F is a French-based network of professional women from diverse horizons representing most players of the French and international tax system (experienced tax executives and expert tax advisors from a wide range of French and foreign companies and law firms, University professors, etc). The ever changing and rapidly evolving corporate and individual tax policies in France and around the world are a major concern for businesses. A3F provides its members with opportunities to exchange ideas and best practices, and to contribute to the shaping of tax policy through participation in public debates. A3F currently counts 115 members (of which two thirds are business representatives), all with a recognized work experience.

The president of A3F is Ms Eva Memran, Tax Director for a large French MNC. Ms Memran can be reached at +33 6 77 76 90 76 or evamemran@gmail.com.

Conclusion

A3F appreciates this opportunity to provide its views on OECD Discussion Draft on Transfer Pricing Documentation and CbC reporting (outlined in the following pages). These comments were prepared by an ad-hoc A3F working group chaired by Ms Laurence Delorme. We will welcome an opportunity to participate in the subsequent public consultations and related discussions.

Respectfully submitted,

For Association Française des Femmes Fiscalistes

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OECD DISCUSSION DRAFT ("DD") 30 JANUARY 2014
ON TRANSFER PRICING DOCUMENTATION AND CbC REPORTING

1. KEY MESSAGES

- We fully support the BEPS objective to harmonize TP documentation requirements with a view to "(iii) *ensuring transparency while promoting increased certainty and predictability*". We agree that "*TP documentation requirements should be less burdensome and more targeted*"¹.
- The TP Documentation information proposed in the DD does not strictly meet this objective. By widening the scope and detail of information needed, it seems to put the highest focus on transparency in a meaning that is not related to the transfer pricing analysis.
The relevance to high level TP risk assessment of the addition of a detailed CbC Reporting within the Masterfile is questionable.
Putting together the tremendous amount of information proposed, at a very granular level (quantitative rather than qualitative), is actually moving away from the transfer pricing fundamentals, i.e. performing for each transaction a functional analysis and transfer pricing method selection. We believe that the scope of the information provided will rather create misinterpretations and therefore disagreements between tax authorities, to the detriment of the tax payer.
In particular, assuming OECD guidelines on TP documentation and CbC Reporting as drafted are applied consistently by OECD member states, in practice information will be shared widely with non-OECD members states, with no guarantee of reciprocity. We view a risk that the information provided will (i) lead to adjustments based on non-OECD methods, which will not be resolved under Mutual Agreement Procedures and (ii) fuel the existing debate between source - based income tax versus residence – based income tax, which could ultimately and unfortunately be in favour of the formulary apportionment method.
- The information requested in the proposed CbC reporting template should be more aligned with Group's constraints such as their organization and existing IT system reporting. It should not be expected from the Business to implement burdensome and costly adaptations to meet new compliance obligations. We specifically question the availability, reliability and relevance of the information that would have to be aggregated in the CbC Reporting template, a document that could be a few pages or a hundred pages long depending on the size of the Group.
The approach proposed is all the more confusing for the Business as it seems to lead us away from the specific objective related to the harmonization of TP Documentation and high level risk assessments in a more efficient way.
- If the goal, as we understand it, is to fight tax evasion and fraud, key information for high level risk assessment in the CbC Reporting template should focus on countries with high income and low tax². We would therefore propose in our comments below an alternative template that we believe should be provided separately from the TP Documentation.
- Finally, we insist that for confidentiality reasons the CbC Reporting template should only be provided to the tax authorities of the ultimate parent company of the Group and communicated to other tax authorities, with additional information if needed, through the Treaty exchange of information clause.

¹ BEPS Action Plan, Chap.3, page 21

² **Further, fixing well-known holes in specific country's local CFC regulations would resolve the perceived issue with international tax much better than adding new reporting burden on businesses operating internationally.**

2. INTRODUCTORY COMMENTS

2.1 General concerns with the DD on TP documentation and CbC reporting template

- (i) **Objectives to be achieved under Action 13 should be more clearly delineated and articulated, consistent with the BEPS Action Plan reflecting the G20 mandate to OECD**

As a reminder, we would like to quote an extract of the introductory comments to the BEPS Action Plan: "***The actions implemented to counter BEPS cannot succeed without further transparency, nor without certainty and predictability for business***"³. Further, Action 13 falls (together with Actions 11⁴, 12⁵ and 14⁶) under the general heading (iii) "***Ensuring transparency while promoting certainty and predictability***".

It seems to us that these above objectives should form the underlying guiding principle for addressing the various BEPS Actions, including Action 13.

In this context, it is our opinion that Action 13 should be clearly understood (and presented) as addressing two completely separate objectives:

- *TP documentation*: objective is to update/replace existing Chapter V of OECD Guidelines;
- *CbC Reporting* has a wider objective: "*information on MNE's global allocation of income, economic activity and taxes paid*", in order to identify situations where an MNE may locate income in a place where it pays no or very low income taxes.

The distinctions between these two very different objectives does not appear clearly enough in the DD as it stands, starting with the Preamble (page 1).

