



# **PRACTICAL TOOLKIT TO SUPPORT THE SUCCESSFUL IMPLEMENTATION BY DEVELOPING COUNTRIES OF EFFECTIVE TRANSFER PRICING DOCUMENTATION REQUIREMENTS**

DRAFT VERSION

This document is prepared under the responsibility of the Secretariats and Staff of the four organisations. It reflects a broad consensus among these staff, but should not necessarily be regarded as the officially endorsed views of those organisations or their member states.

# TABLE OF CONTENTS

ACRONYMS .....	6
EXECUTIVE SUMMARY .....	7
PART I. INTRODUCTION .....	9
1.1 Introduction: why a toolkit on implementing Transfer Pricing documentation? .....	9
1.2 Structure of this Toolkit .....	10
1.3 Scope .....	10
1.4 Context and background of TP documentation requirements .....	13
1.5 Objectives of transfer pricing documentation requirements .....	14
1.6 Policy principles .....	15
Ensuring international consistency .....	15
PART II. OPTIONS FOR COUNTRIES TO IMPLEMENT TRANSFER PRICING DOCUMENTATION .....	16
2.1 Regulatory framework .....	16
2.1.1 General considerations .....	16
2.1.2 Burden of proof .....	17
2.2 Confidentiality .....	19
2.3 Timing Issues .....	19
2.4 Penalties and compliance incentives .....	21
2.5 Accessing documents held outside the jurisdiction .....	23
2.6 Simplification and exemptions .....	24
PART III. SPECIFIC DOCUMENTATION ELEMENTS .....	27
3.1 Introduction .....	27
3.2 Transfer pricing returns .....	27
3.2.1 Functions of transfer pricing returns .....	27
3.2.2 Format and content .....	28
3.2.3 Submission mechanism .....	29
3.2.4 Regulatory framework .....	30
3.2.5 Timing issues .....	32
3.2.6 Enforcement .....	32
3.2.7 Confidentiality .....	34
3.2.8 Simplification and exemptions .....	34
3.3 Transfer pricing studies .....	36
3.3.1 Functions of transfer pricing studies .....	36

3.3.2 Format and content.....	38
3.3.3 Regulatory framework .....	43
3.3.4 Timing issues.....	44
3.3.5 Enforcement .....	46
3.3.6 Confidentiality.....	49
3.3.7 Simplification and exemptions.....	49
3.4 Country by Country Reporting .....	54
3.4.1 Introduction.....	54
3.4.2 Filing mechanism.....	64
3.4.3 Format and Content .....	67
3.4.4 Legislative and regulatory framework.....	68
3.4.5 Enforcement .....	71
3.4.6 Practical issues on the implementation of CbC Reporting .....	72
3.5 Other information gathering mechanisms (Transfer pricing questionnaires and <i>ad hoc</i> information requests).....	77
3.5.1 Functions of transfer pricing questionnaires and <i>ad hoc</i> information requests .....	77
3.5.2 Format and content.....	78
3.5.3 Regulatory framework .....	78
3.5.4 Timing issues.....	78
3.5.5 Enforcement .....	78
3.5.6 Confidentiality.....	78
PART IV. CONCLUSIONS.....	79
Annex 1 .....	80
Illustrative examples - Transfer pricing annual returns .....	80
Annex 2 .....	81
Illustrative examples – Countries’ transfer pricing documentation rules .....	81
Annex 3 .....	85
Example - Exemptions regimes (transfer pricing studies) .....	85
Annex 4 .....	86
Master file content (from Annex I to Chapter V of the OECD Transfer Pricing Guidelines) .....	86
Local file content (from Annex II to Chapter V of the OECD Transfer Pricing Guidelines) .....	88
Annex 5 .....	90
Master file and local file - Filing obligations in selected countries .....	90
Annex 6 .....	92

Sample primary legislation to implement transfer pricing documentation requirements.....	92
Annex 7 .....	99
CbC Report template (from Annex III to Chapter V of the OECD Transfer Pricing Guidelines) .....	99
Template for the Country-by-Country Report – General instructions.....	102
References.....	107

## ACRONYMS

BEPS	Base Erosion and Profit Shifting
CAA	Competent Authority Agreement
CbC	Country-by-Country
CRS	Common Reporting Standard or Standard for Automatic Exchange of Financial Account Information in Tax Matters
CTS	Common Transmission System
DTC	Double Tax Convention
DWG	Development Working Group of the G20
EOI	Exchange of Information
EU	The European Union
GAAP	Generally Accepted Accounting Principles
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IMF	International Monetary Fund
MNE	Multinational Enterprise
MTC	Model Tax Convention
OECD	Organisation for Economic Co-operation and Development
QCAA	Qualifying CAA
SME	Small and Medium Enterprises
SPE	Surrogate Parent Entity
TIEA	Tax Information Exchange Agreement
UN	United Nations
UPE	Ultimate Parent Entity
WBG	World Bank Group

## EXECUTIVE SUMMARY

**Transfer pricing rules apply to taxpayers that conduct transactions with associated parties. In most countries, they require the taxable profit of such taxpayers to be computed in accordance with the arm's length principle** – that is, on the assumption that the price and other conditions of the transactions are the same as those that would be expected had the transaction been between unrelated parties.

**In establishing the prices and other conditions for transactions between associated enterprises and assessing whether such prices and conditions are consistent with the “arm's length principle”, it is necessary for enterprises and tax administrations to conduct what is often called a ‘transfer pricing analysis’.** This analysis requires taxpayers or tax administrations to identify and understand the key features of a transaction between related parties, and analyse the functions performed, risks assumed and assets used by those parties in order to determine and apply the most appropriate transfer pricing method. The application of the transfer pricing method normally relies on information from external and internal sources to find one or more comparable uncontrolled transactions<sup>1</sup>. In some cases, this analysis involves a complex examination of a large amount of information. This Toolkit concerns the measures that tax administrations use to require taxpayers to document all stages of their transfer pricing analysis. It has a specific emphasis on developing countries.

**Robust transfer pricing documentation is a prerequisite for the effective implementation of transfer pricing rules.** The requirement to keep or submit information enhances compliance and enables tax administrations to access the information necessary to enforce their transfer pricing regulations. The access to such information also allows tax administrations to focus their efforts and to deploy their limited resources on taxpayers and transactions that pose the greatest risk of tax loss. At the same time, it should reduce any unnecessary taxpayer compliance costs arising from unfocused or misdirected audits. However, comprehensive documentation can be costly for the taxpayer, and finding the right balance between the tax authorities' needs and avoiding excessive and unnecessary compliance costs is not always an easy task.

**The outcome of Action 13 of the OECD/G20 BEPS initiative outlined a standardised approach to transfer pricing documentation aimed at balancing compliance imperative with compliance cost.** The approach consists of three elements: a master file, containing information on the overall group; a local file, containing specific information on the local enterprise; and a Country-by-Country (CbC) Report, which describes the high-level financial and economic position of the overall multinational group, analysed between countries. This Toolkit takes the view that all three elements are potentially beneficial for developing countries and focuses on the issues faced on implementation of each of them. It should be noted that CbC reporting is one of the four BEPS minimum standards, and that members of the OECD's Inclusive Framework commit to its implementation, and to take part in the Inclusive Framework's peer review process.

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<sup>1</sup> The process of the comparability analysis has been described in the Toolkit “Addressing Difficulties in Assessing Comparable Data for Transfer Pricing Analysis”, [www.oecd.org/tax/toolkit-on-comparability-and-mineral-pricing.pdf](http://www.oecd.org/tax/toolkit-on-comparability-and-mineral-pricing.pdf).

**This Toolkit also describes additional approaches to documentation**, including information required in or to be filed along with the tax return (such as transfer pricing return schedules), and informal measures such as questionnaires.



## PART I. INTRODUCTION

### 1.1 Introduction: why a toolkit on implementing Transfer Pricing documentation?

**The relevance of transfer pricing to developing countries, together with the challenges faced by low-capacity or inexperienced tax administrations, has been high on the regional and global tax agenda in the last several years.** The OECD/G20 Base Erosion and Profit Shifting (BEPS) initiative brought the issue to the fore, and served to highlight the relevance to, and challenges faced by, developing countries, which were specifically discussed in a two-part report to the G20 Development Working Group: ‘The Impact of BEPS on Low Income Countries’ (July and August 2014).<sup>2</sup> This is being followed up with a number of Toolkits developed by International Organisations,<sup>3</sup> which are intended to support developing countries implement those BEPS outcomes that have most relevance to them.

**Research using firm-level information and selected country experiences suggest that the introduction of effective documentation obligations is a critical component of compliance management strategies to address transfer mispricing.** Since 1994 the number of countries with transfer pricing documentation increased more than tenfold (see Figure 1 below), and this has been linked to a reduction in observable indicators of profit shifting by a range of researchers,<sup>4</sup> possibly related to better targeted enforcement activities and self-compliance induced by the obligations to revisit the related party dealing more systematically.

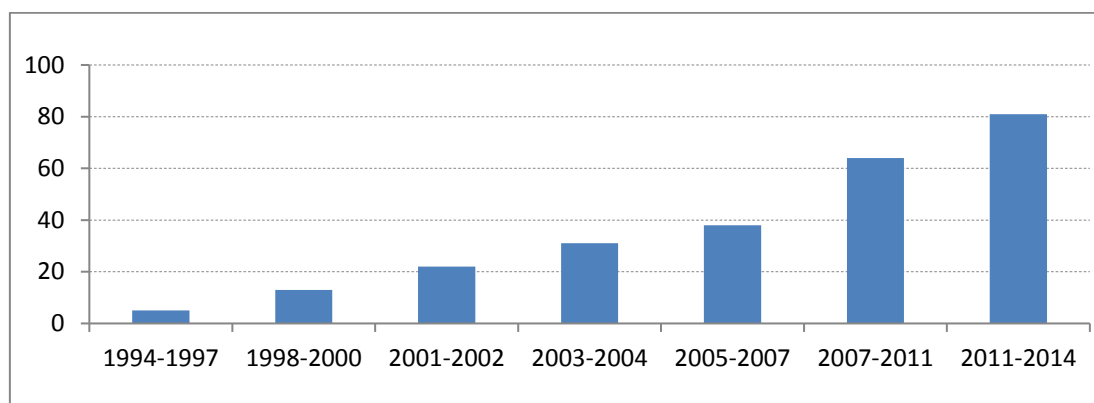
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<sup>2</sup> OECD (2014), Two-part report to G20 Development Working Group on the impact of BEPS In Low Income Countries 2014, OECD Publishing, Paris, [//www.oecd.org/tax/tax-global/report-to-g20-dwg-on-the-impact-of-beeps-in-low-income-countries.pdf](http://www.oecd.org/tax/tax-global/report-to-g20-dwg-on-the-impact-of-beeps-in-low-income-countries.pdf)

<sup>3</sup> IMF, OECD, UN, WBG

<sup>4</sup> Cooper, Joel, Randall Fox, Jan Loeprick, and Komal Mohindra. 2016. Transfer Pricing and Developing Economies: A Handbook for Policy Makers and Practitioners. Directions in Development. Washington, DC: World Bank. doi:10.1596/978-1-4648-0969-9. License: Creative Commons Attribution CC BY 3.0 IGO p.7; and Beer and Loeprick, 2015. ‘Profit Shifting Drivers of Transfer (Mis)Pricing and the Potential of Countermeasures’. International Tax and Public Finance 22 (3): 426-51

**Figure 1: Timeline of Effective Transfer Pricing Documentation Rules by number of countries 1994–2014**



Source: World Bank (2016), based on Oosterhoff, 2008 and PwC, 2014.

## 1.2 Structure of this Toolkit

**This toolkit is intended to provide an analysis of policy options and a “source book” of guidance and examples** to assist low capacity countries in implementing efficient and effective transfer pricing documentation regimes. Key points from these sources are reproduced, for ease of reference.

This first part of the Toolkit provides information on the background, context and objectives of transfer pricing documentation regimes. Part II then discusses a number of general policy options and legislative approaches relevant to all types of documentation requirements.

Part III focuses more specifically at each kind of documentation in turn, and examines the specific policy choices that are relevant to each, as well as providing a number of examples of country practices. This format inevitably involves some repetition, however a reader interested in implementing a particular type of documentation requirement can find all of the relevant information in a single section.

The final part sets out a number of conclusions.

## 1.3 Scope

**For the purposes of this Toolkit, the term ‘transfer pricing documentation’ comprises the following:**

**1. Group level documentation.** This category includes documents such as the master file and the Country-by-Country (CbC) Report described in Action 13 of the OECD/G20 BEPS initiative (“BEPS Action 13 Report”). Note that while there is a high degree of standardisation of the CbC Report (as it applies globally), countries have taken a variety of approaches on the implementation of the master file.

**2. Entity level documentation,** generally comprising one or more of the following:

- The local file or similar (e.g. transfer pricing study), providing details of a local taxpayer's intragroup transactions, and including a description of the transfer pricing analyses giving rise to the selected method and comparables;
- A transfer pricing specific return or schedule, separate from the income tax return, required to be lodged periodically with the tax administration;
- A schedule to the tax return i.e. one or more transfer pricing specific questions included on a tax return or a schedule to the tax return; and
- Questionnaires on a regular or ad-hoc basis.

It should be noted that the term 'transfer pricing documentation' does not include business documents or records such as invoices, contracts, communications etc., which might be used to support or substantiate amounts of assessable income or deductible expenses. Typically, however, tax administrations require taxpayers to keep this type of information and to submit specified items during an audit, and legislation may stipulate the records that taxpayers are required to keep, and the length of time they should be kept. For completeness and comparison purposes, this type of information power is briefly discussed at various points in this Toolkit.

**Table 1: Type and scope of transfer pricing documentation**

Type of Documentation	Group or local entity documentation	Entity submitting document	Required by legislation, and enforced by penalties	BEPS minimum standard
Transfer pricing returns or schedules	Local	Local taxpayer	Yes (where applicable)	No
Local file	Local	Local taxpayer	Generally yes	No
Master file	Group	Local taxpayer	Generally yes	No
CbC reports	Group	Depends on domestic legal obligations. The Action 13 standard generally requires that the report is submitted by the ultimate parent entity, or specified surrogate entity, to that entity's tax jurisdiction. In exceptional circumstances it may be required to be submitted by the local taxpayer.	Yes	Yes
Questionnaires	Local	Local entity	Generally no, but depends on how framed	No

Further information, data and documents	Local	Local entity	Generally yes	No
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The following table summarises the different practices of a number of countries.

**Table 2: Country practices on transfer pricing documentation requirements**

	Local file or similar TP study	Master file	CbC Report	TP Return	Questions in Tax Returns	Questionnaires or ad-hoc requests
Argentina						
Australia <sup>1/</sup>						
Bulgaria						
Canada <sup>2/</sup>						
Colombia						
Czech Republic						
Dominican Republic						
Finland						
Georgia						
Latvia						
Lithuania						
Mexico						
Netherlands						
Pakistan						
Spain						
Slovak Republic						
Turkey						
United States						

<sup>1/</sup> The preparation of transfer pricing documentation is not compulsory, but taxpayers are recommended to do so (with details of comparables and transfer pricing policies) to defend their position and to mitigate any administrative penalties that may apply in the event the tax authority amends an assessment. Australia has an International Dealings Schedule which includes questions on transfer pricing. It is not exclusively a transfer pricing return, but it is a compulsory disclosure form that must be filed with the tax return. Questionnaires or other ad hoc requests for information may arise during the course of an examination.

<sup>2/</sup> Canada has legislation in place for something similar to the local file – it is referred to as “contemporaneous documentation” and it has been in place since 1999. With respect to the master file, Canada can request a master file from a Canadian taxpayer based on certain provisions in their law.

**It can be seen that there is no single approach to transfer pricing documentation requirements, or combination of approaches, that is universally adopted.** Furthermore, other than for CbC reporting (which is a BEPS minimum standard) there is no internationally agreed form

and format of documentation. The OECD Transfer Pricing Guidelines<sup>5</sup> and the UN Practical Manual on Transfer Pricing<sup>6</sup> provide guidance at the level of general principles, including specifying the types of information to be included in the documentation, but do not attempt to prescribe documentation requirements in detail. Rather than reproducing such guidance, this toolkit aims to help translate those principles into practically administrable transfer pricing documentation regimes. See [Part III](#).

## 1.4 Context and background of TP documentation requirements

**Guidance on transfer pricing documentation was first included in the OECD Transfer Pricing Guidelines in 1995**, following the introduction of documentation requirements in the United States one year earlier. Since then, an increasing number of countries have adopted documentation requirements (see Figure 1, above).

**The proliferation of individual country documentation regimes resulted in a wide range of differing requirements around the world, contributing to an increased compliance burden for multinational enterprises.** In response to this, a number of initiatives to coordinate country transfer pricing documentation requirements have been undertaken, for instance by the Pacific Association of Tax Administrators<sup>7</sup> in 2003, within the European Union<sup>8</sup> in 2006, and finally as part of the OECD/G20 BEPS project in 2015.

**The BEPS Action 13 Report required the development of transfer pricing documentation rules that enhanced transparency for tax administrations while taking into consideration the compliance costs for business.**<sup>9</sup> As a result, a three-tiered, standardised approach, comprising a local file, master file and, for large MNEs with world-wide group turnover of EUR 750 million or more, the CbC Report, was developed and then incorporated into the OECD Transfer Pricing Guidelines. A similar approach is taken in the UN Practical Manual on Transfer Pricing.

As has been noted above, only the CbC Report is a BEPS minimum standard. The BEPS Action 13 Report acknowledges that the specific content of the CbC Report template was the subject of compromise by participating countries and its implementation will be reviewed no later than the

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<sup>5</sup> See OECD (2017), "Documentation", Chapter V in *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en>.

<sup>6</sup> See UN (2017), "Documentation", Section C.2 in *Practical Manual on Transfer Pricing for Developing Countries 2017*, UN Publishing, New York, <http://www.un.org/esa/ffd/wp-content/uploads/2017/04/Manual-TP-2017.pdf>.

<sup>7</sup> The Pacific Association of Tax Administrators (Australia, Canada, Japan and the United States) released a documentation package to assist taxpayers in creating one set of documentation which would satisfy the requirements of each of the PATA member countries. While application of the PATA requirements was voluntary for taxpayers, the package included an exhaustive list of documents which was more comprehensive than the requirements of any one of the member countries.

<sup>8</sup> The EU Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union, agreed by the Council of the EU in June 2006, consisted of a common master file relevant to all EU group members of a multinational enterprise (and had to be provided to all relevant EU member states), as well as standardised country-specific documentation. Application of the Code of Conduct was optional for taxpayers.

<sup>9</sup> See OECD (2013), "Action 13" in *Action Plan on Base Erosion and Profit Shifting 2013*, OCDE Publishing, Paris, <http://dx.doi.org/10.1787/9789264202719-en>

end of 2020. As part of this review, both the threshold and the data requirements of the CbC Report may be modified.<sup>10</sup>

## 1.5 Objectives of transfer pricing documentation requirements

**Fundamentally, transfer pricing documentation enables** taxpayers to demonstrate their compliance with transfer pricing rules.

**The BEPS Action 13 Report identifies three main objectives of transfer pricing documentation requirements:**

- To ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated enterprises and in reporting the income derived from such transactions in their tax returns.
- To provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment and selection of cases for audit.
- To provide tax administrations with information necessary to conduct an audit of the transfer pricing of entities subject to tax in their jurisdiction.

**As part of the process of complying with reporting obligations, taxpayers may also be incentivised to focus attention on their transfer pricing arrangements and their compliance with transfer pricing rules.** Through preparation of transfer pricing documentation taxpayers can place themselves in a better position to defend their transfer pricing policies in the event of an audit by the tax authorities.

For tax administrations, requirements for contemporaneous transfer pricing documentation will help to ensure the integrity of the taxpayer's position.<sup>11</sup>

**In summary, requiring enterprises to document their transfer pricing positions could be expected to enhance compliance.**

**While various types of documentation may serve a number of purposes, they generally provide different types of information which can be particularly useful for different purposes,** for example:

- **For risk assessment purposes:** Transfer pricing return schedules, CbC Reports and questionnaires are primarily relevant for risk assessment purposes.<sup>12</sup> These tools can be used in identifying taxpayers or transactions to be audited, or which may warrant further investigation. They also provide auditors with early-stage indications of potential audit issues.

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<sup>10</sup> OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD publishing, Paris, <http://dx.doi.org/10.1787/9789264241480-en>

<sup>11</sup> OECD (2017), Paragraph 5.7 in *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris.

<sup>12</sup> Under the minimum standard in BEPS Action 13, the CbC Report may be used only for risk assessment purposes, and for collection of data for statistical analyses.

- **For audit purposes:** information contained in the local and the master files are a critical source of information for tax auditors during an audit. They contain detailed information needed by tax administrators to effectively verify whether the country's transfer pricing laws, including the arm's length principle are being complied with.
- **To encourage voluntary compliance:** As noted above, all types of transfer pricing documentation discussed in this Toolkit can also be expected to focus taxpayers' attention on their compliance responsibilities and thus enhance compliance.

## 1.6 Policy principles

**Country requirements on the preparation and maintenance of transfer pricing documentation should aim at the following objectives:**

- To be clear enough to provide some certainty to a taxpayer on how to demonstrate to the tax administration that its transfer pricing is consistent with the arm's length principle;
- To provide the tax administration with the information they need in conducting risk assessments, planning and conducting audits and testing the validity and reliability of the transfer prices established by taxpayers;<sup>13</sup> and
- To be balanced, so that reporting obligations fulfil tax administrations' need for information to be able to enforce the transfer pricing rules and at the same time avoid the imposition of excessive documentation requirements on taxpayers. It is important that the costs to a taxpayer of complying with these requirements are not out of proportion to the size and complexity of the transactions in point, and the tax at risk. For this reason, countries often provide exemptions or simplified documentation requirements for smaller taxpayers or transactions.

### Ensuring international consistency

**Both the OECD Guidelines and the UN Practical Manual recognise the advantages of consistent documentation rules to minimise transfer pricing compliance burdens on taxpayers.** International consistency and alignment of the content and format of required documentation, for example, reduces the compliance costs of MNEs. This is particularly relevant for the group level documentation referred to above. A standardised framework also facilitates the sharing of experiences and good practices.

As noted in the UN Transfer Pricing Manual, when considering the implementation of the BEPS Action 13 documentation approach in developing economies, almost all MNEs will likely be required by at least one tax administration to prepare a master file; and MNE groups exceeding the EUR 750 million annual global turnover threshold will also need to prepare a CbC Report. Consequently, requiring these documents to be delivered to the local tax administration in a developing country in a standard format should impose no marginal compliance burden on a MNE group.<sup>14</sup>

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<sup>13</sup> Formal transfer pricing documentation may be supplemented by additional information requests made during the course of an audit.

<sup>14</sup> UN (2017), "Implementation of Global Documentation Standards in Developing Countries", Paragraph C.2.2.3.1 in *Practical Manual on Transfer Pricing for Developing Countries 2017*, UN Publishing, New York.

