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WTS Transfer Pricing Newsletter

Editorial

Dear Reader,

Welcome to the first WTS Transfer Pricing Newsletter for 2016.

Whilst the OECD published reports on the fifteen action points of its "Base Erosion and Profit Shifting (BEPS)" project on 5 October 2015, including final papers on many of the action points, the adoption of the OECD's recommendations around the world is proving somewhat inconsistent. We have decided therefore to focus this newsletter on the status of the transfer pricing related BEPS material within the contributing countries.

The implementation process is clearly ongoing and we will continue to bring you updates through this newsletter as changes occur.

We trust that you will find the content valuable and illuminating.

Yours sincerely
WTS Global Transfer Pricing Team

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Australia

Update on the implementation of BEPS measures in Australia

The Australian Government has been at the forefront of implementing BEPS measures in Australia, both pre and post the release of the OECD's final BEPS recommendations in October 2015.

To date, the following measures have been implemented or are being evaluated:

- Tightening of Thin Capitalisation rules (OECD Action 4) – implemented
- Multinational Anti-Avoidance Law (OECD Action 7) – implemented
- New TP documentation and CbCR rules (OECD Action 13) – implemented
- Introduction of new GST rules to apply to the importation of digital services/products (OECD Action 1) – being considered
- Exchange of rulings (OECD Action 5) – implemented
- Prevention of treaty shopping to be adopted into re-negotiated/new treaties (OECD Action 6) – in progress, included in revised DTA

Other measures have already been largely addressed in existing rules, which is not surprising given Australia has one of the most comprehensive international tax regimes and was the second country to adopt transfer pricing documentation and compliance in the early 1990s.

In February 2016, a consultation paper was released by the Australian Treasury seeking industry feedback on its recommendation that changes be made to the Australian transfer pricing rules in Division 815 of the Income Tax Assessment Act 1997 (the Act) to bring the new OECD guidelines (in particular, Actions 8-10) (**the 2015 Guidelines**) within these rules. It is proposed that any changes would apply from 1 July 2016.

Whilst this of itself is not controversial, given the current rules already require compliance with the 2010 OECD guidelines, there are some concerns relating to the following proposed changes:

(a) Control of risk requirement

The OECD recommendations suggest that risk is only to be captured and valued where that risk is capable of being controlled (and such control is demonstrated) by the taxpayer. Two key issues with this approach are:

- increasing the importance of risk and decreasing the importance of the actual functions performed and assets employed goes against the commonly accepted method of undertaking the "functional analysis" and,
- the level of control required to satisfy these requirements is unclear (does a taxpayer look at who makes the decisions on a daily basis vs who signs-off on the decision? Which function would be considered to be exercising control?)

The control of risk requirement could have consequences for group financing entities that are typically established to secure liquidity and optimise funding and interest outcomes for group members. Under the 2015 Guidelines, such entities would be entitled to no more than a risk-free return, even though they arguably perform a significant function in providing and managing working capital and investment requirements for a region/business division, which in turn drives profit outcomes for those businesses.

(b) Ability to use ex-post outcomes to evaluate ex-ante pricing arrangements in hard to value intangibles

The OECD recommendations suggest that tax administrations may use hindsight when evaluating taxpayer transfer pricing positions, which would have been made at the time of the transaction, and the onus would be on the taxpayer to defend the assumptions relied upon. The mismatch of information being relied upon to evaluate the same transaction (in such cases, likely to be weighted in favour of the Commissioner of Taxation) could result in tax adjustments that do not reflect the actual and arm's length conditions that existed at the time of the transaction.

(c) Cost contribution arrangements (CCA)

Requiring contributions to a CCA to be measured at value rather than at cost (the current position) necessarily leads to the question: how is using an arbitrary measure of "value" more consistent with the arm's length principle than valuing contributions on a cost basis (which is measurable and transparent)?

In the example of CCAs for the joint development of intangible assets, depending on the stage of development, how will the ongoing future benefits to the participants be valued (prior to commercialisation)?

Amongst third parties, CCAs are generally based on costs (hence the term "cost" in the title) so the proposed change to "value" is a significant change in both concept and terminology.

Country-by-Country reporting (CbCR)

Australia has legislated CbCR, with multinational groups that meet the annual global income threshold of A$1 billion now being required to submit a CbCR for income years commencing on or after 1 January 2016. These will be exchanged with tax authorities of other jurisdictions, under the terms of the multilateral agreement signed by Australia (and 31 other countries) on 27 January 2016.

The CbCR follows the OECD format – i.e. relevant taxpayers must provide a CbCR, master file and local file annually to the ATO, within 12 months of their income tax year end. Currently, all taxpayers whose cross-border dealings with related parties meet or exceed the gross value $2 million threshold (including loans) must complete and lodge an International Dealings Schedule (IDS) with the corporate tax return. It remains to be seen whether any changes will be made to the IDS in light of the CbCR requirements.