Furthermore, the DD preamble states that "*As the call to develop a common template for country-by-country reporting to tax authorities did not specifically limit the application of country-by-country reporting to transfer pricing administration, the OECD will be giving further consideration as to whether information relevant to other aspects of tax administration and the BEPS Action Plan should also be included in the common template*": this seems to indicate that the CbC reporting template may even be extended despite the fact that its current proposed format is already extremely wide and detailed, in order to cover in particular other items listed under BEPS Action 11, thereby creating an additional layer of compliance burden for taxpayers. We are very concerned about this potential extension.

- (ii) **Action 13 addresses TP documentation and CbCR in isolation of all other BEPS actions and with an accelerated timeline (September 2014).**

We are concerned that this may create discrepancies between, on the one hand, the final format resulting from Action 13, and, on the other hand, the various international rules which may evolve in the future through the other BEPS actions output, and generate changes in methods of allocation of business profits.

³ BEPS Action Plan Chapter 3, page 14

⁴ BEPS Action 11: Establish methodologies to collect and analyse data on BEPS and the actions to address it

⁵ BEPS Action 12: Require taxpayers to disclose their aggressive tax planning arrangements

⁶ BEPS Action 14: Make dispute resolution mechanisms more effective

As an example, several other related BEPS actions (with a targeted deadline of September 2015) have some ramifications with the outcome of Action 13 and should be therefore treated in parallel and consistently (content, outcome and timeline):

- Action 4: Limit base-erosion via interest deductions and other financial payments;
- Action 5 : Counter harmful tax practices more effectively, taking into account transparency and substance;
- Actions 8, 9 and 10 : Assure that TP outcomes are in line with value creation;
- Action 11 : Establish methodologies to collect and analyze data on BEPS and actions to address it;
- Action 14 : Make dispute resolution mechanisms more effective.

Actions 8, 9 and 10 in particular, deal with assuring "*that transfer pricing outcomes are in line with value creation*", focusing on intangibles (action 8), risk and capital (action 9) and other high-risk transactions (action 10).

By focusing the CbC reporting template on indicators unrelated to transfer pricing analysis such as sales, assets and headcount at such a level of detail, we consider there is a significant risk that the DD opens the door to formula-based allocation of income or systematic application of profit-split upon audit by some countries, ignoring the taxpayer's business and value creation model, functional analysis and related transfer pricing methodology.

This creates a very significant risk of double taxation situations, as competent authorities will not reach mutual agreement on so widely different approaches to the arm's length principle.

(iii) No apparent link with other related OECD initiatives⁷

The OECD Draft Handbook on TP Risk Assessment published in April 2013, in particular, is a comprehensive guide for assisting tax authorities in performing TP risk assessments and selecting cases for audits, by making a efficient use of their (and taxpayers') resources. It is mentioned once in DD paragraph 7, and described as "*a useful tool to consider in conducting such risk assessment*".

However, the DD seems to aim at providing tax authorities with a lot of detailed information as part of the taxpayer TP documentation (including CbC reporting), although such information (or a large part of it) could be obtained by tax authorities using other sources listed in the Draft Handbook such as the exchange of information under Treaty, published consolidated accounts, internet websites, etc

It is our view that CbC Reporting should in no way be used as a substitute for the risk assessment process to be conducted by tax authorities as per OECD Draft Handbook on TP Risk Assessment (once finalized), which should be equally promoted and enforced among OECD (and G20) countries.

We do suggest that the accelerated path for the DD on TP documentation and CbC reporting template gets conducted in close coordination with the finalization of the OECD Draft Handbook on TP Risk Assessment. Indeed, there should be a balance between additional burden put on taxpayers and better coordination between tax authorities through effective standardization and guidelines applied by the latter when performing TP risk assessments and conducting audits.

⁷ OECD Report on "Dealing effectively with challenges of transfer pricing" - January 2012
OECD Draft Handbook on TP Risk Assessment - 30 April 2013
OECD Project on Harmful Tax Practices

(iv) No apparent link with other related EU initiatives ⁸

We note in particular that there is no reference in the DD to EU TPD (nor to other documentation guidance provided by international organisations⁹), although the Masterfile + Local File format is now frequently used in practice by EU and even non-EU MNEs where appropriate.

Since the OECD White Paper on Transfer Pricing Documentation was published on 30 July 2013, the EU JTPF released at its meeting held on 5 November 2013 its most recent reports on the monitoring of the functioning of the EU TPD, based on responses obtained from 27 out of 28 Member States¹⁰, and from 23 non-government stake-holders¹¹. These two reports highlight significant progresses in the implementation of the Code of Conduct on EU TPD since its introduction in 2006 and its first monitoring report in 2009, and the first report states the following :

"All MS consider their national practice to be in line with the EU TPD either by way of having their domestic rules explicitly aligned to the EU TPD or by way of accepting TP documentation in the EU TPD format.