## PART II. OPTIONS FOR COUNTRIES TO IMPLEMENT TRANSFER PRICING DOCUMENTATION

**This section discusses various policy considerations and options relevant to designing a regime for transfer pricing documentation.** These include:

1. The regulatory framework, through a combination of primary legislation, secondary legislation and guidance;
2. Confidentiality of taxpayers' documentation and information;
3. Timing issues concerning when documentation must be in place and when it is required to be submitted to the tax administration;
4. Enforcement, including penalties and measures to assist and promote voluntary compliance;
5. Dealing with access to information outside the jurisdiction; and
6. Simplification and exemptions.

These are discussed in turn below.

### 2.1 Regulatory framework

#### 2.1.1 General considerations

**Developing a transfer pricing documentation regime raises a number of questions**, which concern not only the type and combination of documentation requirements to be introduced but also the type and level of legal instruments introducing such requirements. The balance between primary and secondary legislation varies between countries. For example, some countries include detailed specifications on, for example, the format and content of documentation, in their primary law. Others include only a general provision in primary law and detailed specification in secondary law or regulations.

**The choice of regulatory approach refers to the different levels of law that will apply in practice to institute a legal obligation.** These are:

- Primary law, consisting of statutes or legislation;
- Secondary law, consisting of regulations and procedures; executive orders and presidential decrees; common law/case law; codes of conduct and policies;
- Supplementary guidance or statutory documents, including administrative procedures such as 'practice notes' issued by the tax administration or Ministry of Finance;

Each of these elements fits into, or interacts with, the domestic legal system in different ways depending on each country.

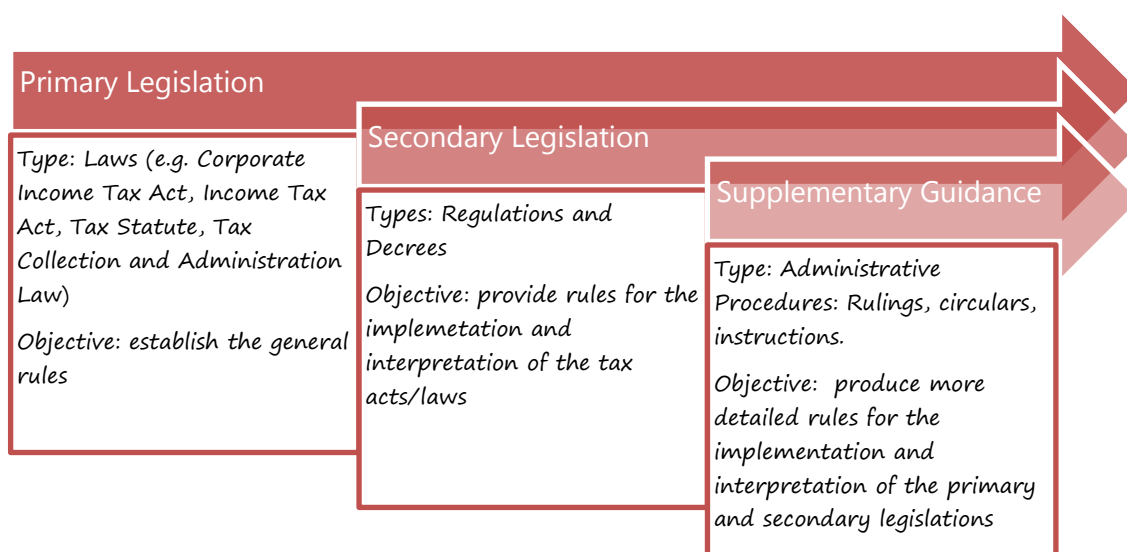
**The starting point for all forms of transfer pricing documentation is a provision in the primary law** (e.g. tax code, tax statute or tax law), which may or not be specific to transfer pricing, and which is usually supplemented in secondary regulations.



**In addition, countries often supplement these with administrative guidance.** While such guidance is not normally binding on taxpayers, it is in practice generally considered binding on the tax administration. This means that care needs to be taken to ensure that guidance accords with primary and secondary law, and the government policy.

**Countries follow different approaches when drafting legislation for transfer pricing documentation requirements.** Some countries adopt very brief language setting out the basic principles in primary law and then elaborate those principles in secondary law and/or supplementary guidance. In such cases, the primary legislation is typically intended to legislate core taxpayer obligations and tax administration powers, which the secondary legislation builds on with more comprehensive and detailed rules. Other countries have more extensive language in the primary law leaving only few specific aspects for in secondary law. In all cases, the primary law would normally have a provision allowing the government, ministry or tax administration to introduce and amend secondary law.

**An advantage of establishing general principles in the primary law and more detailed specific rules in subrogated or secondary law is the flexibility for future updates.** Primary law usually tends to be less flexible than secondary law and the process for its amendment requires more time and approval steps from different government branches. By contrast, amendments to secondary laws are usually primarily approved at government, ministry or tax administration level, and thus offering greater flexibility.



**It should be noted that the ability to receive CbC Reports filed with other tax jurisdictions requires exchange of information instruments** (e.g. treaties or membership of a multilateral agreement), together with appropriate competent authority agreements, to be in place (This is discussed further in Section [3.4](#) below).

### 2.1.2 Burden of proof

**An important consideration for developing countries when devising transfer pricing regimes is to define who bears the burden of proof.** That is, who (either the taxpayer or the tax administration) has to prove that the pricing is in accordance with the arm's length principle.

**It is not always straightforward to determine how the burden of proof operates in different jurisdictions and legal systems.** It is often the case that when there is a self-assessment or similar system requiring taxpayers to comply with the arm's length principle, the burden of proof is placed on the taxpayer. In such cases, there should be a general provision requiring the taxpayer to keep documentation to that effect in support of the tax return. An option is to reverse this burden of proof if the taxpayer has fully complied with the requirement to document transfer pricing. (See example of this approach in the sample legislation at Annex 6).

**In some countries however, the transfer pricing rules may be interpreted only to give the tax administration the right to make an adjustment to taxable profit if needed to enforce the arm's length principle,** but not to require the taxpayer to return an arm's length measure of taxable profit. In such cases, the burden of proof lies with the tax administration and general documentation requirements may not apply to transfer pricing. Alternatively, the burden of proof may lie in the first instance with the taxpayer but pass to the tax administration in the event that an adjustment following a transfer pricing audit has been proposed. In either case, when the burden of proof rests on the tax administration, the tax administration might require the taxpayer to provide documentation about its transfer pricing.

**Where the tax administration holds the burden of proof and there are no, or only very limited, requirements for taxpayers to provide transfer pricing documentation, a perverse incentive can be created** whereby taxpayers are encouraged not to provide information that would be needed by the tax administration to undertake and support a transfer pricing analysis that could result in amendments to the taxpayer's returns. In such cases, it is essential that adequate penalty-backed information powers are in place.

**According to country practices, the burden of proof:**

- Could be directly provided for in the law, in such cases this is generally contained in the primary law and is usually applicable in the ordinary course of the tax administration examination and investigation process, i.e. the provision is not necessarily exclusive to transfer pricing. The stipulated burden of proof could be placed on the taxpayer, the tax administration or split between them (See example on Spain below).
- Could be shifted to taxpayers, through the specific documentation requirements. In this respect, it is generally the case that when domestic legislation requires taxpayers to prepare, maintain and/ or submit transfer pricing documentation the burden of proof lies with or is shifted to the taxpayer (e.g. Argentina and Mexico).

**Where the burden of proof lies with the taxpayer, it is helpful for countries to provide guidance on how taxpayers should satisfy this requirement.**

### Box 1 : Example of countries' provisions on the burden of proof

*In Spain,<sup>15</sup> the tax law provides that:*

- 1. In tax proceedings, the constituent facts of a right must be proved by the party seeking to exercise that right.*
- 2. The taxpayers will fulfil their duty of proof if they provide specific evidence to the tax administration.*

## 2.2 Confidentiality

**In most countries, taxpayer-specific information provided to the tax administration must, by law, be kept confidential except where specifically provided for** (e.g. specific disclosures, disclosures to a court of law).

**It would normally be expected that confidentiality requirements would apply to transfer pricing documentation in the same way that they apply to other information provided by a taxpayer** to the tax administration, and taxpayers should be assured that the information presented in transfer pricing documentation will remain confidential. Further, confidentiality requirements specified in BEPS Action 13 Report relating CbC Reports form an element of the BEPS minimum standards, which are subject to peer review under the BEPS Inclusive Framework process. (This is discussed further in Section 3.4 below).

**Section D.8 of the BEPS Action 13 Report encourages tax administrations to take all reasonable steps to ensure that there is no public disclosure of confidential information** (trade secrets, scientific secrets, etc.) and other commercially sensitive information that will be part of transfer pricing documentation. A relatively small number of countries including Australia, Finland, Japan, Norway and Sweden provide for public disclosure of certain tax return data in relation to (large) corporations. In most cases, only high-level tax data is made available, e.g. total taxable income and tax paid, rather than detailed disclosures or break-downs of income and deduction amounts.

Many civil society organisations and political observers have called for public disclosure of CbC Reports, and the EU's current proposal for a directive on corporate tax transparency includes making CbC Reports publicly available.

## 2.3 Timing Issues

**A number of timing issues arise in the context of transfer pricing documentation regimes:**

- When the taxpayer is required to have specified information in place;

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<sup>15</sup>"Ley 58/2003 General Tributaria" [General Tax Law] Article 105.

[www.agenciatributaria.es/AEAT.internet/Inicio/La\\_Agencia\\_Tributaria/Normativa/Normativa\\_tributaria\\_y\\_aduanera/Ley\\_General\\_Tributaria\\_y\\_normas\\_de\\_desarrollo\\_y\\_aplicacion/Ley\\_General\\_Tributaria/Ley\\_General\\_Tributaria.shtm](http://www.agenciatributaria.es/AEAT.internet/Inicio/La_Agencia_Tributaria/Normativa/Normativa_tributaria_y_aduanera/Ley_General_Tributaria_y_normas_de_desarrollo_y_aplicacion/Ley_General_Tributaria/Ley_General_Tributaria.shtm)  
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- When the taxpayer is required to submit specified information to the tax administration;
- The length of time that records need to be kept.

**Timing and submission requirements may vary depending on the type of documentation requirement, reflecting their differing purposes.** For instance, high level information for risk assessment would be most useful if filed regularly; other, more detailed information may be best kept by the taxpayer and available on request. Typical scenarios are summarised below. The next section discusses in more detail these options for each type of TP documentation, i.e. master file, local file, CbC Report, transfer pricing returns and transfer pricing questionnaires.

**Table 3: Timing and submission of transfer pricing documentation**

Type of Documentation	When taxpayer is required to have in place	When the tax administration may request	When taxpayer is required to submit to the tax administration
<b>TP Annual Returns or Schedules</b>	Normally by time of filing annual tax returns.	N/A – normally required by specified filing date.	Normally required to be submitted with, or as part of, the annual tax return.
<b>Local file</b>	Either contemporaneous to the transaction or time of filing return or combination.	At any time after filing return, typically during an audit. In some cases, the local file must be submitted annually to the tax administration.	Within a specified time following request, or in some cases, submitted with, or as part of, the annual tax return.
<b>Master file</b>	Either contemporaneous to the transaction or time of filing or combination <sup>1/</sup> .	At any time after filing return, typically during an audit. In some cases, the master file must be submitted annually to the tax administration.	Within a specified time following request, or in some cases, submitted with, or as part of, the annual tax return.
<b>CbC Reports</b>	By filing date.	N/A – normally required by a specified filing date.	Normally specified filing date.
<b>Questionnaires</b>	N/A	At any time after filing return, typically during an audit.	As requested by the tax administration or agreed. (Such requirements are often informal).
<b>Further information, data and documents</b>	Depends on legislation relating to information powers.	Normally at any time during the course of an audit.	Within a specified time following request.

<sup>1/</sup> some countries allow local subsidiary entities to lodge the master file in line with the fiscal year of their foreign parent / filing entity of the group. See discussion in section 3.3.

## 2.4 Penalties and compliance incentives

**As transfer pricing documentation is vital for the enforcement of transfer pricing rules, effective penalties are essential.** Some penalties may be applied for failing to provide required documentation, others may be tied to transfer pricing adjustments and, in other cases, failure to fulfil documentation requirements may lead to a higher penalty in relation to a transfer pricing adjustment. A summary of approaches to penalties on transfer pricing documentation is shown in Table 4. These are discussed further in [Part III](#).

**Penalties relating to transfer pricing documentation may rely on a specific regime or on general documentation or record keeping rules that are not specific to transfer pricing.** In the latter case, the general rules are most likely to be found in the primary legislation, and then elaborated for transfer pricing purposes in regulations or guidance.

**Table 4: Penalty and compliance incentive approaches**

Type of Documentation	Penalty conditions	Possible approaches to penalty	Based on specific or general penalty provisions
<b>TP Annual Returns or Schedules</b>	a) Failure to file a return by a required date, b) Submission of an incomplete return. c) Making an incorrect return.	For a) and b) a penalty may be determined according to the delay in filing a complete return, computed by reference to a sum per day between a) the due date and b) the submission of a complete return. For c) a penalty may be based on a fixed sum, and/or the amount of any subsequent adjustment to taxable income or tax payable.	In cases where the TP return is part of the annual tax return, the penalty may be linked to that in place for failure to file a return or a complete return, or for filing an incorrect return. In other cases, a specific penalty may be required.

<b>TP reports (master file or local file)</b>	<p>a) Failure to maintain adequate documentation at a specified date</p> <p>b) Failure to submit adequate documentation upon request or by a specified date.</p> <p>c) Submission of incorrect documentation.</p>	<p>Penalties may be:</p> <p>i. a fixed sum</p> <p>ii. based on any subsequent adjustment to taxable income</p> <p>iii. based on any subsequent adjustment to tax payable.</p> <p>Alternatively, for b) the penalty may be determined according to the delay in making a complete submission, computed by reference to a sum per day between a) the due date for submission and b) the submission of a complete return.</p>	<p>The penalty may be based on either a general penalty regime, or specific penalty provisions contained in the transfer pricing rules.</p>
<b>CbC Reports</b>	<p>a) Penalty for failure to submit a complete CbC Report by a specified date.</p> <p>b) Penalty for making an incorrect CbC Report.</p>	<p>For a) penalty may be determined according to the delay in making a complete submission, computed by reference to a sum per day between (i) the due date for submission and (ii) the submission of a complete return.</p> <p>For b) a penalty may be based on a fixed sum, and/or on the value of the consolidated MNE revenue.</p>	<p>In both cases, the penalty may be based on either a general penalty regime, or specific penalty provisions contained in the transfer pricing rules.</p>
<b>Questionnaires</b>	<p>In most cases, a questionnaire will be non-statutory, and thus may not be subject to penalties. Some questionnaires will be purely advisory and/or used for risk assessment. However, a failure to comply with valid requests for information during an audit may impact on penalties which are applied to transfer pricing adjustments, for example, whether the taxpayer will be regarded as having co-operated or obstructed the tax administration, or whether the taxpayer's position is assessed as being 'reasonably arguable'.</p>		
<b>Further information, data and documents requested during an audit</b>	<p>a) Penalty for failure to submit complete information by the due date.</p> <p>b) Penalty for supplying incorrect information</p>	<p>For a) a penalty may be determined according to the delay in making a complete submission, computed by reference to a sum per day</p>	<p>In both cases, the penalty is most likely to be based on either a general penalty regime, or specific penalty</p>

		between (i) the due date for submission and (ii) the submission of a complete information requested. For b) a penalty may be based on a fixed sum, and/or the amount of any subsequent adjustment to taxable income or tax payable.	provisions contained in the transfer pricing rules.
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### *Relationship with burden of proof*

**Another way to encourage taxpayers to fulfil transfer pricing documentation requirements is to design compliance incentives in the form of a shift in the burden of proof.** In this case, the initial burden of proof on a taxpayer may be shifted to the tax authority if the taxpayer complies with the transfer pricing documentation requirements. This approach, which is illustrated in Paragraph 3 of the illustrative transfer pricing legislation in Annex 6, is most appropriate in respect of contemporaneous, transfer pricing studies such as a local and master file.

## **2.5 Accessing documents held outside the jurisdiction**

**Some countries report that MNE subsidiaries or permanent establishments located in their jurisdiction sometimes contend that they do not have access to information held outside the jurisdiction.** As a result, they contend that they are unable to make this information available to the tax administration. This issue will affect information held by foreign parent or sister companies. It should not affect information held by foreign subsidiaries of a local company – in such cases, the local company will normally have the power to require the subsidiaries to submit information and data to them.

**This issue potentially affects the categories of documentation to different extents.**

**1. Transfer pricing studies and transfer pricing return schedules** are required to be submitted under domestic rules and, typically, penalties will apply for a failure to submit these. Despite this, developing countries report that MNEs exceptionally contend that they do not have access to sufficient information to be able to submit complete schedules or transfer pricing studies. For those countries that adopt the BEPS Action 13 approach to transfer pricing documentation, the issue is likely to affect the master file (which provides a global analysis, and will normally be prepared by the ultimate parent company) rather than the local file (which provides a local analysis).

**Such contentions should be resisted:**

- The information required in these types of documentation is necessary in order to establish that the price and other conditions of transactions within the scope of the transfer pricing rules have been determined in accordance with the arm's length principle. If the local entity

does not have access to this information, then it follows that that entity has not been able to establish that it has made a correct tax return in accordance with the domestic rules.

- MNEs are increasingly integrated organisations, with regional or global management structures and supply chains. This means that it is unlikely that local entities will be denied access to information concerning the wider operations.

It is important that penalties for failure to provide this information are sufficiently robust, and effectively applied, to ensure that such information is submitted locally.

2. **In the cases where CbC Reports are required to be filed locally, as described in [Section 3.4.2](#), there is potential for the local entity to contend that it does not have access to the report.** Therefore, it will be important that penalties for failure to provide the report are sufficiently robust and effectively applied to ensure that they are submitted locally.

3. **A request to foreign affiliates of the local taxpayer to return questionnaires will often be informal and unenforceable in law.** In such cases, there will be little scope for the tax administration to enforce submission. Where the tax administration is unable to compel a taxpayer to provide such information, a request under exchange of information provisions may be possible. This will depend, however, on whether the information requested falls within the scope of exchange of information provisions.<sup>16</sup>

4. **Information required by auditors during the course of an audit may include information that can legitimately be contended by the tax administration should be available, or made available, to the local entity.** However, there may also be information that is genuinely not available to a local entity – for example submissions made by a foreign related entity to its tax administration. In such cases, exchange of information processes may be appropriate.<sup>17</sup>

## 2.6 Simplification and exemptions.

**The costs of compliance with transfer pricing rules can be very significant for taxpayers.** It is important that measures are taken to avoid unnecessary or disproportional compliance costs when designing a transfer pricing documentation regime. This is recognised in the United Nations Practical Manual on Transfer Pricing, in relation especially for small and medium-sized enterprises (SMEs) which engage in cross-border related transactions<sup>18</sup>. Many countries address this concern by simplifying the transfer pricing documentation rules for smaller or lower risk taxpayers (e.g. entities with only limited related party transactions). Alternatively, countries may exempt such

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<sup>16</sup> Article 26.1 of the OECD Model Tax Convention on Income and on Capital allows exchange of information that is 'foreseeably relevant for carrying out the provisions of this Convention, or to the administration or enforcement of domestic laws concerning taxes of every kind...'

See also Chapter III, Section I, on Exchange of Information in OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264115606-en>.

<sup>17</sup> Again, the request must be within the scope of the exchange of information instrument. See Footnote 15, above.

<sup>18</sup> See UN (2017), "Documentation", Section C.2.4.4.1 in Practical Manual on Transfer Pricing for Developing Countries 2017, UN Publishing, New York, <http://www.un.org/esa/ffd/wp-content/uploads/2017/04/Manual-TP-2017.pdf>.



taxpayers from the documentation rules (but not necessarily the transfer pricing rules). In such cases, the exemption would not cover a requirement, under general information powers, to submit information about cross-border transactions during the course of an audit. Approaches to this are summarised in the box below. These are discussed further in [Part III](#).

**Table 5: Simplification and exemptions**

Type of Documentation	Possible simplification or exemption measures
<b>TP Annual Returns or Schedules</b>	<ol style="list-style-type: none"> <li>1. Exemption for smaller or low risk taxpayers</li> <li>2. Simplified return schedule for smaller taxpayers</li> <li>3. Exemptions from disclosure of transactions below a certain value</li> </ol>
<b>Local file</b>	<ol style="list-style-type: none"> <li>1. Exemption for smaller or low risk taxpayers</li> <li>2. Exemptions for taxpayers belonging to a group whose consolidated turnover is less than a certain amount</li> <li>3. Exemption for taxpayers within the scope of a safe harbour or for transactions covered by an APA</li> <li>4. Simplified documentation requirements for smaller taxpayers</li> </ol>
<b>Masterfile</b>	Exemption or simplification for taxpayers belonging to a group whose consolidated turnover is less than a certain amount
<b>CbC Reports</b>	Exemption for MNE groups with a global consolidated revenue of less than EUR 750 million <sup>19</sup>
<b>Questionnaires</b>	As these are generally non-statutory, tax administrations may choose to issue these to the larger or higher risk taxpayers only
<b>Further information, data and documents</b>	Such information is requested by the tax administration during an audit – statutory exemptions are therefore not relevant

These measures require the term ‘smaller taxpayer’ or ‘low risk taxpayer’ to be defined. There are several possibilities:

- Existing definitions of small or medium enterprises. Where such a definition is used, exemptions may be denied to taxpayers undertaking higher risk transactions – for example a taxpayer that conducts one or more transactions with an entity in a low tax jurisdiction;

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<sup>19</sup> This criterion is specified in BEPS Action 13, and forms part of the minimum standards on BEPS Action 13.

- By reference to the value of the related party transactions. This may be problematic if the taxpayer undervalues related party transactions;
- By reference to the proportion of the value of related party transactions to third party non-related transactions. This may be problematic if the taxpayer undervalues related party transactions;
- By exemption for purely domestic transactions between local related entities, where both parties to the transactions are subject to the same rate of taxation.

## PART III. SPECIFIC DOCUMENTATION ELEMENTS

### 3.1 Introduction

This part will look in more detail at each of the categories of transfer pricing documentation discussed in Part II, i.e. transfer pricing returns, transfer pricing studies, master and local files, CbC Reports and questionnaires. It provides some examples of country approaches.

### 3.2 Transfer pricing returns

**A transfer pricing return is a standardised set of information concerning transfer pricing that affected taxpayers must periodically submit to the tax administration, typically annually.** This information may be submitted with the annual income tax return, or in a schedule generally lodged at the same time as the return. The taxpayer is required to disclose, in a standardised format, information relating to its transactions with related parties. This is in addition to other transfer pricing documentation requirements.

**A transfer pricing return contains information on related-party transactions.** This generally includes, at minimum, the countries in which the counterparties are resident and a list of related party transactions.

#### 3.2.1 Functions of transfer pricing returns

**The transfer pricing return serves several purposes, including:**

- 1. Risk assessment and case selection.** The information it provides can be used to:
  - Identify and analyse risks at a macro level. For example, risks arising from a category of transactions or by sector;
  - Identify taxpayers that present a high risk to the revenue, including as a part of an audit case-selection process;
  - Identify specific transactions to be followed up in the context of an audit.

