Transfer Pricing Forum

Transfer Pricing for the International Practitioner

Turning "Corporate Tax Transparency" into a "Big Brother" Regime

Part I: The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

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THE TRANSFER PRICING FORUM
is designed to present a comparative study of typical transfer pricing issues by Country Panelists who are distinguished transfer pricing practitioners in major and emerging industrial countries. Their discussions focus on practical questions posed by guidance, case law and practice in their respective jurisdiction, with practical recommendations whenever appropriate.

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3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

Part II: In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

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Argentina

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Rosso Alba, Francia & Asociados

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1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

The Argentine regulations do not require filing a master file. Since the year 2000, a very detailed local file was required to be submitted within eight months after the end of the relevant fiscal year, in addition to summarized sworn statements every six months.

The main conceptual deviation from OECD standards is that, when it selects its best method, the taxpayer should always treat the Argentine resident affiliate as the tested party. Therefore, it may well be the case that, in the context of the worldwide supply chain, the functionally simplest entity will be located abroad, while the Argentine resident (i.e, the tested entity) will be a complex entity. For example, this may happen if the Argentine resident entity is a complex manufacturer, while the foreign affiliate that purchases the goods manufactured by the Argentine entity is simply a reseller. Even in such a case, the Argentine standard requires the selection of a best method that is applicable to a local resident (in this case a manufacturer).

On the other hand, Section 12 of Argentine Revenue Service (ARS) General Resolution 1122/01 indicates that, when applying any of the methods included in the regulations, if two or more comparable transactions are identified, the interquartile range should be applied to those transactions.. Under GR 1122/01, it is irrelevant if the analysis is internal (i.e., transactions entered into by the taxpayer with related parties are compared to transactions entered into by the same taxpayer with independent parties) or external (i.e., the comparison is with transactions entered into by third independent parties): the interquartile range should be applied whenever two or more comparable transactions arise in the analysis. The range of figures that are acceptable for establishing whether the conditions of a controlled transaction are arḿs length is less restrictive in the OECD guidelines. In the case of the Argentine methodology, an adjustment could arise even if the related-party prices were the same as the prices established with one or more independent parties.

The Argentine regulations differ from the OECD methods in cases of transactions involving products that are traded on transparent markets, such as commodities. For this type of analysis, the Argentine legislation provides a special methodology, referred to as the "sixth method" of transfer pricing. For a detailed analysis of such methodology and its inconsistencies with the arḿs length standard, see our work submitted to the OECD.[1]

This peculiar method has to be used instead of the CUP method in situations where the goods traded are commodities that are commercialized internationally through an unsubstantiated intermediary. The "sixth method" compares prices, but requires to mandatorily price commodity exports at the higher of two prices: the one agreed by the parties on the export contract date or the listed value of the commodities, on the shipment date; which clearly diverge from the CUP method.

In addition to a mandatory local file, submitted every year in pdf format through Form 4501 signed by the company and including certification from an independent accountant, multinationals also have to file their financial statements. The local file has to be submitted in compliance with the following basic requirements, some of which are different from the requirements under the OECD standards:

- A detailed analysis of functions and risks.
- A full description of the worldwide affiliated group, including details of related parties and parties that are "deemed related" under the law because they are located in jurisdictions considered non-cooperative in the international exchange of tax information by the ARS. This broad concept of

affiliation, including the "deemed related" concept, is not be found in OECD/BEPS standards.

- The details of analyzed transactions, preceded by a framework description of the economic context in which such transactions were performed.
- The identity of related counterparties located abroad.
- An explanation of how the "best method" was chosen in each case, together with the grounds for rejecting the remaining transfer pricing method.
- Application of the chosen method, with the corresponding comparability analysis.
- Supporting documentation; the financial statements of comparable companies used in the analysis, and identification of the sources of information for the comparables. A matrix showing the grounds for rejecting or selecting comparable companies, the data contained in their profit and loss statements, and a description of the activities of the comparable companies.
- Detailed information regarding the comparability adjustments performed.
- The performance of the interquartile range and an indication of the median value.
- Conclusions.

In addition, Argentine transfer pricing standards require taxpayers to provide substantial information concerning *unrelated party transactions*. This is also a deviation from OECD/BEPS Action 13 standards. To summarize, the additional burden takes the form of a requirement to provide two different statutory reports. First, local taxpayers must provide a biannual report -form 741- when they import or export commodities from/to unrelated third parties. Secondly, every taxpayer that imports or exports goods, other than commodities, from/to unrelated parties, must file information report number 867 annually, where such cross-border transactions exceed a minimum threshold of 750 million euros. The information contained in Report 867 must provide details regarding traded prices, profit margins earned by local taxpayers, the destination of products, and methodologies for collection of payment.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

As mentioned above, the detailed local file, including information related to the worldwide affiliated group, must be filed with the ARS each year. This is in addition to the financial statements of the tested party. The master file is not formally required yet, but Argentine transfer pricing regulations impose a substantial burden in the form of a requirement that resident companies that are part of a multinational group must maintain documentation to support and substantiate transactions performed with related parties abroad.

Additionally, ARS General Resolution 3572 establishes a "register of related parties," where Argentine resident companies related to foreign and local companies enter detailed information about the counterparties and controlled transactions entered into with local related parties.

Local regulations also require detailed information of controlled transactions to be provided in three Tax Returns (Forms 742, 743 and 969).

Finally, ARS General Resolution 4130-E regulates the information to be submitted to the ARS in the CbC Report. Although this information does not substantially differ from that required by the OECD, in cases where a parent company that has designated a surrogate company to prepare the reports on its behalf is an Argentine company, the rules require full details to be provided about both the parent company and the surrogate company.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

The Argentine tax authorities are bound to comply with various tax treaties and local tax standards that impose burdens as to the exchange of tax information included in the master file and the local file. First, Argentina's tax treaties, especially those whose Exchange of Information Article is based on Article 26 of the OECD Model Convention, generally protect public policy in each of the Contracting States. This applies, for example, in the case of Argentina's treaties with Australia, Belgium, Canada, Chile, Denmark, the United Arab Emirates, Spain, Finland, France, Italy, México, Norway, The Netherlands, the United Kingdom, Russia, Sweden, and Switzerland. Secondly, the OECD tax information exchange framework, including the Multilateral Competent Authority agreement for the automatic exchange of Country-by-Country reports ("CbC MCAA"), which Argentina signed in 2016, provides for the mandatory sharing of CbC reports. Third, local tax laws provide standards that indicate that fiscal confidentiality rules do not prohibit the ARS from exchanging tax-relevant data internationally with other countries' tax authorities, provided that:

(i) Information is handled in secret, in the same way as is provided for by local laws in relation to locally collected tax data;

(ii) The recipient tax authorities would only share such data with governmental authorities, courts, or administrative tribunals that are responsible for auditing and enforcing tax claims or substantiating tax controversies.

(iii) Data disclosed in part (ii) can only be made public in a public hearing of a tax controversy or in a final decision handed down by a Tax Court or Judicial Court with tax competence.

Thus, if the body that would receive the tax information to be provided by Argentina were unwilling to comply with such standards, the Argentine Tax Authorities would be prohibited from delivering the information.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

As mentioned above, the master file is not yet formally required, despite local transfer pricing regulations imposing substantial burden in the form of a requirement that resident companies that are part of an MNE group maintain documentation to support and substantiate transactions entered into with foreign related parties. In practice, ARS auditors tend to construe these requirements quite broadly, so that in the event of an audit proper advice should be sought in order to avoid setting standards that go beyond the actual requirements of the ARS.

In past audits, even though there was no obligation to submit a master file, in some cases, ARS auditors requested a large amount of information relating to counterparties, including the respective local files, financial statements, etc. Taxpayers would usually oppose to such requirements, unless grounded in specific statutory requirements. In other cases, auditors have traveled to counterparty countries to collect customs and tax information.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

Generally speaking, the Argentine tax authorities would have to have recourse to the tax authority in the country where the relevant affiliate is located to obtain such data, except where it is specifically required by Argentine tax law that such information be available at the Argentine resident affiliatés office. The latter is clearly the exception to the rule. For example, the Argentine income tax law requires an Argentine affiliate that trades commodities internationally, through a related party trader, to keep material data as to the substance of the related party trader in order to avoid being penalized with deemed transfer pricing taxation under Argentina's "sixth transfer pricing method."

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

As a matter of domestic law, the ARS may share relevant tax information with the Customs Agency, the Central Bank and the Securities and Exchange Commission, if so required. In addition, information can be shared with other national, provincial or municipal tax authorities, provided the data requested by such authorities can be regarded as potentially relevant to the taxes levied in the relevant jurisdiction. The ARS must also deliver relevant tax data to Argentine Courts, but only in extraordinary circumstances (e.g. criminal cases) and where specified limitations are observed.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

Under Argentine tax norms, the ARS must keep tax information that it collects secret, save in the exceptional cases noted above (e.g., criminal cases). So, we do not expect that CbC data will be made public; eventually, all to the contrary. In fact, CbC requirements have only just been implemented by ARS General Resolution 4130-E, which was published in the Official Gazette on September 20, 2017 and took effect on the same date. It is premature to suggest that such data will be made public in the short term, since the local framework will have to be adapted accordingly, requiring Congressional action that will certainly take some time to complete.

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[1] COMMENTS RECEIVED ON PUBLIC DISCUSSION DRAFT - BEPS ACTION 10: TRANSFER PRICING ASPECTS OF CROSSBORDER COMMODITY TRANSACTIONS, dated 10 February 2015; page 73, available at http://www.oecd.org/tax/transfer-pricing/public-comments-action-10-cross-border-commodity-transactions.htm. This work has been also presented at the public consultation on transfer pricing matters held at the OECD premises in Paris, March 19 and 20, 2015, available at http://www.oecd.org/ctp/transfer-pricing/public-consultation-action-8-10-transfer-pricing-matters.htm.

Australia

Stean Hainsworth
Duff & Phelps, Australia

Part 1. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

The Australian Taxation Office ("ATO") will accept Master files prepared in accordance with the OECD's master file template. The document will however need to be converted from its initial format (usually either in MS Word or PDF) into XML Schema in order to be filed with the ATO (the Master file is filed as an attachment to the Local file). The Master file must be in English.

However, the Australian Local file is a different document to the OECD's Action 13 template. The ATO has designed the Australian Local file as a risk-assessment tool and while some of the information specified by the OECD is included in the Local file, considerable transactional detail also must be provided in the structured format. An OECD Action 13 template-based local file report will not suffice for Australian Local file purposes (even if it is converted to XML Schema), although much of the information and analysis contained therein is likely to be relevant in preparing the annual transfer pricing documentation required under Subdivision 284-E of the Tax Administration Act of 1953. The annual documentation is required contemporaneously with the filing of the taxpayer's tax return (as a separate compliance requirement, for which the ATO's expectations are set out in Taxation Ruling TR 2014/8).

The Australian Local file has various sections which need to be completed by all Australian significant global entities (defined by an global annual turnover in excess of $A 1 billion). The only exceptions are for certain significant global entities whose Australian entities are considered to be "small taxpayers" in the context of Australia's simplified transfer pricing record keeping rules. "Small taxpayers" need only complete the reporting entity section of the Local file (including filing an XML Schema version of the global Master file). The Australian Local file consists of three sections:

Section 1: The reporting entity description

In this section, all significant global entity taxpayers are required to provide information as to:

- A description and a copy of the organizational structure, including a description of the individuals to whom Local management reports and the countries in which such individuals maintain their principal offices;
- A description of the business and strategy;
- A description of any business restructures and an explanation of their significance (for instance, acquisition of business);
- A description of any transfers of intangibles in the current or previous income year, and an explanation of their significance; and
- A list of key competitors.

In this section the taxpayer is required to provide details of its global parent, whether the taxpayer is attaching and filing the global significant entity's Master file (or detail if that is being filed by another Australian taxpayer) and how the global significant entity's Country-by-Country Report is being provided/filed.

Section 2: Part A – the controlled transactions

In Part A, affected taxpayers[1] are required to provide information as to all controlled transactions, grouped by counterparty and category, including details as to:

- The name of the Australian entity;
- The amount paid or received;
- The name and tax residency of the counterparty to the transaction(s);
- The category of the transactions (these categories are aligned with the transactional categories in the International Dealings Schedule disclosure);
- The transfer pricing method relied on; and

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- The extent to which transfer pricing documentation exists to support the arm's length nature of the transaction(s).

There is considerable overlap of the information required in Part A of the Local file and a taxpayer's International Dealings Schedule disclosure, which is filed as part of the annual tax return) and there is an expectation that these currently separate reporting requirements will be brought together in time. However, for FY2016 they remain separate and to a degree duplicative (although the Local file disclosures are more detailed than those in the International Dealings Schedule). Again this additional detail is consistent with the ATO's use of the Local file as a risk-management tool.

Section 3: Part B - the controlled transactions

In Part B, affected taxpayers are required to provide information as to all controlled transactions, including details as to:

- The transfer pricing method relied on by the related party counterparty (this is the price-setting method);
- A copy of the written agreements (if any) between the parties addressing the arrangements (taxpayers are relieved of this obligation where they have previously provided these agreements to the ATO – most likely during an audit – although the taxpayer still has to provide details of when those agreements were provided); and
- Any foreign Advanced Pricing Arrangements or rulings provided by another jurisdiction covering transactions or arrangement similar to those between group entities.

The taxpayer also has to provide a copy of the financial statements for the filing entity.

Each Australian taxpayer that is a significant global entity is required to file a Local file: in other words, if the entity or branch files an Australian tax return, it must file a Local file. Where a number of entities are part of a consolidated tax group for Australian tax purposes, only the head company of that consolidated tax group is required to file a Local file although all international related party transactions by the members of that consolidated tax group will need to be addressed in the one Local file.

The Australian Local file is in an electronic filing format with prescribed questions requiring specific responses.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

The ATO requires that both the Master file and Local file be filed (in XML Schema format) through the ATO's electronic portal. This requires special software and the ATO requires that the developers and licensors of that software be registered with the ATO. This registration process ensures that all materials filed are done so in the correct XML Schema format and that all relevant security protocols are maintained. As is noted above, the Australian Local file content is not merely following the OECD template and a document prepared in accordance with the OECD standardised template local file will not meet the Australian Local file requirements (i.e. it cannot be simply converted to XML Schema and filed electronically).

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

At this stage the ATO has not published any guidance on what information it may or may not be shared based on the Masterfile and/or local file materials that it receives.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

Given the extensive nature of the disclosure requirements of the Australian Local file, it is assumed that most (if not all) of the information that the ATO would want to undertake its risk-assessment of the taxpayer should be included in the Australian Local file.

In a practical sense, it is reasonable to assume that the ATO would only want to seek additional information from the taxpayer (and its parent) if the initial risk-assessment identified a level of risk that warranted an investigation of the taxpayer. If such an investigation was initiated, then the ATO's powers to request any additional information would be limited to requesting it from the taxpayer under the ordinary information gathering powers. Under those rules, the ATO can request overseas information but the taxpayer cannot be compelled to provide information that is not in Australia or in its control: however, the consequence of this is that the taxpayer cannot later introduce that requested but not-provided foreign information in any court proceedings to support its position.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

The ATO has released a position paper that deals with the automatic exchange of information on cross-border arrangements. This position paper relates to

and is limited to the exchange of rulings (such as Private Biding Rulings and Advanced Pricing Arrangements) that have been entered into by the ATO. As will be well known to our readers, under BEPS Action Item 5, six categories of rulings can be exchanged as part of the efforts to circumvent harmful international tax practices and the ATO has advised that it began exchanging future rulings in April 2016 and past rulings in December 2016.

Whether such additional information, if requested, will be provided is a matter for the foreign revenue authority and the ATO under the relevant international agreement and we are of the view that the local taxpayer would not be able to challenge such a disclosure if it meet the exchange of information criteria.

In any case, as noted earlier, the taxpayer is required to file the information on any foreign Advanced Pricing Arrangements or rulings provided by another jurisdiction covering transactions or arrangement similar to those between group entities as part of the Australian CbC Local file lodgement.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

The tax law secrecy provisions in Division 355 of Schedule 1 to the Tax Administration Act of1953 apply to all "protected information," which is defined to *mean information disclosed or obtained under or for the purposes of a taxation law, which relates to the affairs of an entity (including but not limited to the entity's tax affairs), and which identifies, or is reasonably capable of being used to identify, that entity*. Protected information may be contained in written documents, conversations, electronic recordings, transcripts or any other form in which information can be recorded. It includes information obtained directly from a taxpayer or information generated by the ATO (for instance, through collating or cross-referencing information from a variety of sources). Country-by-Country reporting information[2] would constitute protected information. It is an offence under section 355–25 for a tax officer to disclose protected information other than to the entity who the information is about, or that entity's representative, unless the disclosure is permitted under one of the exceptions in Division 355.

There are three principal exceptions to the protected information disclosure rules:

- Information can be shared with a Minister of the Crown to enable that Minister to exercise a power or perform a function under a taxation law or within the Minister's portfolio;
- Certain information can be shared with government agencies in relation to the performance of government. This information is limited to records or disclosures relating to social welfare, health and safety, superannuation, finance, corporate regulation, business, research or policy, other taxation matters, rehabilitation or compensation and the environment; and
- Information can also be disclosed for law enforcement and related purposes (such as security intelligence agencies, government taskforces and Royal Commissions).

The sharing of information in such circumstances is governed by strict internal processes and protocols that must be adhered to. Failure to adhere to the specified processes or releasing information ultra vires is an offence.

As such, while some information gathered as part of the Country-by-Country reporting process could be shared with other agencies, that sharing is strictly controlled. Furthermore, most of the information provided through the Country-by-Country reporting process is unlikely to be relevant to the majority of government departments charged with the tasks referred to in the second exception above.

As a general rule, taxpayers do not have the right to stipulate who may have access to information that they are required to produce under law: taxpayers cannot impose conditions on the provision of mandatory information. However, if a taxpayer did want to challenge the sharing of information it could seek to do so under Australia's administrative law provisions.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

There is considerable interest by both the media and the opposition benches in the Federal Parliament for public disclosure of CbC information. However, the current Government is opposed to that proposition and therefore it is likely to remain a moot point until there is a change of Government. Even with a change in Government, it is likely that any such move would be met with considerable opposition from the multinational community and given the difficulties that the previous Labor governments experienced in dealing with the multinational community in Australia, it may remain in the "too hard" basket for now (especially since there is no revenue at stake per se). That said, if there were moves afoot internationally to initiate mandatory public disclosure, it is likely that Australia would advocate for that position.

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NOTES

[1] This means all taxpayers except those excepted as "small taxpayers" in the context of Australia's simplified transfer pricing record keeping rule.

[2] Collectively referring to the CbC Report, Maste rfile and Local file.

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Austria

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

The Austrian transfer pricing documentation requirements adopt the format and standard recommended by the OECD. The Transfer Pricing Documentation Act (VPDG), which came into effect in 2016, follows the three-tiered approach to transfer pricing documentation as defined in the final report on BEPS Action 13.

Under the VPDG, Austrian companies with a turnover exceeding EUR 50 million in the two preceding fiscal years are subject to the requirements under the master file/local file concept. The precise details on the contents of the master file and local file are contained in a separate Ministerial Ordinance and correspond to those proposed in the final report on BEPS Action. Therefore, taxpayers are not expected to provide additional information in their master file/local file.

Although the VPDG and the Ministerial Ordinance do not depart from the information suggested the final report on BEPS Action 13, the new rules still represent a key challenge for many Austrian taxpayers, given the absence of specific transfer pricing documentation rules in the previous Austrian tax law. As such, they substantially exceed the standards developed in Austrian tax practice.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

The master file/local file must be prepared contemporaneously. However, the transfer pricing documentation must only be readily available at the latest upon filing the corporate income tax (CIT) returns. Once the CIT return for a given year is *de facto* filed, the master file/local file must be provided to the competent tax authority upon request within 30 days.

Generally, the CIT return has to be submitted electronically by June 30th of the calendar year following the year in which the fiscal year of the company ends. However, if the company is represented by an Austrian certified tax advisor, the tax return can be submitted by March 31st of the second following year at the latest (if the company is not formally requested by the tax office to file it earlier).

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

Austria exchanges rulings on two levels - on a European level, taking into account the requirements of EU directives, and on an OECD level under the Convention on Mutual Administrative Assistance and its competent authority implementing agreements and provisions of tax information exchange agreements and income tax treaty information exchange articles.

Specifically, Austria has implemented into its national law the provisions of Directive 2011/16 on administrative cooperation in the field of taxation. The country is also one of the parties to the Convention on Mutual Administrative Assistance in Tax Matters ("the Convention" or "CMAA"). As such, any information deemed necessary for the resolution of an ongoing tax audit could be exchanged upon request between the Austrian tax authorities and the tax authorities of an EU Member State or a country that is also party to the Convention.

However, the tax authorities are bound by the standard of "foreseeable relevance". This ensures the exchange of information in tax matters in the widest possible sense, but to the extent that the Austrian tax

authorities are not at liberty to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

The foreseeable relevance of the requested information is a condition that must be fulfilled in order for the information request to be considered valid. On an EU level, the national courts of the requested Member State have jurisdiction to verify that the information request is not devoid of any foreseeable relevance, as confirmed most recently by the CJEU in the case of *Berlioz* (C-682/15).

As a result, the information holder should not be able to challenge the validity of an information order in cases where the absence of the foreseeable relevance is not obvious. Moreover, as the CJEU highlighted in the case of *Sabou* (C-276/12), a taxpayer who is the subject of an investigation has no right to be informed or involved in the process of information gathering between two national tax authorities.

4. If a taxpayer has prepared a master file according to the requirements of its home country, and has prepared a local file in accordance with the requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

According to the requirements set by the VPDG, Austrian business units need to share the master file itself with the Austrian tax authorities upon their request.

A certain legal basis for transfer pricing documentation duties might also be derived from the general duty of cooperation. The taxpayer has a general duty to cooperate with the tax authorities, although some court decisions indicate that there is a limit to this duty insofar as the tax authorities cannot demand impossible, unreasonable or unnecessary information from the taxpayer.

There is an increased duty to cooperate where transactions with foreign countries are involved. Under this increased duty to cooperate, the taxpayer has a duty to obtain evidence and submit this to the tax authorities. The possibility of administrative assistance from other (foreign) tax authorities does not suspend the duty of the taxpayer to cooperate with the Austrian authorities.

In order to fulfil its increased duty to cooperate, the Austrian taxpayer would need to request from its parent or other group affiliates all information that is necessary to fulfil its reporting obligations under the VPDG. If they have consistently refused to provide such information, the Austrian taxpayer would have to notify the tax authorities of these circumstances. Therefore, Austrian taxpayers would be well advised to document any relevant communication (email chains), in order to serve as proof before the tax authorities that they could not gather the necessary information.

As failure to comply with the duty of cooperation is subject to a lump-sum penalty, a well-argued and thoroughly documented defense could help Austrian taxpayers avoid this penalty.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

Austria has the authority to obtain information on rulings issued to members of a multinational group both from group members resident in Austria and from other tax authorities.

The master file which has to be prepared for fiscal years from 2016 onwards and shared with the Austrian tax authorities upon request, needs to contain a list and brief description of the existing unilateral APAs at the entire MNE group level, which relate to the allocation of income among countries where the MNE group operates. This obligation is limited to a certain extent, as it requires disclosure on the "relevant material controlled transactions" which do not necessarily include all transactions for which a unilateral ruling has been obtained.

With regard to the exchange of information with other tax authorities, Austria has implemented the provisions of the Mutual Assistance Directive 2015/2376 as amended on December 8, 2015, pursuant to which EU Member States shall exchange information on advance cross-border rulings or advance pricing arrangements on a mandatory, automatic basis.

In this regard, the Austrian Ministry of Finance issued an information letter on October 20, 2016 regarding the envisaged exchange of information. The basis for the exchange is BEPS Action 5 (Countering Harmful Tax Practices). The exact information to be communicated is outlined under § 7 item 6 of the EU Mutual Assistance Act. The exchange will be carried out in standard form between the competent tax authorities of all EU Member States. Further, a limited set of basic information shall also be communicated to the European Commission.

The information letter further specifies that information on rulings and advance pricing agreements will only be exchanged with countries outside the EU, if there is an agreement regarding a comprehensive mutual exchange of information in place which allows the provision of information to third parties (the Convention on Mutual Administrative in Tax-related Matters or Article 26 of the OECD Model Tax Treaty).

Importantly, the provisions on the mandatory exchange of information do not apply to rulings exclusively concerning the tax affairs of one or more natural persons.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

According to the federal constitutional law, all federal, state and administrative bodies are bound to an official duty of confidentiality in the course of exercising their official duties. However, at the same time they are also under a general duty of administrative assistance.

While the relationship between the two duties is disputed in the literature, according to the prevailing opinion, an authority is not allowed to pass on any data which is subject to the official duty of confidentiality, to other bodies by reason of administrative assistance.

Importantly, the secret information, which has become known to the administrative body, are covered by the official duty of confidentiality only if the parties can prove that it is in their overwhelming interest to keep these facts secret. Even if this is not the case and the secret information is not covered by the official duty of confidentiality, the administrative body would have to prove that the sharing of the information is in the public interest. However, it is highly doubtful that this could be successfully argued.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

Although Austria has already introduced CbC reporting in its domestic law, the Austrian tax authorities do not support the European Commission's proposal to make the CbC reports public. The reasoning behind this position is twofold.

First, Austrian tax authorities have raised concerns about possible conflict with competition law rules. Companies obliged to publish their CbC reports on their website would be at a competitive disadvantage, compared to small and medium enterprises (SMEs), which would be exempt from this obligation, thereby leaving them vulnerable to competitors who would have access to their business strategies.

Second, it is considered rather disproportionate to make the CbC reports public. According to the Austrian tax authorities, the goals of CbC reporting are the creation of increased awareness among companies and the receipt of relevant information, which are already achieved with the existing rules on CbC reporting. Moreover, the releasing of any information to the general public could lead to misinterpretations of that information, which would inevitably lead to reputation damage.

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Belgium

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Part 1. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

Belgium has introduced a requirement that the Master File and Local File be filed in specific Form formats. Where applicable, the forms must be filed annually using an electronic platform.

The Master File Form and Local File Form must be filed by each Belgian entity in a multinational group where one of the following thresholds is exceeded:

- Aggregate operational and financial revenue of 50 million Euros;
- A balance sheet total of one billion Euros; or
- An annual average number of employees equivalent to 100 full-time employees.

Master File Form

The Master File Form is composed of the content stipulated by the OECD and must contain descriptions of the following principal elements:

- The MNE's organizational structure;
- The MNE's business(es);
- The MNE's intangibles;
- The MNE's intercompany financial activities; and
- The MNE's financial and tax positions

Based on the commentaries on the Form and the explanatory notice regarding the Form, it would appear that, in the case some of the items listed above, slightly more detailed information is being requested that that required compared under the OECD standards. For instance, the following should be included in the Form:

- Overall transfer pricing policies; and
- The global allocation of income and economic activity

However, in practice, it would be generally expected Master Files prepared in line with OECD guidance are likely to be accepted since the Master File Forms' parameters will be Master File-compliant.

Local File Form

Although the general concept of the Belgian Local File Form is in line with the OECD concept, the Belgian Local File Form can be said to go beyond OECD requirements, given the detailed quantitative data requested therein.

The Local File Form is composed of three parts:

- Part I - General company information: This part requires more general information to be provided such as the management structure of the Belgian entity, its legal ownership structure, its international reporting flows, a description of the main activities per business unit, a list of competitors, information as to Permanent Establishments (PEs), notification of restructurings that took place during the year, etc.
- Part II - Detailed information regarding each business unit that exceeded the threshold for cross-border transactions with group entities in the last completed financial year: This part is only required to be completed where:

(a) One of the thresholds listed above is exceeded

(b) There are more than one million euros in cross border intercompany transactions per Business Unit.

This part is more quantitative in nature, requiring more information on cross-border intercompany transactions and applied transfer pricing methods. More specifically, this part requires detailed descriptions of business unit activities, sales/gross margins/operating margins earned per business unit over the past three years, a list of cross-border intercompany transactions involving goods or services, financial transactions and other transactions (including the parties involved, the transfer pricing policy applied and the volume of the transactions), information on cost contribution arrangements, a list of advance pricing agreements, etc.

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- Part III - Other documents: This part is a non-mandatory section that allows additional useful information to be provided in order to interpret the contents in Part I and Part II of the Form. For instance, transfer pricing studies, contracts, organizational structure, etc.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

The Master File Form and Local File Form are required to be filed with the tax authorities.

The Master File Form must be filed for accounting years starting on or after January 1, 2016. It is required to be filed with the Belgian Tax Authorities within a period of 12 months after the close of the reporting period of the group concerned.

The Local File Form must be filed together with the corporate income tax return. The filing due date therefore corresponds to the filing date for the corporate income tax return (i.e., September 27, 2017 for Financial Year 2016). Part I and Part III of the Local File Form must be filed for accounting years starting on or after January 1, 2016. Part II of the form need only be filed for accounting years starting on or after January 1, 2017.

There is an obligation to prepare the Forms but no obligation to prepare or file complete transfer pricing reports. There is however an obligation to have benchmarking studies in place. Such benchmarking studies, however, need not be filed along with Local File Forms. It is recommended in practice to prepare full transfer pricing reports besides filing the Master File Form and Local File Form.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

In accordance with the Multilateral Competent Authority Agreement dated January 27, 2017, the Belgian specific Master File Form and Local File Form could be shared with the tax authorities of other countries. Further, the Directives of 2016/881 of May 25, 2016 allow the automatic exchange of country by country (CbC) reports. Belgium implemented the Program Law of June 2, 2016 as an outcome of OECD's BEPS Action 13. As explained in Point no. 1, the Belgian Forms require more detailed information than that required under the OECD standards.

Additionally, it should be noted that Belgian law follows the arm's length principle. No definition of a related company exists. The existence of related companies is determined on the basis of the facts, such as close cooperation, delivery of raw materials and product, financing, etc. Profits may be recaptured where conditions are made or imposed between two companies in their commercial or financial relations that differ from those that would be made between independent enterprises. A relationship in this respect can be based on shareholding, management or supervision.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

If the taxpayer has prepared a Local file in accordance with the requirements of the Belgian Transfer Pricing Regulations, ideally it is expected to capture all the information required by the stipulations in the Belgian Local File Form. If this is not the case, the taxpayer may be asked to produce the information that is lacking. However, the likelihood of such a scenario transpiring may be low because, under the Belgian Regulations, taxpayers are required to file the Local File Form by the due date for their tax return. The information required by these forms must be filed. There is no requirement to prepare detailed transfer pricing reports but it is recommended that taxpayers should have the transfer pricing reports in place because of the obligation to have benchmarking studies in place.

Companies or PEs that fail to meet the reporting or filing requirements (i.e., the Local File Form) will be subject to penalties ranging from 1,250 Euros to 25,000 Euros. However, these penalties are applicable only on a second or subsequent infringement.

The Belgian Income Tax Code (BITC) provides that payments exceeding an annual amount of 100,000 Euros made to: (1) a person in a tax haven jurisdiction or a jurisdiction that has not substantially implemented the internationally agreed OECD tax standards on the exchange of information; (2) a PE in such a jurisdiction; or (3) a bank account in such a jurisdiction, by a person subject to Belgian corporate income tax, must be reported to the Belgian tax administration. This is done by attaching Form 275F to the annual tax declaration. If such a payment is not reported, or if the payer cannot prove that the payment is made in consideration for "actual and genuine transactions with persons other than artificial constructions," the payment cannot be treated as a tax-deductible expense and will therefore be subject to Belgian corporate income tax at the rate of 33.99 percent. The burden of proving that a payment is so made lies with the taxpayer.[1]

Belgium has effective tax treaties providing for the exchange of information and the Belgian tax authorities may seek the required information through the exchange of information mechanisms. Belgium is one of the first 30 countries to make a joint statement in which they strongly support the development of the single global standard for the automatic exchange of information between tax authorities.