Responses submitted by MS emphasise the importance of the EU TPD as the first commonly established tool on structuring transfer pricing documentation. The concept of a masterfile and local country files which is central to the EU TPD is perceived to be widely used in practice by MNEs across the EU. It is recognised that the EU TPD has contributed to a better standard of documentation within the EU."

See also a summary of the status of implementation of EU TPD by EU Member States in [Exhibit 1](#).

It appears that the OECD DD adds significant requirements to the existing common format under EU TPD, whether in the Master File and Local File, or in the newly introduced CbC reporting template (see comments below on Annexes I, II and III, and comparison of the EU TPD approach and DD approach in [Exhibit 2](#)). This means that in practice, a taxpayer may have to comply with two (or even three) inconsistent sets of TP documentation rules (OECD, EU and domestic): which one should prevail? **This appears very confusing for business, and does not seem to meet the objective of BEPS action (iii) (Ensuring transparency while promoting increased certainty and predictability).**

Furthermore, a number of questions which are raised for comments in the DD have already been addressed by the EU JTPF as part of its previous work (which runs in parallel to OECD work on most transfer pricing subjects), leading to consensus-based answers (Codes of Conduct and other reports). In order to reach consensus across OECD countries (and non-OECD G20 countries), it would seem more efficient if the OECD work on Action 13 would leverage (rather than depart) from such previous EU work representing the consensus view of all 28 EU Member States.

⁸ EU Code of Conduct against harmful tax competition; EU Code of Conduct (Business Taxation);
EU Code of Conduct on TP documentation - June 2006;
EU Report on Transfer Pricing Risk Management - June 2013

⁹ The OECD White Paper on TP documentation (30 July 2013) describes in its section B the existing documentation guidance provided by international organisations such as EU JTPF (EU TPD - 2006), PATA (PATA documentation package - 2003), ICC proposals (2003). However, the January 2014 DD merely refers in its paragraphs 2 and 3 to OECD 1995 Guidelines on TP documentation (Chapter V), and to proliferation of local TP documentation requirements adopted since then, as if nothing had happened for harmonizing transfer pricing documentation requirements and practices since 1995.

¹⁰ http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf

¹¹ http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ngm.pdf

2.2 Specific concerns with the CbC Reporting template

(i) A burdensome and onerous reporting, in contradiction with stated objective of BEPS

A lot of information is already provided by taxpayers or available, as part of the consolidated financial reporting as well as transfer pricing documentation. Objectives should be to avoid duplication each time information is already available locally, and for the documentation to be based on information that is readily available in the bookkeeping and management reports of the MNE concerned.

(ii) No guarantee about the availability and reliability of the data based on MNEs' accounting reporting systems

From a practical perspective, the OECD DD seems to consider that the provision of information and financial data is only a matter of good faith and cooperation from the taxpayer, as all requested information is assumed to exist, and to be completely available and totally reliable.

However, accounting IT systems used by MNEs are primarily designed to provide information to comply with IFRS or local GAAP ; these systems are generally not programmed to provide transfer pricing data in the format required by the CbC Reporting

Business anticipates a high level of cost and time will be required to adapt systems (or to create additional genuine reporting) to provide the data in the format proposed.

Additionally, Business expects that some of the requested data is not currently captured in the accounting system; this data must be manually assembled, requiring a tremendous amount of time to identify/assemble/convert/etc. This burdensome process presents the question of data reliability. (please see examples under Q4. below).

(iii) The relevance of the data requested is questioned for transfer pricing purposes

There is a general concern about the relevance of the very detailed information to be provided and how it will enable the local tax authorities to improve their high level risk assessment. It seems that quantity prevails over quality and that the overall objective ("big picture") is not achieved.

3 - COMMENTS ON SPECIFIC ISSUES AND QUESTIONS HIGHLIGHTED IN DD

B. OBJECTIVES OF TRANSFER PRICING DOCUMENTATION REQUIREMENTS

B.1. Transfer pricing risk assessment

Q 1 Comments are requested as to whether work on BEPS Action 13 should include development of additional standard forms and questionnaires beyond the country-by-country reporting template.

Action 13 focuses on TP documentation (updated Chapter V) and CbC reporting template, and does not call for any additional standard templates for the time being.

In parallel, OECD should focus on harmonizing various tax authorities existing practices such as the use of standard TP forms and questionnaires (to be filed with tax return) already actually used in different countries for TP risk assessment (such as US, Canada, Mexico, India, ...), with very different formats, thereby creating administrative burden for taxpayers.

The objective of this work should be to harmonize existing practices, rather than developing additional forms which would increase the burden put on taxpayers.

Q1 Comments are also requested regarding the circumstances in which it might be appropriate for tax authorities to share their risk assessment with taxpayers.

Sharing the risk assessments with the taxpayers is among the recommendations of both the OECD Draft Handbook on TP risk assessment (April 2013) and the EU Report on TP risk management (June 2013).

In our view, this is a good practice to be promoted among OECD and non-OECD G20 countries.

