Deloitte Tax LLP
1633 Broadway
New York, NY 10019-1754
USA
Tel: +1 212-492-4000
www.deloitte.com

VIA EMAIL: TransferPricing@oecd.org

February 23, 2014

Mr. Pascal Saint-Amans
Director, Centre for Tax Policy and Administration
OECD
2, rue Andre Pascal
75775 Paris
FRANCE

Re: Comments on *Discussion Draft on Transfer Pricing Documentation and CbC Reporting*

Dear Mr. Saint-Amans:

We are pleased to submit comments on behalf of the Global Transfer Pricing professionals of the Deloitte Touche Tohmatsu Ltd. member firms regarding the *Discussion Draft on Transfer Pricing Documentation and CbC Reporting*. We appreciate this opportunity to share our views on this issue and hope you find our comments valuable to the discussion.

We look forward to continued collaboration with the OECD on this and other transfer pricing initiatives.

Very truly yours,

DELOITTE TAX LLP

Todd Wolosoff

By: Todd Wolosoff
Global and U.S. Transfer Pricing Leader

Enclosure

DELOITTE COMMENTS ON OECD'S DISCUSSION DRAFT ON TRANSFER PRICING DOCUMENTATION AND CbC REPORTING

In response to Action 13 of the BEPS Action Plan, which directs the OECD to "develop rules regarding transfer pricing documentation to enhance transparency for tax administrations, taking into account the compliance costs for business," the OECD on January 30, 2014, issued a "Discussion Draft on Transfer Pricing Documentation and CbC[1] Reporting." We commend the OECD's efforts to develop guidance in the area of documentation, and appreciate the opportunity to comment on the discussion draft. Such guidance would facilitate the presentation of more standardized information for tax authorities and should assist with tax authority reviews. Our comments are based on discussions with U.S. multi-national businesses, and our experience with the U.S. and foreign tax authorities regarding transfer pricing documentation.

The discussion draft identifies three objectives for transfer pricing documentation rules:

- To provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment;
- To ensure that multinational enterprises (MNEs) give appropriate consideration to transfer pricing requirements in establishing prices for transactions between associated enterprises and reporting the income derived from those transactions in their tax returns; and
- To provide tax administrations with the information they need to conduct an appropriately thorough examination of MNEs' transfer pricing practices.

We also commend the OECD for acknowledging that the new reporting requirements should be consistent with maintaining the arm's length standard, facilitate efficient assessment of tax, and not create an environment in which examination time is extended, or result in double taxation that must be resolved through an already overburdened competent authority process. Significantly, the discussion draft cites as an "overarching consideration" the need to balance the usefulness of the data to be collected for tax administrations with any increased compliance burdens placed on MNEs. Thus, in reviewing the proposed guidelines, we should keep in mind the OECD's stated goals and guiding principles as the touchstone for our assessment.

The thrust of our comments is twofold. First, one of the stated objectives -- to provide tax administrations with the information they require to conduct an appropriately thorough examination of MNEs' transfer pricing practices -- is a significant expansion of the historic purpose of transfer pricing documentation. Satisfying this objective is inconsistent with the overarching consideration of balancing MNEs' compliance burdens with the usefulness of the data being collected.[2] Second, we are concerned that the proposed documentation rules request a significant amount of confidential, nonpublic business information, but do not provide sufficient procedures to ensure that such information remains confidential.

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[1] CbC = country-by-country.

[2] During a February 13, 2014, Deloitte webcast attended by participants from over 2500 business enterprises, 91 percent of participants expressed their belief that the OECD's revised documentation guidance, including the CbC reporting template, would increase their transfer pricing compliance burdens. And 47 percent of the participants expected their compliance burden to increase by at least 40 percent.

Our specific recommendations, in response to your request for comments on various topics, are as follows.