Further, the Belgian tax authorities may share information with another Member State of the European Union.[2] The information may include an exchange of rulings and transfer pricing agreements.[3] Additionally, as part of continuing efforts to boost transparency, Belgium has signed the Multilateral Competent

Authority Agreement for the mandatory automatic exchange of CbC reports.[4]

The obligations regarding the submission of information to the tax authorities are restricted by the mitigating effects of the general principles of good government. The Minister of Finance has ruled that asking for excessive information is prohibited and that the Belgian Tax Administration (BTA) should only use it powers to demand information moderately and carefully. Requiring taxpayers to fill out comprehensive questionnaires is therefore not allowed.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

The BTA has broad powers to conduct an audit for any purpose related to the administration and enforcement of the BITC. Under the BITC, the BTA has extensive powers to access information and, consistent with those powers, may compel taxpayers, third parties or other public authorities to provide them with all kinds of information sought for purposes of assessing income or collecting tax. A taxpayer has the right to prevent the tax authorities from obtaining such information if the taxpayer raises a defense of professional secrecy.[5]

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

Information obtained during an audit of a taxpayer may be used for purposes of taxing other taxpayers.[6] The BTA may also request from any taxpayer information deemed necessary to determine the tax liability of any other taxpayer.[7]

Though the BTA is authorized to collect and exchange the personal data necessary for carrying out its statutory mission, a system for the interchange of data between the various Tax Administrations and Services of the Federal Public Service of Finance (FPSF) is in place. The exchange of data, the content of data, and access to data are subject to the authorization and instruction of an internal authority set up by Royal Decree. All the administrations of the FPSF are obliged to make available to all officials of the Public Service the relevant information in their possession that contributes to the furtherance of the obligation of these representatives with a view to the establishment or collection of taxes. Any official of the FPSF who is regularly responsible for carrying out inspection or investigations is entitled to take, search for, or collect relevant information that contributes to the establishment of a tax liability or the recovery of taxes.[8]

Every taxpayer whose data is stored has a right to be informed and to obtain access to that data to have it corrected if necessary, except during a tax audit. Further, information relating to judicial proceedings may not be disclosed or copied without explicit authorization of the public prosecutor.[9]

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

With the aim of increasing transparency, on July 4, 2017, the European Parliament voted in favor of requiring multinational companies to disclose tax information for each country in which they operate. Qualifying multinational groups would be required to publish and make accessible certain information about the taxes they pay in each country – with possible exceptions in the case of commercially-sensitive information.[10] Such data would be available for free and made publicly accessible on the website of the firm concerned. The qualifying entity would also be responsible for filing a report in a public registry managed by the European Commission. It is currently planned to present the information in a common template comprising a number of items broken down by tax jurisdiction.

The public CbCR proposals will soon be discussed by the 28 EU Member States. Based on these proposals, a Council common negotiation position will be drafted by the EU Council Presidency. To reach a decision on the ultimate compromise version, small groups of representatives of the EU Parliament and the Council and the Commission will conduct further discussions.

The final text is subject to the approval of a qualified majority of EU finance ministers in the Economic and Financial Affairs Council (ECOFIN), as well as the European Parliament. According to a dissenting legal opinion of the Council, implementation of the proposals would require the unanimous consent of the Council of the EU, rather than the consent of a qualified majority. These legislative developments are being carefully monitored in order to determine their potential impact on Belgium. The Court of Justice of the EU may also be requested to rule on this subject.

If any such requirement is implemented, Belgian taxpayers may be able to prevent sensitive information from being made public by using the 'safeguard clause'. That being said, the desirability of this clause was strongly disputed in the Committee responsible for this dossier. Moreover, it appears ambiguous whether the requisite approval of an eligible majority in the Council (not to mention unanimity) will be attained to promote the initiative of the Commission. It is also worth noting in this respect that the French Constitutional Court has issued a decision concluding that a provision that imposes a country-by-country public financial reporting requirement is unconstitu-

tional. In view of these issues, the practical implications of the public CbCR proposals for companies in Belgium are currently unclear.

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NOTES

[1] Currently the following states are being considered as tax havens from a Belgian perspective: Abu Dhabi, Ajman, Anguilla, Bahamas, Bahrain, Bermuda, British Virgin Islands, Cayman Islands, Dubai, Fujairah, Guernsey, Jersey, Island Man, Federation of Micronesia, Monaco, Montenegro, Naura, Uzbekistan, Palau, Ras al Khaimah, Saint-Barthelemy, Sark, Sharjah, Turks and Caicos Islands, Umm al Qaiwain and Wallis-and-Futuna.

[2] Article 338, ITC

[3] Directive 2015/2376 of December 8, 2015

[4] Directive 2016/881 of May 25, 2016

[5] empty footnote

[6] Article 317, ITC.

[7] Article 322, ITC.

[8] Article 335, ITC.

[9] Article 327, ITC.

[10] The requirements would apply to groups that are EU-parented or otherwise have EU subsidiaries or branches and that have a consolidated net turnover of at least 750 million Euros.

Brazil

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

In the course of the BEPS Action Plan, Brazil informed the OECD that it would not modify its fixed margin Transfer Pricing methods (see Final Report of BEPS Actions 8-10, page 185). Brazil has similarly not adopted specific legislation requiring taxpayers (or qualified taxpayers, i.e., taxpayers with gross revenues above a certain threshold) to provide tax authorities with a master file or a local file for Transfer Pricing purposes. To the extent that the local filing of a Corporate Income Tax return may be considered as a surrogate for a "local file", the information required in the Corporate Income Tax return for Brazilian companies ("ECF") differs considerably from the information required in the local file, as prescribed by Action 13 of the BEPS Action Plan. For instance, ECF requires objective information regarding Transfer Pricing methods, following the standard adopted by Brazil for the calculation of fixed margins (e.g., objective information regarding the average import/export prices, specific comparables and their description, key metrics for commodities, etc.). The local file of BEPS Action 13, on the other hand, requires subjective information such as the assessment of FARM (Functions, Assets, Risk and Market) and information in "context" to which relevant transactions take place.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

As mentioned in question 1, Brazil does not yet require the preparation of a master file or a local file. However, the ECF - with the basic Transfer Pricing information - must be filed on a yearly basis. When the tax authorities believe that additional clarifications and information must be presented, it can commence a tax inspection in any company and request the preparation of documents and further details on the transactions performed.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

Ever since the start of the BEPS Action Plan, Brazil has expressed a strong interest in becoming a more active player in the international tax arena, providing

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information about resident taxpayers and requesting information for tax collection purposes. Brazil has signed and ratified the Multilateral Competent Authority Agreement ("MCAA") and has implemented both the Common Reporting Standard ("CRS") of the OECD and the Foreign Account Tax Compliance Act ("FATCA") with the United States, not to mention its signature and ratification of Double Tax Treaties ("DTTs") containing an exchange of information clause and Tax Information Exchange Agreements ("TIEAs"). Even though Brazil has not implemented a master file or a local file as prescribed by BEPS Action 13, it is likely willing to share relevant information (for the same purpose) on the basis of multilateral/bilateral agreements already in place.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

In principle, Brazilian tax authorities would not be forbidden by domestic law from requesting information that has been provided by a taxpayer in a master file if that information is regarded as relevant and necessary for the support of a tax assessment procedure. A different question, however, is the international instrument that would support this request between the two jurisdictions – depending on the type of information requested (such as "group information", which would be contained in a master file), certain agreements would not textually allow access by the Brazilian tax authorities. Even though cases of this nature have not been subject to public discussion as of yet, we would estimate that this information (in the absence of a specific agreement) would only be obtainable via a TIEA (or a DTT that contains a specific exchange of information article).

In terms of the rights of a taxpayer facing a request from Brazilian tax authorities, there is no requirement under Brazilian law for the taxpayer to provide any information to tax authorities that is not already required to be part of the fiscal documentation mandated by Brazilian law. A taxpayer, however, would find it difficult to prevent Brazilian tax authorities from communicating with their counterparts offshore for the purpose of obtaining group information (along the lines described in the paragraph above).

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

As said in the answer to question 4 of part 1, there is no requirement under Brazilian Law for the taxpayer to provide any information to tax authorities that is not already required to be part of the fiscal documentation mandated by Brazilian law. A ruling provided by tax authorities in a foreign country to the taxpayer is not among the documentation required under Brazilian law to be presented to the Brazilian tax authorities. In practice, during the course of an audit, they may require all the documentation they deem necessary from the taxpayer, for purposes of supporting their tax assessment. However, since a ruling from a foreign country is not established by law as a document that must be: (1) in possession of the taxpayer and (2) provided to tax authorities upon request, we believe that the taxpayer could have a possible defence in this case and could assert that there is no requirement to provide this document to Brazilian tax authorities.

In terms of a request from Brazilian tax authorities to foreign tax authorities, however, provided the request is based on a pre-existing international agreement (which in accordance with our response to question 4 of part 1, we believe would be a TIEA or a specific exchange of information article in a DTT), we believe they would have the necessary authority to obtain that information. We believe that a taxpayer would find it difficult to prevent Brazilian tax authorities from communicating with their counterparts offshore for the purpose of obtaining said information.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

The tax authorities are allowed to share taxpayer information with other governmental entities (such as, for example, the Public Attorney's Office, to prosecute crimes related to tax evasion or tax fraud). The only

restriction in place is that the information cannot become public, as it could damage the company. (If the information does become public, the affected taxpayer may be entitled to compensation.)

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

As of this moment, there is no requirement to make this information public, nor is there any discussion of that happening in the near future. In the long-term, we believe Brazilian tax authorities may draw from the experience of other countries with regard to access and use of CbC report, and master file or local file information. If in the future, other countries demonstrate that this information can be made public without harm (or with reduced or mitigated harm) to the activities of local taxpayers, and if this practice becomes widespread in light of furthering the legitimacy of national tax systems as a whole, we believe that Brazilian tax authorities may consider the practice for Brazilian law. Evidently, this shift in taxpayer information secrecy would have to be discussed with Brazilian society, and it would have to be evaluated and validated from a political and legal standpoint.

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Canada

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

CbC reporting requirement

The OECD's BEPS Action 13 introduced a three tier reporting standard for transfer pricing. This standard is comprised of a country-by-country (CbC) report of data and information that allows tax administrations to perform a risk assessment; a master file (MF) report containing transfer pricing documentation that is common to the group as a whole; and a local file (LF) report containing transfer pricing information that relates to the transactions involving the local jurisdiction. The first of these, the CbC report, is a minimum standard, which countries are expected to adopt; the MF and LF documentation requirements are not a minimum standard.

Canada has taken steps to comply with the OECD minimum standard, but not to go beyond it. At this time, Canada has not imposed a requirement that taxpayers adopt the MF/LF approach for transfer pricing documentation. In fact, businesses operating in Canada are not directly obligated to prepare transfer pricing documentation at all, although in the author's experienced the majority do, because having appropriate documentation can be highly advantageous (if not critical) should transfer pricing be challenged by the Canada Revenue Agency (CRA). Canada's current transfer pricing provision is contained in section 247 of the Income Tax Act, Revised Statutes of Canada 1985 (the Act).[1] Subsection 247(3) imposes a penalty when, as a result of an audit, a transfer pricing adjustment is made and it is established that the taxpayer failed to make a reasonable effort to determine and use an arm's length price for the transaction that is the subject of the adjustment. Pursuant to subsection 247(4), a taxpayer is deemed to have not made a reasonable effort to determine and use arm's length prices if the taxpayer does not, among other requirements, prepare specified transfer pricing documentation.[2] Thus, while there is no obligation to prepare documentation, doing so provides potential protection from penalties that would otherwise automatically apply; therefore, most taxpayers do prepare such documentation.[3]

The specified documentation required under subsection 247(4) of the Act is actually considerably narrower than the requirements of the new OECD Transfer Pricing Guidelines Chapter 5 MF/FL documentation. The minimum documentation required pursuant to subsection 247(4) includes records or documents that provide a description that is complete and accurate in all material respects of:

(i) the property or services to which the transaction relates,

(ii) the terms and conditions of the transaction and their relationship, if any, to the terms and conditions of each other transaction entered into between the participants in the transaction,

(iii) the identity of the participants in the transaction and their relationship to each other at the time the transaction was entered into,

(iv) the functions performed, the property used or contributed and the risks assumed, in respect of the transaction, by the participants in the transaction,

(v) the data and methods considered and the analysis performed to determine the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction, and

(vi) the assumptions, strategies and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction.

As noted, most businesses operating in Canada do prepare transfer pricing documentation, and many have adopted a MF/LF approach in preparing docu-

mentation maintained for Canadian compliance purposes. CRA accepts this as compliant with Canadian documentation requirements, if all of the required documentation is in either the master file or the local file.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

Transfer pricing documentation is not required to be filed with the Canadian tax return, but the taxpayer must provide it to the CRA upon request.[4]

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

Income Tax Act subparagraph 241(4)(e)(xii) states that taxpayer information can be disclosed under a provision contained in a tax treaty with another country or a listed international agreement. In addition to its bilateral income tax treaties, Canada has signed the *Convention on Mutual Administrative Assistance in Tax Matters,* which was initiated by the OECD and the Council of Europe for the purpose of providing a stable framework for governments to combat tax evasion on a global scale by sharing tax information multilaterally.[5]

Pursuant to these provisions, the CRA may share information that it obtains from Canadian taxpayers with tax administrations of other countries. It is understood that the CRA would cooperate with requests from treaty partners to provide information. (These exchanges would be upon request, rather than automatic.) In the author's experience, spontaneous sharing of information by the CRA was historically uncommon. However, exchanges of information are likely to increase in future. In the 2017 federal budget, the government stated:

> *The CRA has begun the spontaneous exchange with other tax administrations of tax rulings that could otherwise give rise to BEPS concerns. As part of the effort to counter harmful tax practices, this helps ensure that revenue authorities are not granting to taxpayers non-transparent "private" rulings that guarantee favourable tax treatment with respect to a transaction.*

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

It is understood that CRA would on occasion seek information from treaty partners, and that it has no objection to doing so when appropriate. However, this avenue was fairly limited, in part because the CRA has extensive powers to compel a domestic taxpayer to provide information. As with outward exchanges as noted above, however, requests for information are likely to increase in the future.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

If the CRA believes that a foreign parent company has information (for example, information in the foreign country transfer pricing documentation) that would be useful for the audit of the Canadian resident subsidiary, the CRA can serve the Canadian resident entity with a requirement to provide foreign-based information pursuant to section 231.6 of the Act. While the Canadian resident entity cannot be compelled to produce information that is not in its possession under this provision,[6] if it fails to obtain the information and provide it to the CRA as required, the information cannot subsequently be used by the taxpayer to defend the computation of its taxable income. It is fairly common for the CRA to issue requirements for foreign-based information.

If the CRA is unsuccessful in obtaining information pursuant to the above noted requirements issued to the Canadian taxpayer, it can seek to obtain the information from the foreign tax administration pursuant to exchange of information provisions in the relevant treaty. CRA has no objection to doing so, if appropriate. Taxpayers have limited ability to prevent such access.[7]

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

Section 241 of the Act generally provides that taxpayer information provided to CRA cannot be disclosed.[8] However, the list of exceptions to the general requirement to maintain confidentiality of taxpayer information is extensive.[9] In fact, the list includes over 50 exceptions. Most of the exceptions are to allow information to be provided to other departments of the federal or provincial government. (Employees of those departments would be bound by the same general requirement to not disclose such information as employees of the CRA.) Other exceptions extend beyond government departments.[10]

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3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

As noted in answer to the previous question, despite many exceptions, Section 241 of the Act prohibits general disclosure of taxpayer information provided to CRA. Information provided to the CRA is not published or otherwise accessible to the general public, and there is no indication that the government intends or desires to change that legislative restriction.

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NOTES

[1] Section 247 was enacted in 1998 and is generally applicable to taxation years commencing after 1997.

[2] The penalty is only applicable if all transfer pricing adjustments exceed $5 million or 10% of revenue, whichever is smaller, and is not automatic. Decisions on whether to impose a transfer pricing penalty are made by the Transfer Pricing Review Committee (TPRC). When transfer pricing adjustments exceed the penalty threshold, the auditor is required to submit a referral report to the TPRC. In the author's view, absence of documentation would likely lead to the imposition of penalties in virtually all cases.

[3] It should be noted that while a taxpayer is deemed to have not made a reasonable effort to determine and use arm's length prices if the taxpayer does not prepare transfer pricing documentation, having such documentation does not provide a guarantee against the potential for penalties. A taxpayer that adopts prices that are clearly unreasonable and inconsistent with the arm's length principle would be subject to penalties, regardless of whether the taxpayer had documentation.

[4] If the documentation is not provided to the CRA within the three months of request, the taxpayer will have waived the right to protection from penalties.

[5] Exchange of information under this Convention is authorized pursuant to subparagraph 241(4)(e)(xii), as the Convention is a listed international agreement under subsection 248(1) of the Act.

[6] It is common that a Canadian subsidiary of a foreign multinational enterprise would not have possession of, or access to, the information required. Where requirements are issued on the Canadian parent company for information that is in the possession of a foreign subsidiary, additional care must be exercised in evaluating whether the Canadian parent has (or had) possession of or access to the information.

[7] Most treaties provide that a tax administration can only share information if it is relevant to administration of the provisions of the treaty or the domestic laws of the countries. This is likely an easy test to meet. If, however, the taxpayer could demonstrate the requested information is not relevant to the treaty or the domestic law of Canada, it might be able to convince the foreign tax authority to decline a request from the CRA – however in the current global environment of transparency and sharing of information, taxpayers are likely to find this a challenging task

[8] Subsection 241(1) of the Act states:

Except as authorized by this section, no official or other representative of a government entity shall

(a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information;

(b) knowingly allow any person to have access to any taxpayer information; or

(c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the Canada Pension Plan, the Unemployment Insurance Act or the Employment Insurance Act or for the purpose for which it was provided under this section.

[9] Subsection 241(4) of the Act provides an expansive list of exceptions to the general prohibition from disclosing taxpayer information.

[10] For example, information can be provided to police officers, but only where it can be reasonably be regarded as necessary to ascertain that an offense has been committed.

China

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

In China, the three-tiered transfer pricing documentation standard suggested by OECD's final report on BEPS Action 13 and adopted by the 2017 version of the OECD Transfer Pricing Guidelines was introduced in July, 2016[1], and was due for the first time for the fiscal year ended December 31st, 2016.

With regards to the Master File, China requires additional details on business restructurings, any central IP-holding and management companies, existing bilateral Advance Pricing Agreements (APAs), and jurisdiction(s) where the Country-by-Country (CbC) report is being filed. In other respects, the Chinese requirements are largely consistent with OECD requirements.

The Chinese Local File, however, requires a significant amount of information and analyses that go far beyond the OECD requirements. These required items include, a Value Chain Analysis (VCA), with substantial information on the value chain participants (e.g., financial statements of each entity in the chain), analysis of location-specific advantages (LSA) and how they are factored in the remuneration of the Chinese reporting entity, more granular financial data, and detailed information on associated enterprises, including senior management structure, effective tax rates, tax incentives obtained through advance rulings or otherwise, etc.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

The Local File and Master File must be prepared by their statutory deadlines (i.e., June 30th and 12 months after the ultimate parent's fiscal year end, respectively) but need not be filed. However, upon request, they must be submitted to the tax authorities, in principle within 30 days of any request.

In addition to the Master File and Local File, Chinese documentation obligations include: (i) Special Issues Files, for companies that have concluded cost-sharing agreements or exceeded the statutory debt-to-equity ratios (currently at 2:1 for non-financial enterprises and 5:1 for financial institutions), (ii) transfer pricing disclosure forms, and (iii) CbC report, for qualifying entities.

The Special Issues Files follow the same timeline and submission rules for the Local File. The transfer pricing disclosure forms and CbC report for qualifying enterprises, however, must be filed electronically, by May 31st with respect to the fiscal year ended December 31st of the preceding year.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

In principle, Chinese tax authorities may not share taxpayer-specific information with other government departments, the public or specific individuals, unless when determined by the relevant laws and regulations or agreed to by the taxpayer or authorized third-party.

While we anticipate that CbC reports may be exchanged in the future in light of the international and domestic exchange legal framework available (see discussion below), to the best of our knowledge there is no information as to whether China contemplates exchanging master files and local files with tax authorities in the future.

A related issue refers to the exchange of unilateral APA. In line with BEPS Action Item 5, recently-issued Announcement 64[2] includes an information exchange clause, which provides that, for unilateral APA(s) signed after April 1st, 2016, the Chinese tax authori-

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ties have the right to exchange information with tax authorities in the other jurisdictions concerned, save for national security information concerns.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

First, if the multinational enterprise to which the Chinese entity belongs has already prepared a Master File, the Master File would also be due in China (regardless of materiality of transactions).

Second, the level of detail required in the Chinese Local File far exceeds that of OECD's final report on BEPS Action 13. Hence, it is likely that any information or data request with respect to a transaction or the broader value chain affecting China would have been covered by the Chinese Local File requirements.

Third, recently released Public Announcement 6,[3] specifically provides that foreign-resident companies may be subject to special tax investigations, with notifications being sent through the Chinese-resident affiliate.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

As a general requirement, if a Chinese taxpayer's foreign related-party (defined broadly) has obtained a ruling that grants it a preferential tax treatment, this information should be disclosed in the Local File, along with a wealth of information on (foreign-resident) related-parties that is ordinarily requested. In addition, Chinese tax authorities may request this information from the foreign-resident affiliate by notifying the domestic enterprise, as discussed above.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

As discussed above, in principle Chinese tax authorities may not share taxpayer-specific information with other government departments, the public or any individuals, except when set forth by the relevant laws and regulations or agreed to by the taxpayer or authorized third-party.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

In general, no information may be disclosed to other government departments, the public or any individuals, except when set forth in the relevant laws and regulations, or approved by the taxpayer or authorized person. China is a signatory of both CbC Multilateral Competent Authority Agreement (CbC MCAA), and the Common Reporting Standards (CRS) Multilateral Competent Authority Agreement (CRS MCAA) for exchange of financial account information.

As of the date of this response, China has activated CbC MCAA exchange relationships with France, Germany and the United Kingdom for taxable periods starting on or after January 1, 2017, following a notification sent to the OECD's Coordinating Body Secretariat on July 31, 2017.[4]

On the other hand, China has activated a total of 47 exchange relationships under the CRS MCAA on August 7th, 2017, with respect to taxable periods starting on or after January 1st, 2017.[5] Nevertheless, it is expected that China will not start exchanging financial account information in the context of the CRS MCAA before the end of 2018.

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NOTES

[1] Announcement on the Enhancement of the Reporting of Related Party Transactions and Administration of Contemporaneous Documentation, released on July 13, 2016.

[2] Announcement on the Enhancement of Administration of Advance Pricing Arrangement, released on October 18, 2016.

[3] Announcement on Special Tax Investigations, Adjustments and Mutual Agreement Procedures, released on March 28, 2017. Public Announcement 6 makes reference to non-exhaustive information and data that may be requested in the context of a tax investigation.

[4] Available at: http://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm.

Accessed on October 12, 2017.

[5] Available at: http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/#d.en.345426. Accessed on 09/25/2017.

Denmark

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

The Danish statutory transfer pricing documentation requirements are based on the standards set forth in the OECD's final report on BEPS Action 13 of October 5, 2015, Transfer Pricing Documentation and Country-by-Country Reporting (the "Action 13 Report"). The Action 13 Report has been incorporated into Danish domestic tax law. See Order No. 401 of April 28, 2016, on statutory transfer pricing documentation (the "Danish Transfer Pricing Documentation Regulations").

Accordingly, the documentation must be divided into a master file covering the group as a whole and a local file covering each Danish taxpayer in the group as per the Action 13 Report. The information required in each file adheres to the OECD information standard (Action 13 Report; Annex I and Annex II, respectively). However, the Danish Transfer Pricing Documentation Regulations do include certain Denmark-specific requirements, including the basic requirement that the documentation must properly enable the tax authorities to make an arm's length assessment of the intercompany transactions.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

The documentation (i.e., master file and local file) must be submitted to the tax authorities within 60 days upon request. It is the tax authorities' view, however, that the documentation must be prepared on a contemporaneous basis and be available at the tax return filing date, thereby rendering the submission rule (60 days deadline) pointless. This view has support in certain draft bill commentaries from 2015, though it is arguably in conflict with the submission rule in the Danish TP Documentation Regulations.

Though statutory transfer pricing documentation must be submitted on request only, the annual income tax return filing must be accompanied by certain information on the nature and extent of intercompany transactions. If the intercompany transactions of the applicable fiscal year exceed a volume threshold of DKK 5 million in total, certain specific information

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mustl be filed electronically along with the tax return or, for certain taxable entities, as an appendix to the tax return (form 05.022 on controlled transactions).

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

There is no official position on the sharing of master file or local file information with other tax administrations. Information may be shared subject to applicable exchange of information instruments.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

Danish taxpayers covered by the transfer pricing documentation duty must produce a fully-fledged documentation package that satisfies the requirements outlined in the Danish Transfer Pricing Documentation Regulations, meaning a master file and a local file with all items required under the OECD standard (see above). If the master file submitted is prepared under foreign non-BEPS compliant standards and therefore does not meet the Danish standard (equivalent to the OECD standard), the documentation may be deemed insufficient. This could result in a discretionary assessment of the intercompany transfer prices and/or fines.

The master file submitted in Denmark should be equivalent to any BEPS compliant master file submitted in foreign jurisdictions. Generally, Danish tax residents are only required by statute to produce a master file that includes the BEPS master file particulars as per the Danish Transfer Pricing Documentation Regulations, though the Danish tax authorities would likely expect Danish taxpayers to also include in the master file any non-BEPS particulars reflected in any master file submitted in foreign jurisdictions, including such particulars that are incorporated in the file to observe foreign country-specific documentation statutes.

The tax authorities may request the taxpayer to provide any supplementary master file information or may retrieve such information through applicable Competent Authority exchange of information instruments. A Danish group member's refusal to produce relevant and appropriate master file information (for example, information required under foreign documentation statutes but not in Denmark) may be prejudicial to its case in the event of controversy or litigation.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

The tax authorities may request the information from the Danish resident under domestic tax disclosure and information request statutes if the information is deemed relevant or potentially relevant to Danish tax affairs. Outside the framework of the transfer pricing documentation obligations, it is not evident that a Danish taxpayer can be instructed to produce information on non-resident group members' tax affairs under the general domestic disclosure statutes (Danish Tax Control Act). Often, the Danish tax authorities' request for such foreign entity information will be explicitly restricted to information on foreign entities that is in the Danish taxpayer's possession or is immediately available to the taxpayer. Disclosure may be contrary to applicable data protection regulations, statutory confidentiality restrictions, etc., however, there is no case law or legal guidance on the extent that such statutes can legitimate the taxpayer's refusal to share information on the tax affairs of non-resident affiliates, assuming that there even is proper legal basis to require such disclosure in the specific case.

Alternatively, and often more appropriately, the Danish tax authorities may retrieve the information from the Competent Authorities in the jurisdiction of the affiliate. In the event that the tax authorities have not received the information through spontaneous or automatic exchange, several instruments provide a basis for such information requests, including income tax treaties, specific Tax Information Exchange Agreements (TIEAs), the Convention on Mutual Administrative Assistance in Tax Matters of the Council of Europe and the OECD, EU instruments, etc.

In relation to tax rulings, the Danish tax authorities will automatically receive and exchange information with other EU Member States on tax rulings that have a cross-border dimension in accordance with Council Directive (EU) 2015/2376 of December 8, 2015, amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation. The obligation covers cross-border tax rulings, unilateral APAs and, subject to certain conditions, bilateral and multilateral APAs.

In addition, the Danish tax authorities will spontaneously receive and exchange information on cross-border tax rulings, including unilateral APAs, with other OECD and G20 countries pursuant to the spontaneous exchange framework developed under BEPS Action 5 (see Chapter 5 of the final report on BEPS Action 5 of October 5, 2015, Countering Harmful Tax

Practices More Effectively, Taking into Account Transparency and Substance).

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

The tax authorities' sharing of taxpayer information is subject to a number of restrictions, including confidentiality statutes, administrative laws and, if related to individuals, data protection. Taxpayer information is covered by strict statutory confidentiality. The information therefore cannot be shared with private citizens or entities, other than with those to which the information relates.

The tax authorities may share confidential information on corporate entities with other administrative authorities and government bodies subject to the rules in the Danish Public Administration Act. Such information sharing is authorized, for example, if the information is deemed essential to the other administrative authority or government body in its exercise of authority. Within the tax administration, only work-related sharing of confidential taxpayer information is authorized.

Generally, taxpayers cannot restrict information sharing through remedies such as court injunctions or similar procedures, but complaints against unauthorized information sharing and confidentiality breaches can be filed with a special "watchdog" section within the tax administration.

The domestic confidentiality restrictions are supplemented by international rules and treaties, including, for example, confidentiality rules built into exchange of information clauses in applicable tax treaties. Confidentiality rules similar to those reflected in Article 26(2) of the OECD Model Tax Convention on Income and on Capital are included in the majority of Danish tax treaties, meaning that the above domestic confidentiality restrictions apply equally to information that foreign tax administrations have shared with the Danish tax authorities.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

Transfer pricing information, including information in any master files, local files, CbC reports, etc., is covered by statutory confidentiality, see above. The business community has voiced some concern about the tax authorities' observance of confidentiality in relation to transfer pricing matters, including in relation to the CbC reporting duty, though there is nothing that suggests that preserving the confidentiality of taxpayers' transfer pricing information is a general issue. Publication of transfer pricing information will require that this information be statutorily exempt from confidentiality. For the present, there have been no official statements from the government supporting publication of transfer pricing information, although political winds may shift.

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France

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

The existing transfer pricing documentation requirement in France is primarily covered by Article L 13 AA of the French Tax Procedures Code (FTPC). It is further discussed in the tax administrative doctrine bulletin Bofip BOI-BIC-BASE-80-10-20.

Article L 13 AA provides for "information at the level of the group" and "information at the level of the Company". As such it purposefully echoes the OECD Master File/lLocal File structure.

Article L 13 AA of the FTPC is complemented by Article L 13 AB covering transactions with non-cooperative states (so-called "ETNC"), within the meaning of Article 238 A of the French Tax Code ("FTC"), i.e. states considered as a tax haven.

According to Article L 13 AA and the FTA guidelines, the transfer pricing documentation should consist of two parts.

Part 1: General Information on associated companies including:

- the activity and business strategy of the group,
- the legal and organizational structure,
- the functional analysis,
- a list of group companies holding intangible assets,
- a list of agreements and APAs, and
- a description of the transfer pricing policy and a commitment of each foreign company of the group to provide supplemental information upon request.

Part 2: Specific information on the audited company itself including:

- a description of its activities and business strategy,
- information on operations carried out with related parties,
- a list of cost sharing agreements, APAs, and any transfer pricing rulings,
- an explanation on the selection and application of the transfer pricing method and any other information on the comparable data used for such method,
- comparable and functional analysis (where necessary), and
- tax rulings obtained by related parties from foreign tax authorities (if known by the French entity).

This current list provided by Article L 13 AA of the FTPC corresponds to the general information to be provided in the Master File and Local File (e.g., the list of intangibles or group intangibles of the MNE group; and the description of the transfer pricing method applied).

The provisions of Article L 13 AA are less detailed than the provisions in Annexes I and II of Chapter V of the 2017 OECD Transfer Pricing Guidelines. In practice, in the course of an audit, it is likely that an OECD-compliant Master File or Local File would be deemed compliant with the French regulations, in most cases. .