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Brazil

OECD BEPS Action 13 Transfer Pricing

In comparison to other countries in the Americas, Brazil's level of engagement with the BEPS project is somewhere between that of the U.S. and Canada and that of Barbados and Curacao.

With regard to the BEPS measures, Brazil has implemented several new tax and accounting rules in the last few years in order to strengthen transparency and control over taxpayers doing business in Brazil. Several of these rules were enacted before the OECD began the BEPS project.

For example, Brazil has introduced:

- a new black list (adding twelve new jurisdictions to the former list of fifty-three jurisdictions);
- a grey list of preferred tax regimes (including countries not previously listed by any other country, such as the U.S., Spain, the Netherlands, Denmark, etc.);
- new controlled foreign company rules (to reach active/passive income from tax havens and non-tax havens);
- thin cap rules for related parties (2:1) and tax havens (0.3:1);
- repatriation rules (to force the disclosure of non-declared licit funds hidden abroad); and
- a whole new electronic tax and accounting system (through which the Brazilian IRS started to gain online access to tax and accounting information from all companies in Brazil).

In terms of transfer pricing, Brazil has introduced important amendments to its former rules, but has not imposed any obligations regarding new documentation requirements. Thus, Brazilian multinationals (i.e., groups with their ultimate parent company resident in Brazil) will not have to file Country-by-Country Reporting ("CbCR") nor a master file or local file in Brazil. However, due to CbCR requirements in other countries, Brazilian groups may need to nominate a Surrogate Parent Company and file CbCR in other jurisdictions. For this reason, information regarding the transfer pricing and other financial details of Brazilian companies (i.e., the amount of revenue/profits, income tax paid, number of employees, tangible and intangible assets, intercompany financial transactions, business descriptions, etc.) may be disclosed to the tax authorities in other countries.

Despite the recent amendments to the Brazilian transfer pricing rules, the rules still differ substantially from those of the rest of the world. For example, in Brazil there are different methods for import and export transactions, a broad concept of "related parties", non-application of the "correlative adjustment" or the "arm's length principle", and application of mathematical formulae and predetermined profit margins to calculate benchmark prices. Considerable changes to the Brazilian transfer pricing rules would be required in order to align with other countries' rules. However, for the time being, there have been no developments to suggest this alignment is forthcoming.

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China

When will the BEPS Action 13 transfer pricing requirements be implemented?

The State Administration of Taxation ("SAT") released a discussion draft entitled "Implementation Measures of Special Tax Adjustments" (known as "Circular 2") for public consultation on 17 September 2015. The draft requires multinational corporations ("MNCs") to submit the new three-tier documentation: a master file, a local file, and Country-by-Country Reports ("CbCR"), if the reporting threshold is met. The new Circular 2 was expected to become effective on 1 January 2016. However, the SAT has not released the final version of the circular yet. It seems that the SAT is unlikely to enforce the new transfer pricing requirements on MNCs' 2015 transfer pricing documentation filings. Otherwise, the notice period for MNCs to respond and meet the due date in June 2016 would be too short. Since the government of China has approved the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and has agreed to its implementation beginning 1 January 2017, it is more realistic for the SAT to implement the new requirements in relation to 2016 transfer pricing documentation filings in 2017 when the information exchange mechanism becomes available.

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What information other than the three-tier documentation will be required to be reported?
Besides the three-tier documentation, the draft Circular 2 requires companies engaging in intercompany services or cost sharing agreements, as well as those exceeding a thin capitalization threshold, to submit a so-called "special documentation" file which has no transaction threshold. The special documentation file shall include information such as the relevant agreements, descriptions of the transactions, values and payment terms, etc. Notably, for special documentation concerning intercompany services, the relevant agreements, service details (including scope of services, values, forms of payment, beneficial status, relevant costs, pricing policies, and supporting reasons), a comparison to unrelated party service transactions, and a description of group transfer pricing policies on intercompany services will be required to be provided by taxpayers to the tax authorities. The requirement for Chinese taxpayers engaging in related party service transactions to prepare special documentation filings demonstrates the SAT's focus on service transactions. This follows the trend of developments in the last couple of years.

How does the SAT approach the use of the BEPS transfer pricing guidance?
It is observed that most of the transfer pricing documentation requirements set out in the draft Circular 2 by the SAT are similar to the recommendations contained in BEPS Action 13 – Transfer Pricing Documentation, released by the OECD on 5 October 2015. However, there are extra requirements added by the SAT, such as the requirement to include a value chain analysis as part of the transfer pricing documentation. Taxpayers must provide an overview of the attribution of MNC global profits to the different jurisdictions within the value chain in its local file to the tax authority, including how profits are allocated across the value chain and the actual amounts of profits earned by each value chain participant. The SAT believes that it is important to understand the value creation of taxpayers from the group level to ensure that the profits are fairly allocated to the Chinese taxpayers. In fact, a value chain analysis has usually been required by the SAT in transfer pricing audit cases even prior to the new requirements.