Further, it is our view that a tax administration cannot perform a relevant risk assessment without discussing the local business operations with the company and understanding its role within the Group.

B.3. Transfer pricing audit

Q 2 Comments are specifically requested on the appropriate scope and nature of possible rules relating to the production of information and documents in the possession of associated enterprises outside the jurisdiction requesting the information.

See paragraph 28 of EU TPD: "*The sort of documentation that needs to be produced by an enterprise that is a subsidiary enterprise in a group may be different from that needed to be produced by a parent company, i.e. a subsidiary company would not need to produce information about all of the cross-border relationships and transactions between associated enterprises within the MNE group but only about relationships and transactions relevant to the subsidiary in question*".

Domestic legislations may limit in any case the ability of the taxpayer to communicate information and documents in the possession of associated enterprises outside the jurisdiction requesting the information.

See also discussion on disclosure of tax rulings under Q10 below.

C. A TWO-TIERED APPROACH TO TRANSFER PRICING DOCUMENTATION

As a general comment, it should be noted that the Master file and Local file format has been developed under the EU TPD (2006) and implemented since then by most EU MS (see [Exhibit 1](#)). We therefore advocate for leveraging (rather than departing) from this existing format resulting from strong consensus of all 28 EU MS.

A comparison between the Masterfile and Local File formats under the EU TPD and the DD is shown in [Exhibit 2](#).

C.1. Masterfile

Q3 Comments are requested as to whether preparation of the master file should be undertaken on a line of business or entity wide basis.

Consideration should be given to the level of flexibility that can be accommodated in terms of sharing different business line information among relevant countries.

Consideration should also be given to how governments could ensure that the master file covers all MNE income and activities if line of business reporting is permitted.

The choice for line of business or entity wide presentation of the master file should be left entirely to the taxpayer, who should have flexibility based on its management organization and associated information reporting systems. The DD should not be prescriptive on that point (see also paragraph 31 of EU TPD).

Similarly, there should also be flexibility on how information items are allocated in the Masterfile or in the Local File, and the DD should not be prescriptive either (see paragraph 6 of the EU TPD on that point).

Below are two example of possible organization of the information in the master file and local files, and how these would be made available to the local entities.

Example 1:

- Master file "Corporate" (generic information common and relevant to ALL subsidiaries): available to all entities
- Several Master files per BU (information specific to each BU and common to all entities in BU): available only to entities in BU, not to entities outside BU
- Local Files (information specific to each local entity or to all entities in one country, e.g. in case of tax unity): available to each local entity in the country

Example 2:

- Master file (generic information common and relevant to all subsidiaries): available to all entities
- Local File: available to each local entity in the country

In any event, the taxpayer should apply consistently (over time and across countries) the selected format.

Country-by-Country Reporting

Q4 A number of difficult technical questions arise in designing the country-by-country template on which there were a wide variety of views expressed by countries at the meeting of Working Party n°6 held in November 2013. Specific comments are requested on the following issues, as well on any other issues commentators may identify:

- **Should the country-by-country report be part of the master file or should it be a completely separate document?**

Action 13 does not call for the CbC reporting template to be part of TP documentation itself.

Action 13 aims at "enhancing transparency for tax administrations, taking into consideration the compliance cost for business" by providing tax administrations with a "big picture" view of taxpayer's global value chain. The CbC reporting template and the TP documentation are serving two very different objectives which should not be mixed. See our further comments on that point in paragraph 2.1 (i) above.

The CbC reporting should be kept separate from the master file.

More generally, the CbC reporting template as drafted creates a number of difficult questions:

- some indicators may not be computed at legal entity level and are not available because the Group has no need of this data at the statutory level; therefore, the IT systems does not provide it.
- Some data indicators such as employee expense, capital and cumulated earnings etc., which are computed at statutory level may be inconsistent between legal entities (due to differences in local GAAP). As such, the rationale behind the data provision is unclear and any interpretation of data by the tax administrations without further details to reconcile the data would be hazardous and inappropriate
- some indicators have no clear definition. As an example "Services fee" is misleading (is this corresponding to "support services fee"?). Similarly for "royalties", is this corresponding to royalties for trademark, technology licence, or other royalties?

- **Should the country-by-country template be compiled using "bottom-up" reporting from local statutory accounts as in the current draft, or should it require (or permit) a "top-down" allocation of the MNE group's consolidated income among countries?
What are the additional systems requirements and compliance costs, if any, that would need to be taken into account for either the "bottom-up" or "top-down" approach?**

There should be flexibility for the taxpayer to choose for one approach or the other depending on what IT systems and the Group's organization can most easily produce.

Most of the time, the statutory financial statements are finalized after the consolidated statements, so the bottom up approach seems the most appropriate to get reliable information.

However, it should be clarified that in no case, reconciliations could be asked by tax authorities between consolidated and aggregated statutory approach. Given differences in GAAP, currency, and particularly the absence of elimination of intercompany transactions if the bottom-up approach were used, it will be impossible to reconcile bottom-up figures to global consolidated financial data.