It is also possible that certain requirements in the 2017 OECD guidance may be excluded in order to restrict the French Transfer Pricing Documentation report solely to the provisions of Article L 13 AA. For example, copies of the material intercompany agreements concluded by the local entity are required to be provided in the Local File but not in the current French transfer pricing documentation requirements pursuant Article L 13 AA

However, technically, Article L 13 AA provides for a "General description of the Group transfer pricing policy" in the "information at the level of the Group" section. One might argue that such a section is not exactly matched by any of the provisions in Chapter V of the 2017 OECD Transfer Pricing Guidelines.

Furthermore, the French Tax Administration is currently considering a possible evolution of the provisions of Article L 13 AA, which would may be submitted to the French Parliament as part of the 2017 Amended Tax Bill. This measure had been expected for the Finance Bill 2018 but it has not been included. The aim of such changes would be to more closely align the provisions of Article L 13 AA and Chapter V of the 2017 OECD Transfer Pricing Guidelines. As a consequence, the list of required information would be considerably expanded and would reproduce a lot of the information requested in the Master File and Local File.

Based on the current informal draft, if Article L 13 AA of the FTPC is amended by the expected bill, the list of required information would include additional information, not explicitly included in the current list. This may, for instance, include:

- a description of important drivers of business profit,
- a description of the supply chain for the group's five largest products and/or service offerings,
- a list and brief description of important service arrangements between members of the MNE group,
- a brief written functional analysis describing the principal contributions to value creation by individual entities within the group,
- a list of the local entity's key competitors, and
- information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements, etc.

In this context, it is expected that an alignment between the current French provision and the BEPS norms will occur.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

The Master File and Local File should be prepared in case of a request by the tax administration in an audit situation. Upon formal request by the tax auditor, the taxpayer has 30 days (with a possible additional 30 day extension) to prepare such a report.

French legislation provides for the annual filing of a transfer pricing form (Cerfa 2257). The primary purpose of this form is to report cross-border intercompany transactions.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

As a preliminary point, all tax treaties signed by France include, as a matter of principle, a provision relating to the exchange of information between the tax authorities of the two signatory countries. The scope of these provisions differs depending on the applicable tax treaty. Some treaties provide for an exchange of information upon request by a tax authority, while others provide for an automatic sharing of information.

Sharing information with the French tax authorities is a mandatory requirement to be complied with in order to avoid falling within the scope of the ETNC. Therefore, this sharing of information has been agreed to by many States since 2009/2010, including countries that do not have a tax treaty with France, such as:

- Cayman Islands;
- Isle of Man;
- BVI;
- Jersey;
- Guernsey; and
- Bahamas.

BEPS's Action 13 also provides guidance for transfer pricing documentation and the Country-by-Country Report (the "CbCR"), which contains certain information related to the global allocation of the MNE group's income and taxes paid, together with certain indicators of the location of economic activity within the MNE group. In addition, the BEPS guidance recommends that the Master File and Local File elements of the new transfer pricing documentation standard be implemented through local country legislation or administrative procedures.

Please refer to Question 1 for a discussion of the transfer pricing documentation requirements pursuant the new Article L 13 AA of the FPTC as it is anticipated to be amended, and based on the informal draft rules, identifying the information to be provided in the Master File and Local File pursuant to BEPS Action 13.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

Please refer to the response to Question 2 for the specific rules applicable to the Master File and Local File, in the event of a tax audit.

The rules described below relate to the general French procedures rules applicable to any taxpayer (i.e. not specific to a transfer pricing context).

According to the French general tax procedure rules, the "right of communication" is the right of the tax authorities to request and, if necessary, take copies of documents held by third parties (e.g., private companies, administrations, institutions, etc.). The information collected in the event of a tax audit may be used for the assessment and control of all taxes and charges to be borne either by the natural or legal person with whom it is exercised or by third parties to that person. It may also be used within the framework

of international technical assistance, within the limits and in the manner provided for in conventions between States.[1]

In the event of a tax audit, the taxpayers must deliver a copy of the documents requested by the tax auditor during the tax audit. If the taxpayers do not respect these requirements, a fine amounting €1500 per document should apply.[2] Tax payers have no possibility to restrain the communication.

Pursuant to decisions of the *Conseil d'Etat* and FTA guidelines, only information protected by professional secrecy (Article L111 of the FTPC) or relating to privacy may be a potential barrier to avoid producing the requested information.[3] In addition, since fiscal year 2014, all taxpayers must provide the French tax authorities with their accounting records in the form of a unique *accounting entry file (AEF or FEC)*, meaning that taxpayers may have to remit an AEF for each financial year still open for audit. On demand of the tax auditor, all the detailed accounting information have to be transmitted. Non-disclosure of the AEF/FEC based on the French requirements will be subject to a €5,000 fine, or 10% of the reassessed amount if greater than €5,000, combined with a risk of automatic reassessment (plus a 100% penalty of the reassessed amount). This new requirement constitutes a good way for the tax authorities to look through operations recorded by a company as a whole, including intragroup operations.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions:

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

Annex 2 of Chapter V of the 2017 OECD Transfer Pricing Guidelines states that a copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to an entity's controlled transactions has to be provided in the Local File.

The transfer pricing documentation rules are adopted through local regulation and enforced by local country tax administrations. Therefore, the transfer pricing documentation rules of individual countries may differ. As previously mentioned, pursuant the a new Article L 13 AA of the FPTC which may be included in the Amended Finance Bill for 2017 and an informal draft of the rules, the list of information provided in the transfer pricing documentation will be aligned to the list of information provided in Annex 2 Chapter V of the 2017 OECD Transfer Pricing Guidelines.

Pursuant to the current version of Article L13 AA of the FPTC, the special transfer pricing documentation rules have, since 2014, notably included a copy of all the tax instructions, circulars and rulings from a foreign tax authority. The new Article L 13 AA of the FPTC likely to be amended after the vote of the coming Amended Finance Law for 2017is expected to include the list of the rulings obtained by the MNE's group.

The French tax authorities are allowed to receive tax rulings of an affiliate operating in France through the transfer pricing documentation and Master/Local File as soon as the companies are required to file this declaration, subject to meeting the respective thresholds.

France can share with the other foreign tax authority's information pursuant to the applicable bilateral tax treaties signed and the international or European Union systems of sharing information. In this respect, France may have to provide, or be provided by a foreign tax authority, rulings obtained by the considered affiliate.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

As previously mentioned, except for information being protected by professional secrecy or relating to privacy, it is not possible for taxpayers to restrain from producing information in the context of a tax audit or an informal request carried out by the French tax auditors.

Where the tax auditors control the taxable basis of a taxpayer, they are allowed to be provided with various forms of information based upon the different procedures implemented.

The information collected in this context may be used for the assessments and penalties issued against taxpayers (companies or individuals).

- **Tax audit**

The Tax authorities verify the declarations filed by the taxpayers allowing for the assessment of taxes, fees or charges as well as the documents filed with a view to obtaining deductions, tax deductions or refunds.

In this respect, they may request the taxpayers for any information, evidence or clarification concerning the declarations or the documents filed (Article L10, 3° of the FTPC). The taxpayers would not be able to restrain from providing the information beyond the professional secrecy and the privacy of certain data.

- **The right of communication on tax authorities' demand**

In addition to the information provided to the tax auditors in the event of a tax audit (tax declarations, balance sheets, etc.), another right of communication is provided by Article L 85 of the FTPC under which tax auditors are allowed to review all accounting documents of the taxpayers as well as requesting third-parties to be provided with information allowing them to reconcile the tax declarations in their possession.

In this respect, the tax authorities are allowed to claim information from the following persons:

- Private companies;
- Certain members of non-commercial professions such as insurance agents, commercial agents, lawyers, auditors, auctioneers, accountants, notaries, judicial administrators or liquidators, etc.;
- The Courts;
- Third-party;
- Public administration; or
- Other persons such as taxable persons subject to the obligation to keep register,
- **The right to visit premises and seize documents provided by Article L16 B of the FTPC**

Article L16 B of the FTPC grants a right to visit private premises and investigate tax fraud and evasion offenses relating to direct taxes and value added taxes. This Article also lists cases representing presumptions of fraud under which the Court (judicial authorities) allows tax authorities to carry out visits and seizures, notably this is when the taxpayers try to avoid the establishment or payment of taxes on income or profits or on value added tax:

- by purchases or sales without invoices;
- using or issuing invoices or documents not related to actual operations; or
- knowingly forbidding to pass or passing entries, or knowingly failing to pass or passing incorrect or fictitious entries in accounting documents prescribed by the FTC

Visits can take place in any location, even private locations, where documents and documents pertaining to fraudulent activities are likely to be held.

The seized documents are enforceable against taxpayers and can be used for future tax assessments as long as the procedure is not invalidated by the Court. The tax authorities must have carried out all the diligence to restore documents and this procedure has to be formalized in a formal notice sent to the taxpayer. After a period of 30 days following the sending of such notice and should the document have not been returned to the taxpayers on their demand, these are valid against them as a result of the implementation of a common tax audit.

Appeal against the procedure of visit and seizure may take the form of an appeal against the order from the Freedom and Detention Judge ("*JLD*") and/or an appeal against the way the visits have been carried out by the tax authorities. The decision of the first President of the Court of Appeal may be appealed to the French Supreme Court ("*Cour de Cassation*"). (BOI-CF-COM-20-20-20120912)

- **The collection of information within the framework of international Standards and directives adopted by France**

From an international perspective, France has accepted to sign and to carry out different procedures involving exchange of certain categories of information. As a consequence, French tax authorities are allowed to share information with tax authorities from other countries.

- the Directive 2003/48/CE of the European Counsel whose scope has been extended by the Directive 2014/48/CE, otherwise known as the "*Directive Epargne*", entered into force in 2005, provides for a system of sharing information applicable to savings income, notably interest paid by a financial an individual, resident of a EU member State.
- The single Standard for automatic exchange of information implemented by OECD (entered into force on the 1 January 2016) which grants a system of sharing information relating to account of non-resident between the financial establishment of the signatory countries and the tax authorities as from the 30 September 2017.
- The Directive 2011/16/UE adopted by the European Counsel of the February 15, 2011, amended by the European Directive 2014/107/UE of the 9 December 2014, provides for an automatic and binding exchange of information for the following categories of incomes: professional income, attendance fees ("*jetons de presence*"), pensions, income issued from the ownership of property. As from the 1st January 2016, financial institutions should declare certain information, through an electronic standard implemented, to the tax authorities of the countries where the beneficiaries of the account are tax resident.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

France has been at the forefront of the promotion of public CbCR.

In December 2016, as part of the Bill Sapin II (named after the Minister of Finance at that time, Michel Sapin), the provision paving the way to a public CbCR[4] was enacted. This provision was the result of an amendment by members of the socialist majority of that time, without outright support from the government. This provision was eventually voided by the French Constitutional Council. The parliament majority and the government have changed since that time. Sources within the French administration suggest that the French minister of Finance is still considering this issue. However, it is not expected that any draft bill will be issued in this respect in the short term.

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NOTES

[1] BOI-CF-COM-10-20120912

[2] See Article 1734 of the FTPC and BOI-CF-CPF-40-20170503

[3] BOI-CF-PGR-30-10-20120912

[4] The French CbCR was intended to be subordinated to the European directive, expected at that time to be issued for an application as from January 1st 2018.

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Germany

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

Germany has broadly implemented the OECD master file and local file guidance through the "Gewinnabgrenzungsaufzeichnungs-Verordnung (GAufzV)"[1], as of 12th July 2017. However, differences do exist that can be relatively important.

Overall, Germany has much more comprehensive documentation requirements than most other countries, even prior to the BEPS project. Most of the transfer pricing documentation requirements are now in addition to and somewhat distinct from the rules that deal explicitly with the master file and local file format. For example, Germany retains the requirement of a "documentation of facts", i.e. a comprehensive set of supporting documents, which is in addition to the master file and local file.[2] Note that this "documentation of facts" is extremely comprehensive and often becomes the focus of German audits.

With regard to the master file requirements, Germany does not substantially deviate from the OECD guidance.[3] The most relevant distinctions between German local file requirements and the OECD guidance concern the German requirements to provide contractual information, as well as all financial information that was used by the taxpayer in setting prices (i.e. not just actual year-end results) and to document transfer price adjustments. Furthermore, German taxpayers must provide a value chain analysis.[4]

In addition, taxpayers incurring losses for 3 or more years are required to describe the cause(s) of the losses and the provisions to overcome these losses.[5]

Moreover, in practice, German auditors are typically very detail-oriented and therefore generally expect the information to be more in-depth. This is especially relevant for "extraordinary" transactions, which fall under specific legislation, such as the "relocation of functions" edicts.[6] Such items must be documented separately and German documentation requirements would not be met if the taxpayer provides only a standard OECD local file.

Specific differences in the master file and local file requirements are therefore important, but not the only factors that must be considered in Germany.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

Transfer pricing documentation of ordinary transactions only needs to be produced when requested. However, taxpayers have only 60 days to provide the information once it is requested by the tax authorities.[7] Most taxpayers therefore prepare the documentation well in advance to ensure they have a solid foundation for the audit.

Specific requirements apply to "extraordinary" transactions, which refers to any change in how transactions are carried out (e.g. restructurings, change of contract, etc.). Documentation of such transactions needs to be prepared contemporaneously (i.e. within 6 months after the financial year in which they occurred), and submitted upon request within 30 days.[8]

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

German authorities are officially in favor of information sharing, at least within the European Union (EU). We will see, to what extent facts that include information on sensitive German income will be exchanged. Information sharing is seen as one of the key methods to tackle tax avoidance. Moreover, tax authorities within the EU are subject to mandatory arbitration, so

establishing consistent transfer pricing documentation is seen as an important step in this regard.

Germany has approved the EU's exchange mechanisms under which unilateral advance pricing agreements (APAs) will be automatically exchanged. Other information "relevant to the allocation of income among countries" will be exchanged upon request.[9,10]

Because the federal field tax auditors are not involved in all field tax audits, the exchange of information also depends on the state (Land) and the very different attitudes of the state authorities and state field tax auditors.

Therefore, it is likely that some but not all master file and local file documents will be exchanged by German tax authorities.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

Even before the OECD BEPS initiative, German auditors were very likely to request a multitude of documents from foreign affiliates. A large number of decisions and other literature exists regarding circumstances in which German tax authorities may request such data.

If the master file requirements of the taxpayer's home country are not in line with German master file requirements, the German regulations foresee that missing information has to be supplemented.[11]

In general, the case law in Germany indicates that most information that can "reasonably" be provided and for which there is some indication of relevance must be provided. Auditors may not just request data if it is not material to the case, but in practice they will often argue that further data is necessary to understand the economic fundamentals of the transactions. Note that in some circumstances data might need to be provided even if it would not be legal, outside Germany, for the entity to share this information.[12]

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

In practice German tax audits primarily focus on the economic merit and arm's length nature of a transaction. The focus of German field tax audits has been more on the quantity of the foreign funds and income, than on its foreign taxation. The taxation of the respective counterparty has not been an explicit focus, although some countries are viewed skeptically and transactions with (perceived) low-tax countries are scrutinized heavily.

A direct focus on advantageous tax rulings can be seen mainly by the European Commission and its focus on "state-aid" cases. Germany has few formal rules that would be directly affected by any tax rulings, although more recent rules are based on the overall taxation of the counterparty, and German tax authorities will likely request a lot of information regarding the effective tax rate if there is any doubt.

Formally, through EUAHiG[13] § 7, Germany has approved the EU's automatic exchange mechanisms of unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.

Furthermore, Germany exchanges information on request of EU member states.[14]

However, in accordance with EUAHiG § 4 (3) Germany does not exchange information if:

- conducting enquiries or copying the requested information breaches German law;
- other EU member states have not sufficiently exhausted the possibilities to gather the information with its available sources;
- the information would disclose any trade, business, industrial, commercial or professional secret or trade process (this may apply in the majority of cases of German parent companies);or
- the disclosure of the information would disrupt public order.

Furthermore, Article 26 of the OECD Model Tax Convention on Income and on Capital (2014) only allows exchange of information which is likely to be significant. Hence the foreign tax authority must provide an explicit estimation why the requested information is expected to be substantial.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

Individual taxpayer information may not be shared outside the various tax agencies (including other EU tax agencies). Overall statistical data (e.g. on overall collected revenues and total tax-audit related payments) is made public, and tax authorities use data on all taxpayers to formulate their audit strategy, but no individual data may be made public.

Generally, German tax authorities follow these rules, but in individual cases there have been anonymous leaks.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

To date the German government has been concerned about the competitive disadvantages of any public reporting; consequently, Germany has been opposed to making data from the CbC report public and has not been supportive of the EU's separate public CbC reporting proposals.

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NOTES

[1] Verordnung zu Art, Inhalt und Umfang von Aufzeichnungen im Sinne des § 90 Absatz 3 der Abgabenordnung

[2] Abgabenordnung ("AO") § 90 (3)

[3] GAufzV Appendix to § 5

[4] GAufzV § 4 (1) and (2)

[5] GAufzV § 4 (2)

[6] GAufzV § 3

[7] AO § 90 (3)

[8] AO § 90 (3)

[9] Gesetz über die Durchführung der gegenseitigen Amtshilfe in Steuersachen zwischen den Mitgliedstaaten der Europäischen Union (EU-Amtshilfegesetz) ("EUAHiG") § 7

[10] AO § 117 Zwischenstaatliche Rechts- und Amtshilfe in Steuersachen

[11] GAufzV § 5(1)

[12] Grundsätze für die Prüfung der Einkunftsabgrenzung zwischen nahestehenden Personen mit grenzüberschreitenden Geschäftsbeziehungen in Bezug auf Ermittlungs und Mitwirkungspflichten, Berichtigungen sowie auf Verständigungs- und EU-Schiedsverfahren ("Verwaltungsgrundsätze-Verfahren") Tz. 3.3.2 e); and BFH decision as of April 16, 1986, BStBl II p. 736

[13] Gesetz über die Durchführung der gegenseitigen Amtshilfe in Steuersachen zwischen den Mitgliedstaaten der Europäischen Union (EU-Amtshilfegesetz)

[14] AO § 117

Hong Kong

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Part I.The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, or is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file & local file? [For example, China will require a value chain analysis to supplement the master file; some countries have required, or indicated they will require, master files by companies smaller than the OECD Guidelines suggest.]

The Hong Kong government launched a public consultation exercise in 2016 to gauge different perspectives on the implementation of the OECD's BEPS initiatives. Within the consultation paper, the most significant proposal related to the adoption of a formal transfer pricing regime in Hong Kong, with mandatory documentation requirements, *i.e.* the three tier approach to reporting (including master file, local file and Country-by-Country (CbC) report). A follow-up Consultation Report was released on July 31, 2017, which confirmed the government's intent to introduce legislative changes to the Legislative Council by the end of 2017.

The proposed Hong Kong transfer pricing regime is in line with the OECD Guidelines and the information to be included in the Hong Kong master file & local file will be substantially similar to the requirements contained in the OECD Guidelines. In addition, documentation preparation requirements will likely mirror those that apply in Mainland China, and taxpayers will likely need to indicate on their income tax returns filing if they are required to prepare a master file and local file.

Further detail will be addressed in an upcoming Departmental Interpretation and Practice Notes ("DIPN") to be issued by the Hong Kong Inland Revenue Department (IRD). Legislation is not currently in force, but it will come into effect in 2018.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

Based on the Consultation Report, Hong Kong taxpayers are required to prepare and retain both the master file and the local file unless they meet either one of the following two sets of exemptions:

i. Based on size of business (any two of three criteria):

a) Total annual revenue - HK$200 million per financial year
b) Total assets - HK$200 million per financial year
c) Number of employees - 100

ii. Based on related party transactions (for that particular category of transactions):

- Transfer of properties (excludes financial assets / intangibles) - HK$200 million per financial year
- Transactions in financial assets - HK$110 million per financial year
- Transfer of intangibles - HK$110 million per financial year
- Any other transactions (e.g. service income / royalty income) - HK$44 million per financial year

Penalties will apply for failure to comply with the filing requirements of the master file and local file. (Penalties will be imposed on taxpayers that file incorrect tax returns relating to non-arm's length pricing.) Although, Hong Kong taxpayers are not required to submit the master file and local file with their tax returns, the IRD may request for transfer pricing related information upon an enquiry, audit or investigation, at which point the taxpayer will have 30 days to respond from the issue date of the IRD enquiry letter. More detail will be addressed in an upcoming DIPN.

Based on the Consultation Report, the retention period for business records will be in line with the Inland Revenue Ordinance (IRO), *i.e.,* companies will

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be required to retain master files and local files for a period of no less than seven years after completion of the transactions.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

Hong Kong supports and openly endorses the standard of transparency and exchange of information developed by the OECD. Hong Kong has an obligation to exchange information under the Exchange of Information (EOI) Article in a Comprehensive Avoidance of Double Taxation Agreements (CDTA) and Tax Information Exchange Agreements (TIEA) it has signed with other tax jurisdictions. The current EOI policy of Hong Kong stipulates information will only be exchanged upon request.

Provided that the information on request is "foreseeably relevant" to the administration and enforcement of the domestic laws of the treaty partner, Hong Kong is permitted to exchange information with the treaty partner subject to any limitations outlined in the relevant CDTA/TIEA. Hong Kong would only exchange information from the Master File and Local File with other tax authorities under signed CDTAs and TIEAs upon request.

Furthermore, on June 7, 2017, China signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") on behalf of Hong Kong by way of territorial extension. This is for the purpose of updating double tax agreements with the October 2015-finalized BEPS minimum standards and recommendations.

Also, the information to be included in the master file and local file in Hong Kong was not explicitly mentioned in the Consultation Report. However, it is expected it will be broadly in line with the OECD requirements. Further detail on this will be addressed in an upcoming DIPN issued by the IRD.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country:

a. What is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country?

b. What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

a. Please see Part (I)(3) for a discussion regarding Exchange of Information.

b. The Hong Kong IRD has the power to gather information in the possession of a person and under the person's control. The term "possession" in this context implies both physical and legal possession (*i.e.* possession which is recognised and protected as such by the law). The Inland Revenue Ordinance states that "control, in relation to a corporation, means the power of a person to secure: by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation, that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person." Therefore, taxpayers may not have the right to restrict the sharing of information to the IRD. Nevertheless, taxpayers should evaluate the information requested and determine if it is relevant to the specific case.

The existing CDTAs and TIEAs are governed by the IRO of Hong Kong and have the full force and effect of the laws of Hong Kong. Therefore, the rights of a taxpayer to object or appeal will be in accordance with Part 10 and 11 of the IRO. More detail will be addressed in the upcoming DIPN to be issued by the IRD.

Furthermore, it is worth noting that the IRD is only empowered to raise additional assessment(s) for a year of assessment at any time within six years after the end of that year of assessment if it considers the taxpayer to have been under-assessed, or to have not been properly assessed for that year in accordance to the IRO.

Further to the above, taxpayers would need to assess the costs and benefits on a case-by-case basis when providing any information to the IRD. Taxpayers need to consider carefully the relevance of the information requested and should bear in mind how producing the required sufficient information may place them in a defensible position.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions:

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position:

a. What authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority?

b. What rights would a taxpayer have to prevent the tax authority from obtaining that information?

a. (i) As mentioned in Part (I)(4)(b), the Hong Kong IRD has the power to gather information in the possession of a person and under the person's control. The IRD may request for transfer pricing related information upon an enquiry, audit or investigation with taxpayers having 30 days to respond.

(ii) Please see Part (I)(3) regarding the tax information exchange.

b. Please see Part (I)(4)(b) addressing a taxpayer's rights.

2. a. What other organizations within your country may your tax authority share taxpayers' information with?

b. Are there restrictions on what that information may be used for?

b. Does a taxpayer have rights to restrict that sharing?

a. In addition to the response provided in Part(I)(3), Hong Kong allows the automatic exchange of financial account information in tax matters ("AEOI") under Inland Revenue (Amendment) (No. 2) Ordinance 2017 that came into effect on July 1, 2017. Specifically, reporting financial institutions in Hong Kong are required to identify and report to the IRD the financial accounts held by non-Hong Kong tax residents of reportable jurisdictions. Such information will be exchanged on an annual basis starting from 2018.

b. Hong Kong allows information received under a disclosure request to only be shared with persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the EOI Article in a CDTA or TIEA. Also, such persons or authorities shall use the information only for such purposes.

Also, Hong Kong does not disclose taxpayers' information to authorities that supervise the tax administration and enforcement authorities of the Hong Kong government or the government of Hong Kong's treaty partners under CDTAs and TIEAs, unless there are legitimate reasons given by the treaty partners.

In addition, to ensure the strictest confidentiality, Hong Kong is not allowed to disclose information to any third party jurisdiction for any purpose. The IRD also does not envisage any circumstances under which Hong Kong would give consent for such disclosure.

c. For Hong Kong, the information exchanged shall not be used for purposes other than those for which it has been exchanged. The information obtained under a CDTA or a TIEA cannot be used for non-tax purposes unless such use is allowed under the laws of both Hong Kong and the treaty partner, and the Competent Authority of the supplying party authorised such use. However, the Competent Authorities may disclose the information in public court proceedings or in judicial decisions. Also, under the laws of Hong Kong, tax information may be used for limited non-tax related purposes including recovery of proceeds from drug trafficking, organised and serious crimes and terrorist acts.

As mentioned in Part (I)(4)(b), under the statute of limitations on transfer pricing assessments, the IRD is only empowered to raise additional assessment(s) for a year of assessment at any time within six years after the end of that year of assessment if it considers that the taxpayer has been under-assessed, or has not been properly assessed for that year.

Further detail on this will be addressed in an upcoming DIPN issued by the IRD.

3. a. Where does your country stand on making any information from the CbC report or the master file, local file and supplemental information public?

b. Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

a. Hong Kong does not intend to make any information from the CbC report, master file or local file public. Hong Kong will follow the EOI safeguards on the confidentiality of information provided in individual CDTAs and TIEAs. Also, Hong Kong will follow the OECD standard that requires information to be kept confidential and that information should be treated "as secret in the same manner as information obtained under the domestic laws".

b. Please see Part (I)(4)(b) with regards to restricting information that may be made publicly available.

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India

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

As an active participant to the OECD / G20 BEPS project, India has endorsed the model legislation on documentation through the Finance Act, 2016 and has implemented the legislative regulations related to introduction of Master file and Country-by-country report ('CBCR') in the Indian Income-tax regime.

The provisions of the documentation have been introduced by the Government of India in the Finance Act, 2016.[1] Consequential penalty provisions for failure to furnish the report / furnishing inaccurate report have also been introduced.

As per the said provisions, CBCR is applicable for multinational groups headquartered in India and having turnover equivalent to EUR 750 million, from Financial Year ('FY') starting from April 1, 2016 to March 31, 2017 ('2016-17'). The due date for filing the documentation would be on or before filing the return of income i.e. November 30, 2017 for FY 2016-17.

Recently, on October 6, 2017, the Government of India has issued draft rules in respect of CBCR and Master File, inviting the comments and suggestions of the stakeholders and general public, by October 16, 2017. The format for CBCR has been kept consistent with the format prescribed in Action Plan 13 of the OECD BEPS project. Finalized guidance on filing modalities could be expected soon.

Earlier, the Indian Revenue Authorities ('IRA') had sought to include additional information in CBCR, with respect to certain transactions considered by them to be high-risk and base eroding in nature such as royalty and management cross charges. However, these considerations are not included in the CBCR template currently, as adherence was given to the common minimum standards with respect to documentation requirements under Action Plan 13. The purpose of the usage of CBCR is purely for risk assessment. Depending on the risk assessment and nature of transactions, the IRA may request for additional information, as and when required.

In relation to Master File and Local File, it has been provided for in the Finance Act, 2016 that documentation shall be applicable to the same year i.e. FY 2016-17.

The draft rules provide for the threshold for maintenance of Master File, whereby every taxpayer in India, belonging to an international group is required to maintain a Master File, if both the following conditions are satisfied:

- consolidated revenue of the said international group as per consolidated financial statements, for the accounting year preceding the financial year under consideration, exceeds INR 5 billion (USD 76.92 million)[2]; and
- the aggregate value of international transactions during the reporting year exceeds INR 500 million (USD 7.69 million), or the aggregate value in respect of purchase, sale, transfer, lease or use of intangible property during the reporting year exceeds INR 100 million (USD 1.54 million).

Further, the draft rules provide for furnishing of the Master File, on or before filing the return of income i.e. November 30, following the financial year ending 31 March. However, for FY 2016-17, an extension has been proposed to file the Master File in Form No. 3CEBA on or before March 31, 2018.

While the revised OECD Transfer Pricing Guidelines[3] have embedded guidance on the nature of documentation, there are certain aspects which still require deliberation from the Indian regulations perspective.

Certain additional information requirements currently are recommended under Action Plan 13 when compared to current documentation requirements in India; *inter alia* these include the following:

In relation to the information relating to the local entity in the local file, the Action Plan 13 report would include the following items that are not currently part of Indian required documentation:

- A description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- A detailed description of the business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.
- Key competitors.

In relation to the local file information relating to the controlled transactions, Action Plan 13 and OECD guidelines recommend:

- That information be maintained for each "material category" of controlled transactions in which the entity is involved. Under the Indian local laws, a taxpayer is required to document all of its controlled transactions in which the aggregate value exceeds INR 10 million.
- That a local file include a copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions under consideration. This is not currently part of existing Indian documentation requirements.

For financial information, Action Plan 13 and OECD guidelines recommend that the local file include:

- Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

With respect to the contents of Master File, although final rules are awaited, the draft rules prescribe maintenance of information and documents in line with the contents specified under Action Plan 13. For FY 2016-17, the date of compliance has been deferred to March, 31 2018, in view of the time taken to release the rules in this regard.

As regards the local file, the Indian regulations prescribe the requirements for maintenance of information and documents under Rule 10D of the Income-tax Rules, 1962 ('the Rules'). The said requirements are largely in line with the requirements recommended by Action Plan 13 and OECD Transfer Pricing Guidelines.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

As of now, while there is no concrete date prescribed for filing of Master File and Local File in India, it may be reasonable to presume that the responsible entity would be required to furnish it on request from the Income-tax authorities, in line with the current requirement of filing local Transfer Pricing documentation.

It may be expected that the Master File and Local File (with additional requirements) as mentioned above could be required to be maintained on or before the due date of filing return of income i.e. November 30 following the financial year ending 31 March. However, as stated above, for FY 201617, an extension has been proposed to file the Master File on or before March 31, 2018.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

India is a signatory to the Multilateral Competent Authority Agreement ('MCAA') for exchange of information especially related to CBCR, hence, India has agreed to adhere to use the said agreement in relation to an agreed position of high-level transfer pricing risk assessment, assessment of other BEPS related risk, and economic and statistical analysis, where appropriate. Thus the CBCR is expected to be shared in accordance with the MCAA's terms.

The exchange of information has been put in action by the Government of India through a notification no. 75 dated July 28, 2017, endorsing the MCAA.

Considering the positions agreed under Action Plan 13, the standardized three-tiered global documentation structure (comprising of CBCR, Master File and Local File) intends to provide the local tax administrations with relevant and reliable information to perform an efficient and robust transfer pricing risk assessment analysis. The provisions for confidentiality and other protections for limiting the use of information exchanged as provided for in the MCAA would govern the information exchanged.

OECD guidance on the appropriate use of information contained in CBCR mentions that there is nothing to prevent a tax authority from using CBCR information in planning a tax audit or as the basis for making further enquiries, into the group's transfer pricing arrangements or other tax matters, in the course of an audit. Further, there is no commitment that these enquiries must relate specifically to potential risks identified through the use of CBCR information. E.g. CBCR information may be used as the basis for making enquiries into tax matters identified using other data sources or arising during the course of a tax audit. Thus, it may be expected that India would share the CBCR internally with domestic tax departments, for specific situations which are substantial reasons for detail enquiries as per authorities.

