

AN ALERT FROM THE BDO TRANSFER PRICING PRACTICE

# BDO KNOWS: TRANSFER PRICING

## ► SUBJECT

## OECD COUNTRY-BY-COUNTRY REPORTING

On September 16, 2014, the Organization for Economic Cooperation and Development (OECD) released its first recommendations for preventing international tax avoidance by multinational enterprises (MNEs). One of the key topics was transfer pricing documentation requirements and country-by-country (CbC) reporting as addressed in the Guidance on Transfer Pricing Documentation and Country-by-Country Reporting (the Guidance).

## ► INTRODUCTION

On July 19, 2013, the OECD issued the Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan) to address the perceived flaws in international tax rules that were discussed in the OECD's February 2013 Base Erosion and Profit Shifting report. Action 13 of the BEPS Action Plan called for a reexamination of transfer pricing documentation to enhance transparency for tax administrations, while taking into consideration the compliance costs for businesses. The guidance will require MNEs to provide information on their global allocation of income, economic activity, and taxes paid among countries according to a common template. Today, this common template is referred to as CbC reporting.

## ► COUNTRY-BY-COUNTRY REPORTING

Subsequent to the BEPS Action Plan, on January 30, 2014, the OECD issued the Discussion Draft on Transfer Pricing Documentation and CbC Reporting (the Discussion Draft). The Discussion Draft proposed revisions to prior guidance regarding transfer pricing documentation standards and CbC reporting, and specified the following three objectives for requiring transfer pricing documentation:

1. To provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment;
2. To ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated enterprises and in reporting the income derived from such transactions in their tax returns; and
3. To provide tax administrations with the information that they require in order to conduct an appropriately thorough audit of the transfer pricing practices of entities subject to tax in their jurisdiction.



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In an attempt to further the work started in the previously issued BEPS Action Plan and Discussion Draft, the OECD, under the Guidance issued on September 16, 2014, describes a three-tiered approach to transfer pricing documentation, consisting of (i) a master file containing standardized information relevant for all MNE group members, (ii) a local file referring specifically to material transactions of the local taxpayer, and (iii) a CbC report containing certain information relating to the global allocation of the MNE's income and taxes paid, together with certain indicators of the location of economic activity within the MNE group.

The CbC report requires aggregate, jurisdiction-wide tax information including the global allocation of income, taxes paid, and indicators of the location of economic activity among tax jurisdictions in which the MNE operates. The OECD expects this report to be a useful tool for tax administrations in evaluating BEPS-related risks and is not intended to be a substitute for a detailed transfer pricing analysis, as the information contained in the CbC report does not constitute evidence as to whether transfer prices are appropriate or not.

The OECD will now attempt to work toward effective and consistent implementation of the Guidance. Specifically, over the next several months, Working Party No. 6 of the Committee on Fiscal Affairs will consider potential mechanisms for filing and distributing the master file and CbC report. Issues to be addressed include: confidentiality of information, availability of information and transparency for tax administrations, consistency in filed information, and the developing of phase-in rules, among other issues. Recognizing that issues may not become apparent until after the guidance has been implemented, the OECD will review the implementation no later than 2020.

## ► OBSERVATION

While CbC reporting may have a significant effect on MNEs that will be required to file, the OECD is not a governing body and the Guidance should not be viewed as a mandate, much less law, at this time. Until further direction is provided by the United States and foreign tax authorities, MNEs should be aware of and monitor the potentially changing landscape. There have been no changes to the transfer pricing documentation required of U.S. taxpayers. Taxpayers might consider proactively reviewing their internal systems to see what changes may be needed to comply with any changes to U.S. reporting requirements.

## ► HOW BDO CAN HELP

BDO has the knowledge and experience to advise clients in matters related to transfer pricing. Please contact BDO for your transfer pricing needs and for assistance in evaluating your company's readiness for compliance with CbC transfer pricing documentation requirements.

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