



**Deloitte TaxMax – the
41st series**
**Base Erosion Profit Shifting,
Transfer Pricing & Audits –
it's not the end**

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One World Hotel

Bandar Utama, Petaling Jaya



Agenda

- Lessons from a year of Form C TP disclosure
- BEPS update
- AEOI
- Country by Country Reporting

Polling Question 1

What is most challenging aspect of Form C TP disclosure?

- i. Getting the right data for related party transactions
- ii. Confidentiality issues
- iii. Understanding of the TP documentation requirement
- iv. Need to have TP documentation in place to “tick the box”

Answer:

- a. i and ii
- b. iv
- c. i,iii and iv
- d. all of the above

2016 budget proposal : Penalty for failure to furnish correct particulars

Regulatory reference	Provision
ITA 1967 Section 120 (1)(h) – Other offences	<p>“Any person who without reasonable excuse</p> <p>Fails to furnish the correct particulars as required by the Director General under paragraph 77(4)(b) or 77(3)(b);</p> <p>shall be guilty of an offence and shall, on conviction, be liable to:</p> <ul style="list-style-type: none">• a fine of not less than two hundred ringgit and not more than twenty thousand ringgit; or• to imprisonment for a term not exceeding six months; or• to both.

Polling Question 2

What transaction area bears most TP risk for your organization?

- a. “Typical” transactions:
 - i. Purchase and Sale of Goods
 - ii. Management Services
- b. More complex transactions
 - i. Loans & Guarantees
 - ii. Intellectual Property & Royalties

Answer:

- a. Typical transactions
- b. More complex transactions
- c. None of the above, am 100% relaxed



Polling

Question 3

It is going to change the landscape of International Tax and TP, with big implications for my companies tax management

What is your view on BEPS?

What is BEPS?

An OECD level issue that will have little to no impact on my business

OECD BEPS Actions

Action 1: Address the tax challenges of the digital economy			
“Gaps”	“Frictions”		“Transparency”
i. Establishing international coherence of corporate income taxation	ii. Restoring the full effects and benefits of international standards		iii. Ensuring transparency while promoting increased certainty and predictability
Action 2: Neutralise the effects of hybrid mismatch arrangements	Action 6: Prevent treaty abuse		Action 11: Establish methodologies to collect and analyze data on BEPS and the actions to address it
Action 3: Strengthen controlled foreign company (CFC) rules	Action 7: Prevent the artificial avoidance of PE status		Action 12: Require taxpayers to disclose their aggressive tax planning arrangements
Action 4: Limit base erosion via interest deductions and other financial payments	Assure that transfer pricing outcomes are in line with value creation	Action 8: Intangibles	Action 13: Re-examine transfer pricing documentation
Action 5: Counter harmful tax practices more effectively, taking into account transparency and substance		Action 9: Risk and capital	
		Action 10: Other high-risk transactions	Action 14: Make dispute resolution mechanisms more effective
Action 15: Develop a multilateral instrument			

UN questionnaire – Malaysia's response

1. How does base erosion and profit shifting affect your country?
2. If you are affected by base erosion and profit shifting, what are the most common practices or structures used in your country or region, and the responses to them?

