

ACTION 13: TRANSFER PRICING DOCUMENTATION AND COUNTRY-BY-COUNTRY REPORTING

Background Documents:

OECD Discussion Draft:	January 30 th , 2014
BIAC Response:	February 21 st , 2014
BIAC Additional Comments:	May 9 th , 2014
OECD Report:	September 16 th , 2014
OECD Guidance on implementation:	February 6 th , 2015
OECD Implementation package:	June 8 th , 2015
OECD Final Report:	October 5 th , 2015

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TOPIC	BIAC COMMENTS	OECD RESPONSE
TP Risk Assessment	1. TP documentation: there should be materiality thresholds or safe harbours (including the exclusion of low-risk transactions).	No specific thresholds, although it is suggested that not all transactions are material enough to require full documentation in Local File and the Master File should only include ‘important’ info. For CbCr, only companies in groups exceeding turnover €750m is suggested. There is no firm commitment to lower the compliance burden on companies that are large enough to be in scope.
	2. BIAC supports the adoption of a safe harbour concept for SMEs and for non-material transactions.	No specific threshold set for SMEs, though it suggests adopting one. Also, it suggests SMEs not to be required to provide CbC reporting.
	3. CbC reporting should be prepared as a stand-alone document and not be combined with the Master File and/or Local File.	The 2014 Deliverable adopts a three-tier structure instead of the original two-tier approach. CbCr is now separate from the Master File.
	4. Tax administrations (TA) should share their risk assessments of a taxpayer with that taxpayer unless it has been demonstrated that there is a lack of cooperation or a deliberate pattern of non-compliance. Also, TA should share risks assessments with one another.	Comment not acknowledged.
TP Audit	5. Master File should only be submitted to the TA of the MNE’s parent jurisdiction and shared only when requested.	The OECD recommends that the Master File be filed directly with the TAs in each relevant jurisdiction as required by those administrations, and not only the parent jurisdiction.
	6. Master File should not be shared by the taxpayer with every country in which the group does business.	The 2014 Deliverable suggests that the Master File would be available to all relevant country tax administrations.
	7. We disagree with the proposed language of paragraph 15 of the DD (word: directly)	Comment not acknowledged – para 15 of the 2014 Deliverable still contains the word “directly”.
	8. Master File or CbC report should not be automatically exchanged	CbCr would be automatically exchanged and it is subject to confidentiality

	but should be exchanged only upon request and only subject to the protections provided by a tax treaty or a TIEA.	rules. Unclear regarding Master File.
	9. TA should only be permitted to obtain relevant country specific information for the TP transaction(s) they are assessing.	Comment not acknowledged.
Master File	10. Requiring Master File/Local File for all transactions and entities on an annual basis would multiply the work.	Local File, Master File and CbCr to be reviewed and updated annually. Comparable searches to be updated every 3 years but financial information to be updated annually.
	11. A modular approach: only require the completion of information relevant to the MNE/business line/transaction in question, rather than imposing a significant compliance exercise in all cases.	Comment not acknowledged.
	12. The choice between preparing a Master File by line of business or entity wide ought to be determined by the taxpayer.	Taxpayer should use the entity wide approach, unless using the line of business approach is well justified by the facts. Some ambiguity remains regarding the additional consolidated work that will be required for those businesses that do need to report along business lines.
	13. Standardising TPD requirements across OECD and G20 members also presents an opportunity to standardise some of the key principles that underpin transfer pricing and the preparation of TPD (e.g. the definition of a 'related party').	Comment not acknowledged – other key principles are not standardised.
	14. Guidance should extend to how the Master File and Local File should be used in practice by tax administrations to ensure some level of consistency on how conclusions are reached.	Comment not acknowledged – there is no guidance on the usage of Master File and Local File.
	15. APAs, other rulings and MAP cases do not need to be included in the Master File.	The Master File template in Annex 1 requires information on the MNE's unilateral APAs and other tax rulings relating to allocation of income.
CbC	16. The inclusion of the CbC report in the Master File suggests that the template is a TP tool. The CbC report should only be used for risk assessment purposes.	Three-tiered approach. CbC not part of Master File.
	17. To prepare the CbC report as a stand-alone document.	Three-tiered approach. CbC not part of Master File.
	18. Proposed information to be included in the CbC report goes well beyond what is required to provide a high-level risk assessment.	The CbC template was modified to exclude some information.
	19. Columns for revenues, earnings before tax, a tax figure, number of employees and activity code should provide sufficient	The CbC template was modified to exclude some information. The only item that was suggested to be removed and that still remains is the column