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Hungary

BEPS – implementation in Hungary – the sound of silence

On 27 January 2016, 31 OECD countries signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports ("MCAA"). Some of the neighbouring countries in the Central and Eastern Europe ("CEE") region such as the Slovak Republic and Austria signed this agreement, while Hungary does not appear on the list. Hungary is "silent" in that the Hungarian Ministry of Economy has not published an official statement with respect to the BEPS Actions and Country-by-Country Reporting ("CbCR").

CbCR in Hungary
Indeed, transfer pricing is one of the major areas in tax through which the Hungarian tax authority would like to increase revenues. The official guidelines by the head of the Hungarian tax authority clearly state that transfer pricing inspections will continue to be a hot topic in Hungary in 2016.

However, there are certain reasons why this issue has not received greater attention:
- Hungary is typically an inbound country and CbCR will mainly relate to multinationals of a certain size.
- Foreign multinationals with subsidiaries in Hungary tend to be aware that the Hungarian transfer pricing system already includes certain recommendations now made by the

BEPS initiatives. Hungary introduced the Masterfile concept from 2010 (whereby a local file is also required at the same time). Additionally, related parties have to report to the Hungarian tax authority on a special form. Such reporting was also a step suggested in the BEPS package. Thus, it can be stated that Hungarian rules likely meet the documentation standards as expected and described in Action 13 of the BEPS plan.

- The Hungarian corporate income tax rate is low; 10 percent up to a tax base of HUF 500 million (approximately EUR 1.7 million), and 19 percent on profits in excess of the HUF 500 million tax base. The Hungarian Ministry of Economy's approach is to focus on indirect taxes instead of collecting direct taxes from companies.

Information means power

The main takeaway of the MCAA is that information will likely be exchanged between tax authorities to ensure that the BEPS project is a success. Such information is also valuable for the Hungarian tax authority and we therefore expect that Hungary will not miss this chance, although the country always maintains an opportunity to make transfer pricing reconciliations based on double tax treaties. On 8 March 2016, an agreement was reached by EU Member States for the automatic exchange of information through CbCR for multinational companies. Practically this means that Member States will also be required to share information with the other Member States concerned. At present, the Hungarian transfer pricing rules already require preparation of a full scope local file with some exemptions (transactions under HUF 50 million, approximately EUR 170,000, and low value-adding intra-group services), and the possibility of submitting a Masterfile. Moreover, the tax authority obliges taxpayers to report the names of the related parties within 15 days of making a group transaction (the value is not required). Otherwise, the inspectors can levy a penalty by default.

Related parties – a broadened definition

We also draw attention to the fact that the related party definition was broadened in 2015, which has effect on transfer pricing documentation to be prepared in 2016. Companies will now qualify as related parties if they have the same management teams and managing directors responsible for making the decisions.

The above shows that there will be an ongoing and long-lasting consideration by Hungary of the joint BEPS and transfer pricing initiatives; however, the Hungarian authorities do always wait for final OECD or EU anti-avoidance packages in order to implement changes.

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India

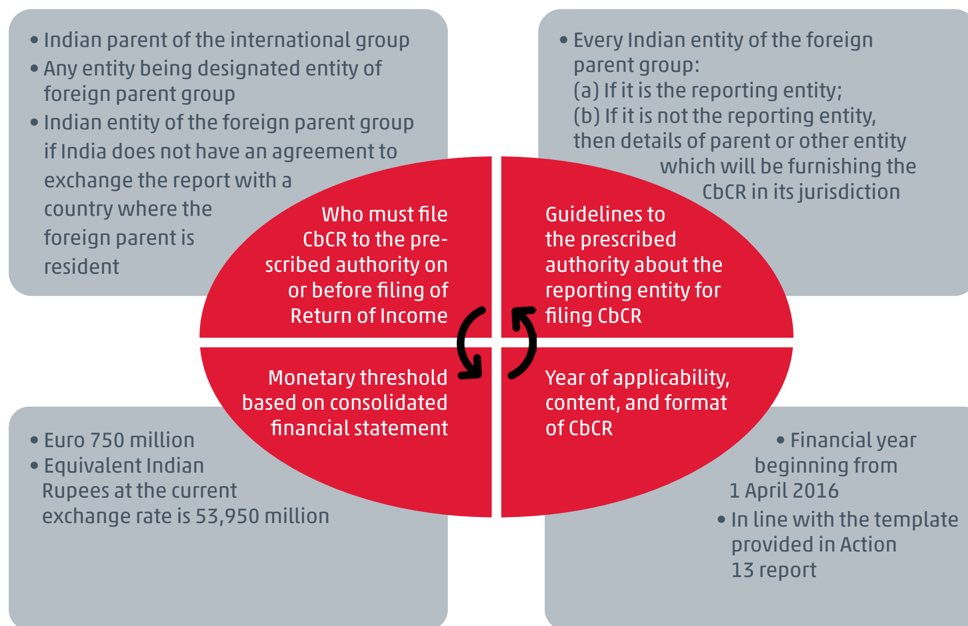
Transfer Pricing in BEPS context – India updates

India has been an active participant in the BEPS initiative of the OECD. Most of the countries that participated in the OECD BEPS initiative, including India, have agreed to adhere to the guidance provided under various Actions by way of necessary amendments to domestic legislation.