Balancing compliance costs and the need for information

As stated above, Action 13 calls on the OECD to perform a balancing act in developing documentation rules between tax administrations' need for transparency and MNEs' compliance burden. The OECD addresses this issue, stating in Paragraph 12 of the discussion draft that "[i]t is therefore important for countries to keep documentation compliance requirements reasonable and focused on material transactions . . . ." However, the proposed detailed requirements are inconsistent with the balance required by mandating the reporting of information that MNEs do not currently collect. The proposed rules, if adopted, would necessitate that MNEs put in place costly information tracking and collection systems (as well as a significant number of personnel to implement and operate them), dramatically increasing their transfer pricing compliance costs.

Most importantly, the stated objective that documentation should provide tax administrations with the information they need to conduct an appropriately thorough examination is a sharp departure from documentation's long-established role as a tool for risk assessment and as evidence that the MNE made a reasonable effort to evaluate and accurately report its transfer pricing. Once a tax administration makes a decision to pursue a comprehensive transfer pricing examination, the tax administration should have timely access to all information necessary to conduct that examination. It is therefore incumbent on MNEs to work closely with tax administrations to identify and provide that information. However, a clear distinction should be made between the information deemed necessary and helpful for tax administrations to make an informed *transfer pricing risk assessment* and information that a tax administration may subsequently seek in *conducting a thorough examination*.

The inclusion of the goal that documentation provide "information that they [tax administrators] require in order to conduct an appropriately thorough examination" permits an interpretation that the documentation must include most if not all of the information that might reasonably be expected to be requested during a transfer pricing examination. This standard is inconsistent with the typical existing process for performing an examination of transfer pricing issues in which tax authorities perform a risk assessment, identify selected transactions for review, and then request detailed financial records and analysis related to the selected transactions. The proposed documentation standard is a significant expansion from the current standard of providing evidence that the taxpayer has acted reasonably in evaluating and reporting its income in accordance with the arm's length standard. This expanded documentation requirement would impose an unfair burden on MNEs that would be subject to penalties for failure to provide the required documentation with their tax return, rather than in the context of a tax examination. Such an expanded requirement is unnecessary. If during a tax examination an examiner determines that additional information is needed, the normal avenues of information-gathering are available to the tax authorities.

We recognize that in some countries specifying that the documentation includes "information that they [tax administrators] require in order to conduct an appropriately thorough examination" might be deemed necessary to obtain the required information to conduct a transfer pricing examination. However, we suggest that a better alternative would be to provide guidance to those countries regarding examination procedures utilized by other countries to obtain the required information from MNEs. Those tools might include conditioning penalty relief on whether an MNE provides relevant information in its possession and in the possession of its affiliates during the tax examination. Any such tools must recognize that in practice the information relied on by the MNE in preparing its transfer pricing analysis and documentation may be only part of the information the tax administrator believes is necessary to conduct a thorough transfer pricing examination. Any tools established to assist examiners in gathering the necessary information must take into account that the requested information may not be readily at hand. Furthermore, requirements or expectations that all potentially relevant information be readily available ignore the reality that reasonable people may differ as to what constitutes potentially relevant information. A balance must be struck between the burden of obtaining and maintaining detailed financial information and the likelihood of it being requested.

Consequently, for the reasons stated above, we propose that the third objective be revised to read as follows: "To provide tax administrations with sufficient information to initiate an examination during which it can request the additional information necessary to conduct an appropriately thorough examination of MNEs' transfer pricing practices."

Master file considerations

The discussion draft's concept of a two-tiered approach to transfer pricing documentation, bifurcated into a master file that would contain standardized information relevant to all MNE group members, and a local file that would refer specifically to the local MNE's material transactions, is at the core of the OECD's proposed guidelines. While there is nothing inherently wrong with this approach, pinning down the appropriate contents of each file, and determining whether and how this information should be shared – both with multiple tax authorities and within the MNE – is crucial.

We believe the local file would contain the primary information a tax authority would need to commence an examination of a company's transfer prices, and would contain most of the information necessary to analyze a company's transfer pricing position. Tax authorities also need a "reasonably complete picture" of the taxpayer's relevant business activities to have the proper context to review a company's transfer prices. The proposed master file (including the CbC reporting template) is intended to provide these additional insights.

