

New post-BEPS three-tiered documentation requirements Impact for Kazakhstan's multinational enterprises

Kazakhstan, 2016

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Introduction

In October 2015, the Organisation for Economic Cooperation and Development (“OECD”) with assistance from G20 countries published a set of final reports outlining various actions to address Base Erosion and Profit Shifting (“BEPS”).

Specifically, BEPS Action Plan №13 proposed a concept of three-tiered transfer pricing documentation, including the preparation of *master files*, *local files* and *country-by-country reporting* (“CbCR”) by multinational enterprises (“MNE”).

The proposed concept reflects G20 and OECD country members’ intentions to introduce a unified international standard for transfer pricing reporting and subsequently implement it in the corresponding countries.

The business society is expected to accept the concept, as it will help to reduce the cost of complying with local legal requirements.

Currently, more than 20 countries have adopted or prepared amendments to national legislation regarding the preparation and submission of the new documentation.

For countries that have already adopted the amendments (e.g. the Netherlands, Spain and the UK), the first reporting period for the CbCR is 2016.

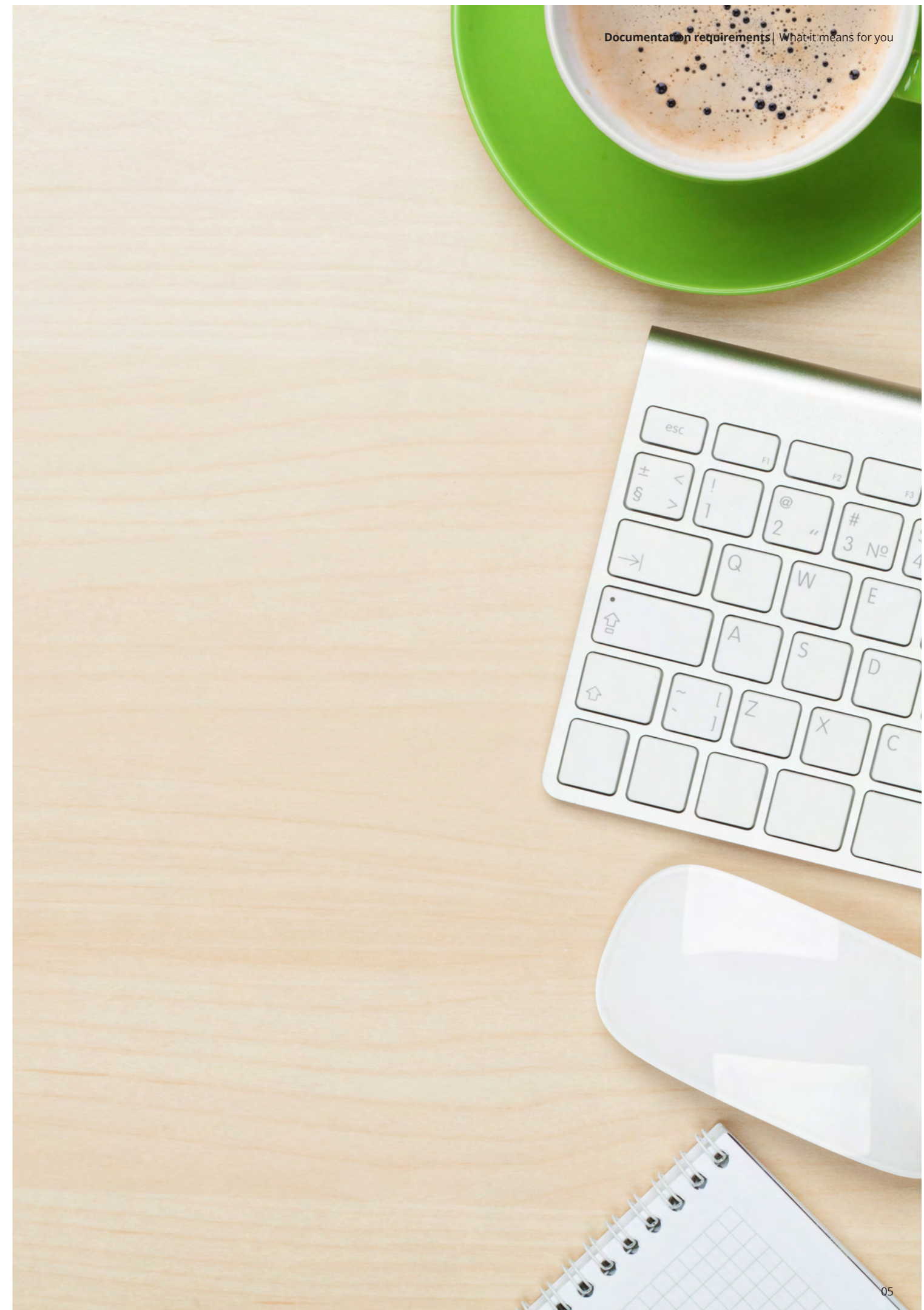
Even though Kazakhstan is not an OECD member and there are currently no requirements to prepare or submit the CbCR and master file, under certain circumstances local companies are required to prepare it (please see later in the document).