1. What is the planned time frame for implementing the BEPS Transfer Pricing Guidance and the new three-tier documentation requirements (CbCR, master file, and local reports) in your country?

The BEPS final report on Action 13 provides for a three-layered approach for transfer pricing documentation. As an implementation mechanism, the Finance Minister of India on 29 February 2016 presented the Union Budget and proposed to amend the Indian Income Tax

Act to include essential elements of Country-by-Country Reporting (CbCR) and master file guidance as contained in Action 13. The essential elements of CbCR included are:



The other aspects of Action 13 (such as information and documents mandated for the master file, etc.), will be detailed in the Income Tax Rules.

However, the Indian Union Budget has not proposed any changes in its legislation regarding transfer pricing guidance contained in Actions 8 to 10 of the BEPS final report.

2. Are there any reports, data or other information which will be required to be provided in addition to the three-tier documentation in your country?

As of now, the BEPS three-tier documentation is not fully implemented in India. As mentioned, the Indian Union budget proposes detailing the information and documents needed for the master file and other aspects of BEPS by way of Income Tax Rules which will be determined at a later date. As per the Memorandum to the Union budget, such information and documents will be in line with the Action 13 report.

However, prescribed authority, by issuing a notice in writing, may call for information/documentation regarding CbCR by granting a 30 day period to comply with the said notice, with a possible extension of another 30 days.

3. Is there any practical experience on how the tax authorities in your country are approaching the use of the BEPS Transfer Pricing Guidance and/or the new documentation requirements?

The new documentation requirements (i.e., CbCR, etc.) are applicable and effective from financial year 2016-17 (i.e., 1 April 2016 to 31 March 2017). Accordingly, it is too early to comment on how the Indian tax authorities will approach using the new BEPS transfer pricing guidance.

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Italy

The implementation of BEPS transfer pricing guidance in Italy

Italian Finance Law for 2016 has introduced Country-by-Country Reporting ("CbCR") with effect from financial year 2016 (documentation due on 30 September 2017). A remarkable feature of the Italian legislation is the extension of the CbCR obligation, upon conditions, to Italian subsidiaries of foreign multinationals. The new rules add on to those adopted in 2010 and imply a high degree of disclosure vis-à-vis the Italian Revenue Agency for the non-application of penalties in the event of a pricing adjustment.

Article 1, Paragraphs 145 and 146 of Law 208/2015 (Finance Act 2016) have introduced in Italy the obligation for multinational enterprises to prepare and file on a yearly basis a country-by-country report. The new legislation makes reference to the OECD Guidelines on the matter, thus evoking the Guidance on Transfer Pricing Documentation and CbCR resulting from Action 13 of the OECD/G20 initiative on Base Erosion and Profit Shifting ("BEPS").

The precise procedure, terms, and minimum content will be established by a Decree to be enacted by the Minister of Economy and Finance (which will also indicate which items of information are to be included in the report), but some key features of the new rules are provided by the Finance Act 2016 itself.

The reporting obligation concerns Italian resident companies that are not controlled by any other entity (other than individual persons), are required to prepare consolidated financial statements and report a consolidated turnover, achieved in the prior financial year, of at least EUR 750 million. Failure to comply with the reporting obligation would lead to penalties ranging from EUR 10,000 to EUR 50,000.

The same obligations apply to Italian resident subsidiaries, where the parent company (i.e., the direct or indirect shareholder required to prepare the consolidated financial statements) is resident of a state that has not introduced the CbCR obligation, does not have in place an agreement with Italy on the exchange of information, or does not comply with the obligation to exchange CbCR. The approach of the Italian legislature makes it necessary for Italian subsidiaries of foreign multinationals to collect information about the rules in force in the state of residence of the respective consolidating entity.

Italian resident companies would be expected to file their first country-by-country reports with their income tax returns for financial year 2016 (i.e., filed by 30 September 2017). Information to be reported includes revenues and gross profits, taxes paid and accrued, and "other indicators of economic activity", most likely those recommended by the OECD in the Guidance on Transfer Pricing Documentation and CbCR.

The new rules will add-on to those resulting from the Decree of the Director of the Revenue Agency, adopted on 29 September 2010, which first introduced transfer pricing documentation requirements in Italy. According to the aforementioned 2010 Decree, and largely consistent with the EU Code of conduct on transfer pricing documentation, information should be contained in a Masterfile and a Country Specific Documentation.

Such documentation, if delivered during an audit process or any other fiscal activity, allows the taxpayer to access the penalty exemption regime provided for by Article 1, paragraph 2-ter of Legislative Decree No. 471 of 18 December 1997. The Decree to be enacted by the Minister of Economy and Finance will remove any double transfer pricing documentation requirements.

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As of today, and at least until the adoption of the foreseen implementation decree, there is no practical experience on how the Italian tax authorities are approaching the use of the BEPS transfer pricing guidance and the new documentation requirements. However, there is much discussion in the professional and academic community on these matters and guidance is expected soon.