**A transfer pricing return is very unlikely to provide sufficient information to conduct an audit and make an adjustment.** It is normally viewed as a tool for use in the first step of an audit process – the selection of cases for audit, and identification of specific issues to follow up in an audit.

**The information provided in transfer pricing returns is usually in a standardised format consisting mainly of quantitative information,** which may make it suitable to be prepared in electronic format. Where a tax administration has the resources, electronic submission using automated processes enables analysis of mass information using techniques such as data mining and data matching.<sup>20</sup>

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<sup>20</sup> For example, transfer pricing audit programs in Colombia are designed using statistical, logarithmic and risk score procedures to select the best possible audit cases, depending on risk assessment variables and tax evasion hypotheses. Data from the transfer pricing return is entered into the DIAN database and, combined with information in the Income Tax Return, is used to screen taxpayers for international audits.

**2. Transfer pricing returns can promote positive MNE behavioural changes and assist in the creation of a compliance culture.** The requirement to submit data as part of, or as a supplement to, a tax return, is likely to raise awareness of the need to consider transfer pricing and focus attention on the responsibility to comply with transfer pricing rules.

**In the design of this type of form, care should be taken not to request burdensome information from taxpayers by requiring more information than is needed for risk assessment purposes,** or information already in possession of the tax administration by other means. Simplicity, non-duplication and standardization might usefully be the governing principles of disclosure forms and specific transfer pricing returns.

**If disclosure forms are to be used, tax authorities may want to consider the extent to which these can follow a consistent regional format.** A regional approach may have the potential to be beneficial to both taxpayers and tax administrations. These include:

- a **The capacity to improve investment climate.** Taxpayer compliance costs will be reduced if countries apply similar formats in their documentation requirements.
- b **Prevention of 'tax competition'.** A non-aligned application of transfer pricing rules has the potential to create tax competition between countries. For example, non-application, or preferential application, of documentation rules, could create intended or unintended incentives to inwards investment.
- c **Alignment and co-operation between countries can also establish 'best practice'** approaches and create opportunities for cooperation and mutual support in policy-development, legislation, administration and skills-building.

### 3.2.2 Format and content

**The format and content of the transfer pricing return varies among countries.** For simplicity, these may be classified into two main types:

**Disclosure by means of a specific standardised form that is not part of an annual tax return.** Examples of countries following this approach include: Argentina, Canada, Colombia, Dominican Republic, Finland, Liberia, Lithuania, Mexico, Nigeria, Peru, and the United States.

**Disclosures that form part of the annual tax return.** In such cases, transfer pricing specific questions are included on a tax return or a schedule to the return. For instance, Australia, Bulgaria, Czech Republic, Georgia, the Netherlands, Slovak Republic, require disclosure of transfer pricing dealings in the tax return.

**Box 2: Example - Requiring taxpayers to respond one or more transfer pricing specific questions included on a tax return.**

**The Netherlands** - The questions asked in a tax return can change year by year. Some questions included in 2016 returns: whether a business restructuring occurred and whether the entity falls within the scope of the requirement to prepare a local file (which in the Netherlands is only required to MNE group with consolidated group revenue of at least EUR 50 million). There are also other questions which have a link to transfer pricing rather than being transfer pricing specific questions (for example whether the entity is engaged in group financing activities).

**As a minimum, countries typically require taxpayers to report whether they have entered into cross-border controlled transactions**, to provide identity information and country of residence of the foreign related parties, the monetary amounts of the transactions and pricing methodology applied. However, some countries request much more detailed information (e.g. Mexico, Dominican Republic).

**Information commonly requested in such returns include:**

- Identity information of the taxpayer
- Identification of foreign related parties with which the resident taxpayer has transactions
- Country of residence of the related party
- Nature of the transaction (e.g. provision of services, sale of goods, financial transactions (i.e. loans, guarantee fees, hedging, etc.))
- Monetary amount of the transaction
- Arm's length value of the transaction
- Quantity of units covered by the transaction
- Transfer pricing method used
- Type of comparable used (external or internal)
- Whether the application of the method results in any adjustment to taxable income.

Disclosure of transactions subject to a safe harbour or an APA are also generally required.

Examples of country returns are provided in [Annex 1](#).

### **3.2.3 Submission mechanism**

**Many tax administrations have made significant efforts and investment in automating filing and management of tax returns and other taxpayer information**; for example, through online filing platforms. The advantage of the online filing of tax returns and other tax information is that it allows tax administrations ready access to documentation for risk assessment and audit purposes and reduces the number of documents required to be stored, maintained and secured. Digitalised

information can also be searched and accessed more effectively. Taxpayers also benefit from filing and retaining tax documents more easily by using online filing platforms.

Some electronic formats that can be used include:

- **Electronic transmission format (e.g. XML Schemas, Web Services).** The tax administration develops and makes available to taxpayers the parameters and specifications for creating the file. The relevant file should then be submitted electronically through Internet file transfer. A pre-validator (i.e. an automated validation check) is provided in the format and contributes to verifying the information prior to its submission. Electronic transmissions are recommended especially for big files. Some countries that allow electronic transmission of transfer pricing returns are Australia, Colombia and the Dominican Republic.
- **Web forms.** Web forms or HTML forms on the tax administration web page allow taxpayers to enter data that is sent to a server for processing. Forms can resemble paper or database forms where web users fill out the forms using checkboxes or text fields. These forms are not recommended for high volumes of data as it could be burdensome for taxpayers to fill in, for example, detailed information on a significant number of transactions. Web forms may have validation checks included for accuracy of information.
- **PDF fillable/saveable forms.** Once completed the file in the form of a Portable Document Format (PDF), the file can be submitted electronically to the tax administration. In particular, PDF fillable forms may be suitable for small files. This type of format is easy to devise and use but has fewer in-built mechanisms to detect errors. An example of a country that allows filing electronically transfer pricing returns in PDF fillable forms is Canada.<sup>21</sup>

To assist taxpayers, guidance for completing the forms is generally provided by tax administrations.

### 3.2.4 Regulatory framework

**The submission of a transfer pricing return is typically mandatory for affected taxpayers.** The scope, format and content of regulations vary from country to country. The most common practice is to establish the general obligation in the primary law and provide more detailed, specific rules through the secondary law or supplementary guidance.

**Secondary law and supplementary guidance can be very detailed.** For example, some countries' rules provide detailed specifications on, for example, the process of documentation submissions, the forms to be completed, and required information technology systems and formats. Examples of such rules are contained in the box below.

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<sup>21</sup> Canada's instructions on how to prepare transfer pricing returns can be consulted here: <https://www.canada.ca/en/revenue-agency/services/forms-publications/about-forms-publications.html#h1>.

### **Box 3 : Example of rules on transfer pricing returns**

**Colombia** – (unofficial English translation)

#### **Extract from Primary law**

Article 260-9. Duty to submit an Information Return.

Taxpayers of income tax and complementary taxes, bound to apply the rules governing the transfer pricing system, whose gross assets on the last day of the taxation year or period are equal to or greater than the equivalent of one hundred thousand (100,000) Tax Units ("TU"),<sup>22</sup> or whose gross income for the respective year is equal to or greater than sixty-one thousand (61,000) Tax Units, who enter into transactions with related parties pursuant to Articles 260-1 and 260-2 of this Statute shall annually submit an Information Return for the transactions carried out with said related parties.

Extract from RESOLUTION NUMBER 000040 from 29 JUNE 2017

ARTICLE 5. Information to be provided by taxpayers obliged to file the Transfer Pricing Information Return – Form 120.

Pursuant to Article 1 of Resolution 000002 of January 15, 2018, the information to be filed for the 2017 taxation year or part of the 2018 taxation year referred to in Sheet 2 of Form 120 "Transfer Pricing Information Return", which must be filed in Form 1125, is the following:

#### **Form 1125. Transactions with foreign related parties, located in free trade zones or with persons, companies, entities or companies located, residing or domiciled in tax havens – Transfer Pricing Return – Sheet 2.**

- Type of document
- Tax identification number
- First surname
- Second surname
- First name
- Other names
- Company name
- Relationship
- Type of operation
- Country code
- City
- Nature of the transaction
- Amount of the transaction
- Tax deduction (from the tax return)
- Amount of principal
- Balance of principal
- Method used
- Profitability indicator of the transaction
- Unadjusted margin or price – (Positive or negative)
- Adjusted margin or price – (Positive or negative)
- Value of the comparable

- Global or segmented data
- Type of adjustment
- Type of range
- Positive/negative minimum value or lower limit
- Positive/negative median
- Positive/negative maximum value or upper limit
- Tested party
- Amount of primary adjustment
- Restructuring
- Cost-sharing agreements

### 3.2.5 Timing issues

**Transfer pricing returns are usually a standardised form to be submitted to the tax administration within a defined period of time.** Where the transfer pricing return is part of a tax return, the deadline for submission will correspond to that of the tax return itself. In cases where the transfer pricing return does not constitute part of the tax return, the deadline could be different.

**Table 6: Country practices**

Country	Filing date
<b>Argentina</b>	No later than eight months after the year-end (the income tax return is due five months after the year-end)
<b>Canada</b>	By the filing date for the annual tax return
<b>Colombia</b>	Filing dates are established annually by regulation. These dates fall three or four months after the filing date of the Income Tax Return
<b>Dominican Republic</b>	No later than 180 days following the end of the fiscal year
<b>Finland</b>	By the filing date for the annual tax return
<b>Lithuania</b>	By the filing date for the annual tax return
<b>Mexico</b>	By the filing date for the annual tax return

### 3.2.6 Enforcement

**Penalties may result from failure to file, late filing (filing after the due date), providing false information or omission of relevant information.** These penalties could be specific to the requirement or could be linked to a more general obligation in the law (e.g. non-filing of tax returns i.e. when transfer pricing disclosure is contained or appended to the tax return). The table below details some countries' penalties practices for non-compliance with the obligation to prepare specific transfer pricing returns.

<sup>22</sup> In fiscal year 2017, the 1 TU = COP 31.859 (EUR 11.20 approx.)



Unlike the requirement to have contemporaneous transfer pricing documentation, or to file a transfer pricing study, the filing of the transfer pricing returns usually does not protect against transfer pricing penalties, nor does it alter which party bears the burden of proof.

**Table 7: Country practices on penalties related to non-filing or late filing of transfer pricing returns**

Country	Penalties <sup>23</sup>
<b>Argentina</b>	For omission or late filing of transfer pricing tax returns, the taxpayer will be fined ARS 20 000 (approximately EUR 460).
<b>Canada<sup>24</sup></b>	<p><b>Late Filing</b> – A late filing penalty or multiple late filing penalties for more than one T106 Slip may be assessed under subsection 162(7) of the Income Tax Act where T106 documentation is filed after the due date. The penalty is equal to the greater of CAD 100, and CAD 25 per day (approximately EUR 67 and EUR 17 respectively) as long as the failure to file continues, to a maximum of 100 days.</p> <p><b>Failure to file</b> – A failure to file penalty may be assessed under subsection 162(10) of the Income Tax Act where reporting persons or partnerships knowingly, or under circumstances amounting to gross negligence, fail to file or fail to comply with a request by the Canada Revenue Agency (CRA) for T106 documentation. The minimum penalty is CAD 500 (approximately EUR 330) per month, to a maximum of CAD 12,000 (approximately EUR 8 000) for each failure to comply. Where the CRA has served a demand to file T106 documentation, the minimum penalty is CAD 1,000 (approximately EUR 670) per month, to a maximum of CAD 24,000 (approximately EUR 16 000) for each failure to comply.</p> <p><b>False statement or omission</b> – A false statement or omissions penalty may be assessed under subsection 163(2.4) of the Income Tax Act where information provided on the T106.</p> <p><b>Summary or Slip is incomplete or incorrect.</b> The penalty is CAD 24 000 (approximately EUR 16 000).</p>
<b>Colombia</b>	<p><b>Late filing</b> — within five days after the deadline - 0.02% of the total value of the transactions carried out with related parties, limited to 313 Tax Units (1 Tax Unit = EUR 9.68 approximately for 2019). After five days – 0.1% of the total value of the transactions carried out with related parties, for each month or part of the calendar month of delay in the presentation of the Information Return, limited to 1 250 Tax Units per each month or 15,000 Tax Units in total.</p> <p><b>Incorrect information</b> – 0.6% of the total value of the transactions carried out with related parties, limited to 2 280 Tax Units.</p>

<sup>23</sup> Exchange rate of reference as of February 15, 2019.

<sup>24</sup> T106 E (10/2017). [www.canada.ca/content/dam/cra-arc/migration/cra-arc/E/pbg/tf/t106/t106-fill-10-17e.pdf](http://www.canada.ca/content/dam/cra-arc/migration/cra-arc/E/pbg/tf/t106/t106-fill-10-17e.pdf).

	<p><b>Omitted information (transactions)</b> – 1.3% of the total value of the transactions carried out with related parties, limited to 3 000 Tax Units; additionally, denial of deductions of cost and expenses related to omitted operations may apply</p> <p><b>Omitted information (related parties located in tax havens)</b> – 2.6% of the total value of the transactions carried out with related parties, limited to 6 000 Tax Units; additionally, denial of deductions of cost and expenses related to omitted operations may apply.</p> <p><b>Non-filing of transfer pricing return</b> – 4% of the total value of the transactions carried out with related parties, limited to 20 000 Tax Units.</p>
<b>Mexico</b>	<b>Penalty for non-filing, late or incomplete filing</b> - MXN 68 590 to MXN 137 190 (equivalent to approximately EUR 3 150 to EUR 6 300).
<b>Peru</b>	<p><b>Non-filing or late filing</b> – the penalty is a fine of 0.6% of the company's net income for the year prior to the due date of the obligation to file the report. The penalty cannot be less than 10% of a Tax Unit or more than 25 Tax Units (1 Tax Unit = EUR 1 113 approximately for 2019).<sup>25</sup></p> <p><b>Incomplete or nonconforming information.</b> The penalty is a fine equivalent to 30% of a Tax Unit.</p>

### 3.2.7 Confidentiality

**In common with other documentation requirements**, information contained in a transfer pricing return should be treated as confidential in the same way as information provided in a tax return.

### 3.2.8 Simplification and exemptions

**In the first instance, transfer pricing returns will normally be required from any taxpayer conducting any related party transaction that falls within the scope of the transfer pricing rules.** This means that taxpayers that are outside the scope of the general transfer pricing rules will be exempted from the responsibility to file a transfer pricing return.

**However, as noted in Part II, the requirement to compile the schedule may create unnecessary or disproportional compliance costs for some taxpayers.** For that reason, some countries have introduced specific exemptions or simplifications for smaller taxpayers or smaller transactions.

**Practices on exemptions from filing requirements vary among countries.** It is the practice in some countries to limit the obligation to prepare and file the disclosure form on the basis of criteria such as the value of related party transactions not exceeding certain amount; or based on the size of the taxpayer. While in other countries, all taxpayers subject to transfer pricing rules may be required to file the returns. Exemptions might not apply when taxpayers have conducted transactions with related parties in jurisdictions considered to be tax havens or other low tax or non-tax jurisdictions, or when those related parties benefit from a preferential regime.

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<sup>25</sup> The Tax Unit "UIT" (*Unidad Impositiva Tributaria*) is the reference value in the Peruvian currency established by the State to determine taxes, infractions, fines and others.

**Table 8: Country practices on simplification and exemptions of transfer pricing returns**

Country	Exemption from transfer pricing returns <sup>26</sup>
<b>Canada</b>	Total amount of the controlled transactions does not exceed CAD 1 000 000 (equivalent to approximately EUR 66 850)
<b>Colombia</b>	Taxpayers whose gross equity on the final day of the fiscal year is below 100 000 UT, or whose gross revenue is less than 61 000 UT (1 Tax Unit = EUR 9.68 approximately for 2019)
<b>Dominican Republic</b>	No exemption applicable
<b>Liberia</b>	Simplified return for smaller taxpayers, defined legal or natural person carrying on a trade or business with turnover of less than \$3 000 000 per year. <sup>27</sup>
<b>Lithuania</b>	Amount of each related party transaction or sum of all similar transactions is below EUR 90 000

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<sup>26</sup> Exchange rate of reference as of February 15, 2019.

<sup>27</sup> Article 6.1. a) Liberia Transfer Pricing Regulations, 2016 and Section 200 c) Liberia Revenue Code

### 3.3 Transfer pricing studies

**In this context, transfer pricing studies refer to a set of documents and information that affected taxpayers are required to keep** and submit to the tax administration if and when this is required. Although this category of documentation is typically referred to as 'transfer pricing documentation', for the purposes of this Toolkit it is referred to as a 'transfer pricing study' in order to distinguish it from other categories of documentation. The term transfer pricing study encompasses the 'local file' and the 'master file' described in the BEPS Action 13 Report.

**The main features of transfer pricing studies are described below.**

1. MNEs are normally required to develop a separate study for each of the entities within the scope of transfer pricing rules in the jurisdictions in which the MNE group operates. However, there may be elements of the transfer pricing studies that are common to more than one entity in an MNE group, or indeed all of them;
2. They are normally drafted specifically for transfer pricing compliance purposes;
3. MNEs are typically (though not always) required to have the documentation in place before they file the tax return, and then submit it to the tax administration on request; and
4. For larger MNE groups with multiple or multifaceted intra-group arrangements, transfer pricing studies can be lengthy and complex. They can also be very expensive to produce – advisors can charge fees running to hundreds of thousands of euros, or even millions of euros in the largest of cases, for developing and drafting transfer pricing studies for a large MNE.

#### 3.3.1 Functions of transfer pricing studies

**From the taxpayer's perspective, the primary function of a transfer pricing study is to demonstrate compliance with the transfer pricing rules of the relevant jurisdiction(s).** At a minimum, the study should: identify and describe the relevant transactions; show how the most appropriate transfer pricing method was selected; and describe how that method has been implemented.

**Transfer pricing studies can thus provide:**

- evidence that taxpayer has complied with the transfer pricing rules. In some jurisdictions, this is important, because it may also provide evidence to counter contentions that a penalty should be applied in the event a transfer pricing audit results in an adjustment;
- the tax administration with information to consider whether to instigate or continue an audit on transfer pricing and, if so, which transactions to focus on;
- the tax administration with information and data relevant for an audit. The information provided in transfer pricing studies, however, is rarely sufficient to conduct a complete audit, and will nearly always need to be supplemented with additional information.

Transfer pricing documentation can also encourage taxpayers actively to consider the way in which they determine and substantiate arm's length transfer prices used for tax purposes.

#### **Box 4 : How can a transfer pricing study be used in the audit process?**

As mentioned above, transfer pricing studies can be lengthy and complex. Large, professionally produced studies can be daunting to some auditors, who may be reluctant to challenge the conclusions contained in a transfer pricing study, or even to request the submission of such a study in the first place. However, a well-produced transfer pricing study typically contains information and analysis that are vitally important for the auditor to understand, and where a transfer pricing study is available, one of the key elements of an audit is to test the reliability of the analyses and conclusions contained in the study.

##### *a) Information and analyses contained in a transfer pricing study*

A well-produced transfer pricing study should provide the auditor with:

- Details of the structure of the MNE's business operations in which the taxpayer participates, including a clear picture of the supply chain
- The main features of the industry or sector in which the MNE and taxpayer operates
- Details of the related party transactions undertaken by the taxpayer
- An analysis of the functions carried out by the taxpayer and its associated parties, as well as the assets used and risks assumed in relation to the intra-group transactions.

This information should assist the auditor in drawing up a picture of the business in which the taxpayer participates, and, importantly, understanding the value drivers of that business. In doing so, it should also allow the auditor to understand: the most important intangibles, and where in the business the return to such intangibles should lie; the most important risks taken and where in the business the return to those risks should be recognised.

Furthermore, well-produced transfer pricing study should provide the auditor with:

- An analysis, employing the information above, resulting in the taxpayer's conclusions on the most appropriate transfer pricing method (and the appropriate tested party, where relevant);
- An understanding of the application of that method, including, where relevant, the identification and selection of reliable comparables.

This information is crucially important. It tells the auditor the taxpayer's conclusions regarding the application of the arm's length principle; and how the taxpayer reached those conclusions. An analysis and review of these conclusions is often the starting point for the transfer pricing audit.

##### *b) Auditing the reliability of the transfer pricing study.*

One of the starting points in any transfer pricing audit will be to test the reliability of the conclusions recorded in a transfer pricing study. There are many aspects to this (and a detailed discussion is outside the scope of the Toolkit). However, the key audit issue will normally be to test whether the facts on which the analysis is based align with the substance of the actual transactions and in particular, the functions, assets (including intangibles) and risks related to

them. The selection of the most appropriate transfer pricing method, for example, will be made based on assumptions in relation to the functions carried out by the taxpayer and its related parties, the assets they use and the risks they assume. This should take account of the key value drivers including valuable intangibles, and the economically significant risks in the business. It is important to establish that the analyses and conclusions in the transfer pricing study, in particular with regards to where value is created, align with the substance of the business operations

### 3.3.2 Format and content

**This section addresses the various approaches that countries take in specifying the format and content of transfer pricing studies. There is a wide variety of approaches.** All tax administrations which oversee active transfer pricing regimes emphasise the importance of obtaining transfer pricing studies as part of the fact-finding process. The extent to which specific documentary requirements are spelled out in countries' legislation varies significantly. Some countries specify general criteria concerning the purpose and objectives of the transfer pricing studies, without specifying particular documents or items of information. In such cases, taxpayers may choose the format of the study and the specific documents they consider to be relevant. This approach provides some flexibility and allows taxpayers to create and maintain only the documentation they consider necessary. Some countries are more specific in their requirements, detailing the documents and categories of information required. The latter approach has been adopted for a 'local file' and a 'master file' described in BEPS Action 13 Report. A more detailed approach increases certainty and helps to ensure that studies contain the information needed by the tax administration to verify that the pricing of a transaction between associated enterprises is consistent with the transfer pricing rules, but it can come with a higher overall compliance burden.

#### **Box 5 : Country approaches to the format and content of the transfer pricing study**

##### **Specifying general criteria**

###### **Guinea**

*'... [specified taxpayers] shall provide the authorities with documentation to justify their transfer pricing policy used for transactions of any kind with affiliated enterprises located outside of Guinea.'*

###### **Nigeria**

*'1) A connected taxable person shall record, in writing or on any other electronic device or medium, sufficient information or data with an analysis of such information and data to verify that the pricing of controlled transactions is consistent with the arm's length principle and the connected taxable person shall make such information available to the Service upon written request by the Service.'*

##### **Specifying a detailed list of documents to be maintained.**

###### **Ghana**

7. (1) A person who engages in a transaction with another person with whom that person has a controlled relationship shall maintain contemporaneous documentation of the transactions engaged in by that person for each tax year. [Regulation 7(1) 2011 Regulations]

Extract from Ghana's Practice Note:

These include:

- a. A general description of the organizational, legal, and operational structure of the group of associated enterprises of which the taxpayer is a member, as well as any relevant change therein during the taxable period.
- b. The group's financial report or equivalent annual report for the most recent accounting period.
- c. A description of the group's policy in the area of transfer prices, if any.
- d. A general description of the nature and value of the controlled transactions in which the taxpayer is involved, or which have an effect on the income of the taxpayer.
- e. A description of the functions, assets and risks of group companies to the extent that they affect or are affected by the controlled transactions carried out by the taxpayer, including any change compared to the preceding period.