As already mentioned, accounting IT systems used by MNEs are designed to comply with IFRS and/or local GAAPs requirements and have not been developed to provide a transfer pricing data.

As such, from both IFRS and statutory perspectives, it is very unlikely that all data items (cash tax, WHT, etc.) and all of the data and information requested by the OECD CbC reporting template (per country, per legal entity, per transaction etc.) will be available through the IT systems of many MNEs. There will be needs to significant changes in IT systems which will generate one-off and ongoing costs and administrative burden.

This information will however be not be available within short deadlines, so it will require either developing new IT tools in Group at significant cost or it will be a significant and highly manual exercise.

In addition, when available, some information can only be roughly retrieved, requesting such significant amount of time to identify/convert them in order to be usable, that their reliability will clearly be questionable.

Examples :

- Most of the current versions of SAP used by MNEs do not allow to retrieve intercompany transactions one by one for each legal entity, and when possible, some key information from a TP perspective (margins etc.) are not mentioned. The exercise performed by the MNE is already complicated as it is to prepare their TP Documentation. It should be taken into account that the increased requirements are adding on to this complexity.
- Another example is the CBCR reporting template, where indicators such as WHT, Cash Tax or Capital and accumulated earnings may not be computed for all legal entities. In certain cases, MNE have no needs to follow their cash legal entity per legal entity (because Cash is generally analysed from a consolidated perspective, not at statutory level).

- **Should the country-by-country template be prepared on an entity by entity basis as in the current draft or should it require separate individual country consolidations reporting one aggregate revenue and income number per country if the "bottom-up" approach is used?**

The CbC reporting template should follow taxpayer's organisation, and the most relevant country view should prevail. We propose a simplified template under Appendix III below, which is based on one aggregate revenue and income number per country assuming the "bottom-up" approach is used.

- **Those suggesting top-down reporting usually suggest reporting one aggregate revenue and income number per country.**

In responding, commentators should understand that it is the tentative view of WP6 that to be useful, top-down reporting would need to reflect revenue and earnings attributable to cross-border transactions between associated enterprises but eliminate revenue and transactions between group entities within the same country.

While we understand WP6's view, it would seem to be extremely complex to produce country aggregate revenue and income numbers eliminating only intragroup transactions between group entities within the same country, and not those attributable to cross-border transactions.

- **Would a requirement for separate individual country consolidations impose significant additional burdens on taxpayers?**

What additional guidance would be required regarding source and characterization of income and allocation of costs to permit consistent country-by-country reporting under a top-down model?

If the "top-down" approach is used, the DD should take into account the existence of fiscal unity regimes in some countries (France, USA, UK, Germany, Italy, Spain,...). In such cases, preparing a separate individual country consolidations in those countries would represent unnecessary duplication and administrative burden.

More generally, if the "top-down" approach is applied, it should be based on existing group reporting (by country) without reconciliation with statutory accounts (in particular regarding allocation of costs).

If the "bottom-up" approach is used, the CbC reporting should be prepared on the basis of country consolidation (aggregation of statutory accounts), and inside the country possibly by business unit, if there are several activities inside the country and if the IT systems track this information at BU level. Again, no reconciliation with consolidated accounts should be requested from taxpayer.

- **Should the country-by-country template require one aggregate number for corporate income tax paid on a cash or due basis per country?**

Should the country-by-country template require the reporting of withholding tax paid?

Would a requirement for reporting withholding tax paid impose significant additional burdens on taxpayers?

The CbC reporting template should require one aggregate number for corporate income tax paid on a cash basis, keeping however in mind that there may be multiple reasons why the implied tax rate resulting from such aggregated data at country level would differ from the applicable statutory tax rate (on account payments, imputations of tax credits, NOLs, etc).

It should also require the reporting of withholding tax paid. The amount of withholding tax paid is normally followed precisely at home country level in order to be able to obtain a credit for such foreign WHT against domestic income tax liability.

Where a low (or nil) income tax is paid in a given country because of existence of NOL's or tax credits, the taxpayer should get an opportunity to explain the situation upon request from the tax authority (rather than having to explain it in the CbC reporting).

- **Should reporting of aggregate cross-border payments between associated enterprises be required?
If so at what level of detail?
Would a requirement for reporting intra-group payments of royalties, interest and service fees impose significant additional burdens on taxpayers?**

This is an extreme requirement for information to be included in the CbC reporting, which appears to be exceeding BEPS objective under Action 13.

This information is already available in the local file.

- **Should the country-by-country template require reporting the nature of the business activities carried out in a jurisdiction?
Are there any features of specialist sectors that would need to be accommodated in such an approach?
Would a requirement for reporting the nature of the business activities carried out in a jurisdiction impose significant additional burdens on taxpayers?
What other measures of economic activity should be reported?**

The CbC reporting template could indeed require reporting the nature of the business activities carried out in the country, making use of the suggested activity codes corresponding to entities present in the country. This may however not be particularly helpful for the purpose of a high level risk assessment, particularly in large MNEs with multiple activities operated in each country.

