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## OECD Updates Transfer Pricing Documentation Proposal

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During an April 2 webcast, Organization for Economic Cooperation and Development representatives discussed tentative decisions regarding proposed changes to Chapter V of the OECD transfer pricing guidelines on documentation. The tentative decisions reached by Working Party No. 6 at its two-day meeting during the week of March 24 reflect a positive reaction to the numerous comment letters the OECD received in response to the discussion draft issued for comment on January 30, 2014. These tentative changes include reducing the scope of information to be included in the country-by-country template, the most controversial part of the proposed new documentation rules.<sup>1</sup>

Joseph Andrus, who will be replaced in May by Andrew Hickman as head of the Transfer Pricing Unit of the Tax Treaties, Transfer Pricing and Financial Transactions Division within the OECD's Centre for Tax Policy and Administration, discussed the following tentative agreements reached by Working Party No. 6:

- The template will include the following information: revenue, earnings before taxes, cash tax paid, current tax accrual, capital, retained earnings, tangible assets, and number of full time equivalent employees.
- The template will be prepared on an "aggregate" country basis, not a separate entity by separate entity basis. We interpret aggregate to mean a simple adding of the financial information of the entities within a country without eliminating intracountry transactions. However, further clarification is needed on this point.
- Eliminated transactional reporting of interest, royalties, and service charges. This information will only be contained in the local file if relevant.
- Eliminated the requirement to disclose the top 25 highest paid employees.
- A complete list of entities and permanent establishments, with activity codes for each, will be required for each country.
- The rules will provide flexibility on the source of financial information, provided the group uses a consistent approach from year to year. Working Party No. 6 responded to the numerous comments they received stating that companies needed flexibility in providing statutory or financial reporting information because of the wide variety of accounting systems employed by companies.
- Separate the country-by-country template from the master file.
- Provide additional clarification that the master file should be a high-level

<sup>1</sup> Action 13 of the OECD's Base Erosion and Profit Sharing Action Plan calls for the development of improved transfer pricing documentation standards, including a country-by-country reporting template. In response to this mandate, the OECD issued a discussion draft containing proposed changes to the OECD documentation rules, including a country-by-country template on January 30. In response to the discussion draft, the OECD received more than 150 comment letters totaling more than 1300 pages.

overview of the company, which will put the company's intercompany transactions in the context of its overall business operations. Many companies were concerned that the list of information contemplated by the January 30 discussion draft could run hundreds of pages. Companies will have to wait for additional guidance to see if they agree that the master file is only a high-level overview.

- Provide flexibility to prepare the master file on either a company-wide or line of business basis.

Working Party No. 6 is scheduled to meet again in May to finalize its recommendation to the Committee on Fiscal Affairs. At that meeting, Working Party No. 6 will try to resolve outstanding questions regarding the process for filing and sharing the master file and country-by-country template. Many companies are concerned that the master file and the country-by-country template may contain confidential information that will likely require the highest level of protection from disclosure. Companies have suggested that this high level of protection may be obtained only by filing the master file and country-by-country template with a company's home country, and making the home country responsible for sharing them with interested countries through government-to-government information exchange agreements. On the webcast, Andrus reassured companies by stating that the country-by-country template is only intended to provide information to governments and not to the general public.

Working Party No. 6 will also consider at the May meeting the language in which the master file and possibly the local file must be prepared, and the requirement for companies to translate the documents into local languages. The January 30 draft stated that the master file is to be prepared in English.

The OECD will hold a public consultation on the proposed documentation rules on May 17. The early release of the tentative agreements is likely an effort on the part of the OECD to better focus the May 17 public consultation on the tentative decisions and outstanding issues.

The tentative agreements are generally in line with the suggestions of commentators, including statements made by the U.K. and U.S. governments. Some of the tentative decisions will need additional clarification to determine the real impact on companies' compliance burden.

On a related topic, Andrus, in response to an audience question, reiterated that the revisions to Chapter VI of the transfer pricing guidelines on intangibles make clear that group synergies do not create residual income that is not associated with assets, functions, or risks. This comment is similar to other comments that changes in the transfer pricing rules will attribute income to where value is created. These comments appear to reflect the intent of proposed changes to Chapter VI and likely other actions the OECD is considering that are intended to limit so-called one-sided transfer pricing analysis and require companies to support the allocation of income to each segment of the value chain, including the contributions of people, tangible assets, and financial capital.

To view the webcast recording or to download the Powerpoint presentation, visit <http://www.oecd.org/tax/beps-webcasts.htm>

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