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Committee on Fiscal Affairs
OECD
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I am pleased to provide the following comments in response to the OECD Global Forum on Transfer Pricing public invitation to comment on the White Paper on Transfer Pricing Documentation, released on July 2013.

Preliminary Comment

The following comment intents to collaborate with the CFA on its current TP Documentation project. It is a suggestion as to how transfer pricing documentation rules might be simplified to make transfer pricing compliance easier.

It is clear that documentation burden for tax payers has increased significantly through the last 20 years. On the other hand, there is a need for transparency and information from the tax authorities to allocated resources efficiently.

The main proposals of this comment are:

1) Substitute the Master File by an international standardized questionnaire which would provide sufficient information to classify the MNE on a global level and its subsidiaries individually for TP risk and documentation requirements;
2) Build a global business classification and Master File Data Base with the information obtained from point one;
3) Create a safe harbor on local documentation for no relevant/no significant risk companies;
4) Standardized the local documentation, as proposed in the report.

International Standardized Questionnaire (ISQ)

If a questionnaire is created in order to obtain information from the tax payer, this information could be processed in order to create a risk assessment for the Tax Administration Service's, not only where the mother company is located but also for those tax administrations where the subsidiaries are located.

Both, tax administrations and tax payers could save time and resources. A general risk assessment could be done with information obtained from this ISQ. The processing of information could be done manually or with a Software.

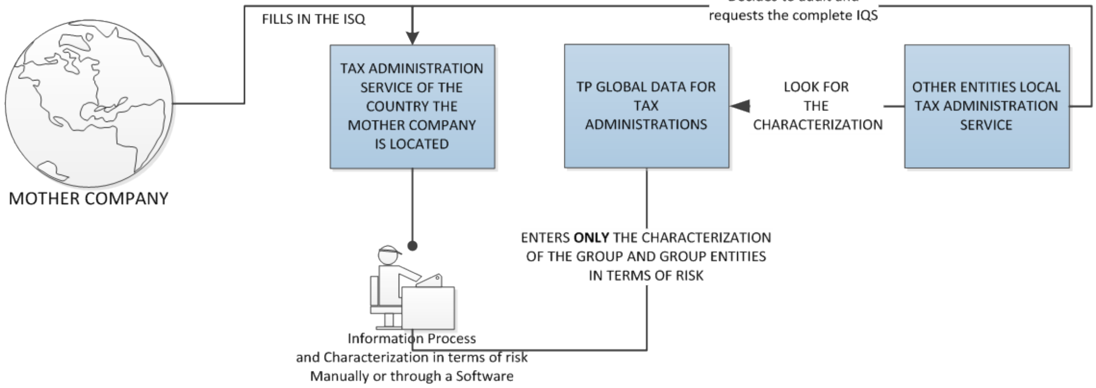
Usually all information contained in a Master File is available at the headquarters or mother company of the group. The ISQ could be filled in once, yearly by the mother company and updated every year for relevant changes or restructuring. The ISQ should be developed in such a way, that with enough knowledge of the company, the ISQ would be filled in a prompt way by the company without the need of spending more resources on the MF information and without creating a document every year.

Information within the ISQ

An ISQ could contain information regarding:

- Structure and location of all entities part of the group;
- Provide information about:
    - Group Revenue
    - Number of employees and location (also key personnel and its location)
    - Main activities of each entity
    - Industry
    - Supply chain relevant information
    - Number of intercompany transactions on a group level
    - Minimum and Maximum amount for intercompany transactions
    - Markets
    - Drivers
    - Competitors
    - Clients
    - Other
- Intangibles Information owners of trademarks, patents and know how among others and its location
- Financial activities, cash pool factoring, loan agreements between related parties
- Tax positions