With respect to each material controlled transaction carried out by the taxpayer,

- a. A description of the transfer pricing method used by the taxpayer to demonstrate that the prices and other financial indicators associated with the transaction satisfy the requirements of the arm's length principle and a description of why such methods are the most appropriate transfer pricing methods within the meaning of Regulation 3 of Transfer Pricing Regulation 2012 (LI 2188).
- b. A comparability analysis supporting the taxpayer's application of the most appropriate transfer pricing method prepared in accordance with the provisions of Section 3.
- c. Financial data showing the results of controlled transactions sufficient to demonstrate the taxpayer's compliance with Section 1 applying the most appropriate transfer pricing method within the meaning of Section 4, paragraph 1.

**Until recently, the OECD Transfer Pricing Guidelines simply described general principles** and addressed no more than a high-level overview of the information that needs to be included in a transfer pricing study. More recently, however, the OECD Transfer Pricing Guidelines (through the G20/OECD BEPS Action 13 Report) introduced a more detailed approach, consisting of a local file and a master file (discussed below). The revised guidance provides a detailed list of information to be provided in each of these files. This Toolkit recognises the advantages of adopting a common approach to transfer pricing studies, including:

**1. Taxpayer compliance costs will be reduced if countries apply similar formats in their documentation requirements,** so that MNEs are able to provide similar information in the same format, and (for the master file) the same document, in each of the countries in which they operate. Taxpayers will also have more certainty about the expected content of documentation;

**2. Tax administrations should expect better compliance with their local transfer pricing documentation requirements as a result of greater standardisation.** The marginal cost of compliance with a country's documentation rules will be reduced where these rules are aligned across countries; and

**3. Alignment and co-operation between countries can also help establish 'best practice' approaches** and create opportunities for co-operation and mutual support in drafting and implementing the rules and using the information contained in the documentation.

The Box below describes the main features of the BEPS Action 13 Report approach to transfer pricing studies (i.e. local file and master file). Detailed information may be found in such report and Chapter V of the Transfer Pricing Guidelines.

#### **Box 6 : BEPS Action 13 approach to transfer pricing documentation**

The recommended master and the local file contents laid out in Annex I and II of the BEPS Action 13 Report provide a platform on which taxpayers with material transfer pricing risks can meaningfully describe their compliance with the arm's length standard. They are aimed at providing tax administrations with a picture of the business operations in organisational and contractual terms, from the perspective of the local entity and the group as a whole. Together, they would also aim to provide tax administrations with detailed information of the individual intra-group transactions, the local taxpayer and the global transfer pricing policy of the group: information needed as a basis for a well-informed transfer pricing audit.

The master file is aimed at providing a high-level overview in order to place the MNE group's transfer pricing practices in their global economic, legal, financial and tax context. That is, the master file provides background and context to the more detailed information contained in the local file.

#### **Local file and master file – brief overview of content <sup>28</sup>**

##### **Master file**

In the master file the MNE should provide information on the overall MNE group describing the nature of its global business operations, its overall transfer pricing policies, and information on key value drivers, intangibles and the financing of the group. As part of the master file taxpayers are also required to prepare other tax information, such as consolidated financial statements of the MNE group, and provide information on key intra-group agreements. The information required in the master file is broad in nature intended to provide tax administrations only with a high-level overview of the MNE group's transfer pricing practices in their global economic, legal, financial and tax context.

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<sup>28</sup> See OECD (2017) *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, Chapter V, Annexes I and II for a complete list of the documents specified to be contained in the master file and the local file.



The OECD Transfer Pricing Guidelines recommend that a master file includes five categories of information:

- organisational structure;
- description of the MNE's business or businesses;
- intangibles;
- intercompany financial activities; and
- financial and tax positions.

### **Local file**

The local file requires detailed information relating to specific transactions taking place between local country affiliate and associated enterprises, including information on the identity of related parties, relevant financial information regarding those specific transactions, a comparability analysis and the selection and application of the most appropriate transfer pricing method.<sup>29</sup> The information contained in this report should reflect the analysis, elements taken under consideration and sources of information used by the taxpayer to substantiate their application of the arm's length principle.

The following categories of information are required in the local file:

- Information on the local entity
- Detailed information on each material category of controlled transactions in which the entity is involved, including a functional analysis of each, an indication of the most appropriate transfer pricing method (including which party is selected as the 'tested party') and the implementation of that method.
- Financial information

Some of the information to be provided in the local file might be also contained in the master file. In those cases, the guidance in the BEPS Action 13 Report recommends that the taxpayer should be allowed to cross reference the information to the master file.

### ***Filing requirements for the master and local files***

**At the time of drafting over 40 countries (including OECD and non-OECD economies) had introduced or were in the process of introducing the master and local files based on the BEPS Action 13 proposal.** BEPS Action 13 Report does not provide specific guidance on all aspects of the local file and the master file approach, and there is thus room for some variation in their implementation on issues such as deadlines for submission, penalties and level of detail.

This section discusses some of these issues and evaluates the different approaches adopted by different countries.

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<sup>29</sup> OECD (2015), "Local File", Paragraph 22 in Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project.

1. **Master file by line of business:** Under the recommendations of BEPS Action 13 Report, MNEs should prepare a single file comprising information on the operations of the MNE group as a whole. The master file may be presented by line of business where this is justified by the facts, e.g. where the structure of the MNE group is such that some significant business lines operate largely independently or were recently acquired. Notwithstanding this, the MNE's affiliate local taxpayer should make available the entire master file consisting of all business lines to assure that a complete overview of the MNE group's global business is provided.<sup>30</sup>

#### **Box 7 : Country Practices – the master file by line of business**

In **Finland**, it is possible to file the master file for a line of business that the Finnish entity is part of. The business line has to be independent enough from other business lines and a description of centralised functions and transactions of the Group has to be also included.

2. **To simplify administrative burden to domestic entities, Mexico offers the possibility of lodging only one master file** when several entities of the same MNE operate in the country. This approach makes sense especially where all entities of the same group are dealt with by the same office in the tax administration.

3. **Some countries (e.g. Austria, China) require local taxpayers to file the master file, even if the domestic entity falls within the exemption threshold which would otherwise apply,**<sup>31</sup> in cases where there is another entity of the MNE group that must prepare a master file in a foreign jurisdiction. For China, the local MNE entity is required to file a master file if either: a) the Chinese entity is part of a multinational group that files a master file; or b) related party transactions exceed CNY 1 billion (equivalent to approximately EUR 131.17 million).<sup>32</sup>

#### **Form of documentation**

**Another issue to be evaluated is whether the maintenance of electronic files would fulfil transfer pricing documentation requirements.** In this respect, the OECD Transfer Pricing Guidelines note that because the tax administration's ultimate interest would be satisfied if the necessary documents were submitted in a timely manner when requested in the course of an examination, the way that the documentation is stored – whether in paper, electronic form, or any other system – should be at the discretion of the taxpayer, provided that relevant information can promptly be made available to the tax administration in the form specified by the local country rules and practices. Countries might wish to ensure that their domestic rules do not prohibit them from requiring documentation in written form when required (for example, as evidence in courts), or restrict the use of other formats when appropriate.

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<sup>30</sup> See OECD (2017) *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, Chapter V, Paragraph 20.

<sup>31</sup> Some countries only require filing transfer pricing documentation when the transactions or the taxpayer's revenue exceed a certain amount. See section 3.3.7

<sup>32</sup> Exchange rate conversion at February 2019

### *Electronic submission of transfer pricing studies.*

**Transfer pricing studies usually require from a taxpayer a significant amount of information and analysis.** Moreover, as transfer pricing studies should be tailored to the specific business operations of the MNE group, it may be difficult to fully standardise such studies so that they are easily amenable to e-filing. Nevertheless, the advantages of having such information available in electronic form mean that tax administrations may want to consider providing for electronic filing of transfer pricing studies, bearing in mind the necessity to allowing for flexibility in the form and content of the information provided.

#### **Some countries have tailored the local file and master file to allow electronic submission.**

This approach facilitates the use of information contained therein for risk assessment purposes. For example, Australia allows the local file and the master file to be submitted to the tax administration electronically; an XML schema is available for this purpose together with associated validation rules. Annexes such as contracts can also be provided in PDF format through the Australian Tax Office online Portal. Japan also allows for electronic submission of the master file.

### *Language*

#### **Generally, countries require transfer pricing studies to be prepared in the local language.**

As a way to reduce compliance costs for taxpayers, however, countries can permit taxpayers to file transfer pricing documentation in commonly used languages and make specific requests for the translation of relevant documents. Such an approach would also allow, for example, an MNE to prepare a master file in one language for all jurisdictions in which it operates, together with local files in the relevant local language. Similarly, some information such as contracts, the functional analysis pertaining to the foreign affiliate (where relevant), or invoices, might only be readily available in the foreign language, and tax administrations might, for example, require translation only if and when they are required to be submitted.

Some options are available:

1. Many jurisdictions require translation to be performed by certified translators before documentation can be considered as evidence in the court. One option for tax administrations is generally to allow uncertified translation and to require official translation only where it is believed the case is going to court. It is advisable to request translations as early as possible.
2. Jurisdictions requiring the master file in their local language might consider providing longer deadlines so taxpayers have enough time to prepare and translate the file.
3. Jurisdictions may also allow taxpayers to file transfer pricing studies in a commonly used language. If so, the option to submit documentation in a foreign language should be established (or at least not precluded) in domestic law.

(See [Annex 5](#) for different countries' practices)

### **3.3.3 Regulatory framework**

**This section discusses the various approaches that countries take in legislating rules on transfer pricing studies.**

Provisions (whether in primary or secondary legislation or in guidance) relating to transfer pricing studies would normally contain at least the following items:

- A statement of the scope of the legislation, including any exemptions for, for example, smaller taxpayers;
- A requirement to maintain documentation;
- A list of documents or information required to be included in the study; or general criteria concerning the purpose and objectives of the documentation (i.e. what the study must achieve);
- The time by which the study should be in place;
- The retention period of the documentation;
- The circumstances in which the study must be submitted to the tax administration;
- The time by which the study should be submitted to the tax administration;
- The form in which it should be provided (e.g. is electronic filing permitted or required?), including the language;
- Penalties for failure to maintain or submit complete documentation; or for providing incorrect information.

See [Annex 6](#), which provides an illustration of a possible approach to drafting primary legislation requiring transfer pricing documentation consisting of the Master File, Local File and CbC report.

### 3.3.4 Timing issues

**When introducing the requirements for the submission and preparation of transfer pricing studies countries should consider the following:**

1. the fiscal period for which a new transfer pricing obligation will first be effective;
2. whether transfer pricing studies should be merely prepared, or they also submitted to the tax administration at a set time (for example with the tax return); and
3. when the transfer pricing studies should be prepared.

Guidance on these three questions and the approach taken by some countries is provided below.

#### *Fiscal Year the transfer pricing study will be effective*

**When introducing a requirement for taxpayers to prepare transfer pricing studies for the first-time countries can consider allowing a reasonable amount of time to taxpayers to make preparations.** For instance, if the transfer pricing studies are required to be prepared contemporaneously, taxpayers should be allowed a period before the reporting obligation becomes effective.<sup>33</sup>

#### *Whether transfer pricing studies should be prepared and submitted to the tax administration at a set time*

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<sup>33</sup> Contemporaneous transfer pricing documentation generally implies that enterprises must determine their transfer prices based on the relevant available information at the time the transaction has taken place.

**The OECD Transfer Pricing Guidelines and the UN Practical Manual do not prescribe whether transfer pricing studies should automatically be submitted to tax administrations and current practices vary among countries.**

**In relation to local files and master files**, the guidelines in BEPS Action 13 Report suggest that a local file be finalised no later than the due date for the filing of the tax return. The master file should be required by the tax return due date for the ultimate parent of the MNE group. The rationale is that the master file will most likely be prepared by the parent company.

**Box 8 : Mismatches with different deadlines for lodging the master file**

**Mexico** allows the domestic entity to lodge the master file in line with the fiscal year of the foreign filing entity of the group preparing it.

**Japan** and **Belgium** require the master file to be submitted within one year of the last day following the date when the Ultimate Parent Entity's fiscal year ends; the local file must be made available at the request of the tax administration

**The most common practice is to require taxpayers to prepare and maintain transfer pricing studies by the timeframes set out in the relevant regulation, and make them available on request from the tax administration.** This is the approach followed by Austria, China, Costa Rica, Dominican Republic, Finland, Germany, the Netherlands, Pakistan, Poland and Spain. In contrast, some countries (e.g. Australia, Colombia, Mexico, Peru) request the transfer pricing studies to be submitted on a regular basis (e.g. annually) to tax administrations. [Annex 5](#) provides some further examples of country practices.

**Each approach has its own advantages and disadvantages.** It might be preferable to require studies to be kept by taxpayers and be submitted on request (e.g. for conducting risk assessment or evaluation, or where the taxpayers have been selected for audit). Ideally, such an approach should be complemented by appropriate penalty or incentive regimes, as described in [Section 3.3.5](#), to encourage compliance. Allowing the tax administration to request the studies also on a random basis could supplement the penalty / incentives regime in encouraging compliance.

**Requiring taxpayers to submit transfer pricing studies annually has the advantage that the tax administration will have documentation available when conducting risk assessment or audits.** The availability of such a source of information may also assist the tax administration in undertaking broad (e.g. industry-wide), systematic risk assessment activities as well as in monitoring tax compliance and broader economic and commercial trends. Another advantage of this approach is that it may increase the compliance effect.

**However, in many cases, tax administrations are not able to conduct comprehensive risk assessment of all taxpayers each year** and so require documentation to be submitted only on request. In some countries, failure to consider, and act upon, contemporaneous information submitted by a taxpayer may prohibit the authority from auditing or reopening the relevant period at a later date, or at least provide implicit approval of the tax return as lodged. This would mean if transfer pricing documentation for a tax period is submitted but not analysed, the tax authority

may not be able to revisit that period at a later date, on the basis that it had implicitly agreed the tax position for the period and had all the information needed to do so. Further, as a purely practical matter, the secure storage of large quantities of documentation will require resources on the part of the tax administration.

### *When should the transfer pricing study be prepared?*

**Tax administrations typically require that transfer pricing studies be prepared on a contemporaneous basis.** This would mean that the documentation would be prepared at the time of the transaction, or, in any event, no later than the time of completing and filing the tax return for the fiscal year in which the transaction takes place.

#### **Box 9 : Country example on preparation of a local file and master file**

**Mexico** – the local file must be submitted by December 31 with regard to the information of fiscal year ending December 31 of the prior year. Information in the local file must be contemporaneous with the income tax return for the same period.

### *Frequency of documentation updates*

**In general, transfer pricing studies should be reviewed and updated annually** in order to determine whether the functional and economic analyses are still accurate and to confirm the validity of the applied transfer pricing methodology. The OECD Transfer Pricing Guidelines recognise that in many situations, business descriptions, functional analyses and descriptions of comparables may not change significantly from year to year. To simplify compliance, tax administrations may allow taxpayers to update comparables searches for example, once every three years rather than annually, provided the operating conditions (and functional analysis) remain unchanged. It would normally be appropriate that financial data for the comparables be updated every year to apply the arm's length principle reliably.

### *Retention period of documents*

**An issue to consider is the number of years records and information must be kept** before their final disposal. The BEPS Action 13 Report notes that taxpayers should not be obliged to retain documents beyond a reasonable period consistent with the requirements of domestic law. In other work streams the OECD recommends countries keep documentation for a period of at least five years. In many countries, the retention period is aligned with the statute of limitations for transfer pricing adjustments.

### **3.3.5 Enforcement**

A number of countries have mechanisms in place to ensure taxpayers prepare their transfer pricing studies. However, practices vary among countries.

**1. Some countries establish a transfer pricing enforcement regime intended primarily to reward timely and accurate preparation of transfer pricing documentation.** Some examples of incentives regimes include:

- **Penalty protection in case of a transfer pricing adjustment.** Where the documentation meets the requirements and is submitted in a timely fashion, the taxpayer could be exempted from penalties or subject to a lower penalty rate if a transfer pricing adjustment is ultimately made and sustained.
- **Shift in the burden of proof.** This would occur if the taxpayer complies with documentation requirements. In the Netherlands, for example, it is established that if transfer pricing documentation is inadequate, the burden of proof can shift back to the taxpayer. (See also sample legislation at Annex 6)

**2. Some countries apply general administrative penalties** to enforce taxpayers' submission of transfer pricing study on request in the course of a tax audit.

**3. Others apply specific transfer pricing penalties.** Penalties might be in place for taxpayers failing to prepare or submit transfer pricing studies. Such penalties could be applied in addition to other sanctions applicable under the tax code. Monetary penalties are the most common type of sanction. They could be based on fixed amounts, or on data from the previous year's tax return (gross taxable income, profit before tax, etc.) depending on the severity of the infraction (e.g. recurrence; time elapsed after the due date, errors, omissions or non-filing).

#### **Box 10 : Country practices**

**Penalty protection in case of a transfer pricing adjustment** – Australia,<sup>34</sup> Canada,<sup>35</sup> Mexico, Singapore, the United States.

**Shifting the burden of proof** – Latvia, Mexico, the Netherlands, Nigeria and the United Kingdom.

**General Administrative penalties** - Slovak Republic, Slovenia<sup>36</sup>

**Specific transfer pricing penalties** - Dominican Republic, Mexico, Peru.

**Both the OECD Transfer Pricing Guidelines and the UN Practical Manual note that it would be unfair to impose significant penalties on taxpayers that have made reasonable efforts in**

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<sup>34</sup> In Australia, a taxpayer cannot demonstrate that they have a 'reasonably arguable position' in relation to their transfer pricing (which consequently would provide for lower penalties in case of an adjustment) unless they maintain adequate transfer pricing documentation.

<sup>35</sup> In Canada a taxpayer might be subject to a transfer pricing penalty if they have not made reasonable efforts to determine and use arm's length transfer prices, as demonstrated in their contemporaneous documentation. If their contemporaneous documentation is complete and accurate in all material respects and was prepared before the documentation due date, there will not be a penalty.

<sup>36</sup> Slovenia Transfer Pricing Country Profile in [www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-slovenia.pdf](http://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-slovenia.pdf).

good faith to undertake a sound transfer pricing analysis, or to a taxpayer for failing to submit data to which the MNE group did not have access at the time of the documentation process.<sup>37</sup>

**Table 9: Country practices on transfer pricing studies enforcement measures**

Country	Description of the enforcement measure <sup>38</sup>
<b>Canada</b>	Sub-Section 247(3) of the ITA provides for a transfer pricing penalty when the net amount of transfer pricing adjustments exceeds specific thresholds. The penalty is intended to be a compliance penalty focusing on the efforts that a taxpayer makes to determine an arm's length price and not solely on the ultimate accuracy of the transfer prices. Therefore, provided that a taxpayer makes reasonable efforts to determine and use arm's length prices or allocations, the transfer pricing penalty does not apply. The provisions of subsection 247(4) may deem that taxpayers have not made reasonable efforts to determine and use arm's length prices or allocations. <sup>39</sup>
<b>Mexico</b>	<p>Penalty on omitted tax whenever it is unveiled by the tax authority: a penalty on the omitted tax from 35% to 75% is imposed.</p> <p>In the case of loss, the penalty will be from 30% to 40% of the excess of the reported over the adjusted loss.</p> <p>However, as long as the taxpayer has transfer pricing documentation that supports its determination of taxable income the penalty will be reduced to half (i.e. 27.5% to 37.5% of the omitted amount and 15% to 20% of the excess of the reported over the adjusted loss). Whenever the taxpayer fails to submit the related parties informative returns as set forth in Article 76-A of Income Tax Law, a penalty of MXN \$140 540 to MXN \$200 090 (equivalent to approximately EUR 6 500 to EUR 9 200) is imposed.</p> <p>Whenever the taxpayer fails to identify transactions executed with related parties residing abroad and report them accordingly to Article 76 of Income Tax Law in its accounting records, a penalty of MXN</p>

<sup>37</sup> See OECD Transfer Pricing Guidelines (2017) at paragraph 5.42 and the UN Practical Manual (2017) at paragraph C.2.4.3.4.

<sup>38</sup> Exchange rate of reference as of February 15, 2019.

<sup>39</sup> Canada Transfer Pricing Country Profile in [www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-canada.pdf](http://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-canada.pdf).



	\$1 550 to MXN \$4 670 (equivalent to approximately EUR 70 to EUR 215) is imposed for each transaction. The public sector will not contract with taxpayers who fail to submit a tax return.
<b>Peru</b>	In case transfer pricing adjustments are made by the Tax Administration due to an audit performed, an amended return would be required to correct the total income originally reported, and thus, a penalty may be assessed for a misstatement of such income, including the corresponding interest (1.2% monthly). The penalty is equivalent to 50% of the omitted taxes and can be reduced by up to 95% if the taxpayer, in addition to the correction, complies with the payment of the reduced fine.
<b>The United States</b>	Where a US taxpayer is examined by the IRS and a transfer pricing adjustment is made that results in a tax assessment over a specific threshold, the IRS may assert penalties. In order to avoid those penalties, taxpayers can provide to the IRS upon request transfer pricing documentation they prepared contemporaneous with their tax return filing to demonstrate they had reasonable cause for their pricing and they acted in good faith. The documentation required to meet the penalty exception is specified in USA Treasury Regulations section 1.6662-6(d).

### 3.3.6 Confidentiality

Transfer pricing studies submitted to a tax administration should be subject to the same level of confidentiality as that applying to tax returns and to other tax information.

### 3.3.7 Simplification and exemptions

**Both the UN Transfer Pricing Manual and the OECD Transfer Pricing Guidelines recommend countries implementing transfer pricing studies to establish some simplification measure or objective materiality standard.** Different approaches can be considered, for example:

- 'Prudent business manager' test for comprehensiveness of transfer pricing documentation;
- Exemptions or simplification options for particular kinds of transactions or for transactions below certain value threshold;
- Exemption regimes for small and medium enterprises; and
- Reduced documentation requirements for transactions covered by Advance Pricing Arrangements or safe harbours.

**Simplification or exemptions regimes for small transaction are commonly used in respect of the local file.** In contrast, for the master file countries commonly define the exemption threshold based on the size of the taxpayer or the MNE group to which taxpayer belongs.

It is often the case that such exemptions do not apply when taxpayers conduct transactions with associated enterprises located in low or no tax jurisdictions, or that benefit from preferential tax regimes.

Some country practices are shown in Table 10 below.

### **Prudent business manager test**

**The ‘prudent business manager’ test requires that the larger and more complex** (or more uncertain) a transaction or group of transactions, the more comprehensive should be the supporting documentation.