We suggest, however, that the information requested in these two documents goes substantially beyond the information governments would need in the majority of transfer pricing examinations to obtain that reasonably complete picture. Simply put, obtaining a "reasonably complete picture" does not require all the information the OECD suggests that tax administrations may request.

Proposed Annex I in the discussion draft lists the information that should be included in the master file. This long list includes numerous examples of information that would rarely be necessary to obtain a "reasonably complete picture," such as:

- the title and country of the principal office of each of the top 25 employees;
- a list of the MNE's APAs and other rulings;
- a list of pending and resolved MAP cases;
- a description of the main geographic markets for material products and services;
- a list of restructurings and intangibles transfers during the year (which presumably do not include the local country, which would be included in the local country report if the local company was a counterparty); and
- intercompany transactions between countries other than the local company.

Requiring information not necessary to form a reasonably complete picture of the relevant business activities would increase compliance costs for businesses, and increase the time commitment of tax examiners, who presumably would be required to read and understand the information provided, even though it would have little, if any, effect on their review of a local company's transfer prices. There is also the risk that the large amount of information currently required to be included in the master file may allow aggressive tax authorities to expand their reach into MNEs' profits at the expense of less aggressive tax authorities (or to use formulary apportionment rather than the arm's length standard to determine the amount of their proposed adjustment). This may result in escalating tensions between tax authorities as jurisdictions become more and more aggressive. Therefore, we request that the OECD substantially reduce the amount of information proposed to be included in the master file and the CbC reporting template. Specifically, we recommend limiting the CbC reporting template to revenue, earnings before income taxes (EBIT), income tax, number of employees, and activity code.

Much of the information listed in the proposed Annex I for inclusion in the master file adds little to tax administrations' ability to obtain a "reasonably complete picture," and may therefore be more appropriate for inclusion in the local file. For example, to the extent a member of an MNE uses intellectual property of the MNE, the local file requirements found in Annex II would require a thorough discussion of both the local company's functions and risks with respect to its use of the intellectual property, as well as those of all counterparties of that local company involved with the intellectual property. That information, coupled with the information from the CbC reporting template, would provide the tax administration with the relevant information necessary to obtain a "reasonably complete picture." It would also provide a solid foundation for conducting a thorough transfer pricing examination involving the local company's use of the MNE's intellectual property.

The same line of reasoning applies to the requirement found in proposed Annex I calling for lists of material intangibles or groups of intangibles, and lists of important related-party agreements. These items fall into the category of information that would be included in the relevant local country files if relevant; therefore, requiring its inclusion in the master file is duplicative and unnecessarily burdensome to MNEs, and unhelpful to tax administrations.

At a minimum, the OECD should consider whether some of the information that is proposed for inclusion in the master file would be more appropriate for inclusion in the local file (instead of the master file) to the extent it is relevant to that jurisdiction (such as pending MAP requests) and to the extent it has some relevance to the local entity's business activities.

The OECD should recommend stronger steps to protect MNEs' confidential information

We welcome the OECD's acknowledgement of the importance of tax administrations protecting the confidentiality of sensitive MNE information. The integrity of all tax systems depends on confidence that tax administrations will protect from public disclosure all information provided to them. This basic tenet applies regardless of whether the tax administration obtains the information from the MNE by means of transfer pricing documentation, through other examination procedures, a tax treaty or a tax information exchange agreement, or from any other nonpublic source.[3]

[3]Approximately 86 percent of the participants attending Deloitte's February 13, 2014, webcast expressed concern over the potential disclosure of confidential information, given the scope and potentially broad distribution of the master file and CbC reporting template.

The master file, CbC report, and local file will contain confidential MNE information, as well as commercially sensitive information that will require appropriate protection from public disclosure. Great care should be taken to protect such sensitive information. Such protections might include:

- Provisions requiring that the master file (including the CbC report) be filed with the home country and made available only through request (alternatively, provisions indicating that the information need not be filed, but only that it be available for inspection (but not copying) at the MNE's affiliate's principal place of business);
- Provisions authorizing countries to whom a request to provide MNE information is made to limit the information provided to information relevant to transactions involving the jurisdiction of the requesting country;
- Procedures whereby the MNE would be permitted to suggest reasonable redactions of potentially sensitive commercial information not relevant to the transactions that involve the jurisdiction of the requesting country;
- Procedures whereby arrangements are made for a requesting country to review confidential and potentially sensitive commercial information relevant to the transactions that involve it at the local country premises of the MNE;
- Providing notice to MNEs when a request for information is made and received; and
- Providing for penalties (both civil and criminal) for violating such confidentiality protection provisions.