Documentation requirements

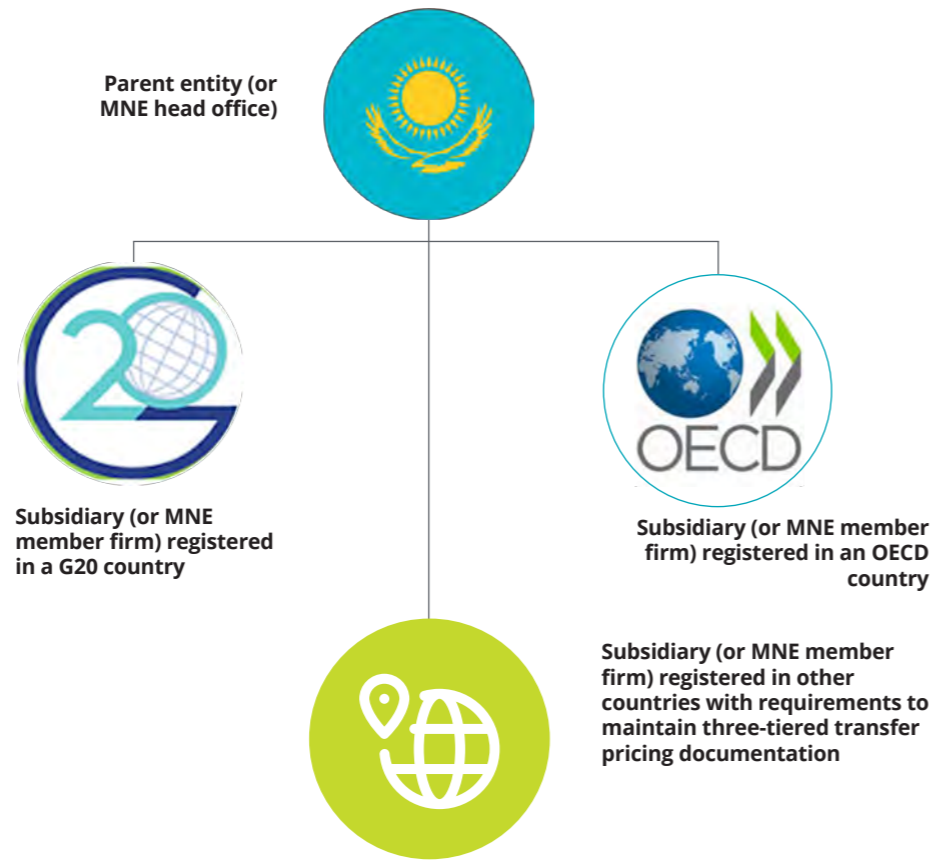
What it means for you

If a Kazakhstan parent company has subsidiaries in countries that have adopted the OECD recommendations for preparing and filing the CbCR, the MNE may have to prepare and file it (together with the master file and local file, if applicable).

- Kazakhstan has no CbCR, master file and local file regulations in place, as it is not a member of the OECD or G20 and does not expect to implement three-tiered documentation requirements in the short term.
- However, due to the new requirements adopted by countries such as the UK and the Netherlands, any Kazakhstan MNE with a subsidiary in those countries is required to prepare a CbCR, master file and local file if certain conditions are met (please see below).
- According to model legislation proposed by the OECD, the first reporting period to be considered for the above rules will be an MNE's financial year starting on 1 January 2016 or later.