Similarly, although the OECD Action 13 report and MCAA do not make specific reference to the Master File and Local File, it cannot be completely ruled out that the information gathered through Master File and Local File, would not be shared with other authorities. These files contain normal information of relevance to determining tax liabilities. However, the Master and Local File would be governed by local information exchange provisions and could only be

used for specific purposes as mentioned in the information requests from other authorities.

Because these files are not limited to exchanges under the MCAA, there may be information exchange with certain countries who are not signatories to MCAA under a separate agreement, and the information exchange under such agreement would be governed by the terms and conditions agreed in the respective agreement.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

While the final guidance on the Master File and intricacies of the exchange of information are still awaited, the draft rules prescribe maintenance of documentation on the lines similar to that of the Action Plan 13 and related guidance available from the OECD on implementation of exchange of information.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

The Government of India has been provided with the right to enter into agreements with the Government of any country outside India, *inter alia*, for facilitating exchange of information for the prevention of evasion or avoidance of income-tax, or investigation of cases of such evasion or avoidance.

Pursuant to such provisions, India has entered into various Double Taxation Avoidance Agreements (DTAAs) with the respective countries, which may include such provisions for exchange of information. Generally, any information received under such provisions of the DTAAs shall be treated as secret, and shall be disclosed only to authorize persons.

Under such DTAAs, India could seek any ruling or information about an aggressive position adopted by an affiliate, from the tax authority of the country of the affiliate, provided India has signed a DTAA with the said country. There has been an increasing trend of information requests sent by India, in the recent past.

The prescribed requirements as per Action Plan 13, also require the taxpayer to maintain a list and brief description of the MNE group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries. Accordingly, having access to the Master File maintained by the taxpayer's parent, in its home country could provide access to such information by the tax authorities.

The information furnished by a taxpayer vide its CBCR, may trigger various questions and enquiries. However, it is to be noted that such questions arising from CBCR filings are to be considered merely for the purpose of assessing the transfer pricing risks.

Further, the Government of India, has prescribed special measures, like including the right to notify any country as a "notified jurisdictional area" ('NJA'), arising on account of lack of effective exchange of information between India and such country. As a consequence of such a notification, any transaction entered into by an Indian taxpayer, with a taxpayer situated in a NJA, would be required to comply with the transfer pricing provisions of India and payments from India being liable to higher rate of withholding taxes. By way of the above, the tax authorities are enabled to seek information with respect to a particular taxpayer or transaction dealing with an NJA and closely scrutinize the case.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

As mentioned above, any information received by India, under the exchange of information mechanism under the DTAAs, will be treated as secret and confidential. Such information will be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the liability of taxes of India. Further, the tax authorities may disclose the information in public court proceedings or in judicial decisions.

Having said above, it cannot be ruled out that the tax authorities may not share such information with customs authorities, indirect tax authorities, foreign exchange authorities, and similar other regulators, in specific situations, as their concern with "taxes" may depend on specific circumstances.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

India, being a signatory to MCAA would be governed by information sharing, protection, and confidentiality terms and conditions. Further, given the recent guidance from the OECD, requiring every country to state their positions on the aforesaid items, suitable positions may be expected from India in the near

future. However, as of now there is no official position with respect to the above.

Having said that, there are specific provisions within the ambit of the Income-tax Act, 1961 and provisions in the Indian Constitution, to protect against data leakage which could harm the taxpayer.

Thus, a taxpayer may have the means to protect their rights, under the respective regulations for protection of sensitive information, which if made public, may cause undue hardship to the taxpayer.

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[1] *Finance Act 2016 § 48, amending Income Tax Act § 92D. The Act may be found at: http://www.cbec.gov.in/resources//htdocs-cbec/fin-act2016.pdf;jsessionid=307F41691AD36A8435ADD14A22603EE1*
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[2] *USD 1 = INR 65*

[3] *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, issued by the OECD in July 2017*

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Ireland

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file and local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

Ireland does not require the preparation of a master file or a local file as such. Pursuant to Irish tax legislation a taxpayer is obliged to have available such documentation as may reasonably be required to support its transfer pricing policy. Guidance from Irish Revenue indicates that documentation prepared in accordance with the EU Transfer Pricing Documentation code of conduct and the OECD Guidelines are best practice. A recent report on the Irish corporation tax regime recommended that there should be a specific obligation in Irish legislation for taxpayers to comply with the documentation requirements set out in the OECD's recommendations (i.e., the master file and local file).[1] Therefore, there is an expectation that this requirement will be adopted in Irish legislation in the near term.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request.

As noted above, Ireland does not require the preparation of a master file and/ or a local file. The current obligations to have transfer pricing documentation available does not require that the documentation be filed with Irish Revenue Commissioners ("Irish Revenue"). Rather, the documentation should be retained on file and be available on request from Irish Revenue.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

Ireland does not require the preparation of a master file and/ or a local file. However, Ireland's general position in relation to the sharing of information is that Ireland will comply with its obligations under the various international arrangements that relate to exchange of information and to which Ireland is a party (see further below).

4. If a taxpayer has prepared a master file according to the requirements of its home country, and has prepared a local file in accordance with the requirements of your country, what is your country's position on seeking information or documents from the home country that are required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

Ireland has not yet adopted any legislation relating to the master file and local file concept. However, as noted above, we do expect Ireland to adopt the master file and local file concept in the near term. In general, Irish Revenue has quite wide powers to procure information from taxpayers that relate to an Irish tax liability and these powers are extended to foreign tax liabilities in the context of Ireland's obligations under various international agreements to exchange information.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

Part 38, Chapter 4 of the Taxes Consolidation Act 1997 (as amended) grants Irish Revenue extensive and broad powers to obtain information from taxpayers in relation to Irish tax liabilities. These powers can also extend to third parties, so that Irish Revenue can seek information from third parties in relation to a particular taxpayer. The powers would necessarily be limited by general territorial principles.

Irish Revenue has the authority to obtain information from another tax authority, under the following legal instruments:

- Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC ("Directive 2011/16/EU"). The relevant national implementing provision is S.I. 549 of 2012 (European Union (Administrative Cooperation in the field of Taxation) Regulations, 2012);
- The Exchange of Information Article (usually Article 26) in Ireland's Double Taxation Agreements ("DTAs"). Ireland's DTAs are given force of law under Section 826(1) of the Taxes Consolidation Act 1997 ("TCA 1997");
- Ireland's Tax Information Exchange Agreements ("TIEAs"). Ireland's TIEAs are given force of law under Section 826(1B) of the TCA 1997; and
- OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (the "Convention"). The relevant national implementing provision is S.I.34 of 2013 (Mutual Assistance in Tax Matters Order 2013).

Irish legislation prohibits Irish Revenue from seeking the following types of information:

- information with respect to which a claim to legal professional privilege could be maintained in legal proceedings,
- information of a confidential medical nature, or
- professional advice of a confidential nature given to a client (other than advice given as part of a dishonest, fraudulent, or criminal purpose).

Irish Revenue's ability to seek information under the international arrangements listed above would be limited in certain cases by reference to the specific terms of the arrangements (for example, information that would reveal a commercial secret).

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

Revenue is generally obliged to keep taxpayer information confidential pursuant to both the Official Secrets Act 1963 and Section 851A Taxes Consolidation Act 1997. There are exceptions to this obligation set out in legislation. For example, Irish Revenue will not be required to produce such information in respect of legal proceedings other than criminal proceedings or those relating to the enforcement of Irish tax legislation. In addition, Irish Revenue is positively authorised to disclose information in certain circumstances. This would include, for example, a suspicion that a criminal offence has been committed and an obligation to report to the Director of Corporate Enforcement. Importantly, in the context of taxation matters, certain staff in the Exchange of Information Branch in Irish Revenue are authorised to exchange information in accordance with Ireland's international arrangements. Every exchange of information, whether incoming to Ireland or outgoing from Ireland, must be by or to an authorized person in the Exchange of Information Branch.

Information received from a foreign tax administration must be kept confidential in the same way as information obtained from domestic sources. It may only be disclosed as provided for in the relevant international agreements i.e. usually only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, taxes covered by the instruments concerned and can only be used for the purposes specified in the arrangements under which the information was received. For example, some of Ireland's older double taxation agreements provide that information received under those agreements may only be used for direct tax purposes.

There are no particular legislative rights for taxpayers to prevent the sharing of information where it is legislatively provided for, though taxpayers may have rights to challenge decisions that have been made by Irish Revenue in any particular case under judicial review.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

Restrictions on the use of data received from other jurisdictions pursuant to CbC Reporting will be governed by the exchange agreement under which the information is exchanged. It is anticipated that in most cases the information will be exchanged under the Convention and in these instances the information can only be used for income tax, corporation tax and capital gains tax purposes.

In general, as a policy stance, Ireland would not support the publication of such information in a public forum. In fact, Ireland sent a reasoned opinion to the European Parliament that the proposal regarding public country by country reporting would breach the principle of subsidiarity.[2]

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[1] http://www.finance.gov.ie/wp-content/uploads/2017/09/170912-Review-of-Irelands-Corporation-Tax-Code.pdf.

[2] http://www.oireachtas.ie/parliament/media/committees/standingorder112dail/RO-Report-on-COM%282016%29198-%28Final%29.pdf.

Israel

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

A proposed amendment to the Israeli TAX Ordinance (ITO), that includes transfer pricing provisions, passed the first reading (out of three) in the Israeli parliament in January. In light of the BEPS initiative, the proposed legislation updates the provisions of section 85A of the ITO, and adds sections 85B and 85C to the ITO. On January 4, 2017, Israel opted to not adopt to its final budget the proposed amendments to the ITO, dealing with reporting of international transactions; however, the Israeli Tax Authority proposed (in a separate bill) to amend the current law dealing with international transactions to adopt the OECD recommendations on multinational group reporting.

The intention is to remain faithful to OECD Action 13 guidance for both files.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

Master File -There is currently a self-declaration on the corporate tax return, which is expected to be expanded to include the Master File.

Local File -The draft legislation in Israel was released very recently. Further detail is expected as the regulations are finalized.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

The sharing information in the master file and local file are intention to remain faithful to OECD Action 13 guidance.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

As Israel has not yet adopted Master and Local File legislation it is not yet known what Israel's position would be in seeking information or documents from a home country where a master file was submitted.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

As Israel has not yet adopted Master and Local File legislation it is not yet known how the tax authority would react if they suspected an affiliate of a company in Israel may have obtained a ruling or may have reported an aggressive position.

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2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

As Israel has not yet adopted Master and Local File legislation it is not yet known what other Israeli organizations the master and local file could or would be shared with.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

The CBC report is part of the documentation and reporting requirements for transfer prices as developed by the OECD. The report includes information about the Group and its operations. The CBC Agreement is an agreement for the automatic exchange of information on CBC reports. The agreement determines, inter alia, the dates for the transfer of the information and the companies to which it applies.

Companies that are part of a multinational group and who meet the definitions in the agreement will be required to submit the CBC report in accordance with a uniform agreement.

In October 2014, the State of Israel announced that the implementation of the automatic exchange of information between the countries in accordance with this standard would begin in September 2018. On May 12, 2016, the Director of the Israel Tax Authority signed a multilateral treaty for the implementation of multi-national reporting by submitting an annual report On all entities in the Multinational Group (Country By Country - "CBC").

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Italy

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

Italian transfer pricing documentation rules were introduced by Article 26 of the Law Decree May 31, 2010 No. 78 and were implemented with regulations issued by the Director of the Revenue Agency on September 29, 2010 ("Regulations"). As expressly indicated by the Regulations, the provision has been drafted on the basis of the Code of Conduct on Transfer Pricing Documentation approved by the European Union Council on July 27, 2006.

The main items to be inserted in the transfer pricing documentation, as required by the Regulations, are a description of the taxpayer and its multinational group, the transfer pricing methods selected, and an analysis to demonstrate compliance with the arm's length principle.

In particular, in accordance with the EU Code of Conduct, the proper documentation required by the Regulation is made of *(i)* a Master File that collects information regarding the Multinational Group and *(ii)* the Country Specific Documentation (local file) that contains information regarding the enterprise.

Transfer pricing documentation is optional, but provides penalty protection in case of a transfer pricing adjustment. While Italian Multinational Groups have to prepare both Master File and Country Specific Documentation in order to gain access to the regime protecting against administrative penalties, Italian subsidiaries of non-Italian groups have only to prepare Country Specific Documentation as long as they do not have any control shareholding in a non-resident companies.

Please see the comparison table explaining the master and local file.

The structure of transfer pricing documentation must follow a rigid format, *i.e.*, all paragraphs have to be maintained and completed in the table format. The structure is quite similar to the layout of the EU Code of Conduct documentation, and largely resembles that in the BEPS Action 13 final report. For non-compliance with the formal structure of the Regulations, or for incompleteness or untruthfulness of the transfer pricing documentation, penalty protection can be denied by the ITA.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

As mentioned above, Art. 26 of Law Decree No. 78 of May 31, 2010, converted into law on July 30, 2010, has set out a specific Master File and Country File documentation packages that the taxpayer must prepare for delivery if needed in an audit in order to benefit from a penalty protection regime with respect to a transfer pricing adjustment. The taxpayer must indicate in its tax return that it has prepared Transfer Pricing documentation.

The submission of the proper documentation to the Italian Tax Authorities ("ITA") must be executed within and not beyond, ten days upon request. If, during an audit or during any other assessment activity, supplementary information is required by the tax auditors it should be provided either within seven days or within a different period that the parties agree upon).

If the above deadline is not met, the ITA is not bound by the penalty protection regime.

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3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

To our knowledge, there is not an official position on sharing information contained in transfer pricing documentation with other tax authorities, but of course the ITA have information sharing arrangements with the tax authorities of other countries and generally comply with requests for exchange of information. In this regard, it is more likely that the Master File will be exchanged with other tax authorities, since the Country file is more country-specific.

In addition to formal information exchanges, Italy also participates in multilateral tax audits in certain instances.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

The audit is primarily aimed at allowing the auditors to search documentation relevant to assess the tax position of the taxpayer. As a consequence the taxpayer must fully cooperate and will incur, in certain cases, penalties for lack of cooperation. Indeed, where the taxpayer does not deliver the documents requested by the auditors, or hides documents or refuses to deliver documents, they will be subject to a severe "indirect penalty" consisting of the impossibility to subsequently use such documentation (for instance in case of litigation). However, such provision only applies to documents that were at the disposal of the taxpayer at the time the request is made. In contrast, such a limit cannot apply in the case of requests concerning, for instance, documents that are not available because they belong to a different group entity (e.g. the accounts of another group entity that is not controlled by the Italian taxpayer) or documents that the company has not prepared prior to the audit.

When an Italian taxpayer has prepared the Transfer Pricing documentation, and during the audit, additional information is required for the purpose of properly assessing the Transfer Pricing concerning a non-resident related party (eg. Sectional accounts of the non-resident tested party), not filing such information could expose the Italian taxpayer to the forfeiture of the penalty protection regime during a Transfer Pricing adjustment.

In any event, separately or in parallel with the requests to the local taxpayers, it is possible (and not infrequent) that tax authorities make requests for an exchange of information with the foreign country tax authorities.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

The authorities can follow two different routes to obtain information on rulings or on other tax issues. The first is to request that information from the Italian company. In this case, as mentioned above, if the taxpayer does not deliver the documents requested by the auditors, or hides documents or refuses to deliver documents, they might be subject to a severe "indirect penalty" consisting of the impossibility of subsequently using that documentation (for instance in litigation), unless it is proven that the taxpayer did not have access to the requested information when the request was received. Alternatively (or even in parallel), the ITA can rely upon the exchange of information.

Legislative Decree No. 32 of March 15,2017, transposed into national law the European rules on mandatory automatic exchange of information on cross-border ruling procedures and transfer pricing agreements. Art. 1, par. 3 of Directive 2015/2376/EU amended the Directive 2011/16/EU ("on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC") by adopting a new Article 8-bis that defines the scope and conditions for mandatory automatic exchange of information on tax rulings and transfer pricing agreements. Art. 8-bis, par. 1 provides that this information will automatically be communicated to the Competent Authorities of all other Member States.

Finally, it must be also noted that 39 countries (including Italy) have already signed the Multilateral Competent Authority Agreement for the Automatic Exchange of Country by Country reports (the MCAA-CbC). This multilateral agreement provides that a group parent company's country of residence that has received the CbC report will sends - on a bilateral basis - to each of the signatory tax administrations.

2 .What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

The ITA is bound by the official secrecy set forth in Art. 68 Presidential Decree No. 600/1973 according to which the information relating to the assessment are secret and cannot be communicated to third parties except in specific cases and to specific addressees. Specifically, the above mentioned rule states that:

> *"Any information or communication relating to the assessment, without the order of the judge, shall be deemed to be a violation of the official secrecy, except in*

the cases provided by law, to persons different from the respective Administrations, the taxpayer or his representative, the staff of the financial administration and the Tax Police as well as the members of the committees referred to in art. 45, members of the communal councils and fiscal councils, members of the committees exercising the Control of legitimacy on the acts of municipalities and the staff of the municipalities participating in the assessment. The disclosure of the data contained in the tax return is not considered a violation of the official secrecy".

Based on the above, the taxpayer's information may be shared only within the various bodies and departments of the ITA. In that regard, the taxpayer has no specific legal protection other than the above-mentioned provision.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

With Law No. 208 of December 28, 2015 (Finance Act 2016), Italy introduced a country-by-country report ("CbCR") filing obligation in accordance with Action 13 of the OECD BEPS project. On March 8, 2017 the decree of the Italian Ministry of Finance implementing the CbCR obligations was published.

The Law introduced a CbCR obligation for MNE Groups to deliver a comprehensive report to their home Revenue Agency reflecting the activity and taxes paid in each country where the group operates (i.e., revenues, profits before tax, corporate income tax paid, etc.). The first reportable period is the annual accounting period that begins in 2016 and is therefore January 1, 2016 to December 31, 2016 for groups using the calendar year for financial accounting reporting.

Even if the ITA had already implemented the CbCR provision, we are not aware of any intention by the ITA to make public the content of the CbCR. However, we believe that Italy is awaiting developments at the European level. In fact, on April 12, 2017, the European Commission submitted a proposal to amend Accounting Directive 2013/34/EU providing for the publication of Country by Country by Reporting by all enterprise groups which exceed Euro 750 million (or a corresponding amount in the local foreign currency) of consolidated revenues.

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Japan

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

In 2016, following the BEPS Action 13 final report, Japan formally introduced a three-tier transfer pricing documentation system. The three-tier documentation system includes a Country-by-Country ("CbC") Report, a Master File and a Local File. Multinational enterprises ("MNEs") with combined sales revenue of JPY 100 billion (approximately USD 900 million) or more ("Specified MNEs") are required to submit the Master File and the CbC Report for the fiscal year beginning on or after April 1, 2016. The Local File has a lower threshold and no submission requirement, but they must be prepared contemporaneously for the fiscal year beginning on or after April 1, 2017.

Master File

While the BEPS Action 13 final report's Paragraph 30 recommends that "the master file be reviewed and, if necessary, updated by the tax return due date for the ultimate parent of the MNE group", Japan requires Specified MNEs to submit the Master File within one year from the fiscal year end date. Therefore, the timing is more generous than OECD's recommendation, but Japan is stricter than the OECD in the sense that it requires submission, which OECD does not specify. The information that should be contained in the Master File is the same as the OECD's recommendation on BEPS Action 13 final report's Annex I to Chapter V.

Local Files

In Japan, the content that should be included in the Local File under the revised regulations is basically the same as what was contained in the previous transfer pricing documentation regulations, but is a little different from what the BEPS Action 13 final report suggests. For example, the Japanese Local File regulations do not specifically contain some information described in BEPS Action 13 final report such as:

- A description of the individuals to whom local management reports and the country in which such individuals maintain their principal offices
- An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection
- If relevant, an explanation of the reasons for performing a multi-year analysis.

On the other hand, the Japanese regulation requires most of the fact-specific information such as the organization, business description, controlled transactions and functional analyses to be included from a bilateral (or multilateral) point of view (i.e., from both the Japanese corporation's and foreign affiliates' perspective). In that sense the Japanese Local File can be characterized as an outbound-type, contrary to the inbound-type of documentation that mostly focuses on a "local entity," as the BEPS Action 13 final report suggests.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

As mentioned earlier, Specified MNEs must file the Master File in Japan within one year after the fiscal year end. More specifically, the Master File should be submitted to the competent District Director via e-Tax within one year of the day following the one when the Ultimate Parent Entity's fiscal year ends.

In addition to the Master File and CbC Report, a Specified MNE also must file "Notification for Ultimate Parent Entity" ("NUPE") with the tax authority via e-Tax by the day when the Ultimate Parent Entity's fiscal year ends. This deadline is one-year earlier than those for the CbC Report and the Master File. However, NUPE is a very simple document including only four items: (1) Name of the Ultimate or Surrogate

Parent Entity; (2) the location of its head or principal office (if the Ultimate Parent Entity resides in a foreign country, the location of its head or principal office or the site where its business is managed or controlled); (3) its corporate number; and (4) the name of its representative.

In contrast, the Local Files, which are under contemporaneous documentation rules, must be prepared by the corporate tax return filing date, but do not need to be filed immediately. Only if the tax authority requests, will the Local File need to be submitted, but then it must be submitted within 45 days from the request date. Taxpayers having total amounts of intangible transactions with a foreign related entity below 300 million JPY and total amounts of other transactions below 5 billion JPY in the previous fiscal year will be exempted from the formal contemporaneous documentation obligation just described. However, these exempted taxpayers still would need to produce alternative transfer pricing documentations equivalent to the Local File, if requested by the tax authority, within 60 days from such a request. As a practical matter, this means that there is only a 15-day allowance for exempted taxpayers to produce information, so that if a transfer pricing inquiry appears to be at all likely, documentation equivalent to a Local File should be contemporaneously created anyway.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

In Japan there are no rules regarding (or concerning) the sharing of information in the Master File and Local File. Only the CbC Report will be automatically shared with other relevant tax authorities. The National Tax Agency ("NTA") has not so far addressed exchanging information on Master File and Local Files with other tax authorities. It is possible that upon a request made under the information exchange article of a bilateral income tax treaty, information from these files (or the files themselves) might be subject to exchange. This would have to be a specific request, however; it would not be an automatic exchange.

4. If a taxpayer has prepared a master file according to the requirements of its home country, and has prepared a local file in accordance with the requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

Unlike China, where MNEs preparing a Master File outside of China should also prepare that Master File in China, Japan has no such rules and only Specified MNEs' Japanese entities regardless of head office location should submit the Master File to the tax authority. Thus, the tax authority cannot request a Master File that is prepared in other countries unless taxpayers are categorized as Specified MNEs.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

The Commissioner's Directive on the Operation of Transfer Pricing ("TP Directive"), which sets out the details of the Japanese transfer pricing regulations, states that during tax audits, tax auditors can request and obtain various documents regarding foreign controlled transactions and counterparty foreign related entities. However, information on local tax rulings in foreign countries is not specified in the TP Directive. Hence, it is understood that the tax authority can request but may not force taxpayers to submit such tax ruling information.

Also, the tax authority is allowed to obtain information from other tax authorities which have a tax treaty that includes an exchange of information provision with Japan. Usually, the information obtained from other tax authorities includes bank account information, financial statements, registry information, invoices of foreign related entities, and similar transactions, but the kinds of information that may be requested is not limited, so long as it is potentially relevant to determining tax liability. As a result, there may be no way to prevent the tax authority from requesting information on any specific local tax rulings made to the foreign related entity by other tax authorities. Regardless of whether the counterparty tax authority agrees to provide the information, the Japanese Tax Authority does have an obligation to keep confidential any taxpayer information.

Currently, there is no specific rule in Japan requiring taxpayers or tax practitioners to report aggressive tax schemes or positions to the tax authority. However, recently major sources have reported that the NTA is preparing to implement such a reporting system starting with fiscal year 2018, although no details have been announced yet.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

In Japan, no other organization than groups within the National Tax Agency is officially allowed to receive taxpayer information from the tax authority.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

In Japan, any taxpayer information included in the CbC Report, Master File, and Local File should be treated as confidential by the tax authority, and there is no plan on making them public. The Japanese business industry strongly objects to the EU's proposal to make the CbC reports public.

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Korea

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

Basically, the items of information to be filed in the master file and local file required by the Korean tax law are the same as those suggested by the OECD report on BEPS Action 13, but the Guidelines published by the Korean National Tax Service ("KNTS") require more detailed explanations of each item in the master file and local file. For example, according to the Guidelines, the item "Legal Ownership Structure of the Whole Corporations" should include more detailed information such as names of major shareholders, share ratios, etc., and not merely the equivalent of a structure diagram.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

The master and local files are in fact required to be filed with tax authorities. Beginning with fiscal years that start after January 1, 2016, Korean companies and permanent establishments of foreign companies having foreign related party transactions of more than KRW 50 billion, and having annual revenue of more than KRW 100 billion must submit a comprehensive report equivalent to a master file and local file within 12 months after the last day of the reporting fiscal year. The comprehensive report actually uses a form, Form 8-3, issued by the Korean tax authority. Form 8-3 covers all information that would be included in a master file and local file as described in Annexes I and II of the BEPS Action 13 Report, but most information in Form 8-3 is in table form.

In addition, the ultimate parent companies of MNE groups with consolidated revenue for a prior fiscal year exceeding KRW 1 trillion must file a country-by-country (CbC) report within 12 months of their fiscal year end, again starting with fiscal years beginning after January 1, 2016. For example, a calendar year taxpayer meeting the revenue threshold would file its first CbC report by December, 31, 2017. If the ultimate parent company is a foreign resident, the threshold in jurisdiction in which the parent company resides is based on the local regulation or EUR 750 million if the jurisdiction in which the parent company resides does not have the relevant regulation in place.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

Korea has no deviation from the OECD standards in terms of exchange of information in the master or local files with other tax authorities. The OECD Transfer Pricing Guidelines (2017) specify that the master file and local file should be implemented by local legislation, filed directly with relevant local tax authorities, and be subject to normal confidentiality and use restrictions in local legislative and administrative matters. There is no restriction on sharing the information under properly authorized procedures. All Korean income tax treaties have an exchange of information provision, and the Korean International Tax Administration Regulations (NTA Notice No. 1188 (1994) as amended) have provisions for the exchange of information.

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4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

The NTS' position is that taxpayer needs to fulfill all requirements in the statutory form even if some of them are not required in its home country. According to the Guidelines published by the NTS, the master file can be in a free format, but all the required fields stipulated in the Guidelines need to be included in the report. For the local file, a taxpayer is required to follow the statutory form in the exact manner. Penalty for noncompliance or false reporting of the BEPS documentation is KRW 10 million per each report (master file, local file, CbC report) and there is currently a proposed amendment to increase the penalty up to KRW 90 million (KRW 30 million per each report).

In addition, the International Tax Coordination Act of Korea allows the tax authorities to request all the information necessary to levy and collect taxes on cross-border transactions, for example, when conducting a tax audit on transfer pricing, etc. If a taxpayer does not submit the information requested by the tax authority without good cause, then the taxpayer might be subject to penalties up to 100 Million KRW at the maximum. However, if the information request is beyond the scope of lawful tax audit or collection, the taxpayer may refuse to submit the information by insisting that abuse exists during the tax audit or collection.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

According to the Article 81-17 of the Framework Act on National Tax, a taxpayer should faithfully comply with lawful interrogation, investigation and instructions from tax authorities. Therefore, the tax authority may request the ruling or aggressive position of an affiliate company to the taxpayer in the course of tax audit, or it may obtain that information from foreign tax authorities through the exchange of information system in a relevant income tax treaty.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

Generally speaking, taxpayer information should not be shared with other institutions, but the Article 81-13 of the Framework Act on National Tax specifies the exceptional circumstances where the information may be shared. The provision is as follows;

"Provided that in cases falling under any of the following subparagraphs, the tax official may offer the taxation information of taxpayers, insofar as it is appropriate for the purpose of use:

1. Where a local government, etc. requests taxation information in order to use for taxation or collection of the taxes prescribed by Acts;
2. Where governmental authorities request taxation information to use for tax action or the prosecution of a tax evader;
3. Where taxation information is requested by the submission order of a court or a warrant issued by a judge;
4. Where taxation information is requested by another tax official as it is necessary for taxation and collection of the national tax, or for placing questions or the investigation;
5. Where the Commissioner of the Korea National Statistical Office requests taxation information for compiling national statistics;
6. Where an agency established for the operation of a social insurance system under subparagraph 2 of Article 3 of the Framework Act on Social Security requests taxation information to perform business activities assigned to the agency under applicable Acts;
7. Where a State administrative agency, local government, or public institution under the Act on the Management of Public Institutions requests taxation information necessary to investigate or examine qualifications of a candidate for the grant of benefits or subsidies with the consent of the relevant party;
8. When the taxation information is requested pursuant to the provisions of other Acts."

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

Except for the circumstances mentioned in answer to question 2, as specified in the Confidentiality Clause of the Article 81-13 of the Framework Act on National Tax, no taxpayer information should be shared with other organizations or made public. The basic principle of confidentiality equally applies to the information contained in the CbC report, master/local files, and any other supplemental information, so the information should not be made public.

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Mexico

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

With respect to the master file, the information required by Mexico is similar to the information suggested in the Organization for Economic Cooperation and Development ("OECD")'s Final Report on Base Erosion and Profit-Shifting ("BEPS") Action 13, except for certain additional requirements with respect to the organizational and legal structure and the business overview of the multinational group. However, Mexico will accept the master file prepared by a nonresident enterprise insofar as its contents are in line with the Final Report on BEPS Action 13. Mexico will also facilitate compliance with this new obligation; e.g., the document may be presented in English without the need for a Spanish translation, and it may be presented in the currency and under the accounting principles of the related party that prepared the master file. For practical purposes, we can say that the master file information required by Mexico is similar to that suggested in the Final Report.

As regards the Mexico local file, we find relevant differences with respect to the OECD's Final Report on BEPS Action 13. For example, Mexico will require taxpayers to provide a value chain analysis and the multinational group's strategy for the development, enhancement, maintenance, protection and exploitation of intangibles (DEMPE functions), which is not included in the OECD Final Report. Likewise, the Mexico local file considers all of the taxpayer's related-party transactions, not just with nonresidents but with residents as well, which is not suggested in the OECD report. Lastly, the Mexico local file will require segmented financial information on the taxpayer's related party, when it is the tested party to the transaction, which is not mentioned in said report. In conclusion, we believe that the Mexico local file materially exceeds the information suggested by the OECD Final Report.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

In Mexico, taxpayers that derive income above 686 million pesos ($38 million U.S. dollars, approximately) will be required to file the master file and the local file with the tax authorities. All other taxpayers, with income below this threshold, must maintain and keep the transfer pricing documentation available to the Servicio de Administración Tributaria ("SAT"), in case of an audit

However, they must also present an annual informative transfer pricing tax return for its transactions with related parties resident abroad and, if applicable, a relevant transactions informative tax return in case of transfer pricing adjustments or restructures.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

To our knowledge, Mexico has not stated a position on exchanging information, particularly on an automatic or ongoing basis, from the master file and local file returns filed by taxpayers. However, Mexico signed the multilateral competent authority agreement on the exchange of country-by-country reports, and also has a network of international treaties both on double taxation and information exchange, under which it could share information as required by other countries in specific cases. Under tax treaties or bilateral tax information exchange agreements, exchanges of this information would be on a "specific request" basis.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

In principle, the Mexican tax authorities have stated that they would not seek further information than that already requested in the master file and local file, unless the master file does not include all or some of the items required by local law or in the OECD Final Report. Otherwise, taxpayers could file the necessary appeals, such as by seeking an injunction against the tax authority, to avoid submitting information prepared by the home office or abroad, not forming part of that prescribed by local law.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

Through an information return called "Form 76—Relevant Transactions," the Mexican tax authorities have access to information on the rulings and/or aggressive tax structures of taxpayers, tracing back to 2014. The Mexican tax authorities may fine taxpayers who do not file the return or file it incomplete, with errors or omissions, and may prohibit them from doing business with federal public-sector entities or even cancel their importer registrations. The Mexican tax authorities may also demand such information through a formal inspection or audit process.