We are particularly concerned about the confidential information contained in the master file and CbC report. Paragraph 45 of the discussion draft recommends that the master file portion of the proposed documentation, including the CbC reporting template, be completed by the MNE's parent company, and then shared with the group affiliates. The discussion draft then proposes that the tax administrations in the local affiliates' countries could obtain the master file directly from the local affiliates. However , we believe that to protect MNEs' confidential information, the master file should be filed only with the parent company's home country, and shared with local tax authorities through the mechanism provided by tax exchange of information agreements.

The OECD should establish specific materiality thresholds that vary for different jurisdictions

The discussion draft suggests that only "material transactions" should be subject to the new disclosure requirements, but requests comments with respect to how to define "material." We recommend, first, that the OECD provide precise guidance on this definition that is capable of determination without any ambiguity. Otherwise, there would likely be a significant amount of confusion both on the part of MNEs and tax authorities as to what constitutes "materiality," which would undoubtedly lead to more disputes both between MNEs and tax authorities and between different tax authorities, putting greater stress on competent authorities' limited resources for dispute resolution. Specific guidance on this issue is also needed in order to ensure that MNEs' compliance costs do not become unreasonably high. Such guidance could take the form of an absolute dollar threshold for transactional value, or some other specific objective measure, but it should be precise enough that it leaves no doubt as to whether the transaction must be disclosed or not.

Second, we recommend that this precise threshold should take into account the fact that different jurisdictions would have different thresholds of materiality for different transactions. For example, a $1 million transaction might be relevant to a country with a small gross domestic product (GDP), but might not be relevant to a larger jurisdiction with a correspondingly larger GDP. Accordingly, the materiality threshold could be different for the different purposes of the local file and the master file.

Third, we recommend that the OECD consider defining materiality with reference to the MNE's business. For example, the OECD could define a transaction as material by reference to whether the transaction was more or less than a certain percentage of the company's gross sales in a given year, or gross assets in the case of loans and IP transfers. Additionally, we recommend that the OECD consider excluding transactions that are not part of the MNE's core business operations, thus acknowledging that such lower-risk ancillary transactions would not be material. This would allow tax authorities to focus their risk assessment on MNEs' core business transactions and alleviate some of the compliance burden that these rules will place on MNEs.

Considerations with respect to "top-down" or "bottom-up" approach in the CbC reporting template

The discussion draft suggests a bottom-up approach to reporting financials on the CbC reporting template, but acknowledges that many questions remain, and requests comments as to whether a top-down approach should be required or permitted.

Given that MNEs differ in terms of operational organization, business structures, and accounting systems, the type of information readily available differs from company to company. MNEs need the flexibility to be able to adopt either the bottom-up or the top-down approach, because companies have different ways of compiling financial data, and the information that would be readily available would vary significantly from one MNE to another. It is not uncommon for MNEs to have multiple accounting systems, and not unheard of for large MNEs to have as many as 20 different accounting systems in place around the globe, as a result of decentralized information technology system decision-making, merger and acquisition activity, or regulatory requirements. The prospect of reconciling these systems for purposes of the CbC reporting template would be daunting and potentially expensive for these MNEs. Thus, MNEs should be given the opportunity to pick the least burdensome and the least expensive approach.

The purpose of the CbC reporting template is to facilitate comparisons across a single MNE, not among different MNEs. Therefore, as long as an MNE follows a consistent approach, either option – bottom up or top down -- should be adequate for risk assessment purposes.[4]

In considering the top-down approach, the discussion draft states that the tentative view of the OECD's Working Party Group 6 is that to be useful, "top-down reporting would need to reflect revenue and earnings attributable to cross-border transactions between associated enterprises but eliminate revenue and transactions between group entities within the same country."