	information for a high level risk assessment. Other proposed data points are not necessary for a high level risk assessment and should be considered as part of a review of the Local File (i.e. tangible assets and employee costs, and royalties, interest and service fees).	for tangible assets.
	20. Some countries/treaties do not include a place of effective management test. The country listed should be country of residence plus permanent establishments.	The CbCr template now includes a box for the country of residence of the Constituent Entities (which includes PE).
	21. Number of employees: MNEs should be permitted to provide this using data maintained for other purposes rather than specify particular rules to avoid an unnecessary compliance burden.	Report suggests providing this data based on average employment levels or any other basis consistently applied across tax jurisdictions.
	22. Lack of guidance on when a taxpayer's circumstances indicate low-risk. In cases of low-risk, there ought to be a clear reduction in the compliance burden.	Comment not acknowledged – there is no guidance on when a taxpayer's circumstances indicate low-risk
	23. Access to the Master File and CbC report should be limited to countries that have adopted common OECD standards for TPD.	There is no such restriction, the only requirement is to have implemented Action 13 (i.e. not the exact wording) and to be a jurisdiction where the MNE operates.
	24. For extractive, financial services and other industries that will have to meet separate disclosure requirements, an “equivalence” approach should be adopted to mitigate same data in a wide variety of formats	Requirements of the Local File or Master File can be fully satisfied by specific cross-references to other existing documents. This applies to all industries, not only extractive and financial services. There is no such rule for CbCr.
	25. Flexibility over a “bottom-up” or “top-down” approach.	Flexibility remains as long as the approach is consistent year-to-year and the source is disclosed in the additional information section of the CbCr, to be updated if the approach changes.
	26. No separate independent audit assurance sign off that the data is accurate should be required if prepared on a “top-down” or “bottom-up” basis.	Comment not acknowledged – no reference to audit assurance sign off.
	27. The CbC report should permit population in one consistent accounting standard or a number of different (local) accounting standards depending on what is most efficient for each MNE.	It is permitted to choose the source of data, but it has to be consistent and briefly described in the additional information section. No adjustments are required for differences in accounting treatments.
	28. “Top-down” reporting should be based on the group reporting	Whilst group reporting standards may be used, all amounts should be

	standards (and not translated into different country reporting standards or currencies).	translated to the stated functional currency of the Reporting MNE at the average exchange rate for the year stated in the Additional Information section of the template.
	29. Eliminating intra-group transactions within a certain country would require substantial administrative efforts and is available to tax administrations via other sources (e.g. the Local File).	Revenues are defined as the arithmetic sum of the revenues of each entity resident in each country, i.e. no eliminations required for intracountry transactions.
	30. The OECD's approach should permit taxpayers to choose between entity reporting and country reporting.	Taxpayer cannot choose between entity reporting and country reporting in the CbCr. OECD adopted an entity reporting approach.
	31. Where countries permit tax consolidation for the purposes of reporting, MNEs should be permitted to submit data in relation to the tax consolidation only as opposed to the sum of the parts of the tax consolidation broken down by legal entity	Comment not acknowledged – there is no reference to tax consolidation.
	32. Country-level consolidations could be prepared in a number of ways, for example, by simply aggregating entity level data (e.g., from statutory accounts) or by using country consolidations already prepared for other purposes.	As per the “general instructions” to the CbCr, the reporting MNE can choose to use data from the consolidated reporting packages or from separate entity statutory financial statements.
	33. PEs/Branches should be included with other legal entities in the same country if reporting on a country consolidation basis	OECD adopted the entity reporting approach. Each constituent entity is to be reported in the CbC report. PEs are regarded constituent entities.
	34. Where a “top-down” approach is used, TA should not request reconciliations to local books or local taxable income	Comment not acknowledged. No mention of reconciliation with local books when using top-down approach.
	35. When a “bottom-up” approach is adopted, dividends received from MNE group members will need to be excluded from revenues and from income before taxes.	OECD makes a specific reference to exclude dividends received from MNE group members from revenues.
	36. Mandating separate formal individual country consolidations with consolidation adjustments would impose a significant administration burden on taxpayers which should be avoided.	It is not necessary to reconcile the revenue, profit and tax reporting in the template to the consolidated financial statements.
	37. Flexibility to choose between reporting of taxes paid, current accrued tax or ‘tax cost’, so long as the data is presented consistently and the method selected is clearly stated.	Both, taxes paid and accrued, should be included in the CbC report.
	38. Separate withholding tax reporting should not be mandatory. But it could be included on a consistent and voluntary basis	Requirement removed.