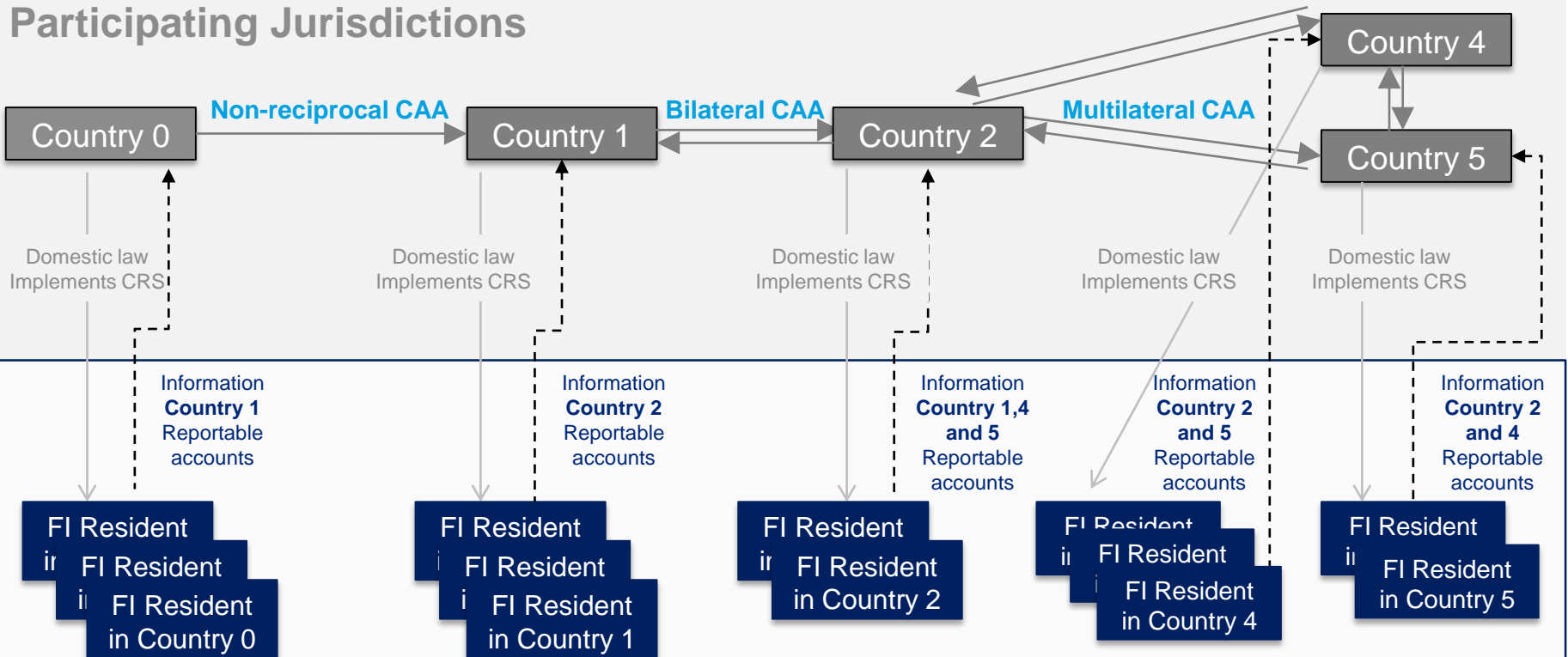
“ Commonly encountered profit shifting structure includes the following:

- a. **Excessive or unwarranted intra group payments such as interest on loans, management fees or technical services fees, or payment for intellectual properties.** ... Malaysia ...susceptible to the risks of BEPS via these kind of payments.....”
- b. Global Value Chain Model
“..... Such business models make it easier for MNCs to shift profits Malaysia has encountered cases of **supply chain restructuring where risks are contractually transferred out**”
- c. Mispricing of services rendered
 - Important functions such as **R&D performed here with only normal routine compensation**
 - **Marketing activities** performed in order to capture the local market was **not compensated**
 - **Low compensation** given higher functions performed, assets employed and risks”

AEOI: Example of global model

- The global model of AEOI is based upon countries signing either a bilateral (reciprocal or non-reciprocal) or a multilateral Model CAA.

Participating Jurisdictions



NOTE: Due diligence procedures may cover all non-residents or residents of jurisdictions in which there is an exchange of information instrument in place

Reporting financial institutions

AEOL: Implications

Individual with offshore accounts

- i) high value pre-existing accounts –balances @ 31 Dec 2016
- ii) new accounts from 1 January 2017

Questions

- i) What is the source of funds?
- ii) Unreported income sourced in Malaysia?
- iii) Request for preparation of capital statement
- iv) Request for supporting documents-bank statements, credit card statements, sale and purchase agreements, loan agreements etc.

