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October 2nd, 2013

MEDEF's comments on the White Paper on Transfer Pricing Documentation (July 2013)

Dear Pascal,

MEDEF is pleased to comment on the OECD's White Paper on Transfer Pricing Documentation (hereafter the "Paper"). We think it is the right time to find "*a simpler and more efficient compliance with transfer pricing documentation rules*" (cf. §78 of the Paper) as complexity is always a hindrance to business's activity. In this respect, particular attention should be given to the addition of new rules and constraints that would be contrary to the aim of simplicity.

We acknowledge the comprehensive work done by the OECD on the Transfer Documentation in general as well as the overview of the existing guidance throughout the world. It is very useful to be able to compare and analyse the various elements that are requested, in order to design the best rules for transfer pricing documentation according to the aforementioned statement.

We particularly support the comments from the Business Representatives that are included in the Paper and in particular:

- §40, bullet point 4: "*Several business representatives suggested that because the studies performed in response to documentation requirements may be quite massive, local tax* *auditors often do not seem to be able to fully digest or understand what is being said. Auditors often ask questions that are answered in the documentation*."

- §43: "*This state of affairs either increases costs for MNEs in an area of activity that may be largely viewed by business as having few benefits beyond penalty avoidance, or gives rise to decisions to simply not comply in the time and manner desired by the governments promulgating the documentation rules*."

We therefore strongly support an internationally accepted and standardised format to avoid the coexistence of two sets of requirements, which would be burdensome, costly and probably inefficient. Although harmonisation is not clearly mentioned as an objective in the Paper, we assume that this is implied as it would be beneficial for both tax payers and tax administrations.

We also support a two-tier set of documentation as long as they do not impose over abundant requirements.

We also would like to stress that from a business perspective, country-by-country reporting should be treated apart, in connection with risk assessment, as it does not belong to the Transfer Pricing Documentation area.

Finally, we think that special consideration should be given to SMEs.

Specific comments

Paragraph 70 (4^{th} bullet point) states that to allow tax authorities to develop a clear understanding of the transfer pricing practices the "*financial results of applying those transfer pricing policies*" could be requested. This raises concerns for business for two mains reasons:

- Financial results are **ex post** results which take into account the various misfortunes of the business life, with variances from one year to the other. On the contrary, transfer pricing are fixed **ex ante** on a budgetary basis, as independent parties do;
- Financial results are not computed and audited on a **transactional** basis but on an **entity** basis, which is quite distinct.

We therefore think this approach should not be included in the OECD Paper, especially because it will give the misleading impression that these results are useful for transfer pricing purposes.
In the same way, financial databases which provides for millions of financial results by entities are not relevant to give information about MNEs with several activities.

There seems to be a contradiction between the notion of "*big picture*" (cf. §71) which allows an overall picture of the company (i.e. disconnected from the country where it operates) and the requirements concerning local sets of accounts (§72) as they are not exploitable in the TP area, contrary to a common belief of some tax auditors.

Indeed, the information mentioned in §72 would hardly help the tax authorities as:

- Managements accounts do not follow the entities but the business units;
- There is not always a consolidation at the country level, and if so, it will include all the activities of the country, i.e. several TP policies;
- Tax returns follow different domestic rules and are expressed in several currencies.

MNEs would be happy to provide such a big picture, if based on elements that are available as well as relevant.

Concerning segmented geographical data, it may be worth to clearly define what aim the OECD is following. If the objective is to provide tax authorities with a risk assessment tool, then MEDEF would fully support a provision asking for publicly available and already existing data at country level such as sales, employees and cash taxes.

Other data may be difficult to gather and we are not so sure they will provide the authorities with more information as regard to risk assessment.

If the aim of such a provision is to add an additional TP documentation layer, we question the efficiency and the utility of such a provision.

Masterfile

As a general comment, we would like to stress that large groups may have hundreds of legal entities. MEDEF considers it would be a significant compliance burden for them to provide information in the masterfile covering all companies in the group.

Linked to the above comments, we see a real danger in the Masterfile model on page 23. Providing "*a written functional analysis showing the principal contributions to value creation by individual entities within the group*" (description of MNE's business, 1st bullet point, 6th dash) could:

- prove rapidly very complex and not exploitable for tax auditors, instead of clarifying the case, and sometimes impossible to design because of the everyday changing conditions and organisation of the business;
- be read by tax authorities as <u>providing figures</u> for the value creation by individual entities, which cannot be done in practice.

Local File

There seems to be an ambiguity regarding the expression "*local file*". In the EUJTP model, the local file is a country file. It appears in the table (page 25) that the OECD opts for an entity file (which is the option of French law) and which we support. It may be useful to make it clear.

Moreover, it should only contain information on controlled transactions to which the relevant reporting entity is a party.

All the issues mentioned at § 83 are of utmost importance. MEDEF would be happy to have further discussion on those topics with the OECD.

We hope our contribution will give you a clearer insight into our expectations. We remain at your disposal if you have any questions and will also be pleased to participate in any working groups regarding this issue.

Yours sincerely,

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