	39. Reporting royalties, interest and service fees would significantly increase the workload on MNEs for very little benefit.	Requirement removed.
	40. Unless one universal standard short activity list is adopted, the number of differing and granular classification standards available will likely cause confusion and will impede businesses efforts to respond to information requests.	Code system replaced by a tick system. List of activities still remains, further including “provision of services to unrelated parties” and “dormant”, and finance activities were split into “internal group finance” and “regulated financial activities”.
Materiality	41. A specific guideline and definition incorporating a reasonable level of materiality is paramount for all three documents.	Comment not acknowledged. There are no specific guidelines and only CbCr has a threshold.
	42. Guidance on a materiality threshold taking into account one or more of the following: i) Exclude small members/countries of the MNE group; ii) Transaction amount: either in absolute terms or in relative terms; and, iii) Type of transaction.	OECD suggests including materiality thresholds, both absolute and relative. However, no specific guidance provided and it is left upon the individual countries based on local conditions and common practices.
	43. Clear safe harbours should be established within the OECD’s guidelines, for example, to acknowledge that routine or small transactions or entities are excluded from the scope.	No clear safe harbours but only guidance on the factors to be considered while establishing safe harbours.
	44. SMEs groups. Such groups should be completely exempted and not be required to incur compliance costs related to the preparation of TPD that is disproportionate to the nature, scope and complexity of their intra-group transactions.	SMEs not completely exempted however, it is suggested that costs of compliance and TPD requirements for SMEs should not be disproportionate to their circumstances.
	45. Explicit guidance on the exclusion of domestic related party transactions to assist in managing the increased compliance.	Comment not acknowledged - No guidance provided.
Frequency of documentation updates	46. To require comparables analysis only every three years for all transactions, not yearly in each Local File for each transaction.	As long as the operating conditions remain unchanged, TA may determine to update every 3 years the comparables. Annual review is required to ensure the operating conditions have not changed.
	47. Clearer guidance on the use of regional (e.g. pan-European, Asian/American) benchmarks vs. local comparables.	No clear guidance, however OECD suggests that using regional comparables will not accord with the requirement to use the most reliable information. Local comparables are considered more reliable.
	48. The use of secret comparables by tax authorities should be affirmatively discouraged.	Comment not acknowledged – there is no reference to secret comparables.
	49. The preparation of the Master File and Local File should be explicitly accepted as sufficient to provide penalty protection.	Penalty protection or shift of burden of proof incentives are suggested but mere TPD preparation not enough to provide penalty protection.