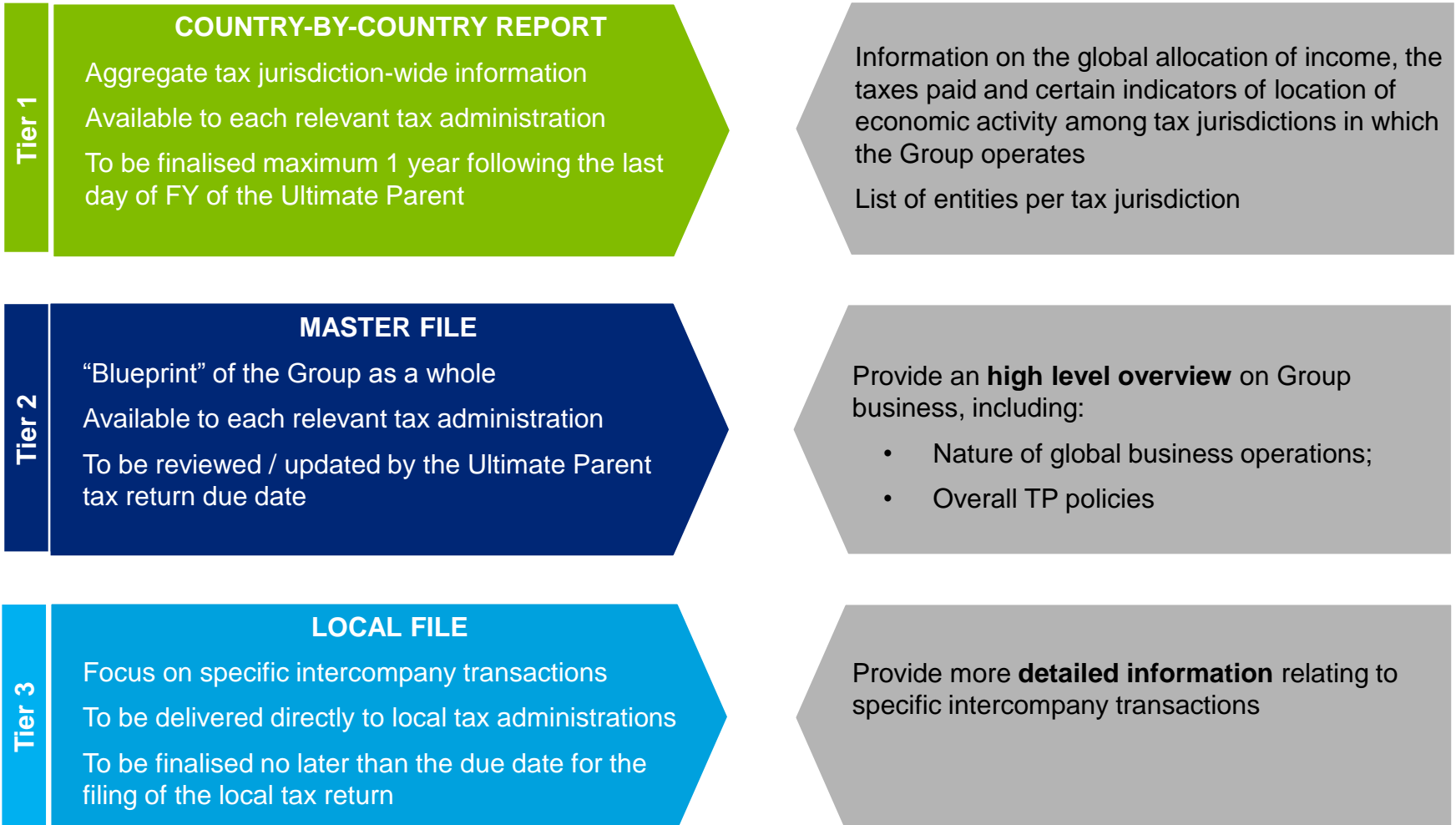
Polling

Question 4



Action 13: TP Documentation & CbC reporting

New guidelines adopt 3-tiered approach



Action 13: TP Documentation & CbC reporting

Country by Country reporting

Data aggregated on country-by-country basis (simple addition), together with a list of entities (and PE) by country of residence and indication of their activities

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group: Fiscal year concerned:										
Tax Jurisdiction	Revenues			Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 2. List of all Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:														
Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity(ies)											
			Research and Development	Holding or Managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant

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