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The Netherlands

Dutch implementation of BEPS Action point 13: TP Documentation and Country-by-Country Reporting

In our previous TP Newsletter, we informed you that the Dutch government had announced the implementation of new standardised transfer pricing documentation obligations as from 1 January 2016, basically in line with action point 13 of the OECD Project 'Base Erosion and Profit Shifting' (BEPS-project). Now we can inform you that the expected legislation has been implemented as announced and is valid as per 1 January 2016.

The new legislation includes the obligation to have in place a country-by-country report ("CbCR") (for multinationals with a consolidated revenue of EUR 750 million or more), and the transfer pricing master-file and local-file (for multinationals with a consolidated revenue of EUR 50 million or more). The CbCR needs to be available within 12 months after the financial year. The transfer pricing master-file and local-file need to be available when the corporate income tax return is filed.

If there is no automatic exchange process in place for the CbCR, i.e. with the country of the ultimate parent company of the Dutch tax payer, it is the Dutch tax payer that needs to provide that reporting.

Given the mature transfer pricing practice in the Netherlands and the "horizontal monitoring" approach of the Dutch tax authorities, we do not expect large changes in the approach of the Dutch Tax Authorities due to the new legislation. Horizontal monitoring is a form of working between the tax authorities and tax payer, based on mutual trust, understanding and transparency. Given the obligation for the master-file and local-country file and the EUR 50 million threshold, we do expect that several multinationals will need to upgrade their current transfer pricing documentation.

We note that not complying with the new legislation may lead to criminal penalties of up to EUR 20,250 and/or imprisonment of a maximum of 4 years. However, it is expected that the criminal prosecution will not always take place and will focus on the most severe cases.

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Norway

Well prepared to comply with BEPS recommendations

The Norwegian Tax Administration ("NTA") has been very loyal to OECD, UN and even EU/EEA recommendations, in particular when the tax base in Norway would benefit from such regulations.

Due to heavy oil / gas investments, Norway has been quite aggressive with regard to permanent establishments for both onshore and offshore coast activities. This tax practice of rather heavy scrutiny of taxpayers has over time become well-known to inbound investors.

The recent court case against IKEA has again led to headlines around the world. While this was not a transfer pricing case per se, it nevertheless illustrated the strength of "substance over form".

→ **What is the planned time frame for implementing the BEPS Transfer Pricing Guidance and the new three-tier documentation requirements (CbCR, master file and local reports) in your country?**

Norway has approved the change of tax treaties by entering into the protocol with 30 other countries in January. Hence, the intention is to comply with the requirements as soon as practically possible. The local legislation is more aligned with BEPS than in many jurisdictions. Norway already has one of the widest Controlled Foreign Company regulations in place, and the anti-deduction rule limiting interest deductions if the creditor is not taxed accordingly was introduced last year. Another example is the thin capitalisation rule introduced in 2014, which limits intra-group interest deductions to 30% of EBITDA.

The requirement to prepare master file and local file reports was introduced in 2011 subsequent to the EU Code of Conduct, and the CbCR requirements will most likely become a part of the local regulations by the end of this year.

→ **Are there any reports, data or other information which will be required to be provided in addition to the three-tier documentation in your country?**

Form RF 1123 needs to be submitted by every taxpayer reaching a certain income threshold, or if the taxpayer has intra-group transactions with entities based in low tax jurisdictions. This tick-off form requires taxpayers to state whether or not certain transactions are relevant, and disclose jurisdictions and volumes of relevant transactions.

→ **Is there any practical experience on how the tax authorities in your country are approaching the use of the BEPS transfer pricing guidance and / or the new documentation requirements?**

As stated above, in press releases the NTA has pointed out to the urgency of cross-country involvement and loyal behaviour in order to ensure that the BEPS programme becomes a real opportunity to make sure that value created locally is taxed and a proper share of tax is levied by the jurisdiction where value is created.

We are convinced that the NTA will lead on in this programme and become one of OECD's most observant participants.

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Russia

Russian Federation

What is the planned time frame for implementing the BEPS transfer pricing guidance and the new three-tier documentation requirements (CbCR, master file and local reports) in your country?

The structure of the transfer pricing documentation in Russia is regulated by the Russian Federal Tax Code, which, according to "The main directions of Tax Policy of Russian Federation for 2016 – 2018", will be amended to fully implement the recommendations of

the OECD BEPS project within the next three years. Amongst the implemented BEPS Actions will be Action 13, requiring submission of three tier documentation (consisting of the CbC Report, master file and local File) by multinational groups, whose consolidated revenue exceeds a certain threshold.

At present, transfer pricing documentation submitted by a Russian company must be supported by economic analysis and include a description of the taxpayer's group, description of the industry and markets in which the group operates, information about the local business activities and description of intercompany transactions.