Moreover, making use of the tax information exchange agreements and double tax treaties signed by Mexico, the tax authorities may request the support of partner countries to obtain information on rulings or aggressive tax structures involving taxpayers from their respective countries. This is a mechanism that the local tax authorities have used on various occasions to gather relevant information.

Taxpayers may seek injunctive relief or even make a human rights claim to avoid having to submit this type of information, although the likelihood of success is currently low, given the existing precedents.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

By law, the Mexican tax authorities cannot share taxpayers' tax information, except when requested by the National Institute of Transparency, Access to Information and Personal Data Protection ("INAI") or deriving from a court ruling entered by a judge of competent jurisdiction. Under the INAI law, taxpayers may seek injunctive relief against the tax authorities' acts relating to the publication or sharing of their tax information.

Article 2 of the Federal Taxpayer Rights Act establishes the sensitive nature of the data, information or backgrounds of taxpayers and their related third parties. For its part, Article 69 of the Federal Tax Code establishes the obligation of official personnel involved in tax enforcement procedures to maintain absolute confidentiality concerning returns and data supplied by taxpayers. The article further provides: "Through international treaties in effect, to which Mexico is party, which contain provisions on the reciprocal exchange of information, information may be supplied to foreign tax authorities."

There is also jurisprudence out of the Second Chamber of the Mexican Supreme Court holding that the tax authorities and their personnel must safeguard and maintain the confidentiality of the information provided pursuant to Article 76-A of the Income Tax Law (master file, local file and Country-by-Country "CbC" reports), effective January 1, 2016.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

Local laws require the tax authorities to maintain the secrecy of this type of taxpayer information. Therefore, and as indicated in the previous answer, Mexico cannot disclose or divulge information on the CbC report, master file or local file, nor is there interest in promoting a regulation to make taxpayer information public.

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these factors could lead to significant disclosure of information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

The Dutch implementation of the master file and local file requirements are broadly in line with the OECD final report on BEPS Action 13. No additional information is required in the master file or local file under Dutch law.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

In Dutch legislation the master file and local file requirements are codified in the new article 29g of the Dutch Corporate Income Tax Act 1969 (CITA). The master file and local file requirements are applicable for multinational groups with a consolidated revenue of EUR 50 million or more. This group of companies should prepare a master file and a local file prior to the required reporting of the CITA tax return. The master file and local file have to be retained and produced upon request. Therefore preparing a master file and local file are a contemporaneous documentation requirement.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

There is no specific position on the sharing of information in the master file and local file from the Dutch government. However the EU directive 2011/16/EU gives tax authorities of EU members states the legal basis to request information from tax authorities in other EU member states. In the Netherlands this directive is implemented in the Law on International Assistance on the Levying of Tax.[1] Tax authorities of other EU member states have the right, based on article 5 of the EU directive 2011/16/EU, to request Dutch Tax Authorities for information that is of possible interest for the levying of tax. The Dutch Tax Authority could indeed share information that is required in the master file or local file. A taxpayer does not have a right to avoid that information request or sharing of information. In addition, on receipt of a specific request under the exchange of information article of an income tax treaty or under an information exchange agreement, tax information that is "foreseeably relevant" to "the administration or enforcement" of the tax law of a country that is party to that agreement may be exchanged. If the contents of a master file or local file could meet that standard, the information could be exchanged.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

The EU directive 2011/16/EU gives tax authorities of EU members states the legal basis to request information from tax authorities of other EU member states. In the Netherlands this directive is implemented in the Law on International Assistance with the Levying of Tax.[2] The Dutch Tax Authorities can request the information from the local file or other documents

based on article 23 of the Law on International Assistance on the Levying of Tax from tax authorities of other EU members states.

The taxpayer does not have a right to prevent the tax authority from obtaining that information from a foreign related taxpayer or tax authority. However, an information request that is based on a so-called fishing expedition is not allowed. The request of information has to be based on a concrete and individual case with a certain goal.[3]

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

The Dutch Tax Authority has a broad competence to gather information for the levy of tax. Based on article 47 of the General Tax Act[4] every person is obliged to give the Dutch Tax Authority information that could be of use for the levy of tax. For example, if the affiliate of a Dutch company obtained a ruling or had to report an aggressive tax position that could be of use for the levying of tax in the Netherlands, then the Dutch company will be obliged to give that information to the Dutch Tax Authorities upon request. If the foreign affiliate of the Dutch company has a share of at least 50% in the Dutch company, the Dutch Tax Authorities can in accordance with article 47a of the General Tax Act also obtain the information directly from that foreign affiliate.

From an EU perspective the EU directive 2011/16/EU gives tax authorities of EU members states the legal basis to request information from tax authorities in other EU member states. In the Netherlands this directive is implemented in the Law on International Assistance on the Levying of Tax.[5] The Dutch tax authorities can request the information regarding a ruling or an aggressive position based on article 23 of the Law on International Assistance on the Levying of Tax from tax authorities of other EU member states.

The taxpayer does not have a right to prevent the tax authority from obtaining that information from a foreign related taxpayer or tax authority. However, an information request that is based on a so-called fishing expedition is not allowed. The request of information has to be based on a concrete and individual case with a certain goal.[6]

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

Within the Dutch tax law, the taxpayers' information is safeguarded by article 67 of the General Tax Act.[7] This article forbids the use of information from the taxpayer other than for the levying of tax. This safeguard does not apply if the disclosure of the information is mandatory by law or necessary for the fulfillment of the public task of a governing body.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

In 2015 the second chamber of Dutch parliament passed a motion proposed by a member of parliament, Markies.[8] The motion was to push the Dutch Government to make an effort for to implement a public CbCr model in the European Union. On 19 October 2016 the State Secretary of Finance wrote a letter to the second chamber of parliament to elaborate on the steps for implementing a public CbCr in the European Union.[9] In response to the letter, the Minister of Finance concluded that there is still doubt if the public CbCr proposition from the European Union will be appreciated by all members of the OECD, considering that the members of the OECD agreed upon CbCr rules that assumed that the CbC reports would be only available to the relevant tax authority. Accordingly, the Minister of Finance noted that the progress of the public CbCr proposal will be dependent on the EU presidency.[10] So, in general the Netherlands is positive towards implementing a public CbCr model. However, it should be noted that with regards to a public transfer pricing master file and local file, the Netherlands has not taken a formal position.

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[1] Wet op de internationale bijstandsverlening bij de heffing van belastingen (International Tax Recovery Act)
[2] Wet op de internationale bijstandsverlening bij de heffing van belastingen (International Tax Recovery Act)
[3] Kamerstukken II, 1984-1985, 18 852, nr. 3, MvT, p. 13
[4] Algemene Wet Rijksbelastingen.
[5] Wet op de internationale bijstandsverlening bij de heffing van belastingen
[6] Kamerstukken II, 1984-1985, 18 852, nr. 3, MvT, p. 13
[7] Algemene Wet Rijksbelastingen.

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[8] Kamerstukken II 2015/16, 21 501-07, nr. 1364.
[9] Kamerstukken II 2016/17, 25087, nr. 146.
[10] Kamerstukken II 2016/17, 25087, nr. 146.

New Zealand

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

Whilst the Inland Revenue ("IRD") has not formally adopted the Organization for Economic Co-operation and Development's ("OECD") master file and local file requirements under BEPS Action 13, the IRD has stated that it endorses this approach and considers the master file and local file documentation requirements set by the OECD to provide a meaningful platform on which taxpayers can describe their compliance with the arm's length principle regarding transfer pricing risks.[1] Further, the IRD website illustrates what it considers should be included in a good documentation package, which is generally in line with the documentation requirements set by the OECD in BEPS Action 13.[2]

The IRD has, however, implemented the OECD's recommendations with regards to the Country-by-Country ("CbC") Report contained in Action 13 for New Zealand-parented multinational groups ("MNEs") with global gross revenues exceeding EUR 750 million (approx. NZD 1,200 million). The IRD's population analysis suggests that approximately 20 New Zealand-headquartered MNEs will be affected.[3]

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

The New Zealand rules do not explicitly require taxpayers to submit, prepare, or maintain transfer pricing documentation. However, the transfer pricing legislation promulgated in Sections GC 6 to 14 of the New Zealand Income Tax Act 2007 ("ITA") and the IRD's transfer pricing guidance requires taxpayers to determine their transfer prices in accordance with the arm's length principle for income tax purposes. To demonstrate compliance with this requirement, the IRD considers it necessary and appropriate for taxpayers to prepare and maintain transfer pricing documentation which demonstrates how transfer prices have been determined, and why these prices are considered to be consistent with the arm's length principle.

Further, as outlined in the previous answer, the IRD endorses the OECD's local file and master file docu-

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mentation requirements, thus, as "best practice," New Zealand taxpayers should prepare and retain these documents to be provided on request by the IRD.

A lack of transfer pricing documentation (in terms of both quality and quantity), as well as non-cooperation with the IRD, can impact on the IRD's position in respect of penalty imposition in practice. For example, where the taxpayer has inadequate documentation, it may make it difficult to rebut a proposed alternative arm's length price asserted by the IRD and may result in penalties where an adjustment to taxable income is proposed.[4] Moreover, the IRD is more likely to audit those taxpayers who have prepared or submitted inadequate documentation.[5]

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

New Zealand has signed the (OECD) Convention on Mutual Administrative Assistance in Tax Matters ("CMAA") and the OECD's Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("MCAA-CBC"), and New Zealand has commenced exchanges of cross-border rulings and unilateral advance pricing agreements. The CMAA provides a multilateral approach for a wide variety of tax administration issues, including international exchanges of information, facilitation of simultaneous and joint audits, and assistance in collecting tax debts. The MCAA-CbC is paving the way for increased information transparency for tax authorities, through automatic exchange of country-by-country reports, as these reports allow tax authorities to obtain aggregated information relating to global allocations of income and taxes paid, and indicators of the location of economic activity of the MNE on a global basis. Further, on June 8 2017, New Zealand was one of the 76 countries to sign, or indicate intention to sign, the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("MLI"). New Zealand's comprehensive adoption of the MLI allows the IRD to efficiently update existing double tax agreements ("DTAs") to include revised articles on permanent establishments, treaty abuse, dispute resolution, and hybrid mismatches. The IRD anticipates that once New Zealand's treaty partners have signed the MLI, New Zealand's existing bilateral treaties will likely be modified, on a phased–in basis, thus ensuring consistency with the international best practices of the OECD.

New Zealand currently has 40 DTAs, all with an article establishing a mutual agreement procedure ("MAP") for resolving tax issues arising under a DTA, and to facilitate the exchange of information. Under this article of New Zealand's DTAs, it is anticipated that broad sharing of information between the relevant jurisdictions occurs, and will continue to occur, particularly in order to address MAP requests.[6]

Thus, whilst New Zealand does not currently require taxpayers to submit master file and local file documentation, it is generally expected that New Zealand may either share or request such documentation where appropriate.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

As discussed in the previous answer, the CMAA, MCAA-CBC and MLI will likely lead to increased information transparency and sharing globally for tax authorities. IRD is generally not constrained from seeking information that would lead to an informed view of a taxpayer's proper liability. As a signatory to these Agreements and under certain domestic laws, the IRD should be able to obtain global taxpayer information from various tax authoritieswhich has not been directly provided to the IRD by the New Zealand taxpayer, including information within submitted CbC Reports and master file documentation. This additional transparency flowing from exchanges of CbC reports and master file documentation may lead to additional scrutiny of various multinational groups.

Under the current New Zealand transfer pricing rules contained in Section GC 13(4)(b) of the ITA, the burden of proof for proving that cross-border associated party dealings are not at arm's length is on the Commissioner of the IRD, unless the taxpayer is uncooperative. However, in August 2017, the New Zealand government released three Cabinet Papers addressing key proposals for New Zealand's implementation of certain OECD BEPS ("Base Erosion and Profit-Shifting") Actions. These proposals will give the IRD increased powers to collect information and issue reassessments to "uncooperative" MNEs, including shifting the burden of proof from the Commissioner of the IRD to the taxpayer, and extending the statutory time bar for transfer pricing audits from 4 years to 7 years.

As a result of these proposals, an uncooperative approach by taxpayers for provision of information is generally not a preferable option in New Zealand, taking into account the IRD's broad administrative powers to request information as noted in Part II below. Further, the proposals will increase the importance for taxpayers to adequately document and ex-

plain their transfer pricing practices from a New Zealand perspective, and are likely to lead to increased New Zealand disputes and litigation.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

As per Part I, Question 3, New Zealand has commenced exchanges of cross-border rulings and unilateral advance pricing agreements, and the implementation of the MAAT, MCAA, and MLI will probably involve greater, potentially extensive, information sharing amongst revenue authorities.

Under Section 17 of New Zealand's Tax Administration Act 1994 ("TAA"), the IRD has considerable authority to obtain information from New Zealand taxpayers. Section 17(1) states:

> "Every person (including any officer employed in or in connection with any department ofthe government or by any public authority, and any other public officer) shall, when required by the Commissioner, furnish any information in a manner acceptable to the Commissioner, and produce for inspection any documents which the Commissioner considers necessary or relevant for any purpose relating to the administration or enforcement of any of the Inland Revenue Acts or for any purpose relating to the administration or enforcement of any matter arising from or connected with any other function lawfully conferred on the Commissioner."

Where a taxpayer in New Zealand fails to provide the information required under Section 17 and within the time limit specified in the notice, the Commissioner has the right to apply to the District Court for an order requiring the person to produce the information.[7]

The IRD can also request information on international payments deducted in New Zealand, even though the information may be held offshore, and the Commissioner can deny deductions to New Zealand taxpayers for such international payments if the requested information has not been provided by the taxpayer or other person as required under Section 17 of the TAA.

The IRD utilizes an International Questionnaire ("IQ") and a Transfer Pricing Questionnaire ("TPQ") to collect key information about financing/debt and transfer pricing issues from New Zealand taxpayers.[8] The TPQ contains the following question: "[H]ave any associated party transactions been the subject of an advance pricing agreement in another jurisdiction?" The IQ contains certain questions relating to international business restructuring and hybrid transactions. The IQ was sent to over 300 foreign-owned MNEs in 2016, and, in 2017, will be issued to all foreign-owned MNEs with turnover of at least NZD 30m; this is expected to cover nearly 900 taxpayers. This information allows the IRD to further enhance their risk assessment processes, and enables the IRD to provide greater certainty of future interventions to facilitate compliance for MNEs within New Zealand.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

It is the New Zealand Government's overall current legislative position that taxpayer information will not ordinarily be shared across government departments on the basis that it is a 'tax secret'. However, there is potential for information to be shared across government departments when there are issues of serious taxpayer crime, and when the sharing of taxpayer information could support the goals of other government departments.[9]

The IRD website lists various approved information-sharing agreements with other government agencies.[10] For example, there is currently a Memorandum of Understanding between Statistics New Zealand and the IRD, whereby the IRD provides certain taxation data to Statistics New Zealand to enable New Zealand's official statistics to be developed.[11] In addition, there is a Taxation Revenue Forecasts agreement between the IRD and Treasury to enable Treasury to be provided with appropriate information on tax returns and income related financial transactions to prepare taxation revenue forecasts.[12]

Other government departments with which the IRD may share taxpayer information include the Accident Compensation Corporation, the Overseas Investment Office, the Financia lMarkets Authority, Land Information New Zealand, the Ministries of Justice and Social Development, New Zealand Customs, New Zealand Police, and Worksafe. The restrictions on what the information may be used for are detailed in section 81 of the TAA or in an approved information-sharing agreement between the relevant departments.

The sharing of information generally occurs automatically (i.e. without notice being given to the taxpayer), with no ability for the taxpayer to restrict disclosure.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

Whilst there has been increased tax transparency and information sharing occurring on a global basis between tax authorities, it is not currently anticipated that the IRD will implement a requirement for public disclosure of taxpayer-specific CbC report, master file or local file information. It is noted, however, that

high-level aggregated information collected by the IRD through, for instance, the IQ is publicly disclosed.[13]

In a recent discussion document,[14] the IRD confirmed that approximately 20 multinational groups headquartered in New Zealand and with group revenue of EUR 750 million or more are now required to file country-by-country reports with the IRD. There is no indication that such information will be disclosed to the public by the IRD.

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[1] http://www.ird.govt.nz/transfer-pricing/practice/transfer-pricing-practice-documentation.html

[2] Ibid.

[3] http://www.ird.govt.nz/international/business/international-obligations/country-by-country-reporting/newcountry-by-country-reporting-requirements.html

[4] http://www.ird.govt.nz/transfer-pricing/practice/transfer-pricing-practice-documentation.html

[5] Ibid.

[6] http://www.ird.govt.nz/international/business/international-obligations/mutual-agreementprocedure/mutual-agreement-procedure-guidance.html

[7] TAA, Section 17A(1) and (2).

[8] http://www.ird.govt.nz/international/business/questionnaire/int-tax-questionnaire.html and http://www.ird.govt.nz/resources/3/1/316769804ba39f44bf2fbf9ef8e4b077/tp-questionnaire-foreignowned.pdf

[9] Inland Revenue (National Research and Evaluation Unit), Cross-government information-sharing to identify, stop or disrupt serious crime, November 2014.

[10] http://www.ird.govt.nz/aboutir/agreements/agreements-share/share-agreements-index.html

[11] This is legislated through Section 81(4)(d) of the TAA and the Statistics Act 1975.

[12] This is legislated through Section 81(4)(e) of the TAA.

[13] See, for example: http://www.ird.govt.nz/resources/d/9/d98bfc23-99aa-4dd7-95a4-a929c5015a1a/inforgraphic-int-questionnaire-2015.pdf

[14] Inland Revenue and the Treasury – Policy and Strategy, Discussion document, BEPS – Transfer pricing and permanent establishment avoidance, March 2017.

Portugal

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Deloitte, Portugal

Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

Transfer pricing documentation requirements in Portugal are generally in accordance with the information suggested by the OECD's final report on BEPS Action 13 regarding master file & local file.

Although the Portuguese transfer pricing legislation does not specifically provide for transfer pricing documentation structured on a master file & local file concept, the relevant information that should be computed from a Portuguese transfer pricing perspective follows the documentation requirements described by the OECD's final report on BEPS.

It should be noted that, although the Portuguese transfer pricing legislation does not specifically addresses the concept of master file & local file, the Portuguese Tax Authorities tend to accept transfer pricing documentation that is prepared and provided according to such format.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

The transfer pricing documentation file should be prepared on an annual basis and must be submitted upon the Tax Authorities' request. Unless requested, however, the transfer pricing documentation file is not required to be filed, but is held as a tax record until (and unless) requested.

In addition, however, certain transfer pricing information must also be reported on the Annual Tax Return, , such as i) the amount and nature of each controlled transaction; (ii) identification of the transfer pricing methods that were used regarding respective transfer pricing policies; (iii) identification of the related parties (in case of domestic transactions – transactions established between local related parties); and (iv) confirm if contemporaneous transfer pricing documentation is available.

Recently, Portuguese Transfer Pricing legislation introduced the Country-by-Country Reporting (CbCR) obligation for tax years starting on or after January, 1 of 2016, following the OECD recommendations regarding the CbCR requirements.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

Portugal was one of the countries that signed the OECD Multilateral Competent Authority Agreement for the automatic exchange of CbCR (the "MCAA"). Under the MCAA, signatories may exchange CbC reports with other signatories, if they have CbC reporting requirements in place and are a party to the OECD Convention on Mutual Administrative Assistance in Tax Matters.

Additionally, based on the OECD action plan and in the European Directive no. 2015/2376 of December 8th, 2015, significant legislative changes were also recently introduced in Portugal: i) automatic exchange of information between EU tax authorities, which includes CbC Reports, Advance Pricing Agreements or Advanced Cross-Border Rulings; and ii) the possibility of exchange of complementary information upon request between EU tax authorities.

Moreover, regarding the exchange of information with third-party countries (non-EU Countries), it is also possible for the Portuguese Tax Authorities to request or share specific information from or with other tax authorities with whom Portugal has established a Tax Information Exchange Agreement, or an income tax treaty with an exchange of information article providing the necessary authorization. Finally, in the situ-

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ation where the taxpayer, in order to avoid double taxation, activates the double taxation agreements between the Portuguese Tax Authorities and other jurisdictions' tax authorities, the Portuguese Tax Authorities are also able to exchange/request complementary information with/from other tax authorities.

It should be noted that, according to our experience, complementary information that is requested or shared by the Portuguese Tax Authorities is usually focused on additional and specific clarifications of facts or circumstances, and not on the information of a given master file or local file. It will depend on the facts and circumstances under analysis, as well as the objectives of the tax authorities.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

Transfer pricing documentation requirements in Portugal are generally in accordance with the information suggested by the OECD's final report on BEPS Action 13 regarding master file & local file.

However, if the master file home country requirements include information that is not contained in the Portuguese Transfer Pricing documentation requirements we tend to understand, from our experience, that there is no legal basis to enforce such additional information to be provided to the Tax Authorities (since it is not the taxpayer's reporting responsibility).

From a practical perspective, usually Portuguese Tax Authorities do not request information that is not included in the Portuguese Transfer Pricing documentation requirements, since taxpayers must only provide data that supports that respective activity was not impacted by any non-arm's length transfer pricing issue (in theory, such evidence will be fulfilled as long as Portuguese Transfer Pricing documentation requirements are followed).

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

Based on the OECD action plan and in the European Directive no. 2015/2376, of December 8th, 2015, significant legislative changes were recently introduced in Portugal: i) automatic exchange of information between EU tax authorities, which includes CbC Reports, Advance Pricing Agreements or Advanced Cross-Border Rulings; and ii) the possibility of exchanges of complementary information upon request between EU tax authorities.

Additionally, it is possible for the Portuguese Tax Authorities to request specific information from other tax authorities (non-EU Countries) with whom Portugal has established a Tax Information Exchange Agreement or income tax treaty with a tax information exchange provision granting the necessary authorization.

In these circumstances, a taxpayer will not be able to prevent the tax authorities from obtaining that information, since sharing such data will be directly negotiated/discussed by the Portuguese tax authorities with the other tax authorities.

However, in the situations where such information is requested from the taxpayer, the taxpayer should assess if the information that is being requested is included in the Portuguese Transfer Pricing documentation requirements. If not, from our experience, we tend to understand that there is no legal basis to enforce such additional information to be provided by the taxpayer to the tax authorities (since it is not the taxpayer's reporting responsibility).

Nevertheless, it should also be noted that, according to our experience, it is advisable to maintain a collaborative approach with the tax authorities in a transfer pricing audit, and a strict position on refusing information does not support a collaborative approach.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

In Portugal, certain organizations, such as credit and other financial institutions, statutory auditors and audit firms, lawyers, law firms, solicitors and other entities providing accounting services should communicate to the tax authorities possible abusive tax planning structures.

Moreover, in Portugal there are also some regulatory organizations, such as the Portuguese Central Bank and the Portuguese Securities Market Commission, which may also share information with the tax authorities (the reverse, however, is not applicable).

Finally, since Tax and Customs Authorities are separated divisions, exchange of information between both organizations is also encouraged (including from the Tax to the Customs Authorities).

In any case, the information to be shared by or with the tax authorities and other organizations must be restrained to the reporting of possible tax abuse or other non-legal or tax issues.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

As a basis, transfer pricing information that is shared with the Portuguese Tax Authorities is confidential. There is no expectation that such an approach will change in the next years. Portugal has not expressed a view that tax information should be made public.

Nonetheless, it should be noted that annually the taxpayer has to fill out and submit an annual tax return with financial and tax information. This form can be purchased by anyone and includes some tax information in regard to transfer pricing, such as the counterparty of a controlled transaction (if it is resident in Portugal) and the amount of the controlled transactions which are listed by type of transaction.

Finally, in the case of a court decision, certain transfer pricing information related to specific litigation process could become public. In this situation, only legal procedures under the respective litigation process could prevent, if possible, such information to be made public (it will depend on the circumstances).

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Russia

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

Russia has not yet adopted the legislation related to the implementation of BEPS Action 13 , including CbCR, master file and local file preparation. Currently, there is only a draft law on Action 13 which has passed the first hearing in the Parliament. The draft law has become a topic of a great attention from both taxpayers and the tax authorities.

According to the current version of the draft law, MNE groups with consolidated turnover exceeding the stipulated threshold are required to prepare a CbCR, a master file and a local file. Generally, the content of both a master file and a local file follows the OECD recommendations, although there are a few exceptions whereby the draft law suggests the following:

In relation to a master file:

- disclosure of information on *all* intercompany service transactions (contrary to the Action 13 recommendation to disclose only important intercompany service transactions);
- disclosure of information on *all* intercompany agreements related to intangibles and general description of *all* intercompany transactions related to transfer of interests in intangibles (contrary to the Action 13 recommendation to disclose only important intercompany agreements related to intangibles and general description of *any important* intercompany transfers of interests in intangibles);
- disclosure of a brief functional analysis of *all* companies of the MNE group making contribution to the value creation (contrary to the Action 13 recommendation to present functional analysis only describing the principal contributions to value creation by individual entities within the group);
- disclosure of information on *all* financial transactions with unrelated lenders (contrary to the Action 13 recommendation to disclose only important financing arrangements with unrelated lenders);
- disclosure of information on bilateral and multilateral APA's, together with the unilateral APAs (contrary to the OECD recommendation to disclose only unilateral APAs);

In relation to a local file:

- disclosure of information on *all* cross-border controlled transactions (contrary to the Action 13 recommendation to disclose information only on material controlled transactions);
- a requirement to undertake a local benchmarking study, should the Russian company be selected as a tested party to a transaction (contrary to the OECD Guidelines which allow using regional sets of comparables);
- a requirement to perform a benchmarking study every year with no option for a regular (e.g. once in a three year period) update (unlike the OECD recommendations to accept the updates).

It should also be noted that currently there are discussions about the necessity for the final version of the law to be more line with Action 13.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

According to the draft Action 13 legislation, the master file and local file are not to be filed with the tax authorities by any deadline. They need, rather, to be available for presenting to the tax authorities upon request.

The Master file can be requested no earlier than 12 months, but not later than 36 months, from the end of the reporting period. Once the request is received, taxpayers will have 3 months to provide their master file to the tax authorities.

Similar to the current transfer pricing documentation requirements in Russia, a request for a local file would be possible starting from the 1st of June following the reporting period. Taxpayers would have 30 days to fulfill the request for a local file.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

Currently, there are no recommendations or guidelines with respect to the tax authorities' intention to use a master file or a local file. At the same time, we are not aware of any factors which might prevent the Russian tax authorities from sharing the master file or the local file information or even the information which goes beyond the scope of these documents, provided the exchange of information is legitimate under a relevant double tax treaty. The exchange of information with other tax authorities is quite active nowadays and we expect it to extend even further in view of implementation of the BEPS action plan in Russia.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

There is not a prescribed list of information which can be requested by the tax authorities during a tax audit, including during a Transfer Pricing, audit. Generally, the tax authorities may request any information which is relevant to the case (operation/transaction) investigated under the tax audit. If such information is available only from the home country of a MNE, then technically there is a possibility for the Russian tax authority to obtain this information via an exchange of information request with a home country's tax authority.

In practice, we sometimes come across examples in which a local taxpayer is not able to fully support the arm's length character of certain transactions, for example, intra-group services rendered to it by a foreign group company since the taxpayer does not have access to full details of the transfer pricing policies relevant to the underlying transactions. In such cases, it is fair to expect that the Russian tax authorities may wish to approach a home country of the service provider in order to obtain the missing details.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

Nowadays Russian tax authorities actively receive information from different sources, including from the taxpayers themselves and also from foreign tax authorities in the course of a tax audit. We do not see any legitimate arguments which could prevent the tax authority from obtaining the required information from either a local taxpayer or, when not available, from another tax authority, including information about tax rulings or aggressive tax positions. At the same time, based on our experience, the tax authorities would only be able to request and use this information to the extent it is relevant to the case under review, i.e. relevant to the case involving a local taxpayer.

Additionally, as far as rulings are concerned, the tax authorities should be able to obtain some information from a master file and a local file, once the relevant requirements are implemented in Russia (proposed from 2018). In particular, according to the draft Action 13 legislation, (1) a master file should include a list and a brief description of the existing APAs and tax rulings related to allocation of income among countries and (2) a local file should include a copy of the existing APAs and tax rulings which are relevant to the analyzed controlled transactions and where Russian tax authorities were not involved.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

We have observed the Russian tax authorities receiving information on taxpayers from banks and Russian customs authorities. The Russian customs authorities also stated that they can receive information from the Russian tax authorities if needed. Usually the taxpayers can't prevent the information from being shared.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

Currently, there are no intentions or discussions about making a CbC report, a master file or a local file public in Russia. Nevertheless, we do not exclude that as such discussions progress outside Russia, for ex-

ample, in the EU, so we may expect similar developments in Russia one day.

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Singapore

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

In Singapore, there is no requirement to prepare a separate master file or a local file. However, the Singapore transfer pricing documentation requirements are, in substance, similar to the updated OECD requirements.

The transfer pricing documentation requirements are contained in the Singapore Transfer Pricing Guidelines ("Guidelines"), which are published and updated from time to time by the Inland Revenue Authority of Singapore ("IRAS"), to provide taxpayers with practical guidance on implementing and documenting arm's length transfer pricing policies. In this regard, the Guidelines set out the requirement in terms of the type of transfer pricing documentation that should be prepared.

Briefly, the transfer pricing documentation should contain information at the group level and at an entity level. The group level information includes general information on the group, the description of the group's business and the group's financial position for the financial year. At the entity level, the information that should be included is general information on the Singapore taxpayer, description of the Singapore taxpayer's business, the related party transactions and the transfer pricing analysis. This is broadly in line with the master file and local file concepts of the OECD.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

IRAS does not require taxpayers to submit the transfer pricing documentation when the tax returns are filed. However, taxpayers are required to submit their transfer pricing documentation to IRAS within 30 days, upon request.

Nevertheless, taxpayers are expected to prepare and maintain their transfer pricing documentation on a contemporaneous basis. "Contemporaneous" transfer pricing documentation refers to documentation and information that taxpayers have relied upon to determine the transfer price prior to or at the time of undertaking the transactions. To ease the compliance burden among taxpayers, though, IRAS accepts as contemporaneous transfer pricing documentation any documentation prepared at any time that is not later than the time of completing and filing the tax return for the financial year in which the transaction takes place. The corporate income tax return due date in Singapore is generally November 30.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

Singapore is a signatory to the Multilateral Competent Authority Agreements on the exchange of Country-by-Country Reports ("MCAA CbCR"). By signing the MCAA CbCR, Singapore will be able to efficiently establish a wide network of exchange relationships for the automatic exchange of Country-by-Country Reports. However, the automatic exchange or sharing of information with other tax authorities does not currently extend to transfer pricing documentation. We note that the MCAA CbCR has not been declared as an international compliance agreement for the purposes of the Singapore Income Tax Act, so technically it is not part of domestic law yet. Hence, no exchange should take place until the MCAA CbCR has been declared as an international compliance agreement.

In this regard, there has not been any legislation or any indication by the Singaporean government to

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mandate the automatic and/or spontaneous sharing of information in the transfer pricing documentation (other than the CbC Reports), except for information on cross-border unilateral Advance Pricing Agreements (APAs) and permanent establishment rulings.