C.2. Local File

- In some cases, domestic regulations (in particular for the Local file part) differ from the OECD recommendations, which could result in a duplication of work to be performed.
- Several domestic regulations also provide for the filing of specific forms (USA, Australia...) or Transfer pricing questionnaires (South Africa...), together with the annual tax return. Hence it should be clarified whether the template recommended by the OECD would aim at replacing all existing formats, with a view to limiting the number of reporting documents.

D. COMPLIANCE ISSUES

On all the following points, it should be noted that the EU JTPF has already done some substantial work through EU TPD and subsequent monitoring actions.

D.1. Contemporaneous documentation

TP information to be filed at the time of filing tax return should be limited to a short questionnaire. Masterfile and local file would be available upon request and/or audit by tax authorities

D.2. Time frame

The time frame proposed in the DD, i.e. completing the master file and local file by the last day of the following fiscal year of the ultimate parent entity of the MNE group, does not take into account that in some jurisdictions, tax filing deadlines may extend further to this date, rendering the collection of accurate information before the completion of the TP documentation all the more difficult.

D.3. Materiality

Q5 Comments are requested as to whether any more specific guideline on materiality could be provided and what form such materiality standards could take.

Some specific guidelines on reasonable level amount of materiality are needed.

Materiality should take into account the point of view of MNE's ultimate parent (consolidated view), as well as the local entity (materiality of intragroup transactions and impact on local results, size of local entity on local market).

D.5. Frequency of documentation updates

Q6 Comments are requested regarding reasonable measures that could be taken to simplify the documentation process. Is the suggestion in paragraph 34 helpful? Does it raise issues regarding consistent application of the most appropriate transfer pricing method?

The suggestion in §34 is welcome, as some guidance and harmonization is needed so as to simplify administrative burden and reduce associated costs for taxpayers.

D.6. Language

Q7 Comments are requested regarding the most appropriate approach to translation requirements, considering the need of both taxpayers and governments.

We strongly advocate that the TP documentation should be prepared in one common language (English). Companies are not going to be able to suffer additional translation costs and delays. Moreover, selecting one common language is clear simplification measure, allowing central control of overall consistency of TP documentation across the group.

Translation into local language could possibly be requested for the Local File, where appropriate, as part of a request for additional information from a taxpayer and/or upon audit. The fact that the TP documentation is written in English and not systematically translated should not be viewed as incomplete TP documentation triggering penalty for non-compliance.

D.7. Penalties

Paragraph 2 (Introduction to DD) states that "*The previous language of Chapter V did not provide...clear guidance with respect to the link between the process for documenting transfer pricing, the administration of penalties and the burden of proof*".

Section D7 is however too vague and more guidance is needed for tax administrations and taxpayers on administration of penalties and burden of proof.

D.8. Confidentiality

Q8 Comments are requested as to measures that can be taken to safeguard the confidentiality of sensitive information without limiting tax administration access to relevant information.

CbC Reporting (even under the proposed restrictive form) includes extremely sensitive information that should NOT be part of TP documentation.

CbC reporting template should, at most, be sent to tax authorities in the country of the ultimate parent company, and then shared with other tax authorities upon request under Treaty exchange of information clauses.

Including CbC reporting template in the Masterfile does NOT safeguard confidentiality.

More generally, this question should be handled consistently with EU and OECD other related initiatives (EU TPD, EU Directive on Administrative Cooperation in the Field of Taxation, OECD Standard on Automatic Exchange of Information, OECD Global Standard for FATCA-type of information).

E. IMPLEMENTATION

Q9 Comments are requested regarding the most appropriate mechanism for making the master file and country-by-country reporting template available to relevant tax administrations. Possibilities include:

- **The direct local filing of the information by MNE group members subject to tax in the jurisdiction;**
- **Filing of information in the parent company's jurisdiction and sharing it under treaty information exchange provisions;**
- **Some combination of the above.**

The second option would be workable.

It would have the merit of being fully consistent with the Model FATCA Inter Governmental Agreement providing for a reporting by financial institutions (in the signing countries) to their local tax authorities, which then exchange information on an automatic basis with the US tax authorities.

The same approach has been retained by the OECD in formalizing a Global Standard for FATCA-type information reporting and automatic sharing¹² (released on 13 February 2014), which could be well seen as a good precedent for exchange of information between tax authorities.

¹² See <http://www.oecd.org/ctp/exchange-of-tax-information/Automatic-Exchange-Financial-Account-Information-Common-Reporting-Standard.pdf>

ANNEXES I & II TO CHAPTER V: TRANSFER PRICING DOCUMENTATION

MASTERFILE & LOCAL FILE

General comments:

- DD requirements include very sensitive and confidential information, which exceed the objectives set for Action 13 (see comments in paragraph 2.1 (iv) above)
- DD requirements should leverage (rather than depart) from existing requirements under EU TPD

We have made a comparative exercise between the content of the EU TPD released in 2006, and the OECD DD on the major items of the master file and local file. Please refer to [Exhibit 2](#).