- Additionally, the obligation to prepare and file CbCR arises for MNE with consolidated annual revenue of no less than EUR 750 million (or its equivalent in local currency) during the period preceding the reporting period (may vary depending on the jurisdiction).
- Tax law in certain countries also requires companies to prepare and file master files and local files in addition to CbCR. For example, in the Netherlands, companies are required to prepare a master file and local file within 6 months of the end of the financial year. This only applies if an MNE's consolidated annual revenue exceeds EUR 50 million.

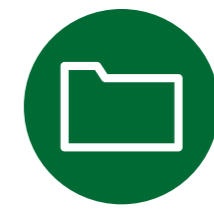


What is included in three-tiered transfer pricing documentation



Master file

According to OECD recommendations, master files should include general information about an MNE's business and an overview of basic transfer pricing approaches. Specifically, master files should reflect: (i) an MNE's organisational structure; (ii) a general description of business processes; (iii) a general description of an MNE's intangibles; (iv) a description of intragroup financial transactions; (v) an MNE's financial and tax position.



Local file

Local files contain more detailed information on specific intragroup transactions in specific jurisdictions, and is prepared in compliance with local transfer pricing regulations.



CbCR

The CbCR summarises information on an MNE's economic activities in the context of relevant jurisdictions. It allows the user to assess the methodology used to allocate profit between MNE member firms, and an MNE's overall tax burden for a specific period.

Requirements for the preparation and submission of three-tiered transfer pricing documentation are specific to each jurisdiction. At the same time, they should be based on OECD "model legislation" recommendations proposed for adoption by the OECD and G20 members.

Questions and Answers

Who is required to file CbCR?

- The obligation to file CbCR rests with an MNE's ultimate parent or pre-selected member firm ("Surrogate Entity").
- A Surrogate Entity may submit CbCR instead of the ultimate parent entity if:
 - the country in which the ultimate parent entity is a tax resident has not established CbCR obligations
 - the country in which the ultimate parent entity is a tax resident does not have a signed agreement in place regarding the automatic exchange of CbCR-related data (at the latest, 12 months after the last day of the applicable fiscal year) or
 - a tax inspector has informed the group company that the country in which the ultimate parent company is a tax resident has failed to comply with CbCR requirements (due to systematic failure)
- At the same time, a Surrogate Entity should be a tax resident of a country with CbCR reporting requirements.

Are MNE's required to notify the authorities of its having filed CbCR?

- An MNE parent or Surrogate Entity should notify the competent authorities of its having filed CbCR by the end of the reporting period (i.e. 2016).
- Other group members should notify the competent authorities of upcoming CbCR requirements and the parent company's or Surrogate Entity's country of tax residence, depending on who is filing CbCR on behalf of the MNE. Notification should also be filed by the end of the reporting period (i.e. 2016).

Are there any deadlines for CbCR filing?

- According to OECD recommendations, CbCR should be filed within 12 months of the end of the reporting period (financial year).
- According to OECD tax model legislation, an MNE's financial year starting from 1 January 2016 (or later) should be considered as the first reporting period.
- However, the above CbCR timelines are based on OECD recommendations and may vary by jurisdiction or supplemented by additional provisions.

Are there any penalties for late CbCR submission?

- According to OECD recommendations, any penalties should be determined locally by jurisdiction.
- For instance, under Netherlands' law, failure to prepare and file CbCR or doing so incorrectly can result in a fine of EUR 20,250 or imprisonment for up to 4 years.

