

To
OECD

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Page 1/3

Subject White Paper on transfer pricing documentation

Dear all,

WTS is pleased to provide you with comments regarding the OECD White Paper on Transfer Pricing Documentation. We appreciate the effort to provide guidance on this important topic, and find the White Paper to be very helpful.

We would like to emphasize several important subjects. Regarding these subjects we want to urge the OECD to rethink its opinions:

- Simplification of transfer pricing requirements

The statement of the OECD on its website dated July 30, 2013, includes a sentence that the White Paper on Transfer Pricing Documentation “is intended to initiate an international discussion of ways in which compliance with transfer pricing documentation requirements can be made simpler and more straight-forward (...)”. Corporate groups that are organized internationally have to follow a lot of different transfer pricing documentation requirements within the different countries. One global documentation approach within all countries would be preferred by many taxpayers so the preparation of the documentation would be more simple and straightforward. Therefore, the efforts of the OECD to provide a global documentation approach are in the interest of many taxpayers and WTS appreciates the efforts of the OECD.

Nevertheless, the White Paper suggests a documentation approach that requires the taxpayers to provide more information overall. The White Paper seems to be very focused on providing tax authorities with more information which leads to higher administrative efforts on the side of the taxpayers. In addition to the information that taxpayers are required to provide with regard to each single transaction, the OECD suggests expanding the documentation requirements on further information explaining the big picture of the groups. To collect these information

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on the big picture of an international group would not only be difficult for parent companies of international groups but especially for smaller subsidiaries. They do not possess these information as they are probably only a part of one of more business streams. The goal to make transfer pricing documentation requirements simpler would therefore not be reached by the White Paper. On the contrary the complexity of transfer pricing documentation requirements would still be on the rise. Therefore, WTS suggests an implementation of a country and master file approach within the OECD transfer pricing guidelines and without further information requirements. The country and master file approach as defined by the EUTPD could be an example for such new approach within the OECD guidelines.

- Timely manner of the need to provide a transfer pricing documentation

Within chapter IV C the OECD describes five existing issues that make the process of preparing transfer pricing documentation difficult. One issue that is missing is the timely requirement regarding the provision of a transfer pricing documentation. The amount of time in which taxpayers have to prepare their documentation reports varies from country to country. There should be a standardization regarding the time in which the fiscal authorities can demand a transfer pricing documentation. Furthermore, the taxpayers should have sufficient time to gather the extensive information that are demanded by the tax authorities. WTS, therefore, asks the OECD to include this issue and define standardized deadlines that fulfill these requirements.

- Formulary apportionment vs. the arm's length principle

Within its transfer pricing guidelines the OECD is focused on the arm's length principle. This means that every single transaction has to be performed as unrelated third parties would have done on a free market. In order to keep track that all transactions are performed at arm's length the taxpayers have to provide various information regarding all kinds of relevant transactions to the tax authorities within a transfer pricing documentation report.

Within the White Paper the OECD intends to additionally gather information regarding the overall, big picture of the corporate groups. The OECD proclaims that these information are necessary so that the tax authorities can access the transfer pricing risks regarding the company. The consequence could be a shift of focus. The focus of the tax authorities might be shifting from the single transactions to the overall financial performance of the group company compared to other group companies. Tax authorities could then analyze if the company in focus has "earned enough" in relation to e.g. sales, assets or employees. This analysis could then create contradictions to the analysis of arm's length transactions. Therefore, the White Paper leaves companies puzzled with regard to the question which analysis would be relevant concerning adjustments through the tax authorities.

In this regard WTS would like to point out that the OECD did not acknowledge the comparable profit method yet, as this method is not based on a transactional approach, which has been the core element of a transfer pricing analysis since

the first OECD TP guidelines issued in the 1970s years. WTS suggests that the OECD makes a strong statement in support of the opinion considering the comparable profit method as being not suitable. Generally, adjustments should not be possible based on the overall risk assessment as long all relevant transactions were at arm's length. The OECD should point out the ongoing commitment regarding the arm's length principle even if it was stated within the BEPS action plan that special measures might have to be implemented. The single transactions should still be regarded as the base to determine the appropriateness of transfer prices.

WTS does not see the necessity for taxpayers to provide the tax authorities with more information regarding the big picture than already required within the EUTPD. The tax authorities should focus on the single transaction and analyze if these are performed at arm's length.

Overall we would like to ask the OECD to keep its focus on more standardization and therefore lowering the compliance cost and efforts for the taxpayers regarding the transfer pricing documentation and reduce additional issues that are making the documentation process more complicated. WTS would appreciate if the OECD could deny any process regarding the implementation of formulary apportionment as this would only lead to more problems and an even more complicated regulatory environment.

Kind regards,

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