Q 10 Comments are specifically requested as to whether reporting of APAs, other rulings and MAP cases should be required as part of the master file.

- The following principles should apply, consistent with the EU TPD approach¹³: Restrict APAs and rulings to transfer pricing matters only, and to the extent relevant to documented entity, and included in Local file if local entity is a party to APA/ruling/MAP or if transfer price is directly impacted by an existing APA to which the audited entity is not a party.
- The wording should clearly differentiate between APA's (agreement of Transfer Pricing methodology, which can be unilateral, bilateral or multilateral, and deals with the TP methodology applied by the taxpayer) and rulings (unilateral agreements on taxation regime applicable to an entity or to certain type of income, out of the scope of transfer pricing and arm's length debate). Only the former would be listed in TP doc.

Specific comments:

Financial information and comparables

Specific case of industries operating on long term projects and/or with very long business cycles

Such circumstances create problems of reconciliation between the TP methodology application and the annual financial statements.

- Long business cycles and long term projects call for multi-year reporting and analysis of TP methodology (to be tested against multiple year benchmarking studies spreading over more than the usual 3 years of most benchmarking studies). Dividing the financial results over a calendar year basis and testing them against arm's length evidence on a year-by-year basis does not reflect the business model and the industry sector in which the MNE operates. Yet this approach is often imposed on taxpayers by domestic TP documentation requirements, and it is very hard to get the message across upon audit.

¹³ See EU TPD paragraph 4.2 (h): "a list of cost contribution agreements, Advance Pricing Agreements and rulings covering transfer pricing aspects as far as group members in the EU are affected"

- In practice, when the local entity is involved in several multi-years projects, for which the local entity may have different functional profiles (Entrepreneur for one project, routine for another one etc.) and thereby requiring different transfer pricing policies, the reconciliation between TP policies application and annual financial statements may be difficult, extremely complicated to perform (notably on a yearly basis) and in the end meaningless for demonstrating that the TPM adhere to the arm's length principle.
- Here, we believe that OECD could be of great help for raising the awareness of tax administrations on such fact patterns, by including some reference and guidance in the revised Chapter V on the required flexibility which taxpayers should have for documenting compliance with the arm's length principle

ANNEX III TO CHAPTER V: MODEL TEMPLATE OF COUNTRY-BY-COUNTRY REPORTING

Proposal for an alternative model of CBCR template

Reminder: Action 13 calls for "*information on global allocation of the income, economic activity and taxes paid among countries according to a common template*".

With this objective in mind, we propose that the CbC reporting template be restricted to the following data, aggregated by country:

Country	
Constituent entities organised in the country	List with legal entity names (> 50% control)
Important business activity code	Per proposed codes in DD
Revenues	Aggregated for country
Number of Employees	Aggregated for country
Pre-Tax Income	Aggregated for country
Income Tax paid	Aggregated for country
WHT paid	Aggregated for country

Regarding reporting standards and currency applied to each Constituent Entity in the Country, taxpayer should have the choice to elect for "IFRS statutory" (ie group GAAP for consolidation, before elimination on intragroup transactions), or "Local statutory" (ie local GAAP for statutory accounts and tax return), depending on what is available in their IT system.

Exhibit 1 : Implementation of EUTPD (monitoring 2013)

Summary of Member States' responses  (142 kB) to the Questionnaire on implementation of the EU TPD

All MS consider their national practice to be in line with the EU TPD either by way of having their domestic rules explicitly aligned to the EU TPD or by way of accepting TP documentation in the EU TPD format.

Responses submitted by MS emphasise the importance of the EU TPD as the first commonly established tool on structuring transfer pricing documentation. The concept of a masterfile and local country files which is central to the EU TPD is perceived to be widely used in practice by MNEs across the EU. It is recognised that the EU TPD has contributed to a better standard of documentation within the EU.

Q1. A

What administrative or legal action was taken to implement the EU TPD Code of Conduct in your Member State?

16 MS took administrative or legal action to implement the EU TPD. As a result, these MS' TP existing documentation rules/guidance were explicitly aligned with the EU TPD or such TP documentation rules/guidance were introduced for the first time. In some MS the EU TPD formed the basis of a national mandatory TP documentation standard. Other MS introduced the EU TPD as an optional regime.

10 MS did not take any administrative or legal action to implement the EU TPD. This group includes (i) MS which do not have any specific rules/guidance on TP documentation (see answers to Q1.B below) and (ii) MS which considered that their existing rules/guidance were already sufficiently consistent with the EU TPD at the time of its adoption and saw no need for further action.

Q1.B

**Do you have specific national transfer pricing documentation rules/guidance?
Do you consider your national practice in line with the EU TPD?**

In all MS MNEs are expected to produce upon request transfer pricing documentation for the purposes of determining whether prices charged have been computed in accordance with the applicable transfer pricing rules.