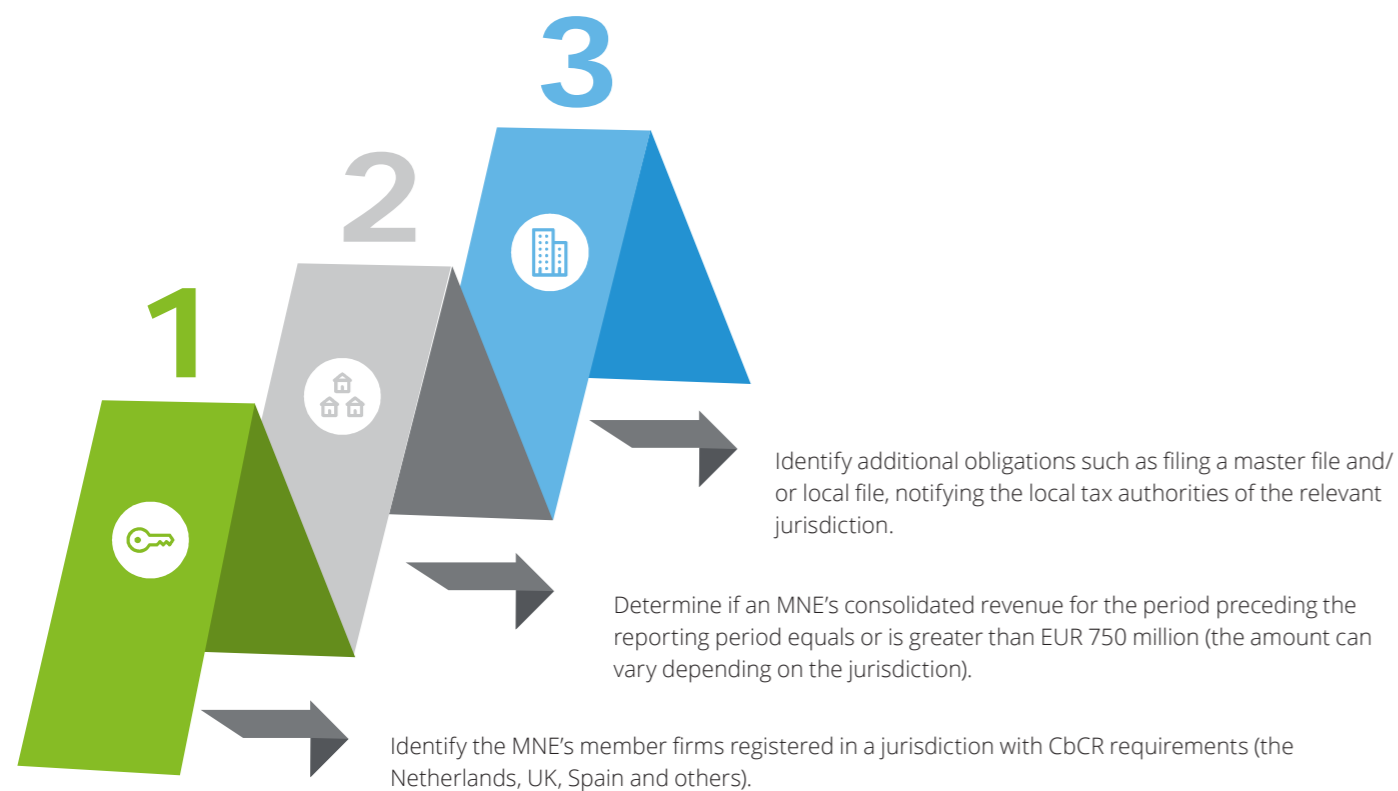
Who is required to prepare master files?

- OECD recommendations do not set any requirements for specific MNE members to prepare master files.



Next steps now

If an MNE meets the requirements outlined in points 1-2 or 3 below, it will have to prepare and file three-tiered transfer pricing documentation (master file, local file and/or CbCR).



The steps to be taken in the event of a requirement to submit a master file, local file and/or CbCR

- 1** Analyse MNE structure to identify any member firms that will be required to file CbCR
- 2** Prepare transfer pricing documentation in master file and local file (if necessary) format, as per OECD recommendations under BEPS Action Plan №13 or local legislation
- 3** Test capacity to collect and consolidate promptly all information (at the MNE level) required to prepare and file CbCR
- 4** Develop/customise information systems (if necessary) to provide member firms required to file CbCR with access to relevant real time data



Suggested approach

Next steps

Step 1. Be prepared — practical way forward

- CbCR risk assessment is vital for large groups with consolidated revenue exceeding EUR 750 million. Deloitte's CDX tool is an important tool in managing CbCR risk, is extremely cost efficient and has been designed to help clients prepare for the new CbCR reporting requirements.
- Develop a strategy around documentation requirements and CbCR, and one that identifies the group entity required to file CbCR and that will be responsible for preparing master files and local files.

- A gap analysis and transition plan are a must for all companies, and involve reviewing which documentation is in place centrally and locally and to what extent it deviates from the new requirements.
- Draft an implementation plan for any new documentation strategy and CbCR requirements.