Are there any reports, data or other information which will be required to be provided in addition to the three-tier documentation in your country?
In addition to the three-tier documentation, taxpayers must also submit a special Notification Form by 20 May following the end of the reporting year. The Notification Form should contain detailed information about intercompany transactions (i.e. a brief description of each transaction, parties to the transactions and their tax residence, as well as monetary value of each transaction and quantitative indicators).

Is there any practical experience on how the tax authorities in your country are approaching the use of the BEPS transfer pricing guidance and / or the new documentation requirements?
The transfer pricing rules in Russia were last updated in 2012 and further changes are expected in the next three years. The changes are intended to bring transfer pricing legislation in line with the OECD BEPS recommendations. However, during the past year, Russian tax authorities have already been seen applying these new recommendations, especially in questions concerning transfer pricing methods, comparability analysis and ownership of intangibles. We have also noticed an increased attention of the tax authorities to transactions involving intangibles, intra-group services and intercompany loans. In addition, transfer pricing litigation in Russia has also increased.

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Singapore

Singapore's evolving transfer pricing regime

What is the planned time frame for implementing the BEPS Transfer Pricing Guidance and the new 3 tier documentation requirements (CBCR, Masterfile & Local reports) in your country?
The Inland Revenue Authority of Singapore ("IRAS") released comprehensive transfer pricing guidance ("the Singapore TP Guidelines") through an e-tax Guide first published on 6 January 2015 and subsequently updated on 4 January 2016. Practically these are applicable to taxpayers from FY 2014 onwards, although the IRAS may challenge a taxpayer's TP policies for any open years. The Singapore TP Guidelines are broadly consistent with OECD principles and propose a two-tiered approach to TP documentation i.e., at the levels of both the group and local entity, in line with recommendations contained in BEPS Action 13. Currently, no CbCR requirement has been specified.

Group level information:

- General group information including management/organisational structure
- Description of group's business relevant to the Singapore taxpayer – global business, nature of operations, supply chain, profit drivers, business models and strategies, business relationships (service provided, goods sold, development, ownership or exploitation of intangibles, financial arrangements) among related parties
- Group's financial position

Entity level information:

- General information on Singapore taxpayer including management/organisational structure
- Description of Singapore taxpayer's business - business operations, related party transactions, functional analysis and economic analysis, contracts/agreements showing terms of transactions, business models and strategies including any changes compared to previous years
- TP analysis/benchmarking - choice of TP methods and reasons for the same, TP benchmarking, segmented financial accounts

We note that the IRAS provides for certain exemptions from TP documentation in situations involving domestic related party transactions if there is no tax delta, routine low-value added services and transactions not exceeding specified thresholds (for sale/purchase of goods and loans to/from related parties, this is set at SG$ 15 million per year and for other transactions including payments/receipts relating to services, rental, royalty etc. at SG$ 1 million per year).

Are there any reports, data or other information which will be required to be provided in addition to the 3 tier documentation in your country?

As mentioned earlier, Singapore's TP documentation requirements are covered as part of the group file and local file requirements specified above. The IRAS may request the translation of any TP documentation not written in English.

Is there any practical experience on how the tax authorities in your country are approaching the use of the BEPS Transfer Pricing Guidance and / or the new documentation requirements?

Singapore, though not an OECD member, has been closely monitoring BEPS developments and official statements by representatives of the Singapore Ministry of Finance ("MoF") have stated support for the BEPS initiatives.

The Singapore TP Guidelines, in addition to incorporating the masterfile/local file recommendations as per BEPS Action 13, also incorporate guidance from Action plans 8 and 10 - for example they contain a specific focus on intra-group loans and services (including cost contribution arrangements) and provide for a 5% safe harbor approach to certain low-value added intra-group services.

In recent years, our experience has been that the IRAS has tightened its scrutiny of related party transactions and is increasingly requesting for documentation and support for the arm's length pricing of transactions.

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Slovenia

Expected changes in the field of transfer pricing documentation

Slovenia officially supports the OECD BEPS Project and acknowledges its professional and political importance. In this respect, the first changes in Slovene legislation are likely to be in relation to the BEPS Action 13: Transfer Pricing Documentation. Based on the BEPS Action 13 the new OECD Guidelines [ ] introduce the three-tiered approach to documentation of transfer pricing. The new concept of transfer pricing documentation shall contain a master file, a local file and a Country-by-Country Report ("CbCR").

Slovene transfer pricing requirements

Slovene transfer pricing documentation requirements are governed by the Tax Procedure Act. In general, Slovene transfer pricing requirements follow the Code of Conduct on transfer pricing documentation for associated enterprises in the European Union.

In accordance with the currently valid provisions of the Tax Procedure Act the documents on the transfer price formation must consist of general documentation (master file), which may be uniform for a group of related parties, and country-specific documentation (country specific file).

The master file has to include a description of the taxpayer, the organisational structure on the worldwide level and type of relationship (i.e. capital, contractual, personal), a description of its system of transfer price formation, a general description of its business and business strategies, a description of general economic and other factors as well as a description of the competitive environment.