Top-down reporting (without the above-stated adjustments) has some natural advantages over the bottom-up approach. Because the financials would be in a uniform currency, using a common time period, and a consistent accounting standard, it would be easier for tax authorities to use these figures for a global view and comparisons across entities with similar functions. Before adjustments,[5] companies gather this data as part of preparing their consolidating financial statements, which may lighten the burden on the MNE. However, the

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[4] Approximately 60 percent of the participants attending Deloitte's February 13, 2014, webcast said that multinationals should be given the option of choosing between the bottom-up and the top-down approaches, because each multinational's industry, corporate structure, and geographical business locations are different.

[5] Many companies make "top side" adjustments that could complicate the use of consolidated financial statements and the ability to reconcile those financial statements to local accounts.

adjustments that Working Party Group 6 suggests would significantly increase the time spent compiling and checking top-down results. Furthermore, MNEs are concerned that if the OECD were to adopt top-down results, each tax authority would require a reconciliation between the top-down results and the statutory results, thereby entirely removing any time savings generated by the top-down approach.

However, in assessing the top-down approach, the requirement to reflect cross-border transactions without intracountry transactions can be onerous. We question whether such eliminations are truly necessary to make the CbC reporting template useful to tax authorities. If tax authorities wish to use the CbC reporting template to obtain a global view of the MNE and to compare their local entity to similar global entities, then in what way does eliminating intracountry transactions improve the comparison? Are the intracountry transactions somehow invalid? Is this a concern only for countries that allow consolidated reporting? Many countries do not allow consolidated tax filings of affiliates within the same country, requiring companies to accurately reflect any intracompany transactions. For these countries, would intracountry eliminations not be necessary? Moreover, the local tax authority will already have local entity financials with intracountry transactions eliminated through the local file. Therefore, this could be compared to the CbC reporting results to identify any major impacts of intracountry transactions, allowing local tax authorities to make their own adjustments in comparison.

Unless the requirement for these adjustments to the top-down approach is removed, the approach would likely be of little use to many MNEs. However, if the OECD removed or lightened this requirement, then giving MNEs a choice between the bottom-up and the top-down approach would be appreciated by MNEs, and could give tax authorities an opportunity to review more consistent data.

Considerations on CbC reporting of income taxes

The discussion draft requires that the following items be reported in the CbC reporting template:

- ***Earnings Before Income Tax:*** In the sixth column of the template, enter the total amount of earnings before income tax for the Constituent Entity. This number should be taken from the same financial statement as the revenue numbers, and should generally be reflected in the functional currency of the Constituent Entity.

- ***Income Tax Paid (on Cash Basis):*** (a) To Country of organization: In the seventh column of the template, enter the amount of income tax actually paid to the country of organization by each Constituent Entity during the relevant year. (b) To All Other Countries: In the eighth column of the template, enter the amount of income tax paid by the Constituent Entity to all countries other than the country of its organization for the relevant fiscal year. With respect to both, cash payments of tax and not tax accruals should be reported. Tax payments should be reported in the same currency used to report earnings before income tax in column 6.

In addition to the cash income taxes amount required by the discussion draft, it is possible that MNEs may be able to access two other aspects of income tax reporting in their books and records — income taxes reflected on their income statement, and income taxes reflected on their income tax returns. We acknowledge that there is no perfect measure of income taxes and that there are several advantages in reporting cash income taxes:

- It is an absolute;

- It is likely more meaningful in that it reflects tax actually paid by a group; and

- It is consistent with the other business activities that are also reported on a cash basis in the CbC reporting template (royalties, interest, and service fees and the related withholding taxes).