Step 2. Draft documentation following the new requirements

Option 1. In-house:

- Possible use of a Shared Service Centre*
- Potential lack of expert knowledge
- Potentially more expensive
- Risk of other priorities

Option 2. Co-sourcing:

- Possible use of a Shared Service Centre
- Access to expert knowledge and networks
- An integrated approach
- More control and flexibility

Option 3. Outsourcing:

- Access to expert knowledge and networks
- In-house resources are freed up
- Customised solutions
- A consistent and proven approach

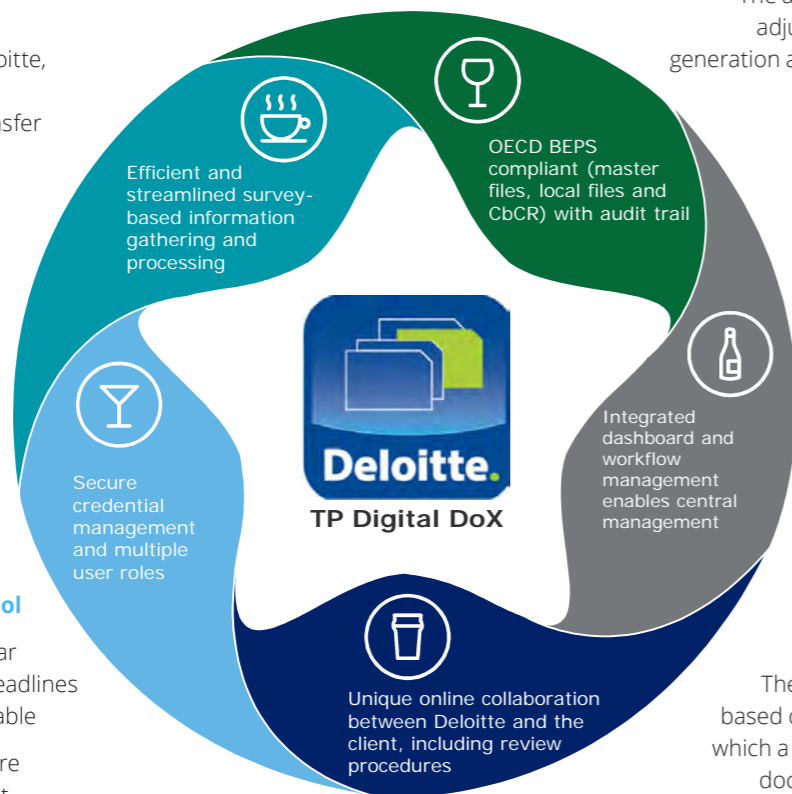
* A shared service centre – a centre for shared services in an organisation – is the entity responsible for the execution and handling of specific operational tasks, such as accounting, human resources, payroll, IT, legal, compliance, purchasing and security. A shared service centre is often a spin-off of corporate services to separate all operational tasks from corporate headquarters, which has to focus on a leadership and corporate governance type of role. As shared service centres are often cost centres, they are quite cost-sensitive also in terms of headcount, labour costs and location criteria.

Use of technology solutions

Data collection tool

Through (individual) information requests, data format can be kept consistent and the retrieval process made more efficient and less time-consuming

After an optional review by Deloitte, any information can be used to automatically generate the transfer pricing documents needed



Workflow management tool

The dashboard allows for clear workflow with content and deadlines readily available and controllable

A coordinator and one or more administrators can, with input from local offices, steer the central documentation process and provide feedback to local offices

Central repository

Documents are stored throughout the process and can be accessed by different users quickly and easily

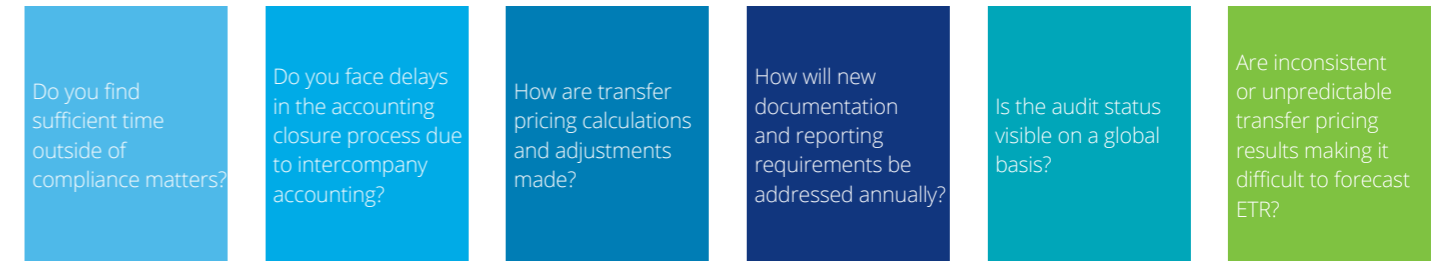
The audit trail provides insight into adjustments during creation and generation as well as over time when files are in place