Country-specific documentation has to include data regarding the transactions with related entities (e.g. description, sort, value, deadlines and conditions), data on performance of the transaction, comparability analysis (on characteristics of assets and services, performed functional analysis, contractual conditions, economic and other circumstances that effect the transaction, business strategies and other impacts, important for the transaction performance), data on method or methods used for the determination of transfer prices and their determination according to comparable market prices and other documentation which proves that the transfer prices are in line with comparable market prices.

With regard to the country-specific documentation in Slovenia, it is worth noting that transfer pricing documentation is a starting point and not an end point. Namely, it should include enough data to allow the Slovene Financial Authority to make a further risk assessment for case selection purposes or to allow the tax inspector at the beginning of a tax audit to ask relevant and precise questions regarding the taxpayer's transfer pricing and assess transfer pricing risks of the inter-company transactions. The requirements set out above for the country-specific documentation may therefore be regarded as a "minimum/basic set of information", always allowing the Slovene Financial Authority to request more information and documentation, by specific request or during a tax audit, than already contained in the transfer pricing documentation.

New reporting requirements

Slovenia is one of the 31 countries signatory to the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of CBC Reports on transfer pricing, which is an important milestone in the implementation of the OECD BEPS Project. The MCAA will enable the implementation of new transfer pricing reporting standards developed under Action 13

of the BEPS Action Plan. In accordance with the MCAA the first exchanges will start in 2017-2018 with respect to 2016 information.

Additionally, the Slovene government in February 2016 issued a concurring draft opinion on the Proposal of Council Directive 2011/16/EU on administrative cooperation in the field of taxation, which proposes the automatic exchange of information within the EU which includes the CBC reports. In accordance with the Proposal the first exchange of information is foreseen in the year 2018 on data for the financial year 2016.

However, the OECD Guidelines are "soft law" only and are not a binding and directly applicable international tax code for transfer pricing pur¬poses. Therefore, implementation of the MCAA for the automatic exchange of CBC reports into domestic legislation is a necessary prerequisite for its execution. However, the OECD Guidelines are an important source of information in transfer pricing issues for Slovene taxpayers and also a point of reference in procedures before Slovene financial authorities and courts.

Based on unofficial information received from a source at the Slovene Ministry of Finance, the Ministry is already drafting new legislation that will be primarily aligned with the EU requirements but also with OECD Guidelines. The amendments of the law are expected by the end of 2016. It is expected that Slovenia will supplement domestic legislation such that multinational enterprises will be obligated to follow the existing legal requirements in relation to the transfer pricing documentation (i.e. prepare master file and country-specific file) and only in the case that the certain conditions are met would it be obliged to comply with CbCR requirements.

It is also expected that international groups of companies will be liable to report from financial year 2016 onwards. This requirement will only apply to groups with more than 750 million EUR of consolidated revenue. For Slovenia this would in practice mean that less than 10 international groups of companies would meet the threshold (i.e. would be required to prepare CbCRs).

Slovenia, as an OECD member, did not have any observations on the new transfer pricing documentation concept, thus in practice it is not very likely that Slovene legal requirements will deviate from the accepted new standard. However, at the moment some uncertainty remains in relation to the precise legal provisions (or any legal documents) implementing the new concept of transfer pricing documentation together with the question as to how certain terminology will be interpreted in practice.

Timeframe

Due to the fact that Slovenia is supposed to perform the first exchange of information for 2016 data in the year 2017, the necessary legislative changes are expected to be adopted from the end of 2016.

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1) Chapter V of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations

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Ukraine

BEPS in Ukraine: not yet but closer

At the end of 2015, the Ministry of Finance of Ukraine announced its program for Tax Reform in Ukraine (Draft Law No.3630 of 11.12.2015). The Tax Reform, as suggested by the Ministry, included changes to the transfer pricing rules. The main changes are devoted to the implementation of the BEPS action plan into Ukrainian law.

In particular, the proposed amendments provide for the requirement of taxpayers to submit:

- → Global TP Documentation (master file);
- → Country-by-Country Report ("CbCR").

In accordance with the draft law, a master file needs to be submitted by the taxpayer within 30 working days upon special request of the central fiscal authority, provided that the fiscal authority have already received the transfer pricing Documentation on separate controlled transactions which are "under consideration" in that particular case. The master file is required to contain information on the organisational structure of the group, a description of its activity and basic transactions, a description of goods/services, market conditions, functional analysis at the global level, detailed information on intangible assets of the group, information on financial transactions of the group and others.

A CbCR will be required from the parent company of the group (or other member of the group duly authorised to submit the report) if the annual income of the group for the financial year is equal or exceeds the equivalent of EUR 750 million. The CbCR will need to be submitted within 12 months following the end of the reporting period. The report will contain separate blocks of financial and other information regarding every country where companies of the group have been registered.

The Draft Law No.3630 of 11.12.2015 has not been voted upon yet and so is still under discussion. However it is expected that the Ukraine will introduce these requirements in the future.