However, there are also disadvantages in reporting cash income taxes paid:

- The amount may not be easily identifiable in books and records;
- It may be difficult to discern the impact of income tax refunds (including tax credits and/or grants that may be nonrecurring) received during the reporting year;
- It is incongruent with the reporting of book earnings before income taxes as required by the CbC reporting template; cash income taxes usually do not correlate to current year's profits because there is usually a lag between cash taxes paid and earnings subject to tax, inclusive of overlapping periods when making estimated tax payments and/or payments upon finalization and filing of income tax returns from previous periods (this would be especially problematic when cash taxes are paid on behalf of a group of entities and allocated to the relevant constituent entities on the basis of their share of profits as required by the discussion draft); and
- Tax planning strategies that allow companies to defer payments to future periods and/or are pending approval or input from tax authorities (for example, authorization for tax treatment of an acquisition or pending MAP cases) would result in the timing of cash taxes in a period different than the reporting period.

An alternative way to report this kind of information would be to report book income taxes reflected on the income statement (i.e., reporting of accrued taxes). The advantages of this approach include:

- It aligns better with accrual-based financial statement income;
- It is congruent with the reporting of book revenues as required by the CbC reporting template; and
- It is easy to identify and extract from books and records (because it is reflected on the income statement as a discrete item).

But there are also disadvantages in reporting book income taxes:

- Distortions related to deferred tax accounting (for example, related to uncertain tax positions; the recording and reversal of valuation allowances; decisions regarding timing of options provided under tax law with respect to, for example, depreciation; changes in the classification of permanently reinvested earnings; and return to provision adjustments);
- Cash payments from tax authority examinations may impact the amount of the tax provision, but these payments may not be individually recorded in the provision; and
- Income taxes that might be taken directly to equity in some countries (for example, tax on stock options).

A third option would be to report income taxes as reflected on income tax returns. The disadvantages listed above for reporting book income taxes are conversely advantages in reporting income taxes as reflected on income tax returns. The disadvantages of this approach, though, include the following:

- It is incongruent with the reporting of book earnings before income taxes as required by the CbC reporting template, because cash income taxes usually do not correlate to current year's profits;

- It could be distorted by net operating loss carryforwards and tax credits;

- Payments pursuant to tax authority examinations might not be individually recorded in the provision; and

- Unavailability of information, because in some countries the tax return is due more than a year after the end of the fiscal year.

As explained above, all three approaches have advantages and disadvantages, and none is perfect. More importantly, the availability and reliability of information varies by industry, corporate structure, and geographical business locations. Accordingly, the practical solution is to allow MNEs to choose one of the three options and apply it over an extended period of time. The application of the same approach over a multiple-year period should not only produce the intended useful information that tax authorities are looking for, but also provide, to a high materiality threshold, information that MNEs could collect without undue burden.

The discussion draft also provides that where tax is paid by one entity on behalf of a combined group of associated enterprises operating in a country, tax should be allocated among members of the relevant combined group in proportion to their shares of the earnings before income tax of the combined group. This is quite an issue for MNEs for a number of reasons. For example, some organizations that have a combined filing group make ease of administration decisions about costs; for example, they may incur all payroll costs out of one company and not allocate to other entities in the group. In such a situation, if the allocation is based on earnings before interest and taxes, it will be distorted. It is important to note that usually a tax sharing agreement is in place among the members of a combined filing group that deals with strategic decisions, such as utilization of historical losses or other tax benefits. If there is a tax sharing agreement, we recommend that it be respected.

We are also concerned that the CbC reporting template does not address reporting difficulties that could arise for MNEs due to differences in taxation year-ends and differing documentation due dates within multinational groups. We recommend that the OECD provide rules that allow for flexibility regarding these issues.

We are also concerned that the amount of information required to be provided in the CbC reporting template would allow tax authorities to either: (1) compile databases of non-public comparable profit levels that could be used as benchmarks to adjust an MNE's income tax return without the MNE having similar access to the non-public data set; or (2) make income tax adjustments based on a formulary apportionment methodology rather than the arm's length standard. What mechanisms will be put in place to prevent these unfair and undesirable events?

The OECD should recommend that countries adopt a uniform time at which MNEs are no longer required to update the information contained in the documentation

As a practical matter, business and economic information, including information on comparable companies and comparable transactions, is not static. To reasonably comply with documentation requirements, MNEs need a specific date after which they are no longer required to update their documentation with potential new information so that they can prepare documentation in an orderly fashion. We recommend that the OECD adopt a provision that requires MNEs to include in their documentation only information that existed at the end of the relevant tax year.

