



OECD Issues White Paper on Transfer Pricing Documentation

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On July 30, 2013, the Organisation for Economic Cooperation and Development (the "OECD") issued its *White Paper on Transfer Pricing Documentation* (the "White Paper").^[1] The purpose of the White Paper is to initiate a global conversation on how to simplify transfer pricing documentation rules and to provide tax authorities with more focused and useful information. It really is framing the future battleground.

The White Paper is a further expression of the growing call to (1) improve transparency, (2) standardize transfer pricing approaches and (3) focus on certain structures that appear to be abusive. The White Paper was issued in conjunction with the OECD's *Action Plan on Base Erosion and Profit Sharing* published on July 19, 2013 (the "BEPs Action Plan")^[2] and in response to communication from the G8 Summit held on June 17-18, 2013 in Ireland calling for the OECD to develop a common template for country-by-country transfer pricing reporting to enhance transparency and improve risk assessment regarding multinational enterprises ("MNEs").^[3] Pursuant to the BEPs Action Plan, the OECD will

[D]evelop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business. The rules to be developed will include a requirement that MNEs provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries, according to a common template.^[4]

The White Paper surveys the current transfer pricing documentation requirements; considers the objectives of transfer pricing documentation; and makes suggestions on how to modify, streamline and simplify the transfer pricing documentation rules. The OECD invites interested parties to provide written comments on the White Paper by October 1, 2013. The OECD plans to hold public consultation on the White Paper on November 12-13, 2013 in Paris, France.

This Alert summarizes the key observations and suggestions provided in the White Paper.

KEY OBSERVATIONS & SUGGESTIONS

- **Existing Guidance and Initiatives on Transfer Pricing Documentation.** The White Paper notes that, because existing transfer pricing documentation rules vary widely by country, it is difficult for MNEs to consolidate and streamline their compliance practices. The White Paper also observes that these variations make it difficult for tax authorities to get a "big picture" of the MNE's transfer pricing practices, which may lead countries to pursue matters of less importance and miss matters of greater importance and higher risk. The White Paper finds that international efforts to create uniform documentation practices have not been effective.
- **Purposes of Transfer Pricing Documentation.** The White Paper notes that it is important for governments to have access to the information they need in order to make an informed decision to perform and conduct audits. The White Paper observes that it also is important for taxpayers to be able to evaluate their compliance with applicable transfer pricing rules before filing a tax return. Consequently, the White Paper finds that the documentation rules should be designed to support each objective without undermining one another.
- **Tiered Approach to Transfer Pricing Documentation.** The White Paper describes the general structure and requirements of possible documentation rules. Initially, the rules would focus on higher-level information to assist governments in undertaking a transfer pricing risk analysis and to help confirm taxpayers' good faith efforts in complying with the arm's-length principle. According to the White Paper, the documentation should focus on identifying (i) material cross-border transactions; (ii) recent business restructuring transactions and transfers of intangibles; (iii) information regarding the levels of corporate debt and interest expense in relevant countries; (iv) information regarding the MNE's global transfer pricing policies, including where important intangibles are held; and (v) the taxpayer's explanation of how its material transfer pricing policies comply with the arm's length principle and local transfer pricing rules. The White Paper notes that the two-tier structure laid out in the EU documentation guidance has significant potential for simplifying transfer pricing documentation compliance.
- **Development of a Coordinated Approach to Documentation.** In an attempt to move towards a simpler and more efficient compliance structure, the White Paper sets out a possible coordinated approach to transfer pricing documentation. This approach follows a two-tier structure, consisting of a master file and a local file. The master file would seek to elicit a reasonably complete picture of the global business, financial reporting, debt structure and tax situation of the MNE, which would help tax authorities identify the presence of significant transfer pricing risks. The local file would supplement the master file and help meet the objective of assuring that the taxpayer has complied with the arm's length principle in its material transfer pricing positions. The local file would focus on specific transfer pricing analyses related to material transactions taking place between a local country affiliate and associated enterprises in different countries. The local file would include relevant financial information regarding those specific transactions, a comparability analysis and application of the most appropriate transfer pricing method.

REQUEST FOR PUBLIC COMMENT

As noted, interested parties are invited to send comments on the White Paper by October 1, 2013.

Comments also are welcome on the most appropriate means of implementing the transfer pricing documentation directives of the BEPS Action Plan. Comments should be sent to TransferPricing@oecd.org. A public consultation on the White Paper and other transfer pricing matters is expected to be held at the OECD Conference Centre in Paris, France on November 12-13, 2013.

CONCLUSION

Over the last 20 years, transfer pricing documentation requirements have rapidly spread around the world. This trend has coincided with greater transparency in all financial and business matters. In the world of e-mail and e-commerce, there is tremendous transparency. The proliferation of diverse local transfer pricing documentation requirements, combined with a dramatic increase in the volume and complexity of international intra-group trade, makes transfer pricing documentation one of the top tax compliance priorities on the agendas of both tax authorities and businesses.

The importance of aligning the tax structure to your business operations becomes increasingly important. Transfer pricing will largely stand or fall on the business substance supporting it. The documentation of transfer pricing will only be relevant and useful if it documents a strong alignment of business to structure. Getting transfer pricing built into your daily processes and systems will greatly reduce your risk under exam.

[1] OECD, *White Paper on Transfer Pricing Documentation* (July 30, 2013), <http://www.oecd.org/ctp/transfer-pricing/white-paper-transfer-pricing-documentation.pdf>.

[2] OECD, *Action Plan on Base Erosion and Profit Sharing* (July 19, 2013), <http://www.oecd.org/ctp/BEPSActionPlan.pdf>

[3] G8 Communique, Action 3 (2013), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207771/Lough_Erne_2013.pdf

[4] OECD, *Action Plan on Base Erosion and Profit Sharing* (July 19, 2013), Action 13, <http://www.oecd.org/ctp/BEPSActionPlan.pdf>

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