Platform-based document generator

The TP Digital DoX is a platform-based document generator through which a more efficient and enhanced documentation process is made possible

Incorporating a connection between local and central responsibilities creates transparency, and provides access to Deloitte's expert knowledge and feedback

Step 3. Draft policies for the constant monitoring and addressing of various operational transfer pricing needs in the end-to-end process



People



- Who are involved in transfer pricing processes?
- Are the roles and responsibilities in transfer pricing processes clear and defined?
- What is the role of Central vs Local in the end-to-end transfer pricing life cycle?

Process



- Are processes documented /communicated / reviewed?
- Are key controls in place?
- How frequently are calculations / true-up's performed?
- Is year-end accounting closure delayed?

Technology



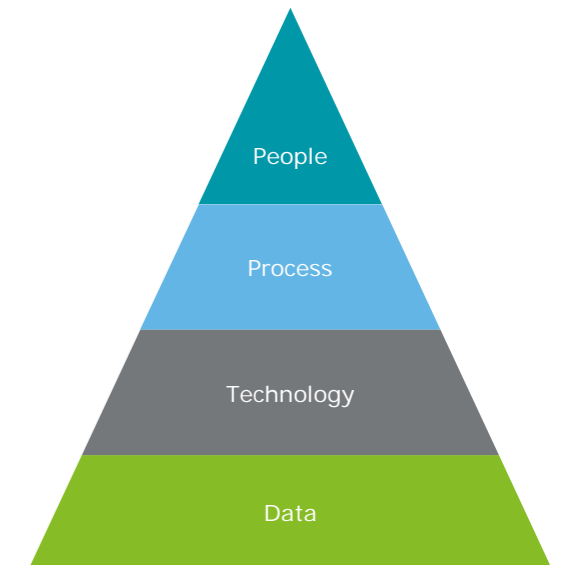
- What technology is used or is the process still mostly manual?
- Have technology options been considered?
- What level of automation is best for the business?

Data



- What typical data is needed?
- Which data is hard to extract / derive?
- What is the quality / level of detail required for data?

Key to continuous monitoring and operational transfer pricing improvements



N.B: Deloitte has been an implementation partner with other similar documentation technology providers, and assisted clients in strategy development and vendor selection.

Our team



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Vladimir has over 20 years of professional experience in Big Four consulting firms and over 10 years' experience with the tax authorities. He is a member of the Chamber of Certified Auditors of Kazakhstan and also has extensive experience in negotiations with the Ministry of Finance.



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Frank Bracht is an experienced Partner in the Dutch Transfer Pricing team with more than 25 years of experience advising a very broad range of clients in virtually all industries served by Deloitte. He has been a partner since 1993. Frank has successfully completed a variety of transfer pricing planning and documentation engagements and has frequently advised on arrangements with the tax authorities in the Netherlands



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Appendix 1

List of countries in the process of adopting OECD recommendations on three-tiered transfer pricing documentation as at 1 April 2016

Country	Requirements for the preparation and submission of three-tiered transfer pricing documentation
Australia	Legislation in force
Belgium	Proposed
UK	Legislation in force
Germany	Proposed
Netherlands	Legislation in force
Denmark	Legislation in force
India	Proposed
Spain	Legislation in force
Italy	Legislation in force
Canada	Proposed
China	Proposed
Mexico	Legislation in force
New Zealand	Requirement to prepare CbCR
Portugal	Legislation in force
South Korea	Proposed
Singapore	Proposed
USA	Proposed
Taiwan	Proposed
Turkey	Proposed
France	Legislation in force
Chile	Proposed
Switzerland	Proposed
Japan	Proposed



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