The OECD should recommend that countries adopt uniform rules that permit taxpayer-initiated post-year-end compensating adjustments

Documentation would be an exercise in futility if MNEs were not allowed to report on timely filed tax returns the arm's length prices carefully analyzed and supported in their documentation. Today, many countries permit MNEs to **increase** the taxable income reported on their tax returns as a result of post-year-end transfer pricing analysis, but only a few countries permit MNEs to **reduce** their taxable income. To state the obvious, for every increase in one jurisdiction, there must be an offsetting reduction in another jurisdiction. The current Paragraph 3.71 of the 2010 OECD *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* recognizes this difficulty, but provides little guidance other than to state that the competent authorities are encouraged to use their best efforts to resolve the resulting double taxation.

We believe that if the OECD adopts new documentation guidance, it must address the asymmetry that currently exists with respect to post-year-end or compensating adjustments. The EU Joint Transfer Pricing Forum issued a paper on November 5, 2013, calling for similar action. To protect the integrity of documentation, we recommend that the OECD, as part of the revisions to Chapter V, permit MNEs to make post-year-end tax return adjustments, at least up until the time the tax return is due.

Tax authorities should communicate the results of the risk analysis to MNEs

We commend the OECD for acknowledging that "sharing risk assessment results with taxpayers can help improve compliance and enhance the effectiveness and the quality of an audit." We propose that the OECD include in Chapter V a recommendation that tax authorities **must** share their risk assessments with MNEs. Doing so would provide MNEs with an opportunity not only to double-check the information provided, but also to prepare relevant evidence or analysis in response to the tax authority's position that the tax authority may have overlooked, or concerning which the tax authority may not have had any information. The U.S. Internal Revenue Service, for example, just recently promulgated internal rules for its transfer pricing examiners that require them to provide the taxpayer under examination with the initial risk analysis (including examination plan and timeline) by the seventh month of the examination,[6] and the midcycle risk analysis (as well as the draft notice of proposed adjustment, if any, including a draft economist report) by the 18th month of the examination cycle.[7]

Conclusion

Today, business faces a multitude of sometimes conflicting documentation requirements around the world, as many countries have adopted their own documentation requirements. Keeping track of and complying with these separate documentation requirements has significantly increased business' documentation compliance costs. A uniform documentation standard is essential to reducing those compliance costs. We agree with the tenor of Paragraphs 44 and 45 of the discussion draft.[8] However, we believe those paragraphs are not strong

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[6] U.S. Department of the Treasury, Internal Revenue Service, "Transfer Pricing Examination Roadmap," p. 16, released February 14, 2014, available at: http://www.irs.gov/pub/irs-utl/FinalTrfPrcRoadMap.pdf.

[7] *Id*. at pp. 21, 23.

[8] Paragraph 44. Transfer pricing documentation requirements are and should continue to be features of local law. The implementation of the two-tiered transfer pricing documentation consisting of a master file and a local file, therefore, requires that local countries

enough. We believe it is essential that that the OECD produces a consensus document, and that **all** OECD and G-20 members adopt consistent and uniform rules based on that consensus that do not add additional requirements to those contained in Chapter V. Failure to adopt consistent and uniform rules is contrary to Action 13, and would unfairly increase the compliance burden on business.

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modify their domestic transfer pricing documentation and reporting rules to require any locally based affiliate of an MNE group to produce the information contained in Annexes I-III.

Paragraph 45. In this respect, consistent and uniform formats are essential. To ensure that the master file information is consistent from country to country, local transfer pricing documentation requirements should include master file information conforming to Annexes I and III. It is recommended that the master file portion of the proposed documentation (including the country by country reporting template) be completed under the direction of the parent company of the MNE group and be shared with each country in which the MNE has an affiliate subject to tax. The master file could then be obtained by local taxing authorities directly from local affiliates. Absent prompt compliance at the local country level, such information could be obtained by tax administrations under treaty exchange of information mechanisms.