However, none of this precludes the IRAS from exchanging information, including transfer pricing documentation, under Singapore's existing Avoidance of Double Taxation Agreements and Exchange of Information Agreements. This would be on a request basis, rather than automatic or spontaneous, but could include any information foreseeably relevant to determining a tax liability, and so could extend to information not specifically encompassed within BEPS Action 13.Can you please confirm these changes

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

As mentioned, while there is no requirement to prepare a master file or local file, the transfer pricing documentation requirements in Singapore are in line with the OECD's master file and local file concepts. In other words, the Singapore transfer pricing documentation should contain information similar to what is required under the OECD's master file and local file. In this regard, if a Singaporean taxpayer prepares transfer pricing documentation in line with the OECD's local file requirements, IRAS will require that the master file is also provided. Under Paragraph 6.15 of the Guidelines, if the Singaporean taxpayer has prepared similar transfer pricing documentation (in this example, the master file) for purposes of complying with the requirements of other tax jurisdictions, such documentation, if relevant to the business operations in Singapore, may form part of the transfer pricing documentation for Singaporean tax purposes.

To the extent that the Singapore transfer pricing documentation and the master file would not contain the information as stipulated in the Guidelines, IRAS would typically require that additional information be provided by the taxpayer. Moreover, IRAS could potentially take the position that the taxpayer has not fulfilled transfer pricing documentation requirements.

Moreover, IRAS may make requests for exchange of information to obtain additional information from the competent authority in the relevant jurisdiction, under Singapore's existing Avoidance of Double Taxation Agreements and Exchange of Information Agreements. In principle, the taxpayer may attempt to seek an injunction to prevent IRAS from obtaining the information, although the grounds may be limited. Another option is for the taxpayer to avail itself of any remedies that could be available under the laws of the foreign jurisdiction to prevent that exchange of information from taking place.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

As mentioned, under the Guidelines, IRAS now requires Singaporean taxpayers to include a copy of any existing unilateral and bilateral or multilateral advance pricing arrangements and other tax rulings to which IRAS is not a party and which are related to related party transactions described in the transfer pricing documentation. This may potentially include tax rulings obtained by an affiliate which conducts related party transaction with the Singaporean entity required to prepare transfer pricing documentation. As such, IRAS may request such information as required under the Guidelines from the Singapore taxpayer.

Additionally, IRAS has adopted the agreed framework for the compulsory spontaneous exchange of information in respect of rulings under the OECD'S Final Report on Action 5. Under this framework, IRAS will spontaneously exchange information on cross-border unilateral APAs with the relevant jurisdictions (i.e. jurisdictions of residence of all related parties covered by the unilateral APAs and of the taxpayer's ultimate parent entity and the immediate parent entity), provided that the jurisdictions have a tax treaty or exchange of information instrument with Singapore, have the necessary legal framework and safeguards to ensure confidentiality and appropriate use of the information exchanged, and are similarly committed to compulsory spontaneous exchange of information on cross-border unilateral APAs under the framework. This would allow IRAS to obtain information regarding the ruling directly from the tax authority in the other jurisdiction concerned. Moreover, IRAS may make requests for exchange of information to obtain additional information from the competent authority in the relevant jurisdiction, under Singapore's existing Avoidance of Double Taxation Agreements and Exchange of Information Agreements.

In principle, the taxpayer may attempt to seek an injunction to prevent IRAS from obtaining the information, although the grounds may be limited. Another option is for the taxpayer to avail itself of any remedies that could be available under the laws of the foreign jurisdiction to prevent that exchange of information from taking place.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

IRAS is subject to official secrecy duties, but there are exceptions to such duties which allow IRAS to share taxpayer information with specified government authorities or statutory bodies under certain circumstances. Examples include provision of information to the Chief Executive Officer of the Central Provident Fund Board, the Commissioner of Police and the Director of the Commercial Affairs Department for specified purposes. The taxpayer has the right to restrict any sharing where the sharing is unlawful or falls outside the exceptions to the official secrecy duties.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

There has not been any express intention by IRAS or the Singaporean government to make any information from the Country-by-Country Report, transfer pricing documentation and any other supplemental information public. We do not anticipate such requirements being implemented in the near future.

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Switzerland

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

At the moment, Switzerland does not have and does not plan to implement Transfer Pricing documentation rules, but has implemented administrative guidance to generally follow the OECD Guidelines with respect to transfer pricing matters. Hence, there is no factual transfer pricing documentation requirement in Switzerland. The master file and local file approach is basically being "imported" by Switzerland, given the fact that other jurisdictions have already introduced it or are about to introduce it. Therefore, Swiss-based MNEs have to adopt a globally consistent documentation approach in order to be compliant (and consistent).

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

Switzerland has not implemented transfer pricing documentation requirements. Hence, there is no requirement of filing such documentation. (reference is made to the answer provided in question1). That being said, in the case of a tax audit on transfer pricing matters, the taxpayer is obliged to provide any requested information that is necessary to demonstrate the arm's length nature of specific transaction. These are generally answers that would be found in a Transfer Pricing documentation and accordingly it is advisable to have something in place beforehand.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

Switzerland will not proactively exchange any information included in the Master File / Local File nor will such information be collected by Swiss authorities. That being said, with effect from January 1, 2017, the spontaneous exchange of information concerning tax rulings was implemented in the Swiss national law based on the BEPS Action 5 report. The exchange of information covers only the Swiss tax rulings granted from January 1, 2010 on and that will still be in force when the actual information exchange starts (January 1, 2018).

Additionally, Switzerland can exchange transfer pricing related information in case of an administrative assistance request from another jurisdiction (if the relevant clause is included in the applicable Double Tax Treaty ("DTT")) and with the countries that have signed a Tax Information Exchange Agreements ("TIEAs") with Switzerland.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

As highlighted above, Switzerland might request information through the administrative assistance and the TIEAs. However, this information is not necessarily linked to available Master File / Local Files. Reference is made to the answers of questions 1 and 3.

Switzerland would only share or request that sort of information if necessary to assess a specific case and in accordance with the applicable treaties.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

(1) As part of a tax audit the Cantonal/Federal authorities have the right to request any local tax ruling, respectively any information around possibly aggressive tax positions.

(2) If the information relates to a ruling/aggressive tax position in another country, Switzerland can request it through an administrative assistance procedure, the TIEAs or will have access to it as part of the spontaneous exchange of information concerning tax rulings.

In case the Swiss authorities are being requested to share information (either through the administrative assistance or the TIEAs) with foreign authorities, the taxpayer can either agree or disagree. In case of disagreement he can request a formal decision by the Swiss authorities against which he can appeal and even enter into litigation procedures.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

The Swiss tax authority will share the information among themselves (Federal tax authority can share with Cantonal tax authority and vice-versa). In addition, the Swiss tax authority will also share the information with the State Secretariat for International Financial Matters ("SIF", Competent Authority for APAs/MAPs), in case of an ongoing APA or MAP case.

In cases of criminal/tax fraud cases, tax-related information can/has to be shared with the respective bodies such as the prosecutors.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

There are currently no plans in Switzerland on making this information public and it is unlikely that Switzerland will implement any public sharing of tax sensitive information.

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United Kingdom

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Part I. The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

The UK currently imposes no requirement on multinational enterprise groups to prepare a master file, as specified in Annex I to Chapter V of the Transfer Pricing Guidelines, or a local file, as defined in Annex II to Chapter V of the Transfer Pricing Guidelines, for transfer pricing documentation purposes.

The UK's transfer pricing legislation is linked to the OECD Transfer Pricing Guidelines and incorporates them into the interpretation of the UK legislation. As a consequence of the BEPS Project and the revision of the OECD Transfer Pricing Guidelines, the UK has revised its legislation to maintain the link to most of the transfer pricing changes. It introduced the changes arising from the final report on BEPS Actions 8-10 to its domestic transfer pricing legislation (s.164(4) Taxation (International and Other Provisions) Act 2010 and s.357GE(1) Corporation Tax Act 2010) through s.75 Finance Act 2016. This updates the readings of the affected chapters of the OECD Guidelines for UK legislative purposes. The UK has also legislated for the introduction of Country-by-Country reporting per BEPS Action 13, through the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016.

However, what the UK has signally not done is incorporate the whole of the revised Chapter V of the OECD Transfer Pricing Guidelines, on documentation, into its legislation by adopting the BEPS Action 13 Report wholesale. This means that the guidance on master file and local file in the OECD Transfer Pricing Guidelines does not form a part of the UK's transfer pricing documentation rules.

The UK's transfer pricing documentation requirements are covered by s.386 Companies Act 2006, whereby companies must keep adequate accounting records sufficient to show and explain the company's transactions. In addition, there exist general rules on the duty to keep and preserve records with respect to company tax returns, as defined at paragraphs 21 and 22 of Schedule 18, Finance Act 1998.

21(1) A company which may be required to deliver a company tax return for any period must—
(a)keep such records as may be needed to enable it to deliver a correct and complete return for the period, and
(b)preserve those records in accordance with this paragraph.

HMRC's expectation in terms of transfer pricing documentation is explained in the International Manual at INTM483030, dealing with "Record keeping and transfer pricing":

> *HMRC does not want businesses to suffer disproportionate compliance costs so customers should prepare and retain such documentation as is reasonable given the nature, size and complexity (or otherwise) of their business or of the relevant transaction (or series of transactions) but which adequately demonstrates that their transfer pricing meets the arm's length standard. Transfer pricing documentation consists of a mixture of records and other information in relation to a period covered by a tax return, and may be created at various times. This variety affects the exposure of a business to the risk of a penalty in relation to documentation. There are four classes of records/ evidence that will need to be considered.*
>
> - *Primary accounting records*
>
> *1. These are the records of transactions occurring in the course of the activities of a business that the business enters in its accounting system.*
> *2. These records are needed to produce accounts, and in particular a balance sheet and a statement of profit or loss, and need to be retained for any audit of the accounts. There are legal requirements concerning the time for which such records need to be retained. The requirements would still be necessary in the absence of any tax rules.*
> *3. These records include the results (in terms of value) of the relevant transactions. In the context of transfer pricing rules, these are the "actual" results. They may or may not be "arm's length" results.*
>
> - *Tax adjustment records*

1. These are the records that identify adjustments made by a business on account of tax rules in order to move from profits in accounts to taxable profits, including the value of those adjustments.
2. These adjustments might include the adjustment of "actual" results to "arm's length" results on account of transfer pricing rules.

- *Records of transactions with associated businesses*
  1. These are the records in which a business identifies transactions to which transfer pricing rules apply.
  - *Evidence to demonstrate an "arm's length" result*
    - *1. This is the evidence in which a business demonstrates that a result is an "arm's length" result for the purpose of transfer pricing rules.*

HMRC makes clear at INTM483030 that it will also accept documents prepared in accordance with the European Union (EU) Code of Conduct on transfer pricing documentation, issued in 2006. Under this Code of Conduct, a multinational enterprise group's standardised and consistent EU transfer pricing documentation consists of two main parts:

(i) one set of documentation containing common standardised information relevant for all EU group members (the "masterfile"), and

(ii) several sets of standardised documentation each containing country-specific information ("country-specific documentation").

The specification for the content of transfer pricing documentation under the EU's Code of Conduct is similar, but not identical, to the specifications for master file and local file in Annexes I and II of Chapter V of the OECD Transfer Pricing Guidelines. Businesses intending to follow the EU's Code of Conduct in preparing transfer pricing documentation are invited to inform HMRC of this change by writing to the Transfer Pricing Team, CTIAA Business International, 100 Parliament Street, London SW1A 2BQ.

However, in the section of the International Exchange of Information Manual dealing with Country-by-Country reporting, at IEIM300033, specifically addressing "Master and Local files", HMRC currently states, rather confusingly in light of what has gone before:

The Action 13 report details a standardised approach for transfer pricing documentation, these being the master file and local file, as well as the Country-by-Country report. The master file contains a high level overview of the group's global business operations and transfer pricing policies; the local file provides detailed transactional transfer pricing documentation for a specific jurisdiction identifying material related party transactions, the amounts involved in those transactions and the company's transfer analysis of those transactions.
HMRC requires that transfer pricing documentation should be retained to support the arms-length pricing. Such documentation should be proportionate to the size and complexity of the transactions or business involved and should be the same as that specified in Annexes I and II of the Action 13 report. HMRC does not require a master file or local file to be filed with the CbC return.

HMRC's current wording of the International Exchange of Information Manual therefore perhaps gives an impression of implying a requirement to prepare and keep an OECD-style master file and local file for UK compliance purposes, which is not compatible with UK statute as it currently stands and would be a change to HMRC's existing position, as expressed in the International Manual. However, we understand that this wording in the International Exchange of Information Manual is currently in the process of revision by HMRC and is likely very shortly to be altered to more generic wording, such that the analysis retained should be both proportionate and appropriate to the size and complexity of the business and transactions involved, but without explicit reference to keeping the same documentation specified in the Annexes I and II of Chapter V, as delineated in the Action 13 report.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

As already stated in the answer to Question 1, HMRC does not require the preparation of a master file or local file and does not require a master file or local file to be filed with the CbC return. Indeed, there is no filing requirement at all for transfer pricing documentation in the UK. Rather, records and evidence need to be retained and produced on request.

HMRC gives guidance in the International Manual, at INTM483030, on when records and evidence need to come into existence:

Primary accounting records would generally be created at the time the information entered the business accounting system. This would be before a tax return was made for the period in question.

If a business were to meet its obligation to make a correct tax return, tax adjustment records and records of transactions with associated businesses:

- *would not need to be created at the same time as primary accounting records,*
  - *but would need to be created before a tax return was made for the period in question. Evidence to demonstrate an "arm's length" result would need to be made available to HMRC in response to a legitimate and reasonable request in relation to a tax return that had been made. Although the business would need to base relevant figures in its tax return on appropriate evidence, the material recording that evidence would not necessarily exist at the time the return was made in a form that could be made available to HMRC. Indeed, if HMRC never made a request, the evidence might never exist in such a form. The OECD Guidelines at Chapter V contain recommendations about transfer pricing documentation.*

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

Exchange of information (EOI) by HMRC with other tax administrations on request is governed by the standard of "foreseeable relevance". For HMRC to share tax information with another tax jurisdiction, there must be a legal gateway, i.e. a valid international agreement in force between both countries, whether a Tax Information Exchange Agreement, a Double Tax Convention containing the equivalent of the OECD Model Tax Convention Article 26 on Exchange of Information, or the countries must both be signatories to and have ratified the Multilateral Convention for

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Mutual Administrative Assistance in Tax Matters and the Amending Protocol. The Directive on Administrative Cooperation in the field of taxation (2011/16/EU) (DAC) also currently provides a legal gateway for exchanging with other Member States of the European Union. Through these instruments HMRC is able to exchange information on request with over 130 jurisdictions.

Together with most other jurisdictions, the UK has been rated "Largely Compliant" against the international standard of exchange of information on request, established through peer review in the Global Forum on Transparency and Exchange of Information for Tax Purposes.[1] The standards provide for exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorized but all foreseeably relevant information requested must be provided.

To the extent that information held by HMRC or by a UK taxpayer might be considered foreseeably relevant to the administration or enforcement of tax in a jurisdiction with which the UK has a valid agreement, HMRC would be expected to share, or obtain and share, that information. The standard of foreseeable relevance is not limited by definitions of "master file" and "local file" and if a requesting tax administration makes a case that information outside the narrow limits of the OECD's definition of master file and local file is foreseeably relevant to administration or enforcement of domestic tax legislation, HMRC would be expected to supply the information.

HMRC makes clear its position on inward requests in the Exchange of Information Manual at IEIM120100:

> *Where the UK has signed an exchange agreement with another jurisdiction, we have undertaken that HMRC will provide information to that jurisdiction. An overview of exchange on request is at IEIM102100.*
> *All inward requests will be reviewed by a UK Competent Authority to check that they meet the requirement of the exchange agreement, and comply with the law; if necessary they will clarify any points of difficulty with the requesting jurisdiction.*
> *Where the information is publicly available or held on a database or other source they have access to, the Competent Authority will reply directly. If not, they will contact the CRM or other officer responsible for the case to find out what information HMRC holds on file.*
> *Where appropriate the Competent Authority will ask the CRM or caseworker to obtain information directly from the UK customer, or do so themselves if there is no one responsible for the case. This may involve using information powers. It does not matter that the information is not needed by HMRC, and there are specific provisions in our information powers allowing us to use them to meet our obligations under exchange agreements (IEIM120150).*

Most international exchange of information for direct tax purposes is dealt with by an EOI Team in the Centre for Exchange of Intelligence (CEI) within HMRC's Risk and Intelligence Service in London. Per the Global Forum Peer Review Report for the UK, HMRC can fully answer approximately 56% of requests for information using information directly available to the EOI team. For the remaining 44% of requests, a third-party enquiry is needed.[2]

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

Though there is no statutory requirement to file a master file or local file in the UK, HMRC considers that it can require the provision of a master file and local file under existing powers (paragraph 7.5 of the draft Explanatory Memorandum to the 2015 draft Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations).[3]

Generally speaking (where it would not prejudice the conduct of an enquiry), HMRC is expected to exhaust all domestic avenues before making a request for information from another tax administration.

HMRC has wide-ranging domestic information powers under Schedule 36 of Finance Act 2008 to obtain information or a document "if the information or document is reasonably required by the officer for the purpose of checking of the taxpayer's tax position". Failure to comply with a notice will lead to penalties. However, the taxpayer can appeal against the notice to the Tax Tribunal. Written notice of appeal must be given to HMRC within 30 days of the date of issue of the notice and must state the ground of appeal.

Reasons for an appeal may be that the information requested does not help to ascertain the taxpayer's position, is irrelevant for the purpose or is too wide and onerous to gather.

If HMRC has contacted a taxpayer and used domestic information powers to the extent that it is content the information cannot be obtained, it has exhausted domestic avenues. It is then in a position to make a request for information to another tax administration. In many cases the UK entity will provide the information on request, even if it has to seek the information itself from an overseas party such as another company in the group.

Where the information is not in the power or possession of the UK entity, HMRC does not need to use domestic information powers, but may make a request for information from another tax administration. The standard of foreseeable relevance applies and exactly the same considerations apply as when dealing with an inward request (see the answer to question 3 above).

HMRC explains to its inspectors in the Exchange of Information Manual, at IEIM111010, on outward requests:

> *Exchange of information requests are a normal part of HMRC enquiry work. An outward request can be made at any stage of an enquiry providing:*
> - *There is a relevant legal gateway for the request (IEIM101200);*
> - *The information you are seeking is foreseeably relevant (IEIM101300); and*
> - *It is information the UK would be legally able to provide for a similar inward request from the other tax authority and so meets the standard of reciprocity (IEIM101500). You must also con-*

sider whether you have exhausted all domestic avenues (IEIM112300).

To the extent that the master file is considered foreseeably relevant to the administration or enforcement of domestic tax legislation in the UK, the counterpart tax administration holding (or able to obtain) the master file would be expected to share it with HMRC.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

The UK has committed to the automatic exchange of tax rulings under the OECD's BEPS Action 5 and the EU's Directive on Administrative Cooperation in the field of taxation (2011/16/EU) (DAC).

Unlike automatic exchanges made under other tax instruments in line with Action 5, or spontaneous exchanges, rulings exchanged under the DAC are not provided directly to the other relevant jurisdictions, but instead are uploaded onto a central EU database.

HMRC will be able to access this information in its risk assessment and enquiry work. Where, on reading the summary, an EU Member State can see that the ruling or APA is foreseeably relevant they can use the details provided, and if necessary request further details about the ruling from the originating State under the DAC.

Given the differing requirements of Action 5 and the DAC it is expected that, on an outward basis, usually:

- All rulings and APAs exchanged under Action 5 will also need to be exchanged under the DAC;
- Some rulings and all bilateral APAs will only be exchanged under the DAC.

HMRC has published detailed information on the exchange of tax rulings in the Exchange of Information Manual, from IEIM50000.

In terms of seeking information about a tax ruling obtained by a foreign affiliate of a domestic entity from another jurisdiction, if HMRC has not received the ruling from that other jurisdiction automatically under Action 5 or gained access to it through the DAC, the same rules will apply as for any other tax information request. Exactly the same considerations described in question 4 above will apply.

Fishing expeditions are not allowed, so there should be grounds for believing that the ruling exists before a request is made. HMRC must first exhaust all domestic avenues for obtaining the ruling – with the taxpayer having the same rights of appeal as described above – before it is in a position to make a request of another tax administration under an appropriate international tax agreement, while adhering to the standard of "foreseeable relevance".

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

HMRC's ability to disclose taxpayer information to anyone is restricted by the Commissioners for Revenue and Customs Act 2005 (CRCA). Sharing information with anyone in a way that is not covered by the CRCA means HMRC officers may personally be liable to a criminal sanction. Section 18 of CRCA makes clear that HMRC officers must not disclose HMRC information to anyone without the lawful authority to do so. This includes other government departments and their agencies, local authorities, the police or any other public bodies.

Sections 17, 18 and 20 of CRCA define when a HMRC member of staff has lawful authority to disclose information. These situations are outlined in its Information Disclosure Guide, at IDG40120:

Sharing information within HMRC is permitted by section 17. See IDG20000. Disclosing information to persons outside HMRC is permitted in certain limited circumstances detailed below:

- *For the purposes of HMRC's functions. An example is where it is necessary to advise a bailiff of a taxpayer's name and address in order that the bailiff can enforce collection of overdue tax. See IDG40400.*
- *Where the person or organization that the information is about has given their consent, see IDG40310. An example could be a taxpayer who provides authorisation for an agent, accountant or other third party to receive confidential information.*
- *Where the duty of confidentiality is specifically overridden by legislation that permits the disclosure of information to a particular third party. These are often known as 'legal' or 'information' 'gateways'. See IDG40320.*
- *Where HMRC receives a court order that is binding on the Crown which instructs HMRC to disclose information. See IDG40510.*
- *Where disclosure is made for the purposes of a prosecution being pursued by HMRC. See IDG54300.*
- *Where disclosure is in the public interest. See IDG60000.*
- *Disclosure to the relevant prosecuting authorities. See IDG54300.*

A full list of legal gateways is found at IDG50000. This list includes parties outside HMRC that are government departments, agencies and other public authorities. These include, *inter alia*, certain enforcement bodies dealing with anti-terrorism, crime and security.

IDG40320 describes for its officers the procedure for disclosure through a legal gateway:

The procedure to take when disclosing information through a legal gateway is often outlined in jointly agreed documents. The forms these arrangements can take are outlined below:

- *a memorandum of understanding (see IDG40230)*
- *a protocol*
- *a partnership agreement*
- *a statement of practice*
- *a code of practice Please note that these documents do not in themselves provide HMRC with lawful authority to disclose information*

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and do not constitute 'legal gateways'. They have no statutory force.
Each legal gateway may have its own procedures set out in one of these formats. If you are using a gateway to disclose information to another public body you must be aware of, and follow, any procedure in place. IDG50000 contains the details of the procedure for disclosure for each government organisations.
The procedure may cover the forms that must be completed, what information can be disclosed, who may disclose the information, who may receive the information, the authorizations and safeguards that need to be in place, and what restrictions are in place on the use of the information once disclosed. You must be aware of all these procedural specifications before you disclose any information.
Often the procedural documents state that a legal gateway has a centralised procedure for disclosure. In this circumstance officers who do not work in the designated central team may not disclose information and all requests should be passed on to the central point denoted.
If you receive a request for information from another government department, agency or public authority, the requesting department should state which legal gateway it is that allows you to disclose the relevant information to that organisation. In some situations requesting authorities may not be aware of the rules governing HMRC disclosures, or the appropriate gateway to use. In this case you should refer to this manual and to Information Policy and Disclosure where you need further guidance (see IDG80100).

It is difficult to envisage the situation in which the taxpayer would be in a position to restrict the sharing of information as he is very unlikely to be aware of the request.

There are also limited circumstances where there is no appropriate statutory gateway, but where the public could reasonably expect HMRC to disclose information (for example, in order to meet legitimate public concern, or to prevent harm to the public) - so called "public interest disclosures".

The authority to make public interest disclosures is narrowly drawn and very specific in what it covers. Disclosures may only be made in the limited circumstances and to the recipients set out in CRCA, described at IDG60232. It should be noted that such disclosures will be made almost entirely while carrying out former HM Customs and Excise functions - disclosures while carrying out former Inland Revenue functions will be rare.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

At present, the UK's position on information exchanged under international agreements remains consistent with that of the OECD, as expressed in the Action 13 report, namely:

Tax administrations should take all reasonable steps to ensure that there is no public disclosure of confidential information (trade secrets, scientific secrets, etc.) and other commercially sensitive information contained in the documentation package (master file, local file and Country-by-Country Report). Tax administrations should also assure taxpayers that the information presented in transfer pricing documentation will remain confidential. In cases where disclosure is required in public court proceedings or judicial decisions, every effort should be made to ensure that confidentiality is maintained and that information is disclosed only to the extent needed.

As already described in the answer to question 2 above, Section 18 of the CRCA makes it clear that no HMRC officer may give HMRC information to anyone without lawful authority to do so. This includes other government departments and their agencies, local authorities, the police or any other public bodies. The circumstances in which information may be disclosed outside HMRC have been highlighted above.

With respect to the CbC report or any tax information received under an international agreement, any such information received by HMRC from another tax administration must be treated as confidential, in accordance with the relevant article of the international instrument covering the exchange. Typically, the information received under an agreement may only be disclosed to persons or authorities (including courts and administrative bodies) concerned with the assessment, collection and enforcement of the taxes covered by the agreement (including the prosecution or the determination of appeals) and the information may be used only for such purposes. Information may not be disclosed to any other person or third jurisdiction without the express written consent of the competent authority of the requested party.

Nevertheless, moves to go beyond the recommendations of the OECD, which contemplate sharing the information only among tax authorities, by making the country-by-country information public, are afoot. Discussions in the EU on public disclosure of the CbC report are ongoing, though with the UK set to leave the EU by 2019, such EU developments, by the time that they ever come to be included in a Directive, may have no jurisdiction in the UK. However, prior to the UK's historic vote on June 23, 2016 to leave the EU, the British government of the time let it be known that it was a supporter of the European Commission's proposal for public country-by-country reporting. HM Treasury stated in its "Business tax road map" that:

The government believes there is an opportunity to go beyond the outcomes of the BEPS project and enhance transparency over multinationals' tax affairs by requiring them to make the details of tax paid publicly available on a country-by-country basis. The UK will therefore press the case for public country-by-country reporting on a multilateral basis.[4]

Following lobbying for increased tax transparency that started with a cross-party group of politicians from eight different parties led by opposition Labour member of Parliament, Caroline Flint, the UK became the first country to introduce, at least nominally, public country-by-country reporting in the 2016 Finance Bill.

However, during a debate on the bill on 28 June 2016, just one week after the vote to leave the EU, the initial proposal by the group of politicians for unilateral introduction of public country-by-country reporting was defeated on the back of fears that it would

disadvantage UK business at a time of increased uncertainty. Finance Secretary David Gauke stated that the UK was committed to improving the transparency of multinational tax affairs but supported *"an effective multilateral approach"*. [5]

In the end, although an amendment to the 2016 Finance Bill to include public country-by-country reporting in the rules relating to the publication of a multinational enterprise's tax strategy was unanimously approved by politicians across the House of Commons in a parliamentary vote on September5, 2016, it was a very watered down proposal. The current rules require publication of the multinational enterprise's tax strategy – the amendment merely represents enabling legislation allowing for the public disclosure of the group's country-by-country report within the context of the group's published tax strategy, at such a time in the future as the government decides to introduce it:

> *The Treasury may by regulations require the group tax strategy to include a country-by-country report.*[6]

At a time when the British government has its hands full dealing with the extraction of the UK from the EU, it is inconceivable that it will put British business at a disadvantage by triggering this public disclosure unilaterally. However, should the EU ever introduce public country-by-country reporting in its territory, it is conceivable that the UK might follow suit at that time.

It is mere speculation whether public country-by-country reporting will be enabled, but, should it be, it is hard to see how any taxpayer will be able to resist a statutory requirement.

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NOTES

[1] http://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/

[2] OECD (2013), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: United Kingdom 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings*, OECD Publishing

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/465512/cbc-em.pdf

[4] *Business tax road map,* HM Treasury (March 2016), 2.29

[5] *"U.K. Backs Away From EU Plans for Country-Specific Reporting"*, Bloomberg BNA Transfer Pricing Report (28 June 2016)

[6] Finance Act 2016, Schedule 19, paragraph 17(6)

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United States

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Part I.The OECD's master file & local file documentation requirements, unlike the CbC report, are requirements set by each country, even though the OECD has published guidance on what it believes should be included in them. These two reports are not BEPS minimum standards, and therefore are open to modifications or additions by countries to suit their perceived tax needs. At the same time, some governments and many NGOs are pushing for public disclosure of corporate tax information. The combination of these two factors could lead to significant leakage of corporations' tax information. In that regard:

1. If your country requires the preparation of a master file & local file, what information is it requiring in each file that departs from, is in addition to, or is more than the information suggested by the OECD's final report on BEPS Action 13, on the master file and local file?

The United States does not require the preparation of a master file or local file. However, on June 30, 2016, regulations came into effect that introduce CbC Reporting in the United States for companies with an annual consolidated turnover of USD 850 million. For reporting periods beginning on or after that date, U.S. persons that are the ultimate parent entities of multinational groups may file IRS Form 8975 (*Country-by-Country Report*) and accompanying Schedules A (*Tax Jurisdiction and Constituent Entity Information*). United States ultimate parent entities may volunteer CbC Reports to the Internal Revenue Service ("IRS") for reporting periods commencing from January 1, 2016, and ending on or before June 29, 2016.

2. Does your country require the master file, local file, and any supplementary information actually to be filed with the tax authorities, or merely to be retained and produced upon request?

No. The United States does not require the preparation of a master file or local file, and thus does not require its filing with the IRS. However, as noted above, the United States does require the filing of IRS Form 8975 related to CbC Reporting for companies with an annual consolidated turnover of USD 850 million for reporting periods beginning on or after June 30, 2016.

3. Does your country have a position on sharing information in the master file and local file with other tax authorities, and would this include information that departs from or is more than what is indicated in BEPS Action 13's final report?

The United States does not require the preparation of a master file or local file. Furthermore, the United States did not sign the OECD's multilateral instrument on June 7, 2017. The IRS released a revised U.S. Model Income Tax Convention in early 2016 and will continue to pursue bilateral conventions that reflect this Model Income Tax Convention. For the sharing of CbC Reporting, the United States exchanges reports under competent authority arrangements with each individual country. Status of the jurisdictions with which the IRS may exchange such information is provided on its website.

4. If a taxpayer has prepared a master file according to requirements of its home country, and has prepared a local file in accordance with requirements of your country, what is your country's position on seeking information or documents from the home country that are not required and not contained in the local file prepared for your country? What rights would a taxpayer have to avoid producing that information if an auditor from your country requested it?

The United States does not require the preparation for a master file. So long as the local file has been prepared in accordance with the guidance set forth in the Internal Revenue Code (IRC) Section 482, the IRS should not be compelled to seek information or documents from the home country outside of the information contained in the local report. Furthermore, under the IRS' *Taxpayer Bill of Rights* (see Part II., Question

1), the IRS must follow certain guidelines with regards to the request of information.

Part II. In addition to the master file and local file, countries are now exchanging information about rulings, and some are requiring reporting of aggressive tax structures or transactions.

1. If your tax authority believes there is a possibility that an affiliate of a company in your country may have obtained a ruling or may have reported an aggressive position, what authority does your country's tax authority have to try to obtain that information (i) from the company in your country, and (ii) from another tax authority? What rights would a taxpayer have to prevent the tax authority from obtaining that information?