MS' requirements range from no formal rules/guidance to rather comprehensive rules/guidance, but **all MS state that their national practice is in line with the EU TPD.** In MS with TP documentation rules/guidance, these rules/guidance are either fully aligned with the EU TPD, partially similar to it, or at least consistent with it. In MS without formal documentation rules/guidance, MNEs can submit their transfer pricing documentation in any format that allows them to effectively prove the arm's length character of related party transactions, including the EU TPD.

Documentation submitted in the EU TPD format would therefore be accepted in all MS.

It should be noted that nevertheless some MS could still request additional information and/or translation of documentation in the local language.

Exhibit 2 : Comparison between EU TPD and OECD DD (content of Master file)

EU TPD Masterfile (2006)	OECD Draft Masterfile (2014)		
	<i>Useful specifications improving EU TPD</i>	<i>Additions viewed as burdensome and/or irrelevant of TP documentation</i>	<i>Comments</i>
“Blueprint” of the MNE Group and its transfer pricing system, relevant and available to all MS concerned		- Organizational structure (chart showing MNEs legal and ownership structure and geographical location of operating entities)	
a) Description of the business and business strategy b) Description of MNE group’s organizational, legal and operational structure (incl’g org. chart and list of group members)	General written description of the MNE major business lines, including: - Drivers of business profit - Description main geographic market for material products and services	- Chart showing supply chain for material products and services	Too detailed for large MNEs and already available in Annual Accounts and on website, or alternatively in functional analysis
c) List of associated enterprises engaged in controlled transactions involving enterprises in the EU		- List of important related party agreements related to <u>intangibles</u> , principal research service agreement and license agreement - List of members of the MNE providing <u>central financing functions</u>	Why the focus solely on intangibles and financial services?
d) Description of intra-group transactions (flows of tangible and intangibles assets, services, financial, invoices flows, amounts)		- Chart showing main service arrangements other than R&D services - Special focus on financial activities with unrelated lenders	Why the focus solely on services and financing?
e) General description of functions performed and risks assumed (and changes from previous year)	• Written functional analysis with principal contributions to value creation • Description of important business restructuring transactions, acquisitions		

• f) Ownership of intangibles and royalties paid or received	• Description of overall strategy of intangibles • List of material intangibles	• Location of R&D facilities and management • Any material transfers of interests in intangibles (entities, countries, compensation)	• Too detailed • Local file if applicable
g) Group Policy intercompany transfer pricing policy		• Description of the MNE general TP policies related to <u>R&D and intangibles</u> • Description of the MNE general TP policies related to <u>financing arrangements</u>	Description of MNE intercompany transfer pricing policy seems to be missing?
h) List of CCA, APAs, rulings covering TP aspects (as far as group members in the EU are affected)		• List of MNE group’s applicable APA, advance rulings • Other tax rulings related to allocation of income to particular jurisdiction • List and brief description of TP matters under treaty MAP	• See comments under Q10 • In local file only, to the extent local entity is a party
i) An undertaking by each domestic taxpayer to provide supplementary information upon request			
	• MNE annual consolidated financial statement	• The title and country of 25 most highly compensated employees in the BU • CbCR template	• Not relevant for TP documentation • See comments under each question

Exhibit 2 : Comparison between EU TPD and OECD DD (content of Local file)

EU TPD Local file (2006)	OECD Draft Local file (2014)		
	Useful specifications improving EU TPD	Additions viewed as burdensome and irrelevant of TP documentation	Comments
a) Detailed description of the business and strategy		<ul style="list-style-type: none"> Description of the management structure (individuals to whom local management reports and the country in which such individuals maintain their principal offices) Business restructuring and intangibles transfers 	
b) Description of intra-group transactions (flows of tangible and intangibles assets, services, financial, invoices flows, amounts)	<ul style="list-style-type: none"> Aggregate amount of intercompany charges for each category of transactions Identification of associated enterprises Description of the controlled transactions with context 	<ul style="list-style-type: none"> Identification of other controlled transactions affecting directly or indirectly the pricing of the controlled transaction being documented 	
c) Comparability analysis : characteristics of property é services; functional analysis; contractual terms; economic circumstances ; specific business strategy)	<ul style="list-style-type: none"> Functional analysis 		
d) Transfer pricing method (selection and application)	<ul style="list-style-type: none"> Transfer pricing method 		

e) Internal and/or external comparables, if available	<ul style="list-style-type: none"> Choice of tested party Existence of comparables List of selected comparables Description of comparability adjustments Summary schedules of relevant financial data for comparables used in the analysis 		
f) Description of the implementation and application of the Group inter-company TP policy	<ul style="list-style-type: none"> Important assumptions made in applying the TPM Reasons for multi-year analysis Description of the conclusion showing that the transaction is arm length Summary financial information used in applying the TPM 		
		<ul style="list-style-type: none"> Financial accounts for local entity Allocation schedule between financial data used in applying the TP method and the annual financial statements 	Available upon request, but not to be part of Local File