



Platform for Collaboration on Tax

By email to: taxcollaborationplatform@worldbank.org

8 November 2019

PwC's Comments on the Draft Toolkit designed to help developing countries with the implementation of transfer pricing documentation requirements

PricewaterhouseCoopers International Limited, on behalf of the Network Member Firms of PwC (PwC), thanks the Platform for Collaboration on Tax (PCT) for the opportunity to provide comments on the draft toolkit designed to help developing countries with the implementation of transfer pricing documentation requirements.

We appreciate the initiative and efforts from the PCT in developing this practical toolkit aimed at assisting developing economies in approaching transfer pricing documentation in a practical way, while at the same time leading to increased tax certainty for taxpayers and tax administrations.

We address our remarks below in relation to the questions raised by the Platform. We also offer some comments on other questions to be considered and on how to support the successful implementation of effective transfer pricing documentation requirements by developing countries.

The main issues which should be considered, and which are further elaborated below, are:

- a stronger recommendation for the international consistency of documentation, in particular based on less divergent interpretation of the outcome of BEPS Action 13 - Transfer Pricing Documentation and Country-by-Country (CbC) Reporting, and
- a reduced emphasis on local filing of CbC reports, focusing instead on the adherence to legal instruments such as the Multilateral Convention on Administrative Assistance in Tax Matters and the signature of the Multilateral

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Competent Authority Agreement on the Exchange of CbC Reports or bilateral exchange agreements.

It would also reduce potential ambiguity if reference were removed to what is described in the document as “the EU’s current proposal for a directive on corporate tax transparency includes making CbC Reports publicly available”. That is transitory and still the subject of considerable debate.

Q1 Does this draft toolkit effectively address all the relevant considerations for the design of an effective transfer pricing documentation regulatory system?

The efficiency of producing and reviewing documentation would be enhanced if the philosophy behind CbC reporting and the master file were followed in considering the need for information locally. Where possible, this would mean a single filing ‘vetted’ and then shared as widely as is appropriate. A specific local filing would be secondary and should relate only to matters necessary to address local variations or legislative requirements. The toolkit could, in relation to CbC reporting, stress the importance of the conclusion of instruments (signing of the multilateral convention on mutual assistance in tax matters for example) and the necessary qualifying competent authority agreements that allow for the exchange of the report.

Even among developing countries we have experienced difficulties with the consistency of application of the recommendations of BEPS Action 13. This applies partly to CbC reporting, despite this being a minimum standard. It applies even more in relation to the master file and local file best practice/ harmonisation wording. It is questionable at present whether the level of documentation within a global group has actually been reduced post-BEPS. This toolkit could be used to help align these issues and this might be something to raise in the Executive Summary.

The draft toolkit recognises, in particular, the advantages of adopting a common approach to “transfer pricing studies”, but we would expect definitions and descriptions that position such a study as part of a local file rather than replacing it.

The draft toolkit refers to the PATA documentation requirements. We would suggest that they are not really a good example: they were simply a compilation (or rather piling up) of the documentation requirements of the different countries participating in the PATA documentation project.

The toolkit warns about the risk of undervaluation of transactions if comprehensive documentation requirements are not enforced. However, simplification might dictate that some transactions could be excluded from documentation requirements based upon their effective or proportional value. As this should concern small(er) transactions which should pose no or limited tax risk, the undervaluation should not become an issue.



Confidentiality of the information included in all transfer pricing documentation should always be considered critical rather than just “normal”. Perhaps that is merely a matter of more emphasis in wording. There may be exceptions where regulations require public disclosure or a taxpayer has chosen to make public disclosure, and at the moment that might be “abnormal”, but there should be a presumed assumption of confidentiality.

The draft toolkit refers to the fact that MNEs exceptionally contend that they do not have access to sufficient information to be able to submit complete transfer pricing return schedules or transfer pricing studies. It then suggests that these contentions should be resisted. That does not take account of the variety of requests we have seen and the organisation of some MNEs. It does not automatically follow that that entity has not been able to establish that it has made a correct tax return in accordance with the domestic rules. Nor are all MNEs organisations integrated in a limited number of ways, all with open access for local entities to information concerning wider operations.

Q2 In terms of enforcement of transfer pricing documentation, are particular approaches (e.g. penalties or compliance incentives) especially beneficial for limited capacity developing countries?