The IRS was created to carry out the responsibilities of the US Secretary of the Treasury ("U.S. Treasury") under section 7801 of the Internal Revenue Code (IRC). Section 7803 of the IRC grants the U.S. Treasury full authority to administer and enforce the internal revenue laws of the United States through the IRS. In order to combat aggressive tax positions, the IRS developed the Office of Tax Shelter Analysis (OTSA) to coordinate the Large Business & International (LB&I) Division's tax shelter planning and operation.[1] The OTSA is tasked with: (i) identifying and deterring participation and promotion of abusive tax structures/transactions; (ii) publishing taxpayer guidance on abusive transactions and tax shelters; and (iii) promoting reportable transaction disclosure filings by those who participate/promote abusive transactions. To this end, the OTSA has identified a set of 35 transactions that it considers particularly high-risk and requires taxpayers involved in these transactions to file a disclosure statement (Form 8886) that provides the tax authority with a detailed description of the transaction (e.g., years participated in the transaction, type of transaction, tax benefit generated, etc.).[2] In addition to the 35 registered transactions, transactions involving certain losses under IRC Section 165, minimum advisor fees under conditions of confidentiality, and contractual protection when the transaction is offered with the right to full or partial refund of fees if the IRS refuses the tax benefit must also be reported.

If the IRS were to conduct an audit, the taxpayer is granted certain rights under the IRS' *Taxpayer Bill of Rights*.[3] This document groups the existing rights in the tax code (under IRC Section 6103) into ten fundamental rights, two of which pertain to the right to privacy and confidentiality. While these rights do not explicitly prevent the IRS from obtaining specific information, they do put into place certain guidelines the IRS must follow with regards to the request. For example, the IRS inquiry must be as minimally intrusive as possible and must be shown to have some bearing on the issue under examination. The *Taxpayer Bill of Rights* also grants taxpayers the right to challenge the IRS' position. This means that taxpayers have the right to raise objections during the examination, as well as appeal an IRS decision in an independent forum. Other rights that indirectly assist taxpayers during the audit process include the right to retain representation, the right to a fair and just tax system, and the right to be informed.

The United States conducts all sharing and exchange of information with foreign jurisdictions through its competent authority arrangements. Please see the following sections and Part I, Question 3 for further details.

2. What other organizations within your country may your tax authority share taxpayer information with? Are there restrictions on what that information may be used for? Does a taxpayer have rights to restrict that sharing?

Under the *Taxpayer Bill of Rights*, the IRS is forbidden from disclosing tax returns and other taxpayer information to third parties unless permission is explicitly given by the taxpayer. Both civil and criminal penalties are in place should a tax return preparer disclose for example, to the IRS, or use taxpayer information for any other purpose outside of tax preparation. Similarly, the IRS may not contact third parties to obtain information concerning tax liability unless it provides the taxpayer with reasonable notice in advance. However, the IRS may disclose tax information to employees of the U.S. Treasury who require the tax return information to do their jobs. The disclosed information should only relate to the information needed for the employee to fulfill the job. If the taxpayer designates a third party to receive tax information, the IRS may disclose this information to the designated third party. The IRS may also disclose return information to third parties related to or during an audit, collection activity, or in a civil or criminal tax investigation. The disclosed information may only be used to the extent necessary and no more. Additionally, state tax administrations may access return information unless the disclosure identifies a confidential informant or the disclosure may seriously impair a civil or criminal investigation.[4] Taxpayers in the United States may reach out to the National Taxpayer Advocate and the Local Taxpayer Advocates, who may decide whether to share with the IRS any information provided to them (by the taxpayer or its representatives) regarding the taxpayers' tax matter.

3. Where does your country stand on making any information from the CbC report or the master file, local file, and supplemental information public? Do you anticipate that such a requirement will be implemented and if so, what (if any) power do you see a taxpayer having to restrict or prevent what is made public?

Per Treasury Decision 9773 ("T.D. 9773"), the information provided in the CbC report will not be made public. The Treasury Department and the IRS determined that the information provided in a CbC report is classified as tax return information which is subjected to the confidentiality protections of Section 6103. This approach is consistent with the confidentiality standards reflected in the Final BEPS Report, which also provides that tax administrations should take all reasonable steps to ensure that there is no public disclosure of confidential information in CbC

reports and that they should only be used for high-level transfer pricing risk assessment and identification. The U.S. Treasury and the IRS intend to limit the use of CbC report information and intend to incorporate this limitation into the competent authority arrangements pursuant to which CbC reports are exchanged with foreign jurisdictions. The U.S. Treasury and IRS are aware of the concerns surrounding the confidentiality safeguards in other tax jurisdictions and will not exchange reports with foreign tax authorities who do not have the appropriate systems and safeguards in place. As of October 12, 2017, the United States has signed more than 20 competent authority arrangements. The IRS website provides a Jurisdiction Status Table, which provides the agreement status by jurisdiction, the text of the agreement (if signed), and the date of signature. Should a case of non-compliance and breach occur, the OECD guidelines recommend that the competent authority notify the Co-ordinating Body Secretariat as well as provide a plan to remedy the issue. While the U.S. regulations do not provide procedures for reporting suspected violations, the U.S. Treasury and the IRS are aware of the concern and intend to establish procedures to report suspected violations of confidentiality and other misuses of CbC report information.

Domestically, return information may be provided to state agencies under Section 6103(d), but only for the purposes of, and only to the extent necessary in, the administration of such state's tax laws. The U.S. Treasury and IRS believe this will be a rare occurrence. Even when CbC report information is deemed to meet this criteria, it will still be subject to the restrictions of Section 6103 that apply to the confidentiality and privacy of tax return information. Due to the IRS' continued commitment to maintain taxpayer confidentiality, it is not anticipated that the information provided in the CbC report will be made public in the foreseeable future.

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[1] IRS webpage: Abusive Tax Shelters and Transactions (https://www.irs.gov/businesses/corporations/abusive-tax-shelters-and-transactions).

[2] IRS Form 8886 (https://www.irs.gov/pub/irs-pdf/f8886.pdf)

[3] Taxpayer Bill of Rights, Publication 1 (Rev. December 2014)

[4] BNA: Can a state agency responsible for the administration of state tax laws access returns and return information filed with the IRS?

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Mayra Lucas Mas has been an advisor at the Centre for Tax Policy and Administration, Tax Treaty, Transfer Pricing and Financial Transactions Division of the OECD since June 2008. She is responsible for chairing bilateral and multilateral transfer pricing events at OECD for the development of the OECD Transfer Pricing Guidelines, for the update of OECD Transfer Pricing Country Developments and for OECD accession review in the field of Transfer Pricing. She also provides technical assistance to non-OECD economies. In the past she has worked as a senior consultant for the transfer pricing group of a leading accounting firm and in the Taxation and Customs Union unit of the European Commission.

Mayra is a graduate of New York University School of Law (LLM), the University of Barcelona (Ph.D in Tax Law and Law Degree.) She has been a lecturer in tax law at the University of Barcelona, and a Research Fellow at the European Tax College at K.U. Leuven.

Rahul Mitra
Editorial Board Member and Panelist for India
Partner and National Head, Transfer Pricing & BEPS, KPMG India

Rahul K Mitra is currently the National Head of Transfer Pricing & BEPS for KPMG in India. Prior to joining KPMG India, Rahul was the national leader of PwC India's transfer pricing practice between 2010 and 2014. Rahul was a partner in the tax and regulatory services practice of PwC India between April 1999 and February 2015. Rahul has over 22 years of experience in handling taxation and regulatory matters in India. He specializes in transfer pricing, particularly inbound & outbound planning assignments, and advises on profit/cash repatriation planning; value chain transformation or supply chain management projects; profit attribution to permanent establishments, etc. Rahul independently handles litigation for top companies before the Income Tax Tribunals. At least 50 of the cases independently argued by Rahul

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have been reported in leading tax journals of India. Some of Rahul's major wins before the Tax Tribunals in transfer pricing matters have set precedents, both in India and globally.

In his personal capacity, Rahul has handled several APAs in India, involving clients from across industries; and also covering complex transactions, e.g. industrial franchise fees/variable royalties under non-integrated principal structures; contract R&D service provider model; distribution models, with related marketing intangible issues; financial transactions; profit split models for royalties; etc. He has been consistently rated as amongst the leading transfer pricing professionals and tax litigators in the world, by Euromoney and International Tax Review, since 2010.

Rahul has been a visiting member of the faculty of the National Law School in the subject of transfer pricing and international tax treaties, was the country reporter on the topic, "Non Discrimination in international tax matters", for the IFA Congress held in Brussels in 2008, and was invited by the OECD to speak in the 2012 Paris roundtable conference on developing countries' perspective on APAs.

Dirk van Stappen
Editorial Board Member
Partner, KPMG, Antwerp/Brussels

Dirk van Stappen is a partner with KPMG and leads KPMG's transfer pricing practice in Belgium. He joined KPMG in 1988 and has over 28 years of experience in advising multinational companies on corporate tax (both domestic and international) and transfer pricing issues. He leads KPMG's transfer pricing practice in Belgium. Furthermore, Dirk is a former member of the EU Joint Transfer Pricing Forum (2002-2015).

Since 1996, Dirk has been a visiting professor at the University of Antwerp (Faculty Applied Economics, UA) teaching Tax to Master students. He has been named in International Tax Review's "World Tax –The comprehensive guide to the world's leading tax firms", Euromoney's (Legal Media Group) "Guide to the World's Leading Transfer Pricing Advisers" and Euromoney's "Guide to the World's Leading Tax Advisers."

He is a certified tax adviser and member of the Belgian Institute for Accountants and Tax Advisers and of the International Fiscal Association.

Country Panelists

Argentina

Cristian E. Rosso Alba
Rosso Alba, Francia & Asociados, Argentina

Cristian Rosso Alba has a well-recognized experience in Tax Law, with particular emphasis in domestic and international tax planning, restructurings, reorganizations and international business transactions. He leads the Tax Law practice of Rosso Alba, Francia & Abogados.

Additionally, Mr. Rosso Alba has been a regular lecturer in the United States and speaker in domestic and international tax conferences and is the author of more than eighty articles appearing in specialised publications. Cristian Rosso Alba is a member of the American Bar Association (ABA), Harvard Club of Argentina, the Canadian Tax Foundation and the Advisory Board of the Argentine Chamber of Commerce. Mr. Rosso Alba has been recommended as one of the "Leaders in their Field" (Tax - Argentina) by Chambers Latin America.

Australia

Stean Hainsworth
Director, Duff & Phelps, Australia

Stean Hainsworth is the Director of Transfer Pricing at Duff & Phelps based in Australia and has over 20 years of legal and tax experience, specializing in transfer pricing. Previously he was a Director of an international transfer pricing firm, at a global advisory firm as the transfer pricing leader for Asia, and worked as a senior transfer pricing specialist for a Big 4 firm in New Zealand, Canada and Australia.

Austria

Alexandra Dolezel
Tax Director, PwC, Vienna

Stean Hainsworth is an Executive Director of Quantera Global based in Australia and has over 20 years of legal and tax experience, specializing in transfer pricing. Previously he was a Director of an international transfer pricing firm, at a global advisory firm as the transfer pricing leader for Asia, and worked as a senior transfer pricing specialist for a Big 4 firm in New Zealand, Canada and Australia.

Tanja Roschitz
Consultant, Transfer Pricing, PwC, Vienna

Tanja Roschitz is a transfer pricing consultant at PricewaterhouseCoopers.

Belgium

Dirk van Stappen
Partner, KPMG, Antwerp/Brussels

Dirk van Stappen is a partner with KPMG and leads KPMG's transfer pricing practice in Belgium. He joined KPMG in 1988 and has over 28 years of experience in advising multinational companies on corporate tax (both domestic and international) and transfer pricing issues. He leads KPMG's transfer pricing practice in Belgium. Furthermore, Dirk is a former member of the EU Joint Transfer Pricing Forum (2002-2015). Since 1996, Dirk has been a visiting professor at the University of Antwerp (Faculty Applied Economics, UA) teaching Tax to Master students. He has been named in International Tax Review's "World Tax –The comprehensive guide to the world's leading tax firms", Euromoney's (Legal Media Group) "Guide to the World's Leading Transfer Pricing Advisers" and Euromoney's "Guide to the World's Leading Tax Advisers." He is a certified tax adviser and member of the Belgian Institute for Accountants and Tax Advisers and of the International Fiscal Association.

Yves de Groote
Director, KPMG, Antwerp

Yves de Groote is a LL.M from King's College London, MSc. HUB; he joined KPMG in 2004 and has over 10 years of experience in advising multinational organizations on transfer pricing issues. He has been involved in and conducted various tax planning and transfer pricing assignments, ranging from the preparation of European and global transfer pricing documentation (including functional and economic analyses and comparables searches), domestic and international transfer pricing audit defense to the negotiation of (uni-, bi- and multilateral) rulings and advance pricing arrangements (APAs).

Eugena Molla
Senior Adviser, KPMG, Antwerp

Eugena Molla, MSc University of Bologna, is a Senior Tax Adviser with KPMG in Belgium, specializing in global transfer pricing services. She has assisted multinational clients in matters such as transfer pricing planning, global documentation and dispute resolution. Eugena also gained experience in global restructuring and supply chain management projects, as well as unilateral / bilateral advance pricing arrangements (APAs) for multinational companies in a range of sectors.

Brazil

Jerry Levers de Abreu
Partner, TozziniFreire Advogados, São Paolo

Jerry Levers de Abreu is a Partner at TozziniFreire Advogados, Sao Paulo.

Lucas de Lima Carvalho
Senior Tax Associate, TozziniFreire Advogados, Sao Paulo

Mr. Carvalho is a Tax Associate with TozziniFreire Advogados, Sao Paulo. In addition to his practice, he is a teacher and lecturer, and a frequently published author. He holds an LL.M. in International Taxation from New York University School of Law; an LL.M. in Corporate Law from the Instituto Brasileiro de Mercado de Capitais (IBMEC); an International Executive MBA from the Chinese University of Hong Kong; an MBA in Taxation from Fundacao Getulio Vargas (FGV), and an LL.B. (magna cum laude) from Federal University of Ceara.

Canada

Richard Garland
Partner, Deloitte LLP, Toronto

Richard Garland is a partner in the Toronto office of Deloitte. He is a Chartered Professional Accountant and has over 25 years of accounting experience focused in the area of corporate international taxation. Richard has assisted clients in all aspects of international taxation, with particular emphasis on tax treaty issues, cross border financing structures and transfer pricing. Over the past several years, Richard's work has been focused in the area of transfer pricing, and he has been repeatedly recognized in Euromoney's guide to leading transfer pricing practitioners.

China

Cheng Chi
Partner-in-Charge for China and the Hong Kong SAR, KPMG, Shanghai

Based in Shanghai, Cheng Chi is the partner-in-charge of KPMG's Global Transfer Pricing Services for China and Hong Kong S.A.R. Mr. Chi has led many transfer pricing and tax efficient supply chain projects in Asia and Europe, involving advance pricing arrangement negotiations, cost contribution arrangements, Pan-Asia documentation, controversy resolution, global procurement structuring, and headquarters services recharges for clients in the industrial market including automobile, chemical, and machinery industries, as well as the consumer market, logistic, communication, electronics and financial services industries .

In addition to lecturing at many national and local training events organised by the Chinese tax authorities, Mr. Chi has provided technical advice on a number of recent transfer pricing legislative initiatives in China. A frequent speaker on transfer pricing and other matters, his analyses are regularly featured in tax and transfer pricing publications around the world i.e. International Tax Review). Mr. Chi has been recommended as a leading transfer pricing advisor in China by the Legal Media Group.

Mr. Chi started his transfer pricing career in Europe with another leading accounting firm covering many of Europe's major jurisdictions while based in Amsterdam until returning to China in 2004.

Rafael Triginelli Miraglia
Senior Manager, KPMG, Shanghai, China

Rafael Triginelli Miraglia is a Senior Tax Manager with the Global Transfer Pricing Team of KPMG China and member of the firm's BEPS Center of Excellence. His practice focuses on design and implementation of transfer pricing systems, business restructuring advice, value chain analysis and planning and outbound investments. Rafael is graduated in Law (Universidade Federal de Minas Gerais, Brazil, 2004) and has obtained the degrees of Master of Laws (Pontificia Universidade Catolica de Minas Gerais, Brazil, 2008) and LL.M. of Advanced Studies in International Tax Law (ITC-Leiden University, the Netherlands, 2011). He is a Transfer Pricing Lecturer at the ITC-Leiden University and has taught courses in Tax and Constitutional Law at Pontificia Universidade Catolica de Minas Gerais. Rafael is a member of the Brazilian Bar Association (Ordem dos Advogados do Brasil) since 2005. Before joining KPMG China, Rafael worked between 2011 and 2015 as Tax Associate with a global law firm in the Netherlands and, prior to that, as Head of Tax with a Brazilian law firm.

Denmark

Arne Møllin Ottosen
Partner and Head of Tax Law, Kromann Reumert, Copenhagen

Arne Møllin Ottosen is Head of Kromann Reumert's tax law group. He specialises in contentious tax including transfer pricing, tax litigation and business

taxation advisory work. Arne is the author of numerous Danish and international articles on tax and company law.

Arne is listed in the International Tax Review, European legal 500 and Chambers. He holds a Law degree, Aarhus University (cand.jur. 1993). LL.M., King's College, University of London (1999).

Casper Jensen
Attorney, Kromann Reumert, Copenhagen

Casper Jensen is an attorney and a member Kromann Reumert's tax law group. He specializes in corporate and international tax matters. Casper is the author of numerous articles on international taxation. He holds a law degree, University of Copenhagen (cand.jur. 2013).

France

Julien Monsenego
Partner in Tax Law, Olswang LLP, Paris

Julien Monsenego specialises in international taxation, tax treatment of M&A and restructurings. He assists French and foreign companies in their international investments as well as in the course of their tax audits and litigations. He particularly focuses on Life Science and R&D-intensive industries. He has extended practice of transfer pricing and has intervened for French and non-French groups in setting-up intra-group flows, IP companies and business restructurings.

Before joining Olswang, Julien Monsenego previously worked at Arthur Andersen International, Ernst & Young, Coudert Brothers and Dechert LLP. Mr. Monsenego is a member of the Paris Bar.

Guillaume Madelpuech
Principal (Transfer Pricing), NERA Economic Consulting, Paris

Mr. Madelpuech holds a MBA from the ESSEC Business School and an MSc in Economics from the Paris Dauphine University. He is a Principal within NERA Economic Consulting in Paris. He is an economist with 10 years of experience in transfer pricing, including in particular intangible valuation, business restructuring, transfer pricing policy design and litigation. Mr. Madelpuech has conducted a number of transfer pricing projects for multinationals in a wide range of industries, including high-tech, consumer goods, automotive, luxury goods, financial services, health care, real estate, media and entertainment, and energy. He is a regular contributor to the OECD and a frequent contributor to journals and trade publications. Prior to joining NERA, Mr Madelpuech was an economist with EY, in both Paris and in New York City, in the transfer pricing and valuation groups.

Germany

Alexander Voegele
Chairman, NERA Economic Consulting, Frankfurt

During more than 25 years advising international corporations and leading law firms on transfer pricing issues, Alexander Voegele has specialised in the development of innovative economic structures for transfer pricing strategies and for the defense of major international transfer pricing cases. He has led hundreds of large transfer pricing projects and defense cases for a variety of clients in a range of industries. Prior to joining NERA, Dr Voegele was a partner with PriceWaterhouse and KPMG, where he was in charge of their German transfer pricing practice.

He holds a doctorate in economics and a Master of tax and business administration from the University of Mannheim. He is a certified German auditor and tax adviser and is a French Commissaire aux Comptes.

He has received numerous awards as a transfer pricing adviser and has frequently been ranked as a leading tax and transfer pricing professional.

Philip de Homont
Senior Consultant/Principal, NERA Economic Consulting, Frankfurt

Philip de Homont specializes in complicated transfer pricing audits and the valuation of intellectual property for international corporations and law firms. He has defended major transfer pricing cases throughout Europe and the Americas in a wide range of industries from consumer goods to financial services.

He holds a MSc in Economics from the University of Warwick and a Masters-equivalent in Physics from the Technische Universität München.

Philip de Homont is the co-author of dozens of articles and two books on transfer pricing and intellectual property valuation. He has participated in various transfer pricing conferences.

Hong Kong

John Kondos
Partner, KPMG Global Transfer Pricing Services, Hong Kong

John Kondos is the Asia-Pacific Leader for Financial Services and the Financial Services Transfer Pricing team. He specializes in transfer pricing documentation, planning, controversy, and audit resolution matters, including competent authority negotiations. John has lived and worked in Asia for over 14 years, and has extensive experience with banking and capital markets, asset management, insurance, treasury and group service transactions in Japan, Korea, Hong Kong, Singapore, Taiwan and other Asian countries. He is a graduate of the University of Melbourne, and has a Bachelor of Commerce and Masters (Commerce & Business Administration) degrees from Kobe University in Japan.

Irene Lee
Director, KPMG Global Transfer Pricing Services, Hong Kong

Irene Lee has practiced tax for 11 years, the last 7 specializing in transfer pricing matters involving the financial services sector. She joined KPMG in Hong Kong in 2013, and advises banking, asset management, and insurance clients on transfer pricing policies, documentation, and risk management in the Asia region. She earned a Bachelors of Business Administration (B.B.A.) degree from the Chinese University of Hong Kong, and has studied at the University of North Carolina (Chapel Hill).

Jeffrey Wong
Manager of Global Transfer Pricing Services, KPMG Hong Kong

Jeffrey Wong is a Manager of Global Transfer Pricing Services at KPMG in Hong Kong.

India

Rahul Mitra
Partner and National Head, Transfer Pricing & BEPS, KPMG India

Rahul K Mitra is currently the National Head of Transfer Pricing & BEPS for KPMG in India. Prior to joining KPMG India, Rahul was the national leader of PwC India's transfer pricing practice between 2010 and 2014. Rahul was a partner in the tax and regulatory services practice of PwC India between April 1999 and February 2015. Rahul has over 22 years of experience in handling taxation and regulatory matters in India. He specializes in transfer pricing, particularly inbound & outbound planning assignments, and advises on profit/cash repatriation planning; value chain transformation or supply chain management projects; profit attribution to permanent establishments, etc. Rahul independently handles litigation for top companies before the Income Tax Tribunals. At least 50 of the cases independently argued by Rahul have been reported in leading tax journals of India. Some of Rahul's major wins before the Tax Tribunals in transfer pricing matters have set precedents, both in India and globally.

In his personal capacity, Rahul has handled several APAs in India, involving clients from across industries; and also covering complex transactions, e.g. industrial franchise fees/variable royalties under non-integrated principal structures; contract R&D service provider model; distribution models, with related marketing intangible issues; financial transactions; profit split models for royalties; etc. He has been consistently rated as amongst the leading transfer pricing professionals and tax litigators in the world, by Euromoney and International Tax Review, since 2010.

Rahul has been a visiting member of the faculty of the National Law School in the subject of transfer pricing and international tax treaties, was the country reporter on the topic, "Non Discrimination in international tax matters", for the IFA Congress held in Brussels in 2008, and was invited by the OECD to speak in the 2012 Paris roundtable conference on developing countries' perspective on APAs.

Yashodhan D. Pradhan
Director, BSR & Co. LLP, Mumbai, India

Yashodhan is the Director at BSR & Co. LLP, located in Mumbai, India.

Ireland

Catherine O'Meara
Partner, Matheson, Dublin

Catherine is a partner in the tax department at Matheson. Catherine has over ten years' experience advising multinational corporations doing business in Ireland on Irish corporate tax. Catherine has a particular interest in transfer pricing, competent authority matters and business restructurings and also has extensive experience in structuring inward investment projects, mergers and acquisitions and corporate reorganisations. Catherine's clients include many of the leading multinational corporations established in Ireland, primarily in the pharmaceutical, healthcare, ICT and consumer brand sector. Catherine has published articles in leading tax journals, is co-author on the Ireland section of the Bloomberg BNA TP Forum and is co-author of the Ireland chapter of the International Fiscal Association Cahiers on Cross Border Business Restructuring.

Catherine is a Chartered Tax Advisor and a member of the Law Society of Ireland.

Israel

Yariv Ben-Dov
Partner, Herzog Fox & Neeman, Tel Aviv

Yariv Ben-Dov is the Head of Transfer Pricing and Valuations Department at Herzog, Fox & Neeman. He is an expert in drafting and defending transfer pricing studies and intercompany agreements, with over 15 years of experience. Yariv counsels both multinational conglomerates and small start-ups on their transfer pricing matters, including multinationals which have no activity in Israel. Prior to joining HFN, Yariv was a co-founder of Bar-Zvi & Ben-Dov, a boutique law firm specializing in transfer pricing and high-tech, and prior to that Yariv served as the Head of the Transfer Pricing Unit in Teva Pharmaceuticals. Yariv has published articles in the subject of transfer pricing and has been asked to keynote as an expert in transfer pricing at several conventions in Israel, Europe and the U.S..

Yariv is a member of Transfer Pricing Associates, the world's largest network of independent transfer pricing experts, a member of the Israeli Bar Tax Committee, and of the Board of the Israeli-LATAM Chamber of Commerce. Yariv is also a Board member of the Arthur Rubinstein Music Society and the head of the Society's NYC branch. Yariv counsels (pro bono) to the Israeli Navy Association. Yariv speaks Hebrew, English, French and Italian, and has often advised global clients in their local language.

Italy

Aurelio Massimiano
Associate Maisto & Associati, Italy

Aurelio Massimiano is associate of Maisto e Associati since 2005, after having worked for the International Tax Office of the Italian Revenue Agency. His areas of expertise are international taxation and transfer pricing. He is the permanent assistant of Professor Guglielmo Maisto at the EU Joint Transfer Pricing Forum.

Aurelio Massimiano
Partner, Maisto e Associati, Milan

Aurelio Massimiano is a partner at Maisto e Associati, where he has practiced since 2005, after having worked for the International Tax Office of the Italian Revenue Agency, and prior to that, for a Big 4 accounting firm. His areas of expertise are international taxation and transfer pricing. He is the permanent

assistant of Professor Guglielmo Maisto at the EU Joint Transfer Pricing Forum. A member of the Association of Chartered Accountants, he holds degrees from Luiss Guido Carli University in Rome, and an LL.M. in International Tax Law from the University of Leiden, The Netherlands.

Mirko Severi
Associate, Maisto e Associati, Milan

Mirko Severi joined Maisto e Associati in 2011 after obtaining a Master Diploma in Tax Law at IPSOA. He graduated (cum laude) in Economics from the University of Parma, in 2010. His areas of expertise include corporate taxation and group taxation.

Japan

Takuma Mimura
Cosmos International Management Co., Ltd

Takuma Mimura is Managing Director of Cosmos-International Management, a transfer pricing boutique consulting firm in Japan. He has more than 14 years of transfer pricing experience, including 6 years at Deloitte Touche Tohmatsu (both Tokyo and New York), and international banking experience prior to transfer pricing. He has worked extensively with transfer pricing issues worldwide and is especially experienced in Japan, U.S. and China Transfer Pricing matters. He has also worked with a broad range of clients in manufacturing, financial services and telecommunications and has assisted many taxpayers in negotiations with the Japanese tax authorities on transfer pricing audit examinations.

Takuma has authored articles for professional journals including BNA Transfer Pricing Report and Monthly International Taxation of Japan, and is a frequent speaker on transfer pricing topics.

Korea

Dr. Tae-Hyung Kim
Deloitte, Korea

Dr. Tae-Hyung Kim is a senior partner and the national leader of the Global Transfer Pricing Group at Deloitte, Korea. Over more than 14 years, Dr. Kim has represented multinational corporations in various industries in transfer pricing audit defense, advance pricing agreement negotiations, mutual agreement procedures, and planning and documentation studies.

Prior to his current position, Dr. Kim headed the national transfer pricing practice at other Big Four firm in Korea and the Law and Economics Consulting Group in Korea. Before specializing in transfer pricing, Dr. Kim was a research fellow for the Korea Institute for International Economic Policy (KIEP). During his tenure at the KIEP, he advised the Ministry of Finance and Economy, the Ministry of Commerce, Industry, and Energy and the Ministry of Foreign Affairs in the area of international trade and investment policies.

Dr. Kim' s recent publications appear in IBFD's International Transfer Pricing Journal, BNA Tax Management's Transfer Pricing Reports, and Euromoney's Transfer Pricing Reviews. His economics publications also appear in Canadian Journal of Economics and Review of International Economics.

He holds a Ph.D. in economics from the University of Washington and is a graduate of Advanced Management Programs of both Harvard Business School and Seoul National University.

Seong Kwon Song
Head of Transfer Pricing Group, Deloitte, Seoul

Mr. Seong Kwon Song, former Assistant Commissioner for International Tax Investigation and Head of the Competent Authority at the Korean National Tax Services (KNTS) leads the Deloitte transfer pricing group in Korea. The group has over 40 specialists including ex-KNTS officers and economists with global background.

Mexico

Moises Curiel Garcia
Principal-Director of the Latin American Transfer Pricing Practice, Baker & McKenzie, Mexico City

Moisés Curiel is a member of the Firm's Transfer Pricing Practice Group. He is recognized by International Tax Review as one of Mexico's top tax advisers, and has served as the Transfer Pricing Audits and Resolutions administrator of Mexico's Ministry of Finance and Public Credit for seven years. Mr. Curiel helped prepare and implement various tax transfer pricing rules in Mexico, including the Income Tax Law, the Omnibus Tax Ruling and the Federal Tax Code. He also led the Advance Pricing Agreements Program in Mexico, where he negotiated over 300 unilateral agreements and 34 bilateral agreements. His impressive track record also includes proposing amendments to legislation on various matters for Latin American countries, and representing Mexico before the OECD for the transfer pricing party (WP6).

Armando Cabrera
Partner, Baker & McKenzie, Mexico City

Armando Cabrera-Nolasco is a partner in Baker McKenzie's Tax Practice Group in Guadalajara. He has 10 years of experience in transfer pricing issues. Mr Cabrera- Nolasco currently coordinates the transfer pricing services for financial and services industries, and the financial valuation practice.

Mr. Cabrera-Nolasco's practice focuses on transfer pricing documentation for tax compliance; pricing strategies and benchmarking analysis by product, industry, country and region; defense in litigation; and alternative dispute resolution of any transfer pricing matter in Mexico and Latin America.

Jorge Ramirez
Associate, Baker & McKenzie, Mexico City

Jorge Ramirez Dorantes is a member of the Latin America Transfer Pricing Group. He has been a transfer pricing practitioner for over six years, with involvement in transfer pricing consulting/ restructuring, economic analysis and valuation, controversy support (audit and litigation defense), transfer pricing documentation, and negotiations with various tax authorities in the Latin America region.

Mr. Ramirez Dorantes has worked with clients in a broad range of industries, with considerable experience in transactions for the aerospace, retail and services industries. He has also participated in the negotiation of APAs for the maquiladora industry, and advising on the tax efficiency of supply chain operations. Aside from consulting projects, Mr. Ramirez Dorantes has substantial experience in the successful resolution of marketing intangibles audits.

The Netherlands

Danny Oosterhoff
Partner, Ernst & Young Belastingadviseurs LLP, Amsterdam, The Netherlands

Danny Oosterhoff is a Partner at Ernst & Young Belastingadviseurs LLP.

Stef Kerkvliet
Senior Consultant at Transfer Pricing & Operating Model Effectiveness group, Ernst & Young Belastingadviseurs LLP, Amsterdam, The Netherlands

Stef Kerkvliet is a a Senior Consultan at Ernst & Young Belastingadviseurs LLP.