For the sake of completeness, we note that the current version of the Tax Code already contains one rule which reflects the BEPS initiatives. There is a special rule for the import/export of commodities for which an exchange quotation might be available, in which case, the exchange quotations should be used as a comparative uncontrolled price. The taxpayer may opt for another method. However, in this case, the taxpayer is required to provide the fiscal service with extensive information on all related parties that participate in the supply chain up to the first unrelated party. In particular the taxpayer has to disclose the profit of all such related parties derived from the transactions and reported in their respective jurisdictions.

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United Kingdom

Evolving transfer pricing landscape in the United Kingdom

The UK government has been at the forefront of combating tax avoidance and implementing the Organisation of Economic Co-operation and Development's ("OECD's") Base Erosion and Profit Shifting ("BEPS") initiatives into domestic law. The Finance Act 2015 set this trend by the introduction of the Diverted Profits Tax legislation, while The Taxes (Base Erosion and

Profit Shifting) (Country-by-Country Reporting) Regulations 2016 continued the trend by introducing the Country-by-Country Reporting ("CBCR") requirements into the UK legislation. Budget 2016 confirmed the pre-announced plans to combat hybrids and to introduce an interest cap.

The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016

On 26 February 2016, the final CBCR regulations were laid before the Parliament and came into force on 18 March 2016. The legislation applies to fiscal years beginning on or after 1 January 2016.

The new regulations give effect to the CBCR guidance set out by the OECD in the "Transfer Pricing Documentation and Country-by-Country Reporting, Action 13: 2015 Final Report" published on 5 October 2015. The guidance forms part of the wider BEPS Action Plan adopted by the OECD and G20 countries.

The regulations concern a new form of transfer pricing documentation which contains high-level information of profits earned, taxes paid and economic activity in each jurisdiction where a multinational entity ("MNE") does business. Her Majesty's Revenue and Customs ("HMRC") expect that the obligation to submit annual CBCR will affect 300 UK-headed MNEs with consolidated revenues of at least €750 million. In the draft regulations, the revenue threshold was expressed in sterling (£568 million), so MNEs with revenues close to the threshold will need to pay attention to exchange rate fluctuations.

The legislation also envisages that non-UK parented MNEs will file Country-y-Country Reports ("CBC reports") in the jurisdictions of their parent entities, with HMRC being able to obtain the reports from the lead tax authority through the exchange of information arrangement. In the event of the non-UK parent not being required to file a CBC report in the jurisdiction where it is tax resident, or the lead tax authority not exchanging information with HMRC, or the exchange of information arrangement not operating effectively, the UK subsidiary will be obliged to submit a UK CBC report, unless a non-UK entity of the group has filed a CBC report under the local CBCR regulations and this has been shared with HMRC, or the UK subsidiary voluntarily files the full CBC report. The concept of the "UK CBC report" is currently unique to the UK. Unlike the Action 13 CBC report, it only needs to include information in relation to the UK entity and its subsidiaries, as opposed to all of the entities in the MNE.

The exact filing method, presentation format and the content of CBC report and UK CBC report are yet to be confirmed by HMRC. Penalties up to a maximum of £3,000 will apply for failure to provide a report or provision of inaccurate information within the report.

Interest deductibility

In line with the OECD's recommendations under Action 4 of the BEPS project, the Government has capped the amount of relief for net interest expense. The new rules will take effect from 1 April 2017.

Specifically, a fixed ratio rule will be introduced limiting tax deductions for net interest expense to 30% of a group's UK EBITDA. Additionally, a group ratio rule based on the net interest to EBITDA ratio for the worldwide group will also be implemented to recognise that

some groups have high external gearing "for genuine commercial purposes." A de minimis group threshold limit of £2 million net UK interest expense will also be implemented, below which restrictions would not apply.

The government also intends to introduce rules to ensure that the restriction does not impede the provision of private finance for certain public infrastructure in the UK where there are no material risks of BEPS. It will also introduce rules to address volatility in earnings and interest.

In light of the restrictions on interest deductibility outlined above, there will no longer be a need for a separate worldwide debt cap and the existing legislation will be repealed, to be replaced with similar measures within the new regime.

Further consultation will be conducted on the detailed design of all aspects of the rules in due course. The government will also continue engaging with the OECD on the design of rules to prevent BEPS involving interest in the banking and insurance sectors.

Adoption of new OECD transfer pricing guidelines

As announced in the Budget 2016, legislation will be introduced in the Finance Bill 2016 to update the definition of "transfer pricing guidelines" contained in the current legislation. This measure will maintain the link between the UK's transfer pricing legislation and the internationally agreed consensus on the practical application of transfer pricing principles and incorporate the revisions agreed to the OECD Guidelines by the joint OECD/G20 BEPS project. The measure will have effect for accounting periods beginning on or after 1 April 2016.

Interestingly, it should be noted that the OECD Final Report on Actions 8-10: "Aligning Transfer Pricing Outcomes with Value Creation", is yet to be approved by the OECD Committee on Fiscal Affairs meaning that the proposals set out in the BEPS final report have not yet become part of the OECD Transfer Pricing Guidelines.

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