The guidance in the OECD/G20 BEPS Action 13 Report regarding the master file emphasises that *“in producing the master file, including lists of important agreements, intangibles and transactions, taxpayers should use prudent business judgment in determining the appropriate level of detail for the information supplied, keeping in mind the objective of the master file to provide tax administrations a high-level overview of the MNE’s global operations and policies. ... For purposes of producing the master file, information is considered important if its omission would affect the reliability of the transfer pricing outcomes.”*

### **Simplification provisions for certain transactions**

**Measures of materiality may be considered in relative terms (e.g. transactions not exceeding a percentage of revenue or percentage of cost measure) or in absolute amount terms (transactions not exceeding a certain fixed amount).** Individual countries should establish their own objective materiality standards for local file purposes based on local conditions.

### **Simplification or exemptions for Small and Medium sized taxpayers**

**Consideration can also be given to rules that exempt small and medium sized enterprises (SMEs) from documentation requirements or that limit the extent of the documentation to be provided by such entities.** A simplification or exemption measure can be expressed in various forms. It can be defined taking into account either the level group information or only information at the level of the local entity. Some of these criteria include:

- Total turnover, revenue or gross operating income
- Assets
- Number of employees
- A combination of the above.

Where the country or the tax administration has defined criteria for SMEs this could be used as the parameter(s) to set the exemption threshold. Some country practices are shown in Table 10 below.

### **Reduced documentation requirements for transactions covered by Advance Pricing Arrangements or safe harbours**

Where an Advance Pricing Arrangement (APA) or safe harbour measure has been adopted there will be no need for a detailed comparability study, although other information and documentation, specified in the APA or the safe harbour rules, should be made available to the tax authorities.

**Table 10 : Simplification or exemption measures for transfer pricing studies**

Country	Threshold/exemptions <sup>40</sup>
<b>Austria</b>	Any Constituent Entity of an MNE Group, whose revenues in the two preceding fiscal years exceeded EUR 50 million must complete the regular transfer pricing documentation requirements. Entities which do not meet this threshold are exempt.
<b>Colombia</b>	<p>Taxpayers do not need to comply with the transfer pricing documentation requirements unless either: (a) gross equity on the last day of the fiscal year or period equals at least 100 000 Taxable Units (approximately EUR 970 000); or (b) gross revenues of respective year equal at least 61 000 TU (EUR 590 000).</p> <p>Additionally to the said threshold, taxpayers will need to prepare and submit the Local and Master files for transactions carried out with related parties, when their annual cumulative amount exceeds the equivalent of forty-five thousand (45 000) Tax Units (approximately EUR 436 000) for the reporting fiscal year.</p> <p>If the transaction is carried out with companies located, residing or domiciled in non-cooperating jurisdictions with low or no taxation or preferential tax regimes, the Local and Master Files must be prepared and submitted when their annual cumulative amount exceeds the equivalent to ten thousand (10 000) Tax Units (approximately EUR 97 000) for the reporting fiscal year. Otherwise, no exemption applies.</p>
<b>Denmark</b>	Small MNEs (less than 250 employees and with either an annual balance sheet total of less than DKK 125 million (approximately EUR 16.75 million) or annual revenue of less than DKK 250 million -approximately EUR 33.5 million) are only required to provide partial documentation.
<b>Finland</b>	SMEs according to the recommendation of the Commission (of 6 May 2003, 2003/361/EC) are not required to prepare transfer pricing documentation. In addition, if the total amount of the taxpayer's arm's length transactions in relation to each of its related parties does not exceed EUR 500 000, there is no requirement to submit a master file. In addition, there are provisions providing for a local file with more limited content when the taxpayer only has minor transactions with its related parties.
<b>Japan</b>	<b>Master file:</b> only required for MNE Groups with a total consolidated revenue for the Ultimate Parent Entity's preceding fiscal year of JPY 100 billion (approximately EUR 803.6 million) or more.

<sup>40</sup> Exchange rate of reference as of February 15, 2019.

	<p><b>Local file:</b> Corporations are exempted from the duty of contemporaneous documentation for Controlled Transactions with a foreign-related party during the current business year:</p> <p>(1) If the amount of transactions (total of receipts and payments) with the foreign-related party during the previous business year (the current business year if there was not the previous one) was less than 5 billion yen (approximately EUR 40.2 million), and</p> <p>(2) If the amount of transactions of intangibles (total of receipts and payments) with the foreign-related party during the previous business year (the current business year if there was not the previous one) was less than JPY 300 million (approximately EUR 2.4 million).</p>
<b>Lithuania</b>	<p>The master file and the local file must only be prepared by the Lithuanian entities and permanent establishments of the foreign entities acting in Lithuania which have turnover in the previous taxable year exceeding EUR 2 896 200 (this exemption is not applied to financial undertakings, credit institutions and insurance companies which are obliged to prepare the transfer pricing documentation despite the size of their turnover).</p>
<b>Mexico</b>	<p>Taxpayers engaging in business activities whose income in the immediately preceding fiscal year did not exceed MXN 13 000 000 (approximately EUR 597 300) and taxpayers whose income from the provision of professional services did not exceed MXN 3 000 000 (approximately EUR 137 800) shall not be bound to prepare transfer pricing documentation, except those taxpayers:</p> <ul style="list-style-type: none"> <li>• That enter into transactions with entities in low tax jurisdictions;</li> <li>• Taxpayers that are contract or assignation holders in terms of the Hydrocarbons Law.</li> </ul> <p>Taxpayers that do not meet the following requirements are not bound to prepare the Master File and Local file:</p> <ul style="list-style-type: none"> <li>• Taxpayers that in the immediately preceding fiscal year reported in their annual return revenue equal to or exceeding MXN 708 898 920 (approximately EUR 32 600) updated every year;</li> <li>• Companies included in the optional tax regime for groups;</li> <li>• State owned companies; or</li> <li>• Foreign resident legal entities with a permanent establishment in Mexico.</li> </ul>
<b>Netherlands</b>	<p>A master file and a Local file must be prepared by an MNE Group having total consolidated group revenue of at least EUR 50 million in the fiscal year that immediately preceded the year for which a tax return is being filed.</p>
<b>Peru</b>	<p><b>Local file:</b> Taxpayers whose accrued income does not exceed 2 300 Tax Units and transactions subject to the transfer pricing rules are below 100 Tax Units are exempted. Taxpayers with transactions subject to the transfer pricing rules between 100 and 400 Tax Units, are only required to prepare a simplified local file.</p>

	<p><b>Master file:</b> Taxpayers whose accrued group income does not exceed 20 000 Tax Units, and transactions subject to the transfer pricing rules are below 400 Tax Units are exempted.</p> <p>(1 Tax Unit = EUR 1 113 approximately for 2019).</p>
<b>Spain</b>	<p>There are some exemptions (e.g. transactions below EUR 250 000 or intra-group transactions if a tax consolidated regime is applied, do not need to be documented) and some simplification measures for medium (with income not exceeding EUR 45 million a year) and small taxpayers (with income not exceeding EUR 10 million a year).</p>
<b>Uruguay</b>	<p>When the aggregate transactions subject to transfer pricing rules, undertaken during the fiscal year, do not exceed 50 million indexed units (approximately EUR 4.3 million), taxpayers are exempt from transfer pricing documentation obligations.</p>

## 3.4 Country by Country Reporting

### 3.4.1 Introduction

**Country by Country Reporting was introduced as an outcome of Action 13 of the OECD/G20 BEPS initiative.** Discussions on this subject, however, had been taking place for many years prior to this.<sup>41</sup> In 2002/2003 civil society organisations started to argue for some form of public country-by-country reporting in order to help address both tax avoidance/evasion and corruption. The Extractive Industries Transparency Initiative (EITI), which requires disclosure of all payments made by listed mining and petroleum companies, was one concrete outcome of this process. The concept was discussed widely from 2013 when country-by-country reporting for the banking sector was introduced in the EU and the topic was placed on the G8 and G20's agenda.<sup>42</sup> From 2013 to 2015, the OECD, working under a mandate from the G20, developed a standard for the CbC Report which was incorporated into the BEPS Action 13 Report.

**Under the BEPS project the development of a template for CbC reporting was central.** In the 19 July 2013 BEPS Action Plan, the OECD was directed to "develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into account the compliance costs for business. The rules to be developed will include a requirement that MNE's provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template".

**In January 2014 the OECD launched a discussion draft proposing a two-tiered approach to transfer pricing documentation comprising a local file and a master file.** The latter included a template of a CbC Report. The proposed template included certain information relating to the global allocation of profits, the taxes paid, and certain indicators of the location of economic activity (tangible assets, number of employees and total employee expense) among countries in which the MNE group operates. It also required reporting of the capital and accumulated earnings as well as aggregate amounts of certain categories of payments and receipts between associated enterprises. One of the questions raised in the discussion draft was whether the CbC Report should be part of the master file, or whether it should be a separate document.

**Another question was on the most appropriate mechanism for making the CbC Report available to tax administrations.** Three potential options were raised: (i) the direct filing of the information by local MNE group members subject to tax in the jurisdiction; (ii) filing of information in the parent company's jurisdiction and the sharing of such information under treaty information exchange provisions; or (iii) some combination of (i) and (ii).

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<sup>41</sup> In an analysis of different initiatives against corporate tax avoidance Ylönen M (2017) shows that discussions on country-by-country reporting dates back to 1970. CbC reporting initiative had already been developed and discussed in the 1970s by the United Nations Commission and Centre for Transnational Corporations. See, Ylönen M 2017. Back from oblivion? The rise and fall of the early initiatives against corporate tax avoidance from the 1960s to the 1980s", p49-50.

<sup>42</sup> Meinzer, M 2017. Lobbyism in International Tax Policy: The Long and Arduous Path of Country-by-Country Reporting.

**From the point of view of the business community, a significant amount of potentially commercially confidential data would be made available in the CbC Report and this data would need to be safeguarded.** In contrast, some NGOs supported public disclosure of the CbC Reports. They did not see any justification for secrecy of aggregate information on items such as employees, assets, profits and taxes by country. For them, the only valid reason for non-publication was commercial confidentiality. Since the proposal was for a template which would be a global requirement, NGOs were of the view that public disclosure of CbC Reports would not affect the competitive position of specific firms.<sup>43</sup>

**Ultimately, confidentiality was a necessary part of the compromise reached by countries to implement CbC Report as a minimum standard under the BEPS project. Under BEPS Action 13 minimum standard on CbC reporting, only the ultimate parent entity (UPE) of an MNE is typically required to file a CbC Report** to its local tax administration, which is then obliged to provide the report to relevant tax administrations around the world under exchange of information (EOI) instruments. As has been noted elsewhere, all aspects of the CbC Report standard are subject to review in 2020, but the initial, widespread implementation of the standard is unlikely to have been possible without the confidentiality requirements included therein. Mechanisms are in place to help ensure wide adoption and access to CbC Reports by relevant countries notwithstanding that such reports would not be made public.

The key features of CbC Reports are:

- **They provide a valuable source of information for tax administrations** – providing access, in a tabular format, to information on the global operations of the large MNE groups operating in the local jurisdiction, including the amount of revenue, profit before income tax, income tax paid, number of employees, stated capital, retained earnings and tangible assets in each jurisdiction;
- **CbC Reports are intended to assist tax administrations with their case selection and risk assessment processes.** They do not provide sufficient information to make an adjustment to profit solely on the information they contain;
- **Only large MNEs groups, i.e. those with global consolidated revenue of EUR 750 million or more** (or a local equivalent) are required to produce a CbC Report;
- **The CbC Report is potentially available to the tax administration in each tax jurisdiction** in which the MNE operates, whether the MNE operates through a local subsidiary or a permanent establishment, either directly from the local taxpayer (and subject to 'local filing' conditions<sup>44</sup>) or through exchange of information mechanisms;

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<sup>43</sup> OECD (2014), "PUBLIC COMMENTS RECEIVED VOLUME I - Letters A to C Discussion Draft on Transfer Pricing Documentation and CbC Reporting" OECD, Paris, [www.oecd.org/ctp/transfer-pricing/volume1.pdf](http://www.oecd.org/ctp/transfer-pricing/volume1.pdf).

<sup>44</sup> The conditions in which local filing of a CbC Report are permitted (i.e. filing of the report by a constituent entity of the MNE Group that is not the Ultimate Parent Entity) can be found in paragraphs 8(c) and 8 (d) of OECD (2017), *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit

- **CbC reporting is one of the BEPS minimum standards**, which means that members of the OECD's Inclusive Framework will be expected to adopt CbC reporting in accordance with the stipulated standards, and commit to participate in the peer review process<sup>45</sup> to be undertaken under the authority of the Inclusive Framework;
- **CbC Reports contain confidential and potentially sensitive information.** For this reason the minimum standard includes conditions regarding confidentiality;
- **The OECD has produced substantial guidance on the implementation of CbC Report, which is intended to result in consistent implementation internationally.** Box 17 lists the guidance provided by the OECD.
- **Under the Inclusive Framework minimum standard, CbC Reports will normally be filed by the ultimate parent entity of each affected MNE group** to the tax administration of the jurisdiction in which that entity is resident. The Report will then be provided to the other tax jurisdictions in which the MNE has a presence, through the exchange of information mechanisms;
- **In specified exceptional cases<sup>46</sup> the BEPS Action 13 Report provides for a back-up mechanism whereby subsidiaries or permanent establishments may be required to file the CbC Report directly with their local tax administration.** This is known as 'local filing'.

### *3.4.1.1 Country by Country Reporting and developing countries*

**CbC Reports contain data that can assist in building a high-level picture of the global operations of MNEs** operating in their jurisdiction. Without the CbC Report, this information would typically be very difficult to obtain directly from local MNE group entities.

**CbC Reports can have relevance beyond transfer pricing and can assist tax administrations to identify, at a high level, other risks relating to base erosion and profit shifting.** For example, a CbC Report may help to identify risks relating to permanent establishments or the location of a company's tax residence. A CbC Report may also help to identify entities within the scope of controlled foreign company rules or transactions within the scope of anti-avoidance measures applying to low-taxed payments.

**Countries that are not members of the Inclusive Framework will take a view on whether or not to adopt CbC reporting, but it is likely to be beneficial to many such countries.** Countries that are members of the Inclusive Framework will generally be expected to adopt CbC reporting,

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Shifting Project, OECD, Paris. [www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf). See also section 3.4.2, below.

<sup>45</sup> The peer review process works through an evaluation made by 'the pairs' (other jurisdictions of the Inclusive Framework) through a monitoring process carried out by an ad-hoc group (the "CbC Reporting Group") of the framework put in place by a jurisdiction to implement the CbC reporting standard.

<sup>46</sup> See Footnote 43 above, and section 3.4.2, below.



although they may 'opt out'. Such an 'opt out' is available only for those countries that do not have any MNE Groups headquartered in their jurisdiction that would be subject to CbC reporting.<sup>47</sup> Choosing to 'opt out' also means that the country will not be able to take advantage of exchange of information processes to receive CbC Reports relating to resident subsidiaries or permanent establishments of the MNE groups operating in its jurisdiction.

**Alternatively, a country may opt to become a non-reciprocal jurisdiction, i.e. they would collect and exchange CbC Reports** for affected MNE Groups headquartered in their jurisdiction with relevant other jurisdictions. They would not, however, receive CbC Reports from other jurisdictions.

**As described above, the primary mechanism by which many developing countries will be able to access CbC Reports will be mainly through the exchange of information with the tax jurisdiction of the ultimate parent entity.** There are, however, substantial prerequisites to such exchanges. These are:

1. **The country must have domestic legislation in place requiring any local ultimate parent company of an MNE group that meets the CbC Report size criterion to submit a CbC Report.** This is the case even if there are no such MNE groups headquartered in the country. This requirement reflects the 'principle of reciprocity'<sup>48</sup> in exchange of information, including the exchange of CbC Reports, which means that countries will not exchange information with other jurisdictions unless the latter is able to reciprocate.

**It is recommended that countries base such domestic legislation on the model provided in the BEPS Action 13 Report** (which is discussed in detail below).

2. **Exchange of information mechanisms must be in place.** These can be in the form of membership of a multilateral exchange agreement (in most cases, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters); tax treaties or Tax Information Exchange Agreements (TIEAs) incorporating exchange of information;

3. **Protocols to allow for automatic exchange of CbC Reports under any such agreements must be in place.** These may take the form of:

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<sup>47</sup> For the purpose of the peer review process, the terms of reference on CbC reporting notes that "… it is possible that there are developing countries that do not have any MNE Groups headquartered in their jurisdiction that would be subject to CbC reporting, and that are not yet ready to receive CbC Reports. In such cases, rather than find such developing countries to have failed to implement CbC reporting, the peer review will instead require a certification process whereby the jurisdiction could confirm that there are no MNE Groups within scope that are headquartered in the country and documenting how that fact is known for the year in question."

<sup>48</sup> The commentary on Article 26 in the OECD Model Tax Convention on Income and on Capital concerning to the principle of reciprocity in EOI procedures the following: "...It follows that a Contracting State cannot take advantage of the information system of the other Contracting State if it is wider than its own system. Thus, a State may refuse to provide information where the requesting State would be precluded by law from obtaining or providing the information or where the requesting State's administrative practices (e.g. failure to provide sufficient administrative resources) result in a lack of reciprocity."

- The Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports ('CbC Report MCAA'), or
- Competent Authority Agreement on the Exchange of Country-by-Country Reports on the basis of a Double Tax Convention ("DTC CAA"); or
- Competent Authority Agreement on the Exchange of Country-by-Country Reports on the basis of a Tax Information Exchange Agreement ("TIEA CAA").

4. **Adoption of the CbC Report XML Schema.** The format used for the exchange information between countries must comply with the OECD XML Schema and the information is provided must be in accordance with the OECD XML Schema User Guide.

5. **To meet the 'appropriate use' condition** i.e. that information received is used only for the purposes of assessing high-level transfer pricing and other BEPS-related risks, as well as for economic and statistical analysis. (This is discussed in more detail below). Jurisdictions will not exchange CbC Reports with countries which have not met the 'appropriate use' condition (discussed below). This requires:

- domestic legislation or guidance containing the 'appropriate use' condition (This is included in the model CbC Report legislation mentioned above);
- the introduction of safeguards to ensure that the 'appropriate use' criterion is implemented in practice.

The provisions of the CbC MCAA and bilateral CAAs require a number of procedural steps in regard to appropriate use, which are described in the box below. This appropriate use condition will be subject to 'peer review'.

**Box 11 : OECD Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports (September 2017)**

Paragraph 15

Under the recitals to the multilateral and model bilateral CAAs, jurisdictions indicate that they have, or expect to have, in place by the time the first exchange of CbC Reports takes place, appropriate safeguards to ensure that information received is used for the purposes of assessing high-level transfer pricing risks and other BEPS-related risks, as well as for economic and statistical analysis, where appropriate. Further, under paragraph 1(d) of Section 8 of the multilateral CAA, a jurisdiction's competent authority must provide notification to the Coordinating Body Secretariat "that it has in place the necessary legal framework and infrastructure to ensure [...] the appropriate use of the information in the CbC Reports". As such, tax authorities will not exchange CbC Reports until this condition is met and, under the multilateral CAA, until such notification has been provided. Similarly, under the Action 13 minimum standard, a jurisdiction may not require a CbC Report to be submitted by an entity that is not the UPE of its group (also referred to as local filing), unless that jurisdiction satisfies the appropriate use condition and the other conditions for local filing in the Action 13 Report are met. Where a jurisdiction imposes local filing in circumstances that are not permitted under the Action 13 Report, this will be identified during the jurisdiction's peer review evaluation. *(emphasis added)*

6. **To meet the confidentiality condition**, discussed in more detail below. This requires:

- the adoption of confidentiality conditions in domestic law (see Section [3.4.3.3 Further note on appropriate use of CbC Report information](#));
- appropriate confidentiality conditions in international exchange of information mechanisms;<sup>49</sup>
- mechanisms to be in place to ensure that the conditions are met in practice.

**Meeting the confidentiality and appropriate use conditions are prerequisites to receiving and using CbC Reports.** Jurisdictions may therefore want assurance that their exchange partners meet these conditions.

The Box below outlines the specific items under scrutiny in the peer review process.

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<sup>49</sup> At least equivalent to the protections that would apply if such information were delivered under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax matters, a Tax Information Exchange Agreement or a tax treaty that meets the internationally agreed standard of information upon request. See paragraph 57 of the BEPS Action 13 Final Report.

**Box 12 : BEPS Action 13 on Country-by Country Reporting Peer Review Documents  
OECD Feb 2017**

Paragraph 11

**With respect to confidentiality, jurisdictions should:**

- (a) Have international exchange of information mechanisms which provide that any information received shall be treated as confidential and, unless otherwise agreed by the jurisdictions concerned, may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information clause. Such persons or authorities should use the information only for such purposes unless otherwise agreed between the parties and in accordance with their respective laws;
- (b) Have the necessary domestic rules or procedures to give effect to the restrictions contained in the International Agreement and related Qualifying Competent Authority Agreement;
- (c) Have in place and enforce legal protections of the confidentiality of the information contained in CbC Reports which are received by way of local filing, which preserve the confidentiality of the CbC Report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD, 2011), a Tax Information Exchange Agreement or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum;
- (d) Have effective penalties for unauthorised disclosures or unauthorised use of confidential information;
- (e) Ensure confidentiality in practice, for instance having in place a review and supervision mechanism to identify and resolve any breach of confidentiality;
- (f) Respect the terms of the International Agreement and related Qualifying Competent Authority Agreement, including the limitation on use of information received for taxable periods covered by the agreement.

**These prerequisites to obtaining CbC Reports can be challenging for many developing countries, which may not yet have the requisite exchange mechanisms in place.** Even where they are in place, some developing countries will face delays in entering into the necessary protocols for the exchange of CbC Reports, and establishing the processes for ensuring consistency, appropriate use and confidentiality in practice.

**Many developing countries have legislation in place to ensure confidentiality of information from taxpayers.** As many developing countries are members of the Global Forum on Transparency

and Exchange of Information for Tax Purposes,<sup>50</sup> they would have undergone a review of their domestic legislation and international agreements in order to verify whether they offer sufficient safeguards to preserve confidentiality.<sup>51</sup> Many of them were found to have sufficient safeguards in place to ensure confidentiality and others have modified their legislation and introduced systems and procedures to ensure confidentiality of documentation received on request from foreign authorities. However, CbC reporting relies on automatic exchange of information, and few developing countries have been reviewed in respect of the specific confidentiality aspects required under this form of exchange of information. The confidentiality standard for the purpose of CbC reporting requires countries taking some additional measures, such as protection of the information systems.<sup>52</sup>

**7. To meet the consistency condition**, discussed in detail below (see Section [3.4.1.4 Further note on the Consistency condition](#)).

**These factors may cause obstacles or delays for developing countries in receiving CbC Reports.** To address this, developing countries may consider giving some priority to putting in place the relevant **exchange of information mechanisms**. The first step for many countries will be membership of the Global Forum and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.<sup>53</sup>

**Requiring local filing under the 'systematic failure' condition** (discussed below) could also help countries to avoid obstacles or delays in receiving CbC Reports in cases where a jurisdiction fails to exchange CbC Reports without adequate justification.