New Zealand

Leslie Prescott-Haar
Managing director, TP EQuilibrium | AustralAsia LP ("TPEQ")

Leslie is the managing director of TP EQuilibrium | AustralAsia LP ("TPEQ") (formerly, Ceteris New Zealand). TPEQ provides transfer pricing services in Australia and New Zealand, across an extensive range of industries, transactions and engagements, including APAs; independent second opinions and expert advice; tax authority reviews, investigations and audit defence; global, regional and country-specific documentation; etc. Leslie has over 22 years of specialised transfer pricing experience based in the APac Region (Sydney and Auckland), and an additional 10 years of corporate taxation experience in Big 4 accounting firm practices specialising in mergers, acquisitions, bankruptcies and reorganisations based in the United States (New York City and Chicago). Prior to forming TPEQ, Leslie commenced the transfer pricing practice of Ernst & Young New Zealand, where she served as the National Leader for a number of years. Leslie frequently provides 'thought leadership' contributions to various international publications and associations.

Stefan Sunde
Senior Analyst, TPEQ

Stefan is a Senior Analyst at TPEQ. He joined TPEQ in 2013 in a university internship role, and since such time has worked on major projects for most of the practice's major client base and all industries, and has managed some more recent projects. Stefan completed his tertiary studies in 2014 and has since worked for the firm in a full-time capacity.

Sophie Day
Analyst, TPEQ

Sophie is an Analyst at TPEQ. She has over a year of transfer pricing experience since joining TPEQ in July 2015, working across various industries and projects for TPEQ's client base. Sophie completed her tertiary studies in 2016 and has since worked for the firm in a full-time capacity.

Portugal

Patrícia Matos
Associate Partner at Deloitte & Associados SROC, S.A., Lisbon

Patrícia Matos is currently Associate Partner in Deloitte's Lisbon office in the transfer pricing department.

Patrícia has a business degree and is a chartered accountant. She started her professional career in Arthur Andersen (Arthur Andersen, S.A., presently Deloitte & Touche as result of an effective association of both firms since April 2002) in 1997 and was promoted to Associate Partner in 2008.

Patrícia has extensive experience in tax planning, due diligence and tax compliance for Portuguese and Multinational companies. In 2002, she began working exclusively in transfer pricing. She advises clients in several aspects of transfer pricing, ranging from tax audits to comprehensive transfer pricing planning, structuring of intercompany transactions and defensive documentation.

Her experience spans a wide range of industries including communications, technology, media, financial services, automotive, consumer goods, tourism and pharmaceuticals.

Patrícia has been a speaker at several seminars and conferences on tax, economic and transfer pricing issues.

Henrique Sollari Allegro
Manager, Partner at Deloitte & Associados SROC, S.A., Lisbon

Henrique is currently a Manager in Deloitte's Lisbon office in the transfer pricing department.

Russia

Evgenia Veter
Ernst & Young, Moscow

Evgenia joined the firm as a partner in March 2011. Before that she worked for more than 15 years with another Big Four company where she obtained extensive experience in providing advisory services to Russian and international companies on various areas of taxation and conducting business in Russia, structuring investments, and coordinating approaches to tax planning. Since 2007 Evgenia has been focusing on transfer pricing. She has led transfer pricing planning and documentation projects for multinational and Russian clients in various industry sectors, including structuring of entry/exit strategies of clients from the transfer pricing perspective, adaptation of global transfer pricing policies to Russian requirements, business restructuring, development of sustainable transfer pricing methodologies, etc. Evgenia specialises on serving companies working in retail, consumer products and life science industries. She is currently a Partner in the Transfer Pricing Group for Ernst & Young in Moscow.

Ibragim Khochaev
Manager, Transfer Pricing Services, Ernst & Young, Moscow

Ibragim is a Manager with the EY Transfer Pricing Group in Moscow. He has specialized in transfer pricing for more than 5 years, and has actively participated in transfer pricing projects for foreign and Russian companies from various industries, including FMCG, chemical, Oil & Gas, automotive, pharma, etc. Ibragim has broad experience in conducting benchmarking studies, preparing TP documentations, designing the TP methodologies, business restructuring, intangible assets and intra-group financial transactions analysis. He graduated with honors from All-Russian State Tax Academy of the Ministry of Finance of the Russian Federation and holds a degree in Taxes and Taxation. Ibragim is currently studying for a Ph.D degree at the Plekhanov Russian University of Economics.

Singapore

Peter Tan
Senior Consultant (Tax and Transfer Pricing), Baker & McKenzie Wong & Leow, Singapore

Peter Tan leads the Baker & McKenzie Transfer Pricing practice in Singapore. He was called to the Bar of England and Wales in 1976, and started his tax career in London, continuing it in Singapore. Mr. Tan advises multinational companies from various industries on tax issues related to mergers and acquisitions, group and business restructuring, joint venture projects, intellectual property, franchising and distribution transactions, technical services arrangements and licensing, and financial products. He also assists clients in obtaining tax incentives. Mr. Tan also has extensive experience in tax dispute resolution. A member of the Middle Temple Inn of Court in England and Wales, Mr. Tan is also an Accredited Tax Advisor in the Singapore Institute of Accredited Tax Professionals.

Michael Nixon
Director of Economics (Transfer Pricing), Baker & McKenzie Wong & Leow, Singapore

An economist with 16 years of experience in transfer pricing consulting and academia, Michael Nixon's experience includes transfer pricing and business restructuring projects in the U.K., Germany, the Netherlands and Singapore, where he has been based for the last six years. He has advised multinationals across various industries throughout the planning, compliance and audit cycle. His practice is focused on transfer pricing controversy, intellectual property valuations and business restructuring. He is a member of the Singapore Transfer Pricing consultation group with the Inland Revenue Authority of Singapore (IRAS), and has undertaken training for the IRAS Tax Academy. He also consults with Singapore academic institutions on transfer pricing and business restructuring matters. Mr. Nixon has a Bachelor of Arts Economics degree from Nottingham Trent University and a Master of Science Economics (with distinction) from the University of London. He is a member of the Chartered Institute of Taxation in the U.K., and of the Society of Financial Advisors in the U.K..

Spain

Montserrat Trapé
Global Transfer Pricing Services, Partner, Tax Department, KPMG Abogados, Spain

Ms. Trapé joined KPMG in 2007 and has worked on numerous transfer pricing projects including transfer pricing policy design, documentation work, APA negotiations as well as audit defence and recourse in transfer pricing cases and international taxation. Her work has spanned the financial, consumer products, energy and pharmaceutical sectors.

Prior to joining KPMG, Montserrat Trapé worked at the Spanish Revenue Service. As Co-Director of International taxation she was responsible for negotiating several multilateral and bilateral APAs, judicial defence of TP assessments as well as actively participating in the new transfer pricing legislation. Ms. Trapé was also Vice-Chair of the European Union Joint Transfer Pricing Forum for four years. During this period, the JTPF worked on recommendations for the effective implementation of the Arbitration Convention, on a transfer pricing model documentation to simplify documentation compliance requirements and on a report on best practices for APA within Europe.

Montserrat Trapé is also a Visiting Professor at ESADE Instituto de Estudios Fiscales, where she has conducted several training courses for Spanish & Latin American Tax Authorities in Madrid. She is a frequent public speaker and contributor to articles and books on transfer pricing, dispute resolution mechanisms and international taxation issues.

Ms. Trapé has been included in the list of 2009 and 2010 "Best lawyers" in Spain.

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Elisenda Monforte is a Partner in KPMG's Global Transfer Pricing Services practice. She joined KPMG in the U.S. in 2007, and has been part of the Spanish practice since 2011. Elisenda has extensive experience in the financial services industry, with a focus on banking and insurance, and funding transactions for non-financial clients. She has been involved in operational transfer pricing engagements, and analyzed the effective implementation of transfer pricing policies for IP licenses and services, as well as assisting clients in tax audits and the negotiation of APAs. Elisenda has been a lecturer both in internal training and external sessions at ESADE and Centro de Estudios Fiscales, and has co-authored a number of articles on the Spanish transfer pricing environment. She has also been a teaching assistant at NYU's Stern School of Business and College of Arts and Sciences. Elisenda is a graduate of Universitat Pompeu Fabra (BA in Law '05, BA in Economics '03) and NYU (MA in Economics '06).

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United Kingdom

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Danny Beeton is a Managing Director in the London office of Duff & Phelps and is part of the Transfer Pricing practice. He has over 25 years' experience advising multinational companies on global transfer pricing issues, bringing a management consulting perspective to business analysis and transfer pricing advice, supported by deep economics skills and extensive international experience. Prior to joining Duff & Phelps, Danny was global head of transfer pricing economics at Freshfields Bruckhaus Deringer and, before that, was a partner and global head of transfer pricing in an international accounting firm. He advises on the pricing of all types of transactions including financial transactions and transfer pricing for financial services, with a particular focus on international tax planning and transfer pricing dispute resolution. He is well known as an international speaker and author on transfer pricing. Danny is listed in various directories including The World's Leading Transfer Pricing Advisers and received his PhD in economics from Queen Mary College in the University of London.

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Murray Clayson is a partner in Freshfields' tax practice group and is based in London, and leads the firm's international transfer pricing practice. He specializes in international tax, finance and capital markets taxation, corporate structuring, transfer pricing, banking and securities tax, asset and project finance, derivatives and financial products, particularly cross-border. Murray is listed in *Chambers Europe, Chambers UK, The Legal 500 UK, Who's Who Legal, PLC Which Lawyer? Yearbook, Tax Directors Handbook, Legal Experts and International Tax Review's World Tax*. He is a fellow of the Chartered Institute of Taxation, past-Chairman of the British branch of the International Fiscal Association and a member of the CBI's Taxation Committee and International Direct Taxes Working Group. Murray is a graduate of Sidney Sussex College, Cambridge, and holds a PhD from the University of London for research in the field of transfer pricing. He joined the firm in 1983 and has been a partner since 1993.

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Andrew is an international tax practitioner in the Duff & Phelps Transfer Pricing practice, with more than 18 years of cross-border experience in private practice, industry and in government. He brings a comprehensive regulatory, commercial and advisory perspective to the fields of transfer pricing and business restructuring, with a focus on practical implementation. Before joining Duff & Phelps Andrew was Deputy Comptroller of Taxes in the Jersey tax authority, acting as competent authority for all of Jersey's international tax agreements. He also served as Jersey's delegate to the Global Forum on Transparency and Exchange of Information for Tax Purposes, as well as representing Jersey at the OECD's Global Forums for Transfer Pricing and for Tax Treaties. Andrew spent eight years in industry as a global head of transfer pricing, and has led the transfer pricing practice in two FTSE 100 FMCG multinationals.

Andrew is a graduate of Oxford University and is an Associate of the Institute of Chartered Accountants in England and Wales. He qualified as a chartered accountant at Deloitte before focusing on transfer pricing at Ernst & Young, where he was a member of its Tax Effective Supply Chain Management team.

United States

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Patrick McColgan is a managing director in Duff & Phelps' Atlanta office and part of the transfer pricing team. He has a strong focus on assisting growth companies with their global transfer pricing needs through the design of defensible and pragmatic solutions. Patrick has more than 11 years of transfer pricing experience and has worked across several industries including automotive, chemical, consumer products, medical products, pharmaceutical, software, internet, and manufacturing.

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Emily Sanborn is a director in the Atlanta office of Duff & Phelps' Transfer Pricing practice. Emily has more than nine years of transfer pricing experience and has both led and assisted in the design and implementation of practical and effective transfer pricing solutions to address a broad spectrum of transfer pricing issues, including management fees, license and migration of intangible property, and tangible goods transfers. Emily also has experience assisting clients

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Transfer Pricing Forum Country Contributors

Country Contributors

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Cristian Rosso Alba heads the Tax Law practice of Rosso Alba, Francia & Asociados. He has a well-recognized expertise in tax law, with particular emphasis on domestic and international tax matters. Mr. Rosso Alba has served as professor of Tax Law at the Pontifical Catholic University of Argentina; visiting professor at the University of Buenos Aires, School of Economics; professor of Tax Law at Austral University and professor of postgraduate courses at the Torcuato Di Tella University. Additionally, he has been a regular lecturer in the United States and speaker in domestic and international tax conferences and is the author of more than eighty articles appearing in specialized publications. Cristian Rosso Alba holds an LL.M from Harvard Law School, and a Certificate in International Taxation jointly from Harvard Law School and the J.F. Kennedy School of Government at Harvard; a Masters in Taxation from Buenos Aires University School of Economics; and the degree of Abogado from the University of Buenos Aires Law School. He is a member of the American Bar Association (ABA), the Canadian Tax Foundation and the Advisory Board of the Argentine Chamber of Commerce. He has been recommended as one of the "Leaders in their Field" (Tax – Argentina) by *Chambers Latin America*.

Australia

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Stean Hainsworth is the Director of Transfer Pricing at Duff & Phelps based in Australia and has over 20 years of legal and tax experience, specializing in transfer pricing. Previously he was a Director of an international transfer pricing firm, at a global advisory firm as the transfer pricing leader for Asia, and worked as a senior transfer pricing specialist for a Big 4 firm in New Zealand, Canada and Australia.

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Alexandra Dolezel has been a Tax Director in the Vienna, Austria, practice of PricewaterhouseCoopers since 2011. There, she specializes in transfer pricing; international tax structuring and value chain transformation; and mergers and acquisitions. In addition, she is a lecturer on European Union tax law and comparative tax law at FH Campus Wien, the largest university in Austria. Prior to joining PricewaterhouseCoopers, she was Head of Corporate Taxes for Borealis AG, where she had overall responsibility for group corporate tax, including matters affecting tax risk management, transfer pricing and international structures. Ms. Dolezel received her education at the Vienna University of Economics and Business Administration, and she is also a member of the Austrian Chamber of Accountants.

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Since 1996, Dirk has been a visiting professor at the University of Antwerp (Faculty Applied Economics, UA) teaching Tax to Master students. He has been named in International Tax Review's "World Tax –The comprehensive guide to the world's leading tax firms", Euromoney's (Legal Media Group) "Guide to the World's Leading Transfer Pricing Advisers" and Euromoney's "Guide to the World's Leading Tax Advisers."

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Yves de Groote is a LL.M from King's College London, MSc. HUB; he joined KPMG in 2004 and has over 10 years of experience in advising multinational organizations on transfer pricing issues. He has been involved in and conducted various tax planning and transfer pricing assignments, ranging from the preparation of European and global transfer pricing documentation (including functional and economic analyses and comparables searches), domestic and international transfer pricing audit defense to the negotiation of (uni-, bi- and multilateral) rulings and advance pricing arrangements (APAs).

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Based in Shanghai, Cheng Chi is the partner-in-charge of KPMG's Global Transfer Pricing Services for China and Hong Kong. Mr. Chi has led many transfer pricing and tax efficient supply chain projects in Asia and Europe, involving advance pricing arrangement negotiations, cost contribution arrangements, Pan-Asia documentation, controversy resolution, global procurement structuring, and headquarters services recharges for clients in the industrial market including automobile, chemical, and machinery industries, as well as the consumer market, logistic, communication, electronics and financial services industries. In addition to lecturing at many national and local training events organized by the Chinese tax authorities, Mr. Chi has provided technical advice on a number of recent transfer pricing legislative initiatives in China. A frequent speaker on transfer pricing and other matters, his analyses are regularly featured in tax and transfer pricing publications around the world i.e. International Tax Review). Mr. Chi has been recommended as a leading transfer pricing advisor in China by the Legal Media Group. Mr. Chi started his transfer pricing career in Europe with another leading accounting firm covering many of Europe's major jurisdictions while based in Amsterdam until returning to China in 2004.

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Rafael Triginelli Miraglia is a Senior Tax Manager with the Global Transfer Pricing Team of KPMG China and member of the firm's BEPS Center of Excellence. His practice focuses on design and implementation of transfer pricing systems, business restructuring advice, value chain analysis and planning and outbound investments.

Rafael is graduated in Law (Universidade Federal de Minas Gerais, Brazil, 2004) and has obtained the degrees of Master of Laws (Pontifícia Universidade Católica de Minas Gerais, Brazil, 2008) and LL.M. of Advanced Studies in International Tax Law (ITC-Leiden University, the Netherlands, 2011). He is a Transfer Pricing Lecturer at the ITC-Leiden University and has taught courses in Tax and Constitutional Law at Pontifícia Universidade Católica de Minas Gerais. Rafael is a member of the Brazilian Bar Association (Ordem dos Advogados do Brasil) since 2005.

Before joining KPMG China, Rafael worked between 2011 and 2015 as Tax Associate with a global law firm in the Netherlands and, prior to that, as Head of Tax with a Brazilian law firm.

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Julien Monsenego specializes in international taxation, tax treatment of M&A and restructurings. He assists French and foreign companies in their international investments as well as in the course of their tax audits and litigations. He particularly focuses on Life Science and R&D-intensive industries. He has extended practice of transfer pricing and has intervened for French and non-French groups in setting up intra-group flows, IP companies and business restructuring. Before joining Olswang, Julien Monsenego worked at Arthur Andersen International, Ernst & Young, Coudert Brothers and Dechert LLP. Mr. Monsenego is a member of the Paris Bar.

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For more than 25 years, Alexander Voegele has been advising international corporations and leading law firms on transfer pricing issues, specializing in the development of innovative economic structures for transfer pricing strategies and for the defense of major international transfer pricing cases. He has led hundreds of large transfer pricing projects and defense cases for a variety of clients in a range of industries. Prior to joining NERA, Dr. Voegele was a partner with PriceWaterhouse and KPMG, where he was in charge of their German transfer pricing practice. He holds a doctorate in economics and a Masters of Tax and Business Administration from the University of Mannheim. He is a certified German auditor and tax adviser and is a French Commissaire aux Comptes. He has received numerous awards as a transfer pricing adviser and has frequently been ranked as a leading tax and transfer pricing professional.

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Philip de Homont specializes in complicated transfer pricing audits and the valuation of intellectual property for international corporations and law firms. He has defended major transfer pricing cases throughout Europe and the Americas in a wide range of industries from consumer goods to financial services. He holds a MSc in Economics from the University of Warwick and a Diplom (Masters-equivalent) in Physics from the Technische Universitat Munchen. Philip de Homont is the co-author of numerous articles and two books on transfer pricing and intellectual property valuation. He has participated in various transfer pricing conferences.

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Dr. Florian Sarnetzki is a consultant at NERA Economic Consulting, where he provides economic planning and litigation advice to international corporations and law firms. Using his profound mathematical and statistical knowledge, Dr. Sarnetzki helps the team through his expertise in the identification and quantification of microeconomic and macroeconomic effects. He is specialized in valuation, complex calculations and econometric analysis of financial investments. Florian Sarnetzki was awarded with the Reinhard-Selten-Award (Young Author Best Paper Award) by the German Economic Association. Mr. Sarnetzki holds a PhD in Economics from the University of Mannheim, and an MSc-equivalent in Mathematics from University of Heidelberg, Germany.

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Irene Lee has practiced tax for 11 years, the last 7 specializing in transfer pricing matters involving the financial services sector. She joined KPMG in Hong Kong in 2013, and advises banking, asset management, and insurance clients on transfer pricing policies, documentation, and risk management in the Asia region. She earned a Bachelors of Business Administration (B.B.A.) degree from the Chinese University of Hong Kong, and has studied at the University of North Carolina (Chapel Hill).

India

Rahul Mitra
Partner and National Head, Transfer Pricing & BEPS, KPMG India

Rahul K Mitra is currently the National Head of Transfer Pricing & BEPS for KPMG in India. Prior to joining KPMG India, Rahul was the national leader of

PwC India's transfer pricing practice between 2010 and 2014. Rahul was a partner in the tax and regulatory services practice of PwC India between April 1999 and February 2015. Rahul has over 22 years of experience in handling taxation and regulatory matters in India. He specializes in transfer pricing, particularly inbound & outbound planning assignments, and advises on profit/cash repatriation planning; value chain transformation or supply chain management projects; profit attribution to permanent establishments, etc. Rahul independently handles litigation for top companies before the Income Tax Tribunals. At least 50 of the cases independently argued by Rahul have been reported in leading tax journals of India. Some of Rahul's major wins before the Tax Tribunals in transfer pricing matters have set precedents, both in India and globally.

In his personal capacity, Rahul has handled several APAs in India, involving clients from across industries; and also covering complex transactions, e.g. industrial franchise fees/variable royalties under non-integrated principal structures; contract R&D service provider model; distribution models, with related marketing intangible issues; financial transactions; profit split models for royalties; etc. He has been consistently rated as amongst the leading transfer pricing professionals and tax litigators in the world, by Euromoney and International Tax Review, since 2010.

Rahul has been a visiting member of the faculty of the National Law School in the subject of transfer pricing and international tax treaties, was the country reporter on the topic, "Non Discrimination in international tax matters", for the IFA Congress held in Brussels in 2008, and was invited by the OECD to speak in the 2012 Paris roundtable conference on developing countries' perspective on APAs.

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Catherine is a partner in the tax department at Matheson. Catherine has over ten years' experience advising multinational corporations doing business in Ireland on Irish corporate tax. Catherine has a particular interest in transfer pricing, competent authority matters and business restructurings and also has extensive experience in structuring inward investment projects, mergers and acquisitions and corporate reorganisations. Catherine's clients include many of the leading multinational corporations established in Ireland, primarily in the pharmaceutical, healthcare, ICT and consumer brand sector. Catherine has published articles in leading tax journals, is co-author on the Ireland section of the Bloomberg BNA TP Forum and is co-author of the Ireland chapter of the International Fiscal Association Cahiers on Cross Border Business Restructuring.

Catherine is a Chartered Tax Advisor and a member of the Law Society of Ireland.

Israel

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Yariv Ben-Dov is the Head of Transfer Pricing and Valuations Department at Herzog, Fox & Neeman. He is an expert in drafting and defending transfer pricing studies and intercompany agreements, with over 15 years of experience. Yariv counsels both multinational conglomerates and small start-ups on their transfer pricing matters, including multinationals which have no activity in Israel. Prior to joining HFN, Yariv was a co-founder of Bar-Zvi & Ben-Dov, a boutique law firm specializing in transfer pricing and high-tech, and prior to that Yariv served as the Head of the Transfer Pricing Unit in Teva Pharmaceuticals. Yariv has published articles in the subject of transfer pricing and has been asked to keynote as an expert in transfer pricing at several conventions in Israel, Europe and the U.S. Yariv is a member of Transfer Pricing Associates, the world's largest network of independent transfer pricing experts, a member of the Israeli Bar Tax Committee, and of the Board of the Israeli-LATAM Chamber of Commerce. Yariv is also a Board member of the Arthur Rubinstein Music Society and the head of the Society's NYC branch. Yariv counsels (pro bono) to the Israeli Navy Association. Yariv speaks Hebrew, English, French and Italian, and has often advised global clients in their local language.

Italy

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Marco Valdonio was admitted to the Association of Chartered Accountants in 2002. He joined Maisto e Associati in 2000, after working for another tax law firm. He headed the London office from 2002 to 2004, and has been partner in the firm since 2011. Marco's areas of expertise comprise transfer pricing, tax controversies and settlements, mergers and acquisitions, financial instruments, and international taxation.

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Aurelio Massimiano is a partner at Maisto e Associati, where he has practiced since 2005, after having worked for the International Tax Office of the Italian Revenue Agency, and prior to that, for a Big 4 accounting firm. His areas of expertise are international taxation and transfer pricing. He is the permanent assistant of Professor Guglielmo Maisto at the EU Joint Transfer Pricing Forum. A member of the Association of Chartered Accountants, he holds degrees from Luiss Guido Carli University in Rome, and an LL.M. in International Tax Law from the University of Leiden, The Netherlands.

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Mirko Severi joined Maisto e Associati in 2011 after obtaining a Master Diploma in Tax Law at IPSOA. He graduated (cum laude) in Economics from the University of Parma, in 2010. His areas of expertise include corporate taxation and group taxation.

Japan

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Takuma Mimura is Managing Director of Cosmos International Management, a transfer pricing boutique consulting firm in Japan. He has more than 14 years of transfer pricing experience, including 6 years at Deloitte Touche Tohmatsu (both Tokyo and New York), and international banking experience prior to transfer pricing. He has worked extensively on transfer pricing issues worldwide and is especially experienced in Japan, U.S. and China TP matters. He has also worked with a broad range of clients in manufacturing, financial services and telecommunications and has assisted many taxpayers in negotiations with the Japanese tax authorities on transfer pricing audit examinations. Takuma has authored articles for professional journals including BNA's Transfer Pricing Report and Monthly International Taxation of Japan, and is a frequent speaker on transfer pricing topics.

Korea

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Dr. Tae Hyung Kim is a senior partner at Deloitte Korea. Over more than 19 years, Dr. Kim has advised multinational corporations in various industries on a wide range of issues in their global transfer pricing and value chain management strategies. In so doing, he has handled complex transfer pricing disputes and negotiations with both Korean and foreign tax authorities. Dr. Kim has been contributing to articles in BNA International Transfer Pricing Forum, BNA Tax Management Transfer Pricing Reports, IBFD's International Transfer Pricing Journal, and Euromoney's Transfer Pricing Reviews. Dr. Kim has been recognized as a World's Leading Transfer Pricing Advisor by Euromoney's Legal Media Group. International Tax Review has recognized him as a Tax Controversy Leader in Korea. He holds a Ph.D in economics from the University of Washington, and is also a graduate of the Advanced Management Program of Harvard Business School. He graduated from Korea University with a BA in economics.

Seong Kwon Song
Head of Transfer Pricing Group, Deloitte, Seoul

Mr. Seong Kwon Song, former Assistant Commissioner for International Tax Investigation and Head of the Competent Authority at the Korean National Tax Services (KNTS) leads the Deloitte transfer pricing group in Korea. The group has over 40 specialists including ex-KNTS officers and economists with global background.

Mexico

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Armando Cabrera
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Armando Cabrera-Nolasco is a partner in Baker McKenzie's Tax Practice Group in Guadalajara. He has 10 years of experience in transfer pricing issues. Mr Cabrera- Nolasco currently coordinates the transfer pricing services for financial and services industries, and the financial valuation practice.

Mr. Cabrera-Nolasco's practice focuses on transfer pricing documentation for tax compliance; pricing strategies and benchmarking analysis by product, industry, country and region; defense in litigation; and alternative dispute resolution of any transfer pricing matter in Mexico and Latin America.

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New Zealand

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Leslie is the managing director of TP EQuilibrium | AustralAsia LP ("TPEQ") (formerly, Ceteris New Zealand). TPEQ provides transfer pricing services in Australia and New Zealand, across an extensive range of industries, transactions and engagements, including APAs; independent second opinions and expert advice; tax authority reviews, investigations and audit defence; global, regional and country-specific documentation; etc. Leslie has over 22 years of specialised transfer pricing experience based in the APac Region (Sydney and Auckland), and an additional 10 years of corporate taxation experience in Big 4 accounting firm practices specialising in mergers, acquisitions, bankruptcies and reorganisations based in the United States (New York City and Chicago). Prior to forming TPEQ, Leslie commenced the transfer pricing practice of Ernst & Young New Zealand, where she served as the National Leader for a number of years. Leslie frequently provides 'thought leadership' contributions to various international publications and associations.

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Sophie is an Analyst at TPEQ. She has over a year of transfer pricing experience since joining TPEQ in July 2015, working across various industries and projects for TPEQ's client base. Sophie completed her tertiary studies in 2016 and has since worked for the firm in a full-time capacity.

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Patrícia Matos
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Patrícia Matos is a Partner in Deloitte's Lisbon office in the transfer pricing department. She has a business degree and is a chartered accountant. Patricia started her professional career in 1997 with Arthur Andersen, S.A., which became Deloitte & Touche after the combination of both firms in April 2002. Patrícia has extensive experience in tax planning, due diligence and tax compliance for Portuguese and multinational companies. In 2002, she began working exclusively in transfer pricing. She advises clients in several aspects of transfer pricing, ranging from tax audits to comprehensive transfer pricing planning, structuring of intercompany transactions and defensive documentation. Her experience spans a wide range of industries including communications, technology, media, financial services, automotive, consumer goods, tourism and pharmaceuticals. Patrícia has been a speaker at several seminars and conferences on tax, economic and transfer pricing issues.

Henrique Sollari Allegro
Manager, Partner at Deloitte & Associados SROC, S.A., Lisbon

Henrique is currently a Manager in Deloitte's Lisbon office in the transfer pricing department.

Russia

Evgenia Veter
Partner, Ernst & Young, Moscow

Evgenia Veter joined the Transfer Pricing Group of Ernst & Young as a partner in March 2011, coming from another major accounting firm. She has extensive experience in providing advisory services to Russian and international companies on various areas of taxation and conducting business in Russia, structuring investments, and coordinating approaches to tax planning. Since 2007 Evgenia has been focusing on transfer pricing. She has led transfer pricing planning and documentation projects for multinational and Russian clients in various industry sectors, including structuring of entry/exit strategies of clients from the transfer pricing perspective, adaptation of global transfer pricing policies to Russian requirements, business restructuring, development of sustainable transfer pricing methodologies, etc. Evgenia specializes on serving companies working in retail, consumer products and life science industries.

Olga Kurkina
Manager, Ernst & Young, Saint Petersburg

Olga Kurkina has been a manager in the Moscow office of EY's transfer pricing group since 2008. She has over 8 years of experience in Russia providing tax and legal advice to Russian and multinational companies. She graduated from the Academy of Budget and Treasury Ministry of Finance RF, as an Economist. Olga advises major Russian and multinational clients on tax issues such as structuring of operations in Russia, deduction of management fees and in particu-

lar, transfer pricing matters. She has participated in a wide range of transfer pricing projects, including the development of transfer pricing documentation, preparation of transfer pricing methodology, performance of benchmarking studies and the adaptation of global transfer pricing policies to Russian requirements for Russian and multinational clients. Olga has worked with clients in different industries, mainly specializing in FMCG, pharmaceuticals, and industrial products.

Ekaterina Nikolaeva
Ernst & Young, Saint Petersburg

Ekaterina Nikolaeva works at EY Moscow.

Singapore

Peter Tan
Senior Consultant (Tax and Transfer Pricing), Baker & McKenzie Wong & Leow, Singapore

Peter Tan leads the Baker & McKenzie Transfer Pricing practice in Singapore. He was called to the Bar of England and Wales in 1976, and started his tax career in London, continuing it in Singapore. Mr. Tan advises multinational companies from various industries on tax issues related to mergers and acquisitions, group and business restructuring, joint venture projects, intellectual property, franchising and distribution transactions, technical services arrangements and licensing, and financial products. He also assists clients in obtaining tax incentives. Mr. Tan also has extensive experience in tax dispute resolution. A member of the Middle Temple Inn of Court in England and Wales, Mr. Tan is also an Accredited Tax Advisor in the Singapore Institute of Accredited Tax Professionals.

Michael Nixon
Director of Economics (Transfer Pricing), Baker & McKenzie Wong & Leow, Singapore

An economist with 16 years of experience in transfer pricing consulting and academia, Michael Nixon's experience includes transfer pricing and business restructuring projects in the U.K., Germany, the Netherlands and Singapore, where he has been based for the last six years. He has advised multinationals across various industries throughout the planning, compliance and audit cycle. His practice is focused on transfer pricing controversy, intellectual property valuations and business restructuring. He is a member of the Singapore Transfer Pricing consultation group with the Inland Revenue Authority of Singapore (IRAS), and has undertaken training for the IRAS Tax Academy. He also consults with Singapore academic institutions on transfer pricing and business restructuring matters. Mr. Nixon has a Bachelor of Arts Economics degree from Nottingham Trent University and a Master of Science Economics (with distinction) from the University of London. He is a member of the Chartered Institute of Taxation in the U.K., and of the Society of Financial Advisors in the U.K..

Switzerland

Maurizio Borriello
Director, Transfer Pricing and Value Chain Transformation, PwC, Zürich,

Maurizio Borriello is a Director in the Transfer Pricing and Value Chain Transformation Team in Zürich, Switzerland. He graduated with a Bachelor of Arts in International Business from the University of Applied Sciences Aalen, Germany. Maurizio has been working