Process Flow Description



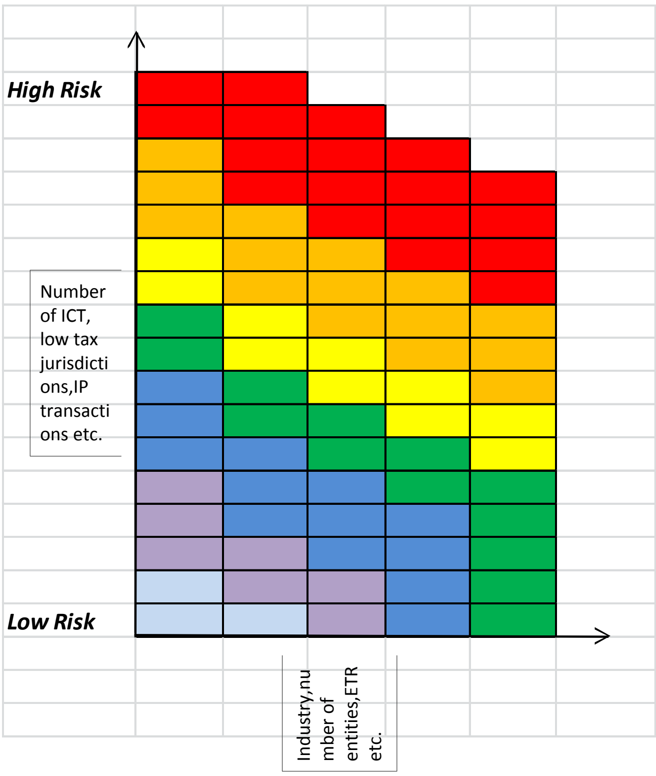
1) The mother company accesses the ISQ and fills in the requested information.

2) The Tax Administration Service of the Country where the mother company is located processes and characterizes the group and entities according to their level of risk.

3) Other Tax Administration Services access the global data for TP purposes in order to look for the characterization of the entity that has operations in its country. In case tax authority decides to audit the tax payer the MF information would be available at the mother company IQS.

The Characterization for TP purposes

The manual process or software would process the information and create risk analysis matrixes and ranges of risk. These ranges of risk would determine what companies have more risk than others but more important are the intercompany transactions relevant enough in terms of amounts and in terms of location to start an audit.



The characterization result should be also available to the tax payer. The lowest range of risk should be free from preparing and documenting transactions for transfer pricing purposes locally. If there are insignificant intercompany transactions with low risk entities in no low rate jurisdictions there is no point on tax payers and tax administrations to spent resources and time in transfer pricing issues. As already expressed in the OECD TPG but in practice barely applied.

Limitations

- It is clear that the burden of characterizing MNE would lie on those countries which are typical locations for mother companies. Nevertheless, headquarters are usually located in developed countries

and OECD member countries which in theory would more easily have the resources and practical knowledge to do it;
- A great amount of international cooperation will be needed among tax administrations;
- There might be legal limitations in creating a global data base for MF information and the access of tax administrations to this data base.

Conclusions

It is already clear what information is relevant for the tax administration for transfer pricing risk assessment, and for the taxpayer to evaluate their transfer pricing policies. The EUJTPF has established the base for building the appropriate documentation since 2005, and MNE have implement the EUJTPF guidelines for documentation purposes because until now, it has been the clearest and the most complete guideline available.

The call now, and in the context of the BEPS project, is not to make a list of information that the tax payer will need to defend its transfer pricing policy; that has already been done and it is not the real challenge.

The real challenge is to create a simple way, to comply for tax payers and to assess the risk for tax administrations in terms of documentation. That is the challenge.

The demand is to create something that goes hand by hand with every day's new circumstances.

Every year companies become more and more global and their business is to sale products or services not to prepare themselves for audits. MNE's have to focus on spending its resources on the purpose of its business and not on building documentation.

I ask you to go beyond the current needs and think what the tax administrations and the tax payers will be facing in a long term. Eight years after the EUJTPF published the Code of Conduct on Documentation the OECD is coming with a Draft that outlines the past, describes the current situation and repeats the list of documentation already available since 2005, with some additional aspects.

Don't be afraid of innovating creating and designing a migration on documentation that can simplify the MNE's compliance life and make tax administrations job easier.

We all need simplification and systematization for compliance purposes. Take advantage of technology, just the way the MNE's change its business according to new commerce and technical developments, international organizations have to be part of the game. Take these 8 years of experience in documenting to innovate and please embrace your mission, which is to promote policies that will improve the economic and social well-being of people around the world.

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