**The BEPS Action 13 minimum standard<sup>54</sup> provides that local filing of the CbC Report may be accepted in three specific circumstances**, so long as a jurisdiction also meets conditions on confidentiality, consistency and appropriate use of CbC reporting data. Some countries have introduced a local filing obligation that is wider than that envisaged under BEPS Action 13, for at least a transitional period until they are able to put in place the frameworks required to receive CbC Reports from partner tax administrations. This would require local subsidiaries and permanent establishments of MNEs that meet the CbC Report criteria to file CbC Reports directly with the local tax administration. Such an option poses significant risks, including possibly in terms of investment climate. This requirement will also negatively impact on any review of the jurisdiction's compliance with the BEPS Action 13 minimum standard. Countries covered by the Action 13 peer review that introduced a filing requirement wider than provided by the BEPS minimum standard have received

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<sup>50</sup> As at December 2018, 120 jurisdictions have been assessed by the Global Forum.

<sup>51</sup> This refers to the Peer Review process for EOI on request. This review consists of a review of the legal framework (Phase I) and the practical application of the Standards (Phase II).

<sup>52</sup> For the peer review purposes, the review relies on the confidentiality preliminary assessments carried out by the Global Forum for the purpose of Common Reporting Standard.

<sup>53</sup> For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency).

<sup>54</sup> Action 13 restricts 'local filing' by entities other than an ultimate parent entity to very specific circumstances. See Box 14 on Description of the main provisions of the CbC Report model legislation.

recommendations to address this during their peer review by the Inclusive Framework and a number have since introduced changes or address these recommendations.

#### **3.4.1.2 Further Note on Confidentiality Condition**

**The report on BEPS Action 13 makes it clear that CbC Reports must be subject to confidentiality safeguards** at least equivalent to those contained in an exchange of information instrument that meets the internationally agreed standard reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes:

*"Jurisdictions should have in place and enforce legal protections of the confidentiality of the reported information. Such protections would preserve the confidentiality of the Country-by-Country Report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a Tax Information Exchange Agreement (TIEA) or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes. Such protections include limitation of the use of information, rules on the persons to whom the information may be disclosed, ordre public, etc."*<sup>55</sup>

**Accordingly, information obtained through CbC Reports may only be disclosed to and used by courts, administrative bodies and others involved in and for the purposes of assessment, collection, or administration, enforcement or prosecution, or determination of appeals** concerning the taxes covered by the agreement. With very limited exceptions, tax administrations cannot disclose exchanged information to persons or agencies not authorised under the information exchange agreement or use such information for non-tax purposes.

**In addition to the protections afforded by the confidentiality provisions of information exchange instruments, confidentiality of CbC Report should be guaranteed in domestic laws.** Countries implementing CbC Reports should ensure confidentiality provisions in their domestic laws equivalent to the international standard under an international agreement. Civil liability and criminal penalties should be also in force for unauthorised disclosure of taxpayer data.

**To ensure the protection of confidential information, countries will therefore need:**

- Protection in EOI mechanisms;
- Robust domestic rules and procedures ensuring confidentiality in practice;
- Effective penalties for unauthorised use or disclosure;
- Procedures to address efficiently any confidentiality issues that may arise;
- Information security management systems (i.e. monitoring of systems; application of sanctions in case of unauthorised disclosures, etc.)

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<sup>55</sup> BEPS Action 13, Paragraph 57.

### 3.4.1.3 Further note on appropriate use of CbC Report information

**The Final Report on BEPS Action 13 makes it clear that CbC Reports must be used only for specific purposes**, which constitute the condition on ‘appropriate use’.

*“Jurisdictions should use appropriately the information in the Country-by-Country Report template in accordance with paragraph 25. In particular, jurisdictions will commit to use the Country-by-Country Report for assessing high-level transfer pricing risk. Jurisdictions may also use the Country-by-Country Report for assessing other BEPS related risks. Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the Country-by-Country Report. They will further commit that if such adjustments based on Country-by-Country Report data are made by the local tax administration of the jurisdiction, the jurisdiction’s competent authority will promptly concede the adjustment in any relevant competent authority proceeding. This does not imply, however, that jurisdictions would be prevented from using the Country-by-Country Report data as a basis for making further enquiries into the MNE’s transfer pricing arrangements or into other tax matters in the course of a tax audit.”<sup>56</sup>*

*“... the information in the Country-by-Country Report should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. The information in the Country-by-Country Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate. It should not be used by tax administrations to propose transfer pricing adjustments based on a global formulary apportionment of income.”<sup>57</sup>*

**Guidance on ‘appropriate use’ is provided in the OECD publication: Guidance on the Appropriate Use of Information Contained in CbC Reports.** The Report contains useful guidance on the meaning of appropriate use, the consequences of non-compliance with the appropriate use condition and approaches to ensure appropriate use. As a checklist, a jurisdiction should be able to answer “yes” to six basic questions, or should expect to be able to do so before the first exchange of CbC Reports takes place as described in the box below.

#### **Box 13 : Questionnaire on appropriate use of CbC Reports**

##### **(OECD Guidance on appropriate use)**

1. Do the multilateral and/or bilateral competent authority agreements concerning CbC Reporting signed by your jurisdiction include the appropriate use of information contained in CbC Reports, as a condition of obtaining and using CbC Reports?
2. Does your tax authority have a clear written policy in place governing the use of CbC Reports, including guidance on appropriate use?

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<sup>56</sup> BEPS Action 13, Paragraph 59.

<sup>57</sup> Ibid., Paragraph 25.

3. Is this policy effectively communicated to all staff likely to have access to CbC Reports in the course of their work?
4. Is the use of CbC Reports controlled or monitored to ensure appropriate use, which may include: (i) imposing restrictions on access to CbC Reports, and/or (ii) ensuring that appropriate use is adequately evidenced?
5. Is guidance or training provided to appropriate tax authority staff in your jurisdiction that clearly sets out their commitments: (i) to notify the Co-ordinating Body Secretariat (for exchanges pursuant to the multilateral CAA) or other competent authority (for exchanges pursuant to the model bilateral CAAs) immediately of any cases of non-compliance with the appropriate use condition; and (ii) to promptly concede any competent authority proceeding that involves a tax adjustment using an income allocation formula based on CbC Report information?
6. Are there measures in place to ensure controls are reviewed and updated as required, and the outcomes of these reviews documented?

#### 3.4.1.4 Further note on the Consistency condition

**The Final Report on BEPS Action 13 makes it clear that domestic CbC Report regimes must be implemented in accordance with the internationally agreed standards.**

*"Jurisdictions should use their best efforts to adopt a legal requirement that MNE groups' ultimate parent entities resident in their jurisdiction prepare and file the Country-by-Country Report, unless exempted as set out in paragraph 52. Jurisdictions should utilise the standard template contained in Annex III of Chapter V of these Guidelines. Stated otherwise, under this condition no jurisdiction will require that the Country-by-Country Report contain either additional information not contained in Annex III, nor will it fail to require reporting of information included in Annex III."*<sup>58</sup>

**Consistency thus focuses on:**

1. **Implementing the CbC Report with a consistent format following the standard template designed for these purposes and contained in the BEPS Action 13 Report.** To avoid unnecessary compliance burdens on taxpayers and to provide for efficiencies in analysing the CbC Reports, it is essential that countries follow closely the template as laid out in Annex III of BEPS Action 13 Report. (See in [Annex 7](#)).
2. **Requiring that MNE groups' ultimate parent entities resident in their jurisdiction prepare and file the CbC Report.** A basic feature of the CbC Report is that it is generally filed only in the ultimate parent entity's country of residence.

#### 3.4.2 Filing mechanism

A CbC Report should be filed by ultimate parent entity of the MNE in its jurisdiction of tax residence. This will generally be the entity at the top of the ownership chain that is required to prepare

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<sup>58</sup> Ibid. Paragraph 58.



consolidated financial statements in its jurisdiction of residence, or would be required, if its equity interests were traded on a public securities exchange in that jurisdiction.<sup>59</sup>

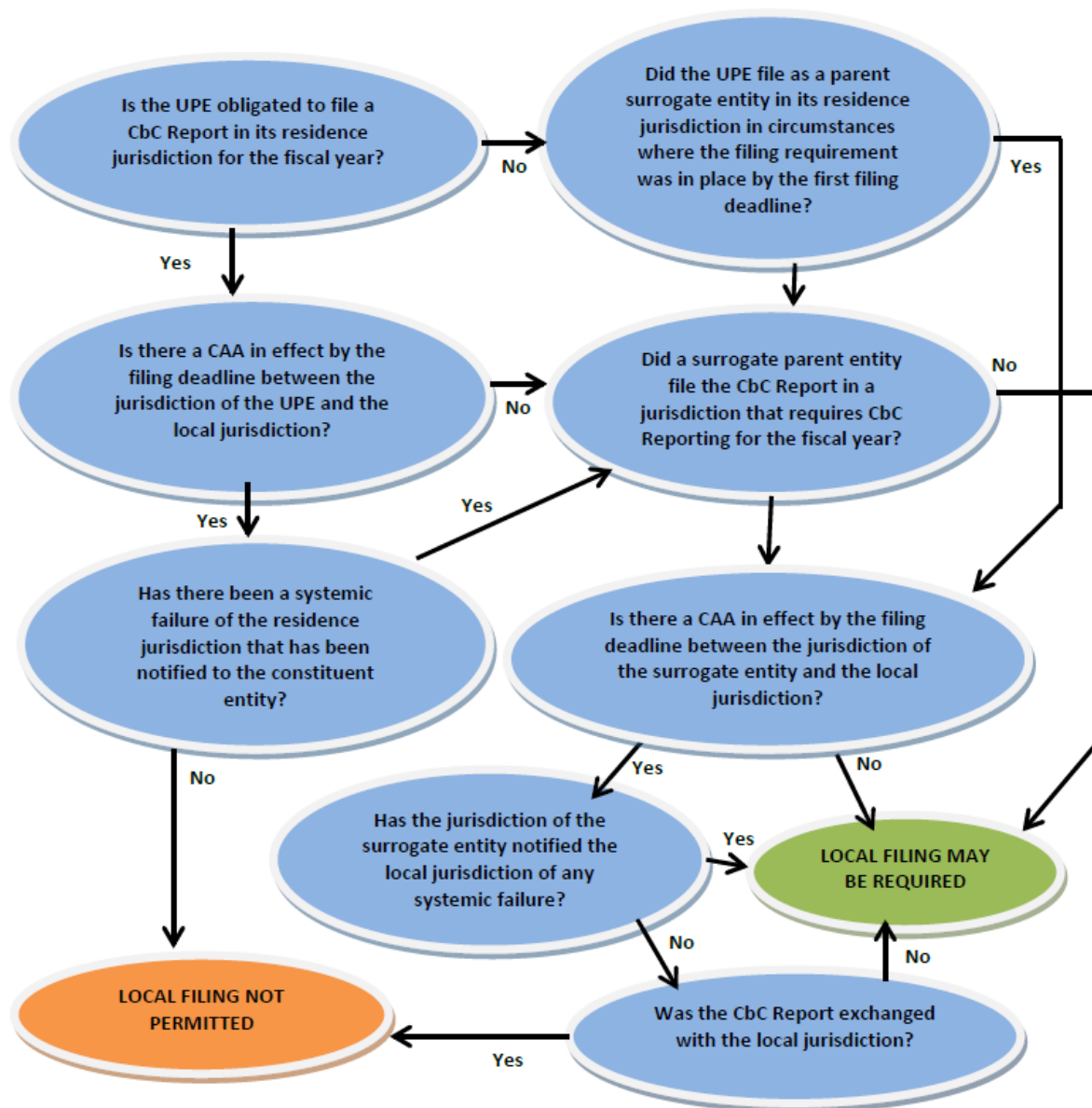
**Action 13 thus restricts ‘local filing’ by entities other than an ultimate parent entity to very specific circumstances**, i.e. surrogate entity filing and constituent entity filing (also known as local filing). There is no obligation under the minimum standard for a jurisdiction to introduce any of these mechanisms. However, if a jurisdiction allows local filing (under the specific circumstances described in Action 13 Report) or surrogate entity filing, the other required elements of the minimum standard (e.g. the content of the report) should be applied to those reports in the same way as to CbC Reports filed by ultimate parent entities resident in that jurisdiction. See Box 14 for further discussion on surrogate and local filing, including the three circumstances under which local filing can be invoked.

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<sup>59</sup> OECD (2017), Country-by-Country Reporting: Handbook on Effective Implementation, OECD, Paris: p16. [www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf](http://www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf).

**Figure 2 : Local filing of CbC Reports**

This diagram<sup>60</sup> illustrates the circumstances under which a local filing requirement would be consistent with the minimum standard. It assumes that the constituent entity is a resident of the local jurisdiction while the ultimate parent entity (UPE) is a resident of another jurisdiction and that there is an international agreement which permits automatic exchange of information to which the residence jurisdiction and the local jurisdiction are parties.



<sup>60</sup>Ibid. p21.

### 3.4.3 Format and Content

**The BEPS Action 13 minimum standard requires the CbC Report to include aggregate jurisdiction-wide tax information** in three standard tables (see [Annex 6](#)) consisting of:

- Information on the allocation of income, taxes and business activities by tax jurisdiction (Table 1 of the Template);
- A list of all constituent entities of the MNE group by tax jurisdiction (Table 2 of the Template); and
- Any further brief information or explanations that might be considered necessary or that would facilitate the understanding of the compulsory information provided in the CbC Report (Table 3 of the Template).

Table 1 of the template provides an overview of the MNE group's allocation of income, taxes and business activities, aggregated by tax jurisdiction. The information required consists of:

- Revenues, broken down between unrelated and non-related parties
- Profit (Loss) before Income Tax
- Income Tax Paid (on Cash Basis)
- Income Tax Accrued – Current year
- Stated Capital
- Accumulated Earnings
- Number of Employees
- Tangible assets other than Cash and Cash Equivalents

Table 2 requires information to be provided by tax jurisdiction and consists of:

- The list of Constituent Entities Resident in each Tax Jurisdiction
- The Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence
- The main Business Activity(ies): for the purpose of determining the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction Table 2, offer a predetermined list of economic activities, which includes, among other the following activities: research and development; purchasing or procurement; manufacturing; sales, marketing or distribution; administrative, management or support services; provision of services to unrelated parties; financing; insurance; Holding Shares or Other Equity instruments; Dormant; and other (which nature should be specified in Table 3 of the template).

All the terms listed above and contained in the CbC Report template are defined in Action 13 report and additional guidance issued by OECD.<sup>61</sup>

### 3.4.4 Legislative and regulatory framework

#### 3.4.4.1 Introduction

**The BEPS Action 13 Report** includes model legislation available to jurisdictions to use when developing their own domestic rules.<sup>62</sup> Jurisdictions can adapt this as needed, and supplement if required with secondary legislation or supplementary guidance. The model addresses the 'consistency' issues mentioned above and includes provisions on confidentiality and appropriate use.

**This Toolkit suggests that developing countries base their domestic legislation as far as possible on the 'model', to achieve consistency and certainty of approach.** Building on the model legislation will also help countries meet the terms of reference of the peer review process.

**The model legislation does not include a provision on penalties.** It is thus up to countries to supplement the legislation to include enforcement measures in line with domestic policies.

#### 3.4.4.2 The use of primary legislation, secondary legislation and guidance

**Guidance on implementation of CbC Reports is still being developed.** Taking into account that the guidance in the report will be further revised in 2020, developing countries can consider regulating through the primary legislation the high-level principles, leaving scope to enable the subsequent introduction of the more detailed reporting requirements through subsidiary legislation/regulations or guidance. This is to ensure greater flexibility when making any subsequent amendments. Cross-referencing the OECD guidance in domestic guidance is a solution adopted by some countries to help ensure consistency and to maintain up-to-date information for taxpayers.

#### 3.4.4.3 Interpreting the model legislation

##### **Box 14 : Description of the main provisions of the CbC Report model legislation**

##### *Article 1 – Definitions*

Article 1 of the model legislation sets out a list of defined terms which should be contained in the CbC reporting legislation such as: the definition of an MNE group, and which MNE groups are subject to CbC Reporting; the definition of a reporting entity; the definition of a reporting fiscal year. Additionally, if not regulated elsewhere, the definition of Consolidated Financial Statements, should be also considered.

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<sup>61</sup> OECD (2018), Guidance on Country-by-Country Reporting: BEPS Action 13, OECD, Paris.  
<http://www.oecd.org/tax/beps/guidance-on-country-by-country-reporting-beps-action-13.htm>

<sup>62</sup> BEPS Action 13, p39.

## *Article 2 – Filing obligation*

**Paragraph 1 is about who must file the CbC Report.** According to the BEPS Action 13 minimum standard, CbC Reports should be required only by MNE groups with annual total consolidated group revenues of EUR 750 million or more, as reflected in their Consolidated Financial Statements for the preceding fiscal year.

In principle, the filing obligation falls on the ultimate parent entity. However, it is possible for an MNE group under certain conditions to appoint a different reporting entity to file the CbC Report on behalf of the MNE group.<sup>63</sup> This entity is known as the Surrogate Parent Entity.

The determination as to whether an MNE Group must file a CbC Report should generally be made based on the accounting principles used by the ultimate parent entity of the group. However, if the MNE group is not listed on a public securities exchange, it may choose to apply either its domestic accounting principles (local Generally Accepted Accounting Principles (GAAP)) or International Financial Reporting Standards (IFRS).<sup>64</sup>

**For further guidance on the definitions of ‘Consolidated Financial Statements’ and the term ‘revenues’, countries might want to refer to the guidance prepared and updated regularly by the OECD.**

**OECD Guidance on the Implementation of Country-by-Country Reporting**

<http://www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.htm>

**Paragraph 2 sets out provisions which would require local filing of CbC Reports in particular circumstances.** These provisions are not part of BEPS Action 13 minimum standard and are therefore optional: it is up to each country to decide whether or not to introduce this secondary, back-up mechanism in its domestic legal framework. Local filing refers to a situation where a constituent entity of an MNE group (e.g. a local subsidiary) which is neither the ultimate parent entity nor the group’s nominated surrogate parent entity is required to file the CbC Report directly with its local tax administration. The limited circumstances where the local filing is permitted under the Action 13 minimum standard are where:

- the ultimate parent entity of the MNE group is not obligated to file a CbC Report in its jurisdiction of tax residence; or
- the jurisdiction in which the ultimate parent entity is resident for tax purposes has a current International Agreement to which the local jurisdiction is a party but does not have a Qualifying Competent Authority Agreement in effect to which the local

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<sup>63</sup> BEPS Action 13, 41. Article 2.3 of the Model Legislation.

<sup>64</sup> OECD, (2018), Guidance on the implementation of Country-by-Country Reporting - BEPS Action 13, OECD, Paris, p20. [www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf](http://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf).

jurisdiction is a party by the time for filing the CbC Report for the Reporting Fiscal Year; or,

- there has been a Systemic Failure of the jurisdiction of tax residence of the ultimate parent entity and the local MNE affiliate taxpayer has been notified of this failure by its tax administration.

**Under the BEPS minimum standard, local filing cannot be applied in any other circumstance:** in particular, it is noteworthy that with respect to the second condition mentioned above, local filing cannot be applied in the absence of an International Agreement.

The term “**Systemic Failure**” with respect to a jurisdiction, means that a jurisdiction has a qualifying competent authority agreement in effect, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to a treaty partner relevant CbC Reports in its possession.

### *Article 3 – Notification*

The notification requirements impose an obligation on local MNE affiliates to provide advise their tax administration as to:

- whether it is the ultimate parent entity or the group’s nominated surrogate parent entity of an MNE group that is required to file a CbC Report, and
- where the local entity will not itself be responsible for filing the CbC Report, the identity and tax residence of the entity filing the CbC Report on behalf of its MNE group (i.e. typically its ultimate parent).

This provision also does not form part of the minimum standard. It is an optional requirement whose purpose is to assist a jurisdiction in applying its domestic rules and anticipating the number of CbC Reports it will receive locally as well as from other jurisdictions through automatic exchange of information.

### *Article 4 – Country-by-Country Report*

This Article describes the content of CbC Reports. It expressly provides that CbC Reports should be filed in a form identical to the standard template set out at Annex III of the BEPS Action 13 Report, applying the definitions and instructions contained in that Report.

### *Article 5 – Time for filing*

The BEPS Action 13 Report requires the CbC Report to be submitted within twelve months after the last day of the reporting fiscal year of the MNE group.<sup>65</sup>

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<sup>65</sup> A majority of jurisdictions allow 12 months from the reporting year-end to file the CbC Report, with legislation providing language consistent with the proposal of Article 5 of the model legislation contained in the Action 13 Report.

This extended period recognises that in some instances final statutory financial statements and other financial information that may be relevant for the CbC Report may not be finalised until after the due date for tax returns in some countries.<sup>66</sup>

#### *Article 6 – Use and Confidentiality of CbC Report information*

This Article defines two of the conditions underpinning the obtaining and the use of the Country-by-Country Report: confidentiality and appropriate use.

#### *Article 7 – Penalties*

Jurisdictions' domestic laws will normally impose penalties where entities do not comply with filing requirements. The model legislation does not include provisions regarding penalties for failure to comply with filing requirements, recognising that jurisdictions might choose to apply their transfer pricing documentation penalty regime to the requirement to file the CbC Report.

#### *Article 8 – Effective Date*

Defines the date when legislation will be effective.

### 3.4.5 Enforcement

**To ensure compliance with the obligation to file CbC Reports** countries might want to consider introducing penalties in respect of:

- failure by a resident ultimate parent entity of large MNE group (or other local entity required to file locally) to file a complete CbC Report to the local tax administration;
- late filing of CbC Report; and
- filing of an incorrect CbC Report.

**One option is to impose a penalty according to the delay in making a complete submission,** computed, for example, by reference to a sum per day for the period between a) the due date for submission and b) the submission of a completed CbC Report.

**A second option is to provide for a penalty based on a fixed sum, or an amount based on the size of the MNE group (e.g. as measured by its global consolidated turnover).**

**Many countries will vary the amount of the penalty to take account of the level of culpability.** For example, a simple arithmetical error may attract a smaller penalty than a deliberate attempt to misstate figures. Some countries may deem the submission of a wilfully incorrect CbC Report as a matter of criminal law.

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<sup>66</sup> BEPS Action 13, Paragraph 31.

**Penalty provisions may be specific to CbC Report or based on existing general penalties for failure to file a return or for making an incorrect return.**

### **3.4.6 Practical issues on the implementation of CbC Reporting**

**CbC Reports received by a tax administration from an ultimate parent entity or an MNE group's nominated surrogate entity (if applicable) should be exchanged** with tax administrations in other jurisdictions where the MNE group has either resident entities or permanent establishments. For this process to be effective, two main issues may present practical challenges for developing countries. These are (i) having the technology to allow electronic filing of the reports, and (ii) the technology for exchanging the reports with treaty partners.

#### **3.4.6.1 Electronic filing of the CbC Report**

**Since jurisdictions need to exchange CbC Reports in an agreed XML format (see below), it is advisable that the same format be required of taxpayers for filing purposes.** This is to avoid the tax administration having to convert the data into a different format, which can be very resource-consuming.