There needs to be a balanced approach to the burden of proof. Consistent and reasonable documentation requirements with appropriate penalties have been widely accepted as part of a taxpayer’s compliance standard. The draft toolkit suggests that if the burden is placed on the tax administration that is a disincentive for the taxpayer to produce information. However, where a taxpayer has produced appropriate information, tax administrations may be encouraged to pursue more aggressive assessments if the burden of [dis]proof lies with the taxpayer.

In our experience questionnaires are not “usually” informal: in many cases not responding in a timely manner may indeed lead to penalties, reversal of burden of proof, or other tax related sanctions. Often this may be appropriate and proportionate but guidance might be helpful.

The toolkit perhaps provides the opportunity to address in relation to CbC reporting who should impose penalties. Is it the tax administration of the ultimate parent entity, the tax administration of the surrogate parent entity, the local tax administration in case of local filing, or any local tax administration? Usually, if one were adhering to the standard, it would seem to us that only the tax administration of the parent or surrogate should levy a penalty as the other tax administration will receive through an exchange of information. It would further be unjust if a taxpayer were to get a penalty because another tax administration had not exchanged the CbC report that the MNE Group sent in on a timely basis with its tax administration.

There needs to be a clear distinction between transfer pricing related penalties and documentation related penalties. For example, the toolkit refers to a penalty arising as a result of a potential adjustment for which a transfer pricing study may be offered as mitigation – it would

seem that if the penalty were enforced in those circumstances it would be a transfer pricing related penalty (unless there were then separate contentions about the study having been wrong).

Q3 Are there other transfer pricing documentation requirements not covered in this toolkit that should be considered?

As noted above in relation to consistency, the variety in approaches to master file documentation that countries have adopted is actually contrary to the concept of a standardised documentation package (BEPS action 13) leading to issues for both taxpayers and tax authorities. The contents of the master file could then be more specifically agreed in the toolkit. The result in relation to the master file sometimes includes:

- tax payers needing to consider and prepare different documentation packages;
- tax administrations not receiving information considered relevant by a counterparty country because it is not requested in that country's interpretation of the master file requirements, and
- a lack of transparency in the 'blueprint' of the MNE.

We think there is room for local forms, provided these are specific, relevant and proportionate. In Belgium, the local form (which deviates substantially from the local file as described in BEPS Action 13) is an appropriate supplement to the tax return (which we think the draft toolkit intended to point out). However, the regulatory framework should prohibit sending general or phishing questionnaires, i.e. questionnaires should be targeted.

Q4 What additional considerations and/or tools can be included in this toolkit to assist developing countries to implement effective transfer pricing documentation?

The PCT might consider the potential benefit of including a recommendation to align domestic transfer pricing requirements to the greatest extent possible. Although documentation requirement will remain an issue of domestic law, such recommendations may lead to more uniformity in the requirements, leading to a lesser burden for MNEs and greater transparency for tax administrations.

Tax authority approaches to certain activities can result in deduction for the costs being denied, for example with management expenses both where they are incurred and where they are passed on to group members. One jurisdiction might consider them to be services while another treats them as shareholder costs. OECD recommendations on low value adding services may deal with these but documentation requirements could be used to reduce the chances of challenge or provide the local fisc with information to risk assess.

CbC reports arguably don't best serve the purpose of a risk assessment based approach to reviewing transfer pricing. A standard questionnaire or other request for information might



better enable tax authorities to identify those who have made a concerted effort to establish robust transfer pricing (even though it may not be state of the art). On the basis of that information, tax authorities might decide to take a deeper look and legislation might be framed to shift the burden of proof from the tax administration to the taxpayer in specific, clearly defined circumstances. It might incentivise taxpayers to address transfer pricing in all countries while simultaneously establishing the basis for enhanced cooperation in a further stage.

Additional guidance could also be given for countries with high inflation rates where pricing of any sort gives rise to additional difficulties.

Other comments

As noted above, there are examples in the draft toolkit where references to MNE behaviour, business models or tax administration practices are unsubstantiated. For example, this includes reference to regional/ global supply chains and management structures. Citations for studies that sets out these matters in particular countries or regionally or globally, as appropriate, would help readers who wanted to consider these matters further.

We look forward to the opportunity to engage further in the process of trying to reach greater consensus on the analysis that might be included in any final toolkit.

If you would like to discuss any element of this response in more detail please do not hesitate to contact me (or any of those listed below).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Stef van Weeghel'.

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