	50. To develop clear grandfathering rules to ensure that compliant taxpayers are not penalised.	Comment not acknowledged – there are no grandfathering rules.
	51. Promote consistency in the adoption and application of its new guidance to ensure that taxpayers are provided with a reasonable timeframe to comply with the requirements.	The OECD encourages countries participating in the OECD/G20 project to consistently implement/use the standards for MF and LF.
Language	52. Permitting a common language, such as English, for the Master File and the separate CbC report will simplify compliance for taxpayers. However, it should be permitted to prepare Master File in the language of their home (headquarter) country.	Language should be established under local law. It is encouraged to have a common language. English is not the suggested language to prepare the Master File. No reference to use the language of the home country.
	53. If MNEs choose to prepare their Local Files in the relevant local language, it should not be required to prepare that same document in English.	Comment not acknowledged – The 2014 Deliverable, as the DD, consider that If TA believes that translation of all or part of the Master File is required can request a translation.
	54. There should be no requirement to have Master Files available in any language other than English	Comment not acknowledged – it will be a matter of domestic law.
	55. If English is selected as the official language for TPD purposes, the definitions of English terms must take precedence over local language translations.	Comment not acknowledged.
Confidentiality	56. A TA should not exchange CbC information unless the treaty partner has formally signed up to effective arbitration mechanisms and has demonstrated that there exists a policy and practical commitment to effective MAP.	Comment not acknowledged. Under the model MCAA, a CbC Report is only required to be exchanged, if both Competent Authorities have this Agreement in effect and their respective Jurisdictions have in effect legislation that requires the filing of CbC Reports. None of the models require for the exchange having a commit to effective MAP or arbitration.
	57. The level of detail required in the CbC report could potentially lead to confidentiality issues, it should not be disclosed to third parties, including foreign TAs.	Comment not acknowledged.
	58. Disclosure of Master File and CbC information only to the MNE parent's home country TA (where requested) for sharing to other countries under information exchange treaties as the exclusive means of sharing the information.	Comment not acknowledged.
	59. CbC data should only be used for high-level risk assessment purposes and not be used for tax audit purposes.	CbC data can be used for high-level risk assessment as well as economic and statistical analysis, but TP adjustments cannot be based on the CbC data.

	60. Specific anti-infringement procedures available to taxpayers to protect them from unauthorised information disclosure by TA if real damage is demonstrated, or if disclosure is in conflict with applicable legal restrictions.	Comment not acknowledged.
	61. Reviewing (rather than filing) of sensitive information at taxpayer premises.	Comment not acknowledged.
	62. Legally binding confidentiality agreement between taxpayers and TA	Comment not acknowledged.
	63. Any information received by a TA should always be treated as confidential.	Countries participating in the OECD/G20 Project agree to maintain confidentiality with regard to Local File and Master File. CbCr also protects confidentiality. The report does not address
	64. The information should not be disclosed to any other person or entity or authority in the same jurisdiction or any other jurisdiction without the express written acknowledgement of the taxpayer.	Comment not acknowledged. No written permission requirement although information is treated as confidential.
Implementation	65. The information to be disclosed in the Master File should be relevant to the transactions actually documented. For large groups undertaking a range of activities (i.e. those without a simple supply chain or principal structure), providing a detailed Master File would disclose a substantial amount of information that is not relevant for local risk assessment or understanding of how the local functions and risks fit into the group's activities	Comment not acknowledged. The information to be reported in the Master File remains largely the same as the DD.
	66. A phased roll out of the new guidance, beginning with the CbC report & moving onto the Local File and Master File requirements.	Comment not acknowledged – there is no phased roll out to implement the new TPD.
	67. Clear guidance that TA should not add to the information required within the CbC report, Master File or Local File.	Comment not acknowledged. No clear guidance on this point.
	68. The Master File and Local File should not require separate independent audit assurance sign off that the info is accurate	OECD agrees that no certification of TPD from an outside auditor or a third party is required especially at the stage of TP risk assessment.
	69. Twelve (12) items proposed for inclusion in the Master File are not necessary to review the TP position in a country, could result in	From the 12 items requested to be deleted, only one was removed (the title and country of the 25 most highly compensated employees in the business

	<p>the disclosure of information that could be misleading, and relate to highly confidential or commercially sensitive information.</p>	<p>line).</p>
	<p>70. Additional guidance will be needed on several of the terms used in Annex I and II to the Discussion Draft.</p>	<p>Comment not acknowledged – there is no additional guidance.</p>
	<p>71. The Master File should not separate R&D services from other related party activities. R&D arrangements should be disclosed in the Local File.</p>	<p>Comment not acknowledged – it still separates R&D services from other related party activities.</p>
	<p>72. Local Files should be submitted to the relevant jurisdictions (when requested). Master File should be retained in the location of the parent and only shared under existing exchange of information principles. CbC report should be filed in the location of the parent and also shared under existing exchange of information principles</p>	<p>The Master File and Local File should be filed directly with the tax administrations in each relevant jurisdiction as required by those administrations. CbCr is filed in the ultimate parent jurisdiction, a constituent entity may be requested to file if one out of three conditions is present.</p>