**There is no obligation under the Action 13 minimum standard for MNE groups to submit a CbC Reports using the OECD XML schema (CbC XML Schema),** and therefore, many jurisdictions have provided flexibility as to the format in which a CbC Report may be submitted. However, the Multilateral Competent Authority Agreement on the Exchange of CbC Reports includes a commitment for competent authorities to use the CbC XML Schema to transmit CbC Reports to other jurisdictions. Therefore, if an MNE group is allowed to submit its CbC Report in an alternative format (e.g. using Excel), the tax administration/competent authority in the jurisdiction is, in effect, committed to converting the CbC Reports into the CbC XML Schema format itself.

**While it is possible to convert alternative formats into XML, there can be technical challenges in doing so in practice.** Moreover, there are validation checks built into the CbC XML schema to ensure that all required fields are completed and that the correct formatting is used. These validation checks do not exist in other formats, so there is also the risk that the CbC Reports received are incomplete or incorrectly formatted.

**Filing formats of CbC Reports vary across jurisdictions.** While some countries require all CbC Reports to be submitted in XML (either OECD CbC XML schema or self-developed domestic reporting XML format)<sup>67</sup>, other countries allow the filing in other forms. A few examples are listed below:

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<sup>67</sup> Although countries are free to determine the reporting format, based on their usual forms/practice etc. They all need to exchange in the OECD CbC XML format.



### Box 15 : Filing formats of CbC Reports

**Only XML:** UK, Australia, Cayman Islands

**XML or Comma Separated Value (CSV) file:**<sup>68</sup> Japan

**XML but allow to submit CbC Reports in paper:** US, Canada

#### 3.4.6.2 Sharing and receiving CbC Reports

**The exchange of CbC Reports is governed by international agreements**, i.e. bilateral double tax conventions, tax information exchange agreements (TIEAs) or the Convention on Mutual Administrative Assistance in Tax Matters. In contrast to certain other types of tax information, CbC Reports must be exchanged automatically rather than spontaneously or on demand.

**The exchange will be done only with jurisdictions with a competent authority agreement in place** which “operationalises” the exchange under the International Agreement. To identify the jurisdictions with which the CbC Report must be exchanged, the tax administration will rely on Table 1 of the CbC Report for the list of jurisdictions where the MNE group has operations. Tax administrations will then match this list against the jurisdictions with which it has a competent authority agreement in effect.<sup>69</sup>

**The OECD has developed an XML Schema for intergovernmental exchanges which countries have agreed to use to exchange CbC Reports through a Common Transmission System.** The way this exchange takes place is described in the Handbook on Effective Implementation of Country-by-Country Reporting prepared by the OECD. An extract of this is provided in the following box.

### Box 16 : The common transmission system – Handbook on Effective Implementation of Country-by-Country Reporting<sup>70</sup>

Except for the transmission of CbC Reports between members of the European Union through the EU CCN, CbC Reports will be largely transmitted through the CTS. The CTS is an electronic platform that facilitates the automatic exchange of information between countries, in particular for information pursuant to the Common Reporting Standard, CbC Reports, and tax rulings. The CTS will be operated by the OECD and will be available to participating jurisdictions for an annual fee. The CTS will provide a secure and standardised platform for the automatic exchange of

<sup>68</sup> A Comma Separated Value (CSV) file allows data to be saved in a table structured format. The CSV file takes the form of a text file containing information separated by commas, hence the name. CSV files can be used with any spreadsheet program, such as Microsoft Excel, Open Office Calc, or Google Spreadsheets.

<sup>69</sup> The OECD maintains a database with all bilateral exchange relationships that are currently in place for the automatic exchange of CbC Reports between tax authorities. See [www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm](http://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm)

<sup>70</sup> OECD (2017), Country-by-Country Reporting: Handbook on Effective Implementation, OECD, Paris (paragraphs 92-97) [www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf](http://www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf)

information and relieve individual jurisdictions from the requirement to develop numerous bilateral arrangements and systems.

A competent authority that will utilise the CTS must become familiar with the specific protocols associated with sending and receiving CbC Reports through this platform. CTS users will be provided with access to the CTS portal which will contain all relevant information for using the CTS, as well as information on preparing and encrypting files to be transmitted.

The information contained in the CbC XML Schema must be prepared and encrypted prior to transmission in accordance with the common file preparation and encryption approach agreed to at the level of the OECD. In general terms, the encryption process for the CTS involves the combination of private and public encryption/decryption keys. A competent authority's public encryption key is available to other competent authorities to allow them to authenticate and encrypt files being sent to the competent authority. Each competent authority also maintains a private key that allows it to decrypt files received through the CTS.

Under the CTS, alerts will be automatically generated regarding the status of the transmission (uploaded, downloaded) and status messages are expected to be generated by the receiving competent authority indicating whether the file received contains any of the agreed file or record errors. File errors will generally entail the receiving competent authority is not in a position to open the file and, therefore, a status message would normally be sent to the sending competent authority with a view to receiving a new file.

Record level errors relate to key issues of data quality. Where record level errors are communicated to the sending competent authority by the receiving competent authority it is expected that the sending competent authority would take action to address any errors and provide the receiving competent authority with new or amended information on a timely basis.

As part of its obligations to protect the confidentiality of the information contained in the CbC Reports, the competent authorities should also take measures, where applicable:

- to ensure the confidentiality and the custody of any log-in identification, passwords, and decryption keys used for the transmission of CbC Reports
- to protect any computers accessing the transmission system and ensure that only designated personnel (personnel who work with CbC Reports in the course of their duties) have access to the data
- to ensure that the CbC Reports received from other countries are securely stored while in the custody of the competent authority and then securely transmitted or made accessible to the tax authority's risk assessment personnel.

For competent authorities receiving CbC Reports outside the CTS or CCN, the receiving competent authority should put into place a system to notify the sending competent authority of the delivery status of the CbC Reports, to verify that it is the correct recipient, and notify the other competent authority if there are errors or problems with the quality of the data in the reports.

### 3.4.6.3 Implementation tools

The box below summarises the guidance and tools developed by the OECD to assist countries implement CbC reporting requirements.

#### **Box 17 : Implementation tools for CbC reporting**

##### *BEPS Action 13 Report*

The BEPS Action 13 Report modifies Chapter V of the OECD Transfer Pricing Guidelines, which provides guidance on transfer pricing documentation, including CbC reporting. The report contains an implementation package in order to facilitate the consistent implementation of the CbC Report, consisting of:

- model legislation which could be used by countries as the basis of domestic legislation to require MNE groups to file CbC Reports and
- three models of competent authority agreements may be used to facilitate the implementation of the exchange of those reports among tax administrations.

##### *Interpretation guidance for the implementation of CbC reporting*

A number of questions have arisen after the publication of Action 13 report concerning the content of the CbC Report. Guidance on interpretative questions, which is regularly updated by the OECD, can be found in the document: "Guidance on the Implementation of CbC Reporting: BEPS Action 13". This guidance is regularly updated by the OECD<sup>71</sup> and published on its website: [www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf](http://www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf).

##### *Report on the appropriate use of the CbC Report*

The guidance on the appropriate use of the information contained in CbC Reports includes guidance on the meaning of "appropriate use", the consequences of non-compliance with the appropriate use condition and approaches that may be used by tax administrations to ensure the appropriate use of CbC Report information.

[www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf](http://www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf)

##### *Handbook on effective implementation of CbC Report*

The Country-by-Country Reporting: Handbook on Effective Implementation is a practical guide to the key elements that countries need to keep in mind when introducing CbC reporting, including technical issues related to the filing, exchange and use of CbC Reports, as well as practical matters that tax administrations will need to deal with.

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<sup>71</sup> See CbC Report portal: <http://www.oecd.org/tax/beps/country-by-country-reporting.htm#guidance>.

[www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf](http://www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf)

#### *XML Schema and User guide*

To accommodate the electronic exchange of the CbC Reports a standardised electronic format for the exchange of CbC Reports between jurisdictions (the CbC XML Schema), together with a User Guide, have been developed and made available on the OECD website.

The CbC XML Schema User Guide further explains the information required to be included in each data element to be reported. It also contains guidance on how to make corrections to data elements within a file.

Both files are available here:

<http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations-and-taxpayers.htm>

#### *Terms of Reference and methodology for the Peer Review process*

<http://www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf>

**There are also some tools available to assist developing countries to assess whether their legislation and administrative practice are compliant with the G20/OECD BEPS confidentiality standards.** These include the terms of reference on exchange of information which set out the minimum standard on confidentiality,<sup>72</sup> and the Guide “Keeping It Safe”<sup>73</sup> on the protection of confidential information exchanged for tax purposes, which provides guidance on the rules and practices that must be in place to ensure the confidentiality of tax information exchanged under exchange of information instruments. Although these documents have been prepared for the purpose of ensuring confidentiality of information received from EOI treaty partners, the recommendations contained therein are best practices that will similarly apply for any type of information received by whichever means.

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<sup>72</sup> See the Terms of Reference for Exchange of Information at: OECD (2016), Exchange of Information on Request: Handbook for Peer Reviews 2016 – 2020, Third Edition. OECD, Paris. <http://www.oecd.org/tax/transparency/global-forum-handbook-2016.pdf> and OECD (2018), Standard for Automatic Exchange of Financial Information in Tax Matters - Implementation Handbook – Second Edition, OECD, Paris. <http://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-offinancial-account-information-in-tax-matters.htm>

<sup>73</sup> OECD (2012), Keeping It Safe: The OECD Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes, OECD, Paris. <http://www.oecd.org/ctp/exchange-of-tax-information/keeping-it-safe.htm> - Available in English, French and Spanish.

### 3.5 Other information gathering mechanisms (Transfer pricing questionnaires and *ad hoc* information requests)

**Another information gathering mechanism, less commonly or systematically used by countries, is targeted transfer pricing questionnaires.**

In most cases, the completion of such questionnaires by local taxpayers is not mandatory. They can be issued in the framework of:

1. the risk assessment of a specific taxpayer, in which case the transfer pricing questionnaire is requested after an initial review of the taxpayer's tax return by the tax administration; or,
2. a general compliance program or initiative which targets certain groups of taxpayers (e.g. taxpayers operating in certain industries) and focused on particular areas of risk (e.g. financing or business restructurings) as a means for selecting taxpayers for audits and/or to facilitate actual field audits.

**Requests for additional information may be required to verify a taxpayer's transfer prices and accompanying analysis, for example, during an audit.** As such requests will necessarily need to be tailored to the particular circumstances of the case, and the type and range of additional information required; it is beyond the scope of this toolkit to discuss their content. Guidance on understanding the controlled transactions, together with the relevant contributions of each associated enterprise (e.g. their functions, assets and risks) can be found in the OECD Guidelines and the UN Practical Manual. In addition, the Toolkit for Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses contains resources such as a sample Functional Analysis Questionnaire (at Appendix 1).

#### 3.5.1 Functions of transfer pricing questionnaires and *ad hoc* information requests

Transfer pricing questionnaires can fulfil different functions:

- They could be used for conducting risk assessments and analyses at an industry or sectoral level. In such cases the questionnaire will normally target certain groups of taxpayers and will be focused on particular areas of risk as a means for selecting taxpayers for audits and/or to facilitate actual field audits,
- They can be required, either at the beginning or during the audit, to provide additional information to tax auditors;
- They can be required to determine whether the taxpayer has maintained adequate documentation.

Ad hoc information requests are normally used to supplement existing information already available to the tax administration during the course of an audit. Such information requests are often requested to verify the taxpayer's transfer pricing analysis, including the functional analysis that underpins the determination of arm's length transfer prices.

### 3.5.2 Format and content

The questions to be formulated in transfer pricing questionnaires or *ad hoc* information requests will depend on their purpose.

### 3.5.3 Regulatory framework

Transfer pricing questionnaires and *ad hoc* information requests are usually subject to existing record keeping and information gathering rules.

### 3.5.4 Timing issues

**Transfer pricing questionnaires can potentially be requested at any time, depending on their purpose, as discussed above.** For instance, audit questionnaires may be required from a category of taxpayers as part of a risk assessment on a sectoral basis. Alternatively, they may be requested of an individual taxpayer as part of, or after, an initial review of the taxpayer's tax return.

***Ad hoc* information requests are typically requested during an audit.**

### 3.5.5 Enforcement

**Where the completion of a questionnaire is mandatory, penalties may apply for failure to submit the questionnaire.** In addition, a failure to comply with valid requests for information during an audit may impact on penalties which are applied to transfer pricing adjustments. For example, such failure may be regarded as 'non-cooperation'.

In some other cases, a questionnaire will be non-statutory, and thus not subject to penalties.

**The penalty regime which may apply to *ad hoc* information requests will depend on how such requests are incorporated into the domestic law and supporting regulations.** Most commonly, a taxpayer's response is normally required within a specified time period, and penalties can apply if the taxpayer fails to meet this requirement. Responses to any *ad hoc* information requests during an audit will often be relevant to penalties which may be applied to any audit adjustment which ultimately ensues. For instance, a taxpayer that responds fully and within reasonable time frames to such requests during an audit may be eligible for a lower rate of penalties than a taxpayer that is less co-operative.

### 3.5.6 Confidentiality

Information provided to tax authorities in transfer pricing questionnaires or *ad hoc* information requests should be subject to the same level of confidentiality as that applies to tax returns and to other taxpayer information.

## PART IV. CONCLUSIONS

**Transfer pricing documentation is an integral component of the administration of any transfer pricing regime.** In particular, the adoption of transfer pricing studies (described in Section 3.3) can be expected to significantly enhance taxpayer compliance and audit effectiveness.

**In addition, there are strong arguments for the adoption by developing countries of transfer pricing returns or schedules** (described in Section 3.2) and CbC Reports. It is recognised, however, that the resource commitment to implement these measures may not reflect the immediate needs and policy priorities of some low-capacity jurisdictions.

**The Toolkit has also illustrated that, with the exception of CbC reporting, there are marked variations in country approaches to many aspects of transfer pricing documentation.** These include the form and content of legislation and regulations; the amount and type of guidance; simplification for smaller taxpayers and transactions; the content and format of transfer pricing studies and return schedules; and penalties. Countries legitimately adopt approaches to these issues that best suit their circumstances and policy preferences.

**There are, however, benefits available to both tax administrations and taxpayers if jurisdictions adopt some consistency in their approaches.** Adopting similar requirements for transfer pricing studies and transfer pricing returns, thus allowing taxpayers to file in the same format, or at least collect the same information in a number of jurisdictions, can be expected to reduce taxpayer compliance costs and, at the same time, improve compliance. The master file and local file developed under Action 13 of the BEPS initiative provides a template to facilitate this. In particular, the marginal cost of filing a master file in developing countries should be low, given that, for many MNEs, such a file would already exist within the MNE group.

**With respect to CbC reporting, international consistency is vital.** Indeed, ‘consistency’ is an element of the BEPS minimum standard. Members of the Inclusive Framework commit to adopting the standard and to agree to be peer reviewed. There is still room for some variation, however, with regards to the wording and form of implementing legislation and on administrative issues such as penalties for non-filing.

**CbC reporting can undoubtedly provide very valuable information to developing countries.** Section 3.4.1.1 above notes, however, that the mechanisms and conditions for access to CbC Reports (in relation to subsidiaries and permanent establishments of foreign MNEs) may be very challenging for many developing countries. This might be addressed through giving some priority to adopting the requisite international exchange mechanisms, with the support of regional and international organisations. Developing countries and international and regional organisations should monitor the effectiveness of CbC reporting with a view to inputting into the Inclusive Framework’s review of this measure in 2020.

## Annex 1

### Illustrative examples - Transfer pricing annual returns

Country	Form name	Website
<b>Canada</b>	T106 Summary Form Information Return of Non-arm's Length Transactions with Non- residents <b>(English)</b>	<a href="https://www.canada.ca/content/dam/cra-arc/migration/cra-arc/E/pbg/tf/t106/t106-10-17e.pdf">https://www.canada.ca/content/dam/cra-arc/migration/cra-arc/E/pbg/tf/t106/t106-10-17e.pdf</a>
	Part II - T106-1 Slip Package Reporting person/partnership and information sheet <b>(English)</b>	<a href="https://www.canada.ca/content/dam/cra-arc/migration/cra-arc/E/pbg/tf/t106/pdf/t106-1-17e.pdf">https://www.canada.ca/content/dam/cra-arc/migration/cra-arc/E/pbg/tf/t106/pdf/t106-1-17e.pdf</a>
	T106 Summary Form Information Return of Non-arm's Length Transactions with Non- residents <b>(French)</b>	<a href="https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t106/t106-10-17f.pdf">https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t106/t106-10-17f.pdf</a>
	Part II - T106-1 Slip Package Reporting person/partnership and information sheet <b>(French)</b>	<a href="https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t106/pdf/t106-1-17f.pdf">https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t106/pdf/t106-1-17f.pdf</a>
<b>Colombia</b> <sup>74</sup>	Information transfer pricing return (Form 120)	<a href="https://www.dian.gov.co/atencionciudadano/formulariosinstructivos/Formularios/2019/Formulario_120_2019.pdf">https://www.dian.gov.co/atencionciudadano/formulariosinstructivos/Formularios/2019/Formulario_120_2019.pdf</a>
	Part II - Information transfer pricing return (Form 120) Format 1125	<a href="https://www.dian.gov.co/normatividad/Proyectosnormas/Anexo%20Proyecto%20Resoluci%C3%B3n%20000000%20de%2018-06-20181.pdf">https://www.dian.gov.co/normatividad/Proyectosnormas/Anexo%20Proyecto%20Resoluci%C3%B3n%20000000%20de%2018-06-20181.pdf</a>

<sup>74</sup> Only available in Spanish



## Annex 2

### Illustrative examples – Countries' transfer pricing documentation rules

#### 1. Canada (broad access power approaches)

##### **Inspections**

**231.1 (1)** An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act,

- a) inspect, audit or examine the books and records of a taxpayer and any document of the taxpayer or of any other person that relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer under this Act, and
- b) examine property in an inventory of a taxpayer and any property or process of, or matter relating to, the taxpayer or any other person, an examination of which may assist the authorized person in determining the accuracy of the inventory of the taxpayer or in ascertaining the information that is or should be in the books or records of the taxpayer or any amount payable by the taxpayer under this Act,

and for those purposes the authorized person may

- c) subject to subsection 231.1(2), enter into any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept, and
- d) require the owner or manager of the property or business and any other person on the premises or place to give the authorized person all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the authorized person.

##### **Requirement to provide documents or information**

**231.2 (1)** Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

- a) any information or additional information, including a return of income or a supplementary return; or
- b) any document.

##### **Compliance order**

**231.7 (1)** On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

- a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and
- b) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).

<http://laws.justice.gc.ca/eng/acts/l-3.3/page-255.html#docCont>

## **2. Georgia transfer pricing studies legislation**

General provisions on transfer pricing studies are outlined in Articles 127(6) and 129(3)) of the tax law and more detailed guidance by Decree of the Finance Minister (Instructions on International Transfer Pricing). The provisions in the law are more general. It contains a provision allowing for future delegated legislation.

### **Primary legislation**

Art 127 (6) on the application of Transfer Pricing explicitly provides that "Criteria that shall be satisfied in order to deem value of operation subject to examination as market value for the purpose of this chapter shall be determined by the Finance Minister;"

Art. 129(3) The methods of transfer pricing and their application, the assessment of comparability of independent operation, the rule of making correction, the information that shall be submitted to the tax authorities by the parties of operation, listing of documentation,... shall be determined under order of Minister of Finance;

### **Secondary legislation**

(Decree #423 of the Finance Minister, December 18, 2013)

#### **Chapter IV**

#### **Transfer Pricing Documentation**

#### **Article 17 Transfer Pricing Documentation**

1. For the purpose of Article 129(1) of the GTC, a request by the Revenue Service to provide an explanation regarding the ground based on which it considers its profit consistent with the market principle shall be considered satisfied where:
  - a. The Georgian enterprise has prepared transfer pricing documentation in accordance with this article and
  - b. The documentation is provided to the Revenue Service within 30 calendar days of receipt of the request in writing.
2. Transfer pricing documentation should contain:

- a. an overview of the Georgian enterprises' business operations, including an analysis of the economic factors that affect the pricing of its products and services;
  - b. a description of the Georgian enterprises' corporate organizational structure covering all parties potentially relevant to the controlled transactions being analysed;
  - c. a description of the transaction being analysed, including an analysis of the comparability factors specified in Article 5 of these Instructions and details of the group's transfer pricing policy (where relevant);
  - d. a description of the transfer pricing method selected and an explanation of why this method was selected (in accordance with Article 8 of these Instructions);
  - e. a comparability analysis, including: a description of the comparable uncontrolled transactions that were utilized; explanation of the basis for the rejection of any potential internal comparable uncontrolled transaction (where applicable); details of the external comparables search process (where applicable); the assessment of comparability of the controlled transactions and the comparable uncontrolled transactions (with reference to the comparability factors specified in Article 5 of these Instructions); and, a description of any comparability adjustments that were made;
  - f. an explanation of any economic analysis and projections relied on in developing the transfer pricing methodology;
  - g. details of any advance pricing agreements or advance decisions relevant to the controlled transactions;
  - h. a conclusion as to compliance with the market principle, and where relevant, any adjustments made by the Georgian enterprise to its transfer prices/ taxable income for the relevant years in order to ensure compliance with the market principle; and
  - i. any other information that may have a material impact on the determination of the Georgian enterprises' compliance with the market principle with respect to the controlled transactions.
3. Georgian enterprises with a turnover of less than 8 000 000 GEL during a tax year, will be considered to satisfy the documentation requirements even where the external comparable transactions identified in accordance with the analysis referred to in paragraph 2 subparagraph "e" of this Article are only updated every third year, provided there have been no material changes to the Georgian enterprises business, the business operations of the comparables or to the relevant economic circumstances.
4. Transfer pricing documentation may be submitted in Georgian or English, however, at the request of the Revenue Service translation of English documents in to Georgian is required at the expense of the Georgian enterprise.

5. Transfer pricing documentation may be submitted in either electronic or paper format

## Annex 3

### Example - Exemptions regimes (transfer pricing studies)

#### *Singapore exemption regime for transfer pricing studies (documentation)*

IRAS does not expect taxpayers to prepare transfer pricing documentation under the following situations [Nonetheless, the usual business records for the transactions should still be kept]:

- a) Where the taxpayer transacts with a related party in Singapore and such local transactions (excluding related party loans) are subject to the same Singapore tax rates for both parties;
- b) Where a related domestic loan is provided between the taxpayer and a related party in Singapore and the lender is not in the business of borrowing and lending;
- c) Where the taxpayer applies the 5% cost mark-up for routine services in relation to the related party transactions concerned;
- d) Where the taxpayer applies the indicative margin for related party loans in accordance with the administrative practice stated in paragraph 13.27;
- e) Where the related party transactions are covered by an agreement under an APA. In such a situation, the taxpayer will keep relevant documents for the purpose of preparing the annual compliance report to demonstrate compliance with the terms of the agreement and the critical assumptions remain valid; or
- f) Where the value or amount of the related party transactions (excluding the value or amount in sub-paragraphs (a) to (e)) disclosed in the current year's financial accounts does not exceed the thresholds shown in this Table:

Category of related party transactions	Threshold (S\$) per financial year
Purchase of goods from all related parties	15 million
Sale of goods to all related parties	15 million
Loans owed to all related parties	15 million
Loans owed by all related parties	15 million
All other categories of related party transactions (e.g. income and expense from service, royalty, rental and guarantee)	1 million per category of transactions

IRAS, 2017. Paragraph 6.19

## Annex 4

### Master file content (from Annex I to Chapter V of the OECD Transfer Pricing Guidelines)

The following information should be included in the master file:

#### **Organisational structure**

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

#### **Description of MNE business(es)**

- **General written description of the MNEs business including:**
  - Important drivers of business profit;
  - 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;
  - 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;
  - A description of the main geographic markets for the group's products and services that are referred to in the second bullet point above;
  - 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;
  - A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.

#### **MNE's Intangibles (as defined in Chapter VI of these Guidelines)**

- 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.
- 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.
- A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and licence agreements.

- A general description of the group's transfer pricing policies related to R&D and intangibles.
- 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.

#### **MNE's intercompany financial activities**

- A general description of how the group is financed, including important financing arrangements with unrelated lenders.
- 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 organised and the place of effective management of such entities.
- A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

#### **MNE's financial and tax positions**

- 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.
- A list and brief description of the MNE group's existing unilateral advance pricing agreements.

## Local file content (from Annex II to Chapter V of the OECD Transfer Pricing Guidelines)

The following information should be included in the local file:

### Local entity:

- A description of the management structure of the local entity, a local organisation chart, a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- 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.
- Identification of the key competitors.

### Controlled transactions

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

- 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) and the context in which such transactions take place.
- 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 payor or recipient.
- An identification of associated enterprises involved in each category of controlled transactions and the relationship amongst them.
- Copies of all material intercompany agreements concluded by the local entity.
- 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.
- An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.
- An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.
- A summary of the important assumptions made in applying the transfer pricing methodology.
- If relevant, an explanation of the reasons for performing a multi-year analysis.
- 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.

- 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.
- 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.
- A summary of financial information used in applying the transfer pricing methodology.
- 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.

### **Financial information**

- 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.
- Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

## Annex 5

### Master file and local file - Filing obligations in selected countries

Country	Master file/Local file filing deadline	Local language requirement
<b>Argentina</b>	<b>Local file:</b> To be submitted within 8 months of end of fiscal year (3 months before Corporate Tax Returns filing obligation)	Spanish
<b>Australia</b>	<b>Master file:</b> To be submitted within 12 months of end of fiscal year. <b>Local file:</b> no compulsory filing requirement.	English
<b>Austria</b>	<b>Master/Local file:</b> To be submitted within 30 days upon request (can only be requested after filing of the tax return).	German or English
<b>Belgium</b>	<b>Master file:</b> To be submitted within 12 months of end of fiscal year of the ultimate parent entity of the MNE group; <b>Local file:</b> to be submitted with income tax return.	Dutch, English, French or German
<b>China</b>	<b>Master file:</b> To be prepared within 12 months of end of fiscal year of the ultimate parent entity of the MNE group; <b>Local file:</b> To be prepared by 30 June following the tax year in question. Filing within 30 days upon request.	Chinese
<b>Colombia</b>	<b>Master/Local file:</b> To be submitted within the following fiscal year, three or four months after the filing date of the Corporate Income Tax Return.	<b>Master file:</b> Spanish or English <b>Local file:</b> Spanish
<b>Denmark</b>	<b>Master/Local file:</b> To be submitted within 60 days upon request.	Danish, Swedish, Norwegian or English
<b>Finland</b>	<b>Master/Local file:</b> To be submitted within 60 days upon request (cannot be requested earlier than 6 months from the end of the accounting period).	Finnish, Swedish or English
<b>Japan</b>	<b>Master file:</b> To be submitted within the year following the fiscal year-end of the ultimate parent entity of the MNE group. <b>Local file:</b> no filing requirement.	<b>Master file:</b> Japanese or English <sup>75</sup> . <b>Local file:</b> Japanese

<sup>75</sup> A Japanese translation of a Master file submitted in English can be required.

<b>Mexico</b>	<b>Master/Local file:</b> To be submitted within 12 months of end of fiscal year.	<b>Master file:</b> Spanish or English <b>Local file:</b> Spanish
<b>Poland</b>	<b>Master/Local file:</b> To be prepared by the corporate tax return filing deadline <sup>76</sup> . To be submitted within 7 days upon request.	Polish
<b>Russia</b>	<b>Master/Local file:</b> To be submitted within 3 months upon request (cannot be requested earlier than 15 months after the end of the income year.	Russian
<b>Singapore</b>	<b>Master/Local file:</b> To be submitted within 30 days upon request.	English
<b>Slovakia</b>	<b>Master/Local file:</b> To be submitted within 15 days upon request	Slovak (English, German or French may also be accepted on request)
<b>Spain</b>	<b>Master/Local file:</b> To be prepared by the corporate tax return filing deadline. To be submitted upon request.	Spanish or English
<b>Sweden</b>	<b>Master file:</b> To be prepared at the time of the submission of the annual income tax return of the group's parent entity.  <b>Local file:</b> To be prepared at the time of the submission of the annual income tax return.	Swedish, Danish, Norwegian or English
<b>The Netherlands</b>	<b>Master/Local file:</b> Must be included in the taxpayer's records within the term set for submission of the corporate income tax return.	Dutch or English
<b>Turkey</b>	<b>Master/Local file:</b> To be submitted within the end of the second month following the corporate tax return submission date.	Turkish
<b>Vietnam</b>	<b>Master/Local file:</b> To be prepared by the filing date of the corporate income tax return (90 days after fiscal year end). To be submitted within 15 days upon request.	Vietnamese

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<sup>76</sup> Taxpayers are obligated to make a statement on the preparation of their transfer pricing documentation to the tax office.

## Annex 6

### Sample primary legislation to implement transfer pricing documentation requirements

**A sample set of provisions establishing a specific transfer pricing documentation regime is set out below.** These sample provisions are general in nature and in the form of simplified legal provisions. Importantly, they do not take into account the individual circumstances of any particular tax system. For example, many systems integrate their transfer pricing documentation and adjustment penalties with their general administrative and criminal penalties. The ultimate legal framework for a transfer pricing documentation regime in any given country would need to take into account the existing framework, together with the specific legal tradition and system, of the country concerned. Further, the more detailed requirements (e.g. format of required documentation) need not be reflected in the overarching law but could form part of any underlying regulations. The overarching legal framework may merely operate to support the obligation to keep transfer pricing documentation.

#### 1. Required documentation

- (1) If the total value of controlled transactions to which a person is a party exceeds [minimum threshold], that person must –
  - (a) prepare, maintain, and, upon request by the Commissioner-General, make available contemporaneous documentation comprising —
    - (i) a master file as set out in paragraph 1 of Schedule 1;
    - (ii) a local file as set out in paragraph 2 of Schedule 1; and
  - (b) submit, together with the person's annual tax return, a Transfer Pricing Annual Return Schedule in the format prescribed by the Commissioner-General.
- (2) A person must, in addition to the obligation under subsection (1), prepare and submit a CbC Report in accordance with [Article 2 of the model legislation related to Country-by-Country Reporting – see BEPS Action 13: 2015 Final Report].
- (3) Contemporaneous documentation means documentation and information prepared on or before the last day for the filing of the tax return for a tax year as required by the tax law that is relied upon by the person in determining the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer is a party in respect of that year.
- (4) The documentation obligations of a person under this section are in addition to any record-keeping obligations applicable to the person under the tax law.

#### 2. Provision of documentation and CbC report

- (1) A person must provide the documentation prepared under section 1(1)(a) to the Commissioner-General within 30 days of a written request issued by the Commissioner-General.

- (2) A person must submit a CbC Report prepared under section 1(2) to the Commissioner-General on or before the date specified in [Article 5 of the model legislation related to Country-by-Country Reporting – see BEPS Action 13: 2015 Final Report].

### **3. Burden of proof**

- (1) Subject to subsection (2), the onus is on the taxpayer to prove, on the balance of probabilities, that the determination of the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer is a party is consistent with the arm's length principle.
- (2) Where the taxpayer has fully complied with a request received from the Commissioner-General under section 2(1) and otherwise complies with all other related requests in the course of any tax audit, the onus is on the Commissioner-General to prove, on the balance of probabilities, that the determination of the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer is a party is not consistent with the arm's length principle.

### **4. Power of Commissioner-General to request additional information**

The obligation of a person to provide documentation under section 2 is established without prejudice to the power of the Commissioner-General to request additional information that is considered necessary in the course of a tax audit.

### **5. Penalty for failing to maintain documentation**

- (1) A person who fails to prepare and maintain documentation as required under section 1(1)(a) is liable for a penalty not exceeding 2% of the total value of controlled transactions to which a person is a party and in respect of which the required documentation has not been prepared and maintained.
- (2) As an alternative to the imposition of a penalty under section 5(1), a person who fails to prepare and maintain documentation as required under section 1(1)(a) commits an offence and is liable on conviction to a fine not exceeding [\$•].

### **6. Failure to submit documentation or CbC report**

- (1) A person who fails –
  - (a) to provide documentation to the Commissioner-General when requested under section 2(1); or
  - (b) to submit a CbC Report or other document as required under a tax law,is liable to pay —

- (c) a penalty not exceeding —
  - (i) [\$•] in relation to a failure referred to in subsection (1)(a);
  - (ii) [\$•] in relation to a failure referred to in subsection (1)(b); and
- (d) an additional penalty for each day that the failure continues of —
  - (i) [\$•] in relation to a failure referred to in subsection (1)(a);
  - (ii) [\$•] in relation to a failure referred to in subsection (1)(b).
- (2) As an alternative to the imposition of a penalty under section 6(1), a person who fails to provide documentation or submit a CbC Report or other document referred to in subsection (1) commits an offence and is liable on conviction to a fine not exceeding [\$•].

## **7. Tax adjustment penalty**

- (1) This section applies where —
  - (a) a person makes a statement to a taxation officer that is incorrect or inappropriate in a material particular with respect to the determination of the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer is a party, or fails to disclose in such statement made to a taxation officer any matter or thing without which the statement is incorrect or inappropriate in a material particular; and
  - (b) either:
    - (i) the tax liability of the person, or any other person, computed on the basis of the statement is less than it would have been had the statement not been incorrect or inappropriate (the difference being referred to in this section as the “tax liability adjustment”); or
    - (ii) a tax loss of the person, or any other person, computed on the basis of the statement is more than it would have been had the statement not been incorrect or inappropriate (the difference being referred to in this section as the “tax loss adjustment”).
- (2) Subject to subsections (3), (4) and (5), a person to whom this section applies is liable for a tax adjustment penalty equal to —
  - (a) when the statement or omission was made knowingly or recklessly, the greater of —

- (i) 4% of the total value of controlled transactions to which the person is a party and in respect of which the statement or omission relates; and
    - (ii) either:
      - (A) 75% of the tax liability adjustment; or
      - (B) 30% of the tax loss adjustment.
  - (b) in any other case, the greater of —
    - (i) 3% of the total value of controlled transactions to which the person is a party and in respect of which the statement or omission relates; and
    - (ii) either:
      - (A) 20% of the tax liability adjustment.
      - (B) 8% of the tax loss adjustment.
- (3) The amount of a tax adjustment penalty imposed under subsection (2) on a person is increased by —
- (a) 200% when —
    - (i) the person is a member of a MNE Group; and
    - (ii) the consolidated revenue of the MNE Group in the preceding financial year is at least [EUR 750 million or a near equivalent amount in domestic currency of adopting country];
  - (b) irrespective of whether paragraph (a) applies —
    - (i) 10% when this is the second application of this section to the person; or
    - (ii) 25% when this is the third or a subsequent application of this section to the person.
- (4) The amount of a tax adjustment penalty imposed under subsection (2) on a person is reduced by —
- (a) 20% when the person voluntarily discloses to the Commissioner-General the statement or omission to which this section applies before the earlier of —

- (i) discovery by the Commissioner-General of the tax liability or loss adjustment; or
  - (ii) the commencement of a tax audit in respect of the person to whom the statement relates;
- (b) irrespective of whether paragraph (a) applies, 30% when the person has —
  - (i) prepared and maintained documentation as required under section 1(1)(a);
  - (ii) fully complied with any request received from the Commissioner-General under section 2(1); and
  - (iii) otherwise complied with all other related requests in the course of any tax audit.
- (5) No tax adjustment penalty is payable under subsection (2) when the tax liability or loss adjustment arose despite the taxpayer taking a reasonably arguable position with respect to the determination of the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer was a party being consistent with the arm's length principle when lodging a self-assessment return.
- (6) For the purposes of this section:
 

**"statement made to a taxation officer"** includes a statement made, in writing or orally, in any of the following circumstances —

  - (a) in a self-assessment return or other tax return, Transfer Pricing Annual Return Schedule, CbC Report, or other document lodged under a tax law;
  - (b) in information provided or made available under a tax law;
  - (c) in a document provided to a taxation officer otherwise than pursuant to a tax law;
  - (d) in an answer to a question asked of a person by a taxation officer;
  - (e) in a statement to another person with the knowledge or reasonable expectation that the statement would be passed on to a taxation officer.

a **"reasonably arguable position"** arises when it would be concluded in the circumstances, having regard to the available information and relevant authorities such as the tax law, a decision of a court or other authoritative guidance, that the position taken with respect to the determination of the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer was a party is about as likely to be consistent with the arm's length



principle as inconsistent, or is more likely to be consistent than inconsistent with that principle.

## **8. Incorrect disclosure penalty**

- (1) This section applies where —
  - (a) a person makes a statement to a taxation officer that is incorrect or inappropriate in a material particular, or fails to disclose in a statement made to a taxation officer any matter or thing without which the statement is incorrect or inappropriate in a material particular; and
  - (b) there is no tax liability or loss adjustment in respect of the statement or omission.
- (2) Subject to subsections (3), (4) and (5), a person to whom this section applies is liable for an incorrect disclosure penalty equal to —
  - (a) when the statement or omission was made knowingly or recklessly, the greater of —
    - (i) in the case of a CbC Report:
      - (A) 1% of the consolidated revenue of the MNE Group in the preceding financial year; and
      - (B) [\$•];
    - (ii) otherwise:
      - (A) 2% of the total value of controlled transactions to which a person is a party and in respect of which the statement or omission relates; and
      - (B) [\$•];
  - (b) in any other case, the greater of —
    - (i) in the case of a CbC Report:
      - (A) 0.5% of the consolidated revenue of the MNE Group in the preceding financial year; and
      - (B) [\$•];
    - (ii) otherwise:
      - (A) 1% of the total value of controlled transactions to which a person is a party and in respect of which the statement or omission relates; and

(B)      [\$•];

- (3) The amount of an incorrect disclosure penalty imposed under subsection (2) on a person is increased by —
  - (a) 200% when —
    - (i) the person is a member of a MNE Group; and
    - (ii) the consolidated revenue of the MNE Group in the preceding financial year is at least [EUR 750 million or a near equivalent amount in domestic currency of the adopting country];
  - (b) irrespective of whether paragraph (a) applies —
    - (i) 10% when this is the second application of this section to the person; or
    - (ii) 25% when this is the third or a subsequent application of this section to the person.
- (4) The amount of an incorrect disclosure penalty imposed under subsection (2) on a person is reduced by —
  - (a) 20% when the person voluntarily discloses to the Commissioner-General the statement or omission to which this section applies before the earlier of —
    - (i) discovery by the Commissioner-General of the incorrect or inappropriate statement; or
    - (ii) the commencement of a tax audit in respect of the person to whom the statement relates;
  - (b) irrespective of whether paragraph (a) applies, 20% when the person has —
    - (i) prepared and maintained documentation as required under section 1(1)(a);
    - (ii) fully complied with any request received from the Commissioner-General under section 2(1); and
    - (iii) otherwise complied with all other related requests in the course of any tax audit.
- (5) No incorrect disclosure penalty is payable under subsection (2) when the incorrect or inappropriate statement arose despite the taxpayer taking reasonable care when making the statement.
- (6) Section 7(6) applies in determining whether a person has made a statement to a taxation officer.

## Annex 7

### CbC Report template (from Annex III to Chapter V of the OECD Transfer Pricing Guidelines)

#### A. Model template for the Country-by-Country Report

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

Name of the MNE group: Fiscal year concerned: Currency used:										
Tax Jurisdiction	Revenues			Profit (Loss) before Income Tax	Income Tax Paid (on Cash Basis)	Income Tax Accrued – Current Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:															
Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Main Business Activity(ies)												
			Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity Instruments	Dormant	Other <sup>1</sup>
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

1. Please specify the nature of the activity of the Constituent Entity in the “Additional Information” section.

Table 3. Additional Information

<p>Name of the MNE group: Fiscal year concerned:</p>
<p>Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information</p>



## Template for the Country-by-Country Report – General instructions

### **Purpose**

This Annex III to Chapter v of these Guidelines contains a template for reporting a multinational enterprise's (MNE) group allocation of income, taxes and business activities on a tax jurisdiction-by-tax jurisdiction basis. These instructions form an integral part of the model template for the Country-by-Country Report.

### **Definitions**

#### ***Reporting MNE***

A Reporting MNE is the ultimate parent entity of an MNE group.

#### ***Constituent Entity***

For purposes of completing Annex III, a Constituent Entity of the MNE group is (i) any separate business unit of an MNE group that is included in the Consolidated Financial Statements of the MNE group for financial reporting purposes, or would be so included if equity interests in such business unit of the MNE group were traded on a public securities exchange; (ii) any such business unit that is excluded from the MNE group's Consolidated Financial Statements solely on size or materiality grounds; and (iii) any permanent establishment of any separate business unit of the MNE group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

#### ***Treatment of Branches and Permanent Establishments***

The permanent establishment data should be reported by reference to the tax jurisdiction in which it is situated and not by reference to the tax jurisdiction of residence of the business unit of which the permanent establishment is a part. Residence tax jurisdiction reporting for the business unit of which the permanent establishment is a part should exclude financial data related to the permanent establishment.

#### ***Consolidated Financial Statements***

The Consolidated Financial Statements are the financial statements of an MNE group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the Constituent Entities are presented as those of a single economic entity.

#### ***Period covered by the annual template***

The template should cover the fiscal year of the Reporting MNE. For Constituent Entities, at the discretion of the Reporting MNE, the template should reflect on a consistent basis either (i) information for the fiscal year of the relevant Constituent Entities ending on the same date as the fiscal year of the Reporting MNE, or ending within the 12 month period

preceding such date, or (ii) information for all the relevant Constituent Entities reported for the fiscal year of the Reporting MNE.

### ***Source of data***

The Reporting MNE should consistently use the same sources of data from year to year in completing the template. The Reporting MNE may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts. It is not necessary to reconcile the revenue, profit and tax reporting in the template to the consolidated financial statements. If statutory financial statements are used as the basis for reporting, all amounts should be 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. Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

The Reporting MNE should provide a brief description of the sources of data used in preparing the template in the Additional Information section of the template. If a change is made in the source of data used from year to year, the Reporting MNE should explain the reasons for the change and its consequences in the Additional Information section of the template.

## **C. Template for the Country-by-Country Report – Specific instructions**

### ***Overview of allocation of income, taxes and business activities by tax jurisdiction (Table 1)***

#### ***Tax Jurisdiction***

In the first column of the template, the Reporting MNE should list all of the tax jurisdictions in which Constituent Entities of the MNE group are resident for tax purposes. A tax jurisdiction is defined as a State as well as a non-State jurisdiction which has fiscal autonomy. A separate line should be included for all Constituent Entities in the MNE group deemed by the Reporting MNE not to be resident in any tax jurisdiction for tax purposes. Where a Constituent Entity is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker should be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the Constituent Entity should be reported in the tax jurisdiction of the Constituent Entity's place of effective management. The place of effective management should be determined in accordance with the provisions of Article 4 of the OECD Model Tax Convention and its accompanying Commentary.

#### ***Revenues***

In the three columns of the template under the heading Revenues, the Reporting MNE should report the following information: (i) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with associated enterprises; (ii) the sum of revenues of all the Constituent Entities of the MNE

group in the relevant tax jurisdiction generated from transactions with independent parties; and (iii) the total of (i) and (ii). Revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenues should exclude payments received from other Constituent Entities that are treated as dividends in the payor's tax jurisdiction.

#### *Profit (Loss) before Income Tax*

In the fifth column of the template, the Reporting MNE should report the sum of the profit (loss) before income tax for all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The profit (loss) before income tax should include all extraordinary income and expense items.

#### *Income Tax Paid (on Cash Basis)*

In the sixth column of the template, the Reporting MNE should report the total amount of income tax actually paid during the relevant fiscal year by all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. Taxes paid should include cash taxes paid by the Constituent Entity to the residence tax jurisdiction and to all other tax jurisdictions. Taxes paid should include withholding taxes paid by other entities (associated enterprises and independent enterprises) with respect to payments to the Constituent Entity. Thus, if company A resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B should be reported by company A.

#### *Income Tax Accrued (Current Year)*

In the seventh column of the template, the Reporting MNE should report the sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The current tax expense should reflect only operations in the current year and should not include deferred taxes or provisions for uncertain tax liabilities.

#### *Stated Capital*

In the eighth column of the template, the Reporting MNE should report the sum of the stated capital of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital should be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes.

#### *Accumulated Earnings*

In the ninth column of the template, the Reporting MNE should report the sum of the total accumulated earnings of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings should be reported by the legal entity of which it is a permanent establishment.



### *Number of Employees*

In the tenth column of the template, the Reporting MNE should report the total number of employees on a full-time equivalent (FTE) basis of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions and from year to year. For this purpose, independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees. Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.

### *Tangible Assets other than Cash and Cash Equivalents*

In the eleventh column of the template, the Reporting MNE should report the sum of the net book values of tangible assets of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, assets should be reported by reference to the tax jurisdiction in which the permanent establishment is situated. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

### ***List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction (Table 2)***

#### *Constituent Entities Resident in the Tax Jurisdiction*

The Reporting MNE should list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name, all the Constituent Entities of the MNE group which are resident for tax purposes in the relevant tax jurisdiction. As stated above with regard to permanent establishments, however, the permanent establishment should be listed by reference to the tax jurisdiction in which it is situated. The legal entity of which it is a permanent establishment should be noted (e.g. XYZ Corp – Tax Jurisdiction A PE).

#### *Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence*

The Reporting MNE should report the name of the tax jurisdiction under whose laws the Constituent Entity of the MNE is organised or incorporated if it is different from the tax jurisdiction of residence.

#### *Main Business Activity(ies)*

The Reporting MNE should determine the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes.

Business Activities
Research and Development
Holding or Managing Intellectual Property
Purchasing or Procurement
Manufacturing or Production
Sales, Marketing or Distribution
Administrative, Management or Support Services
Provision of Services to Unrelated Parties
Internal Group Finance
Regulated Financial Services
Insurance
Holding Shares or Other Equity Instruments
Dormant
Other <sup>1</sup>

1. Please specify the nature of the activity of the Constituent Entity in the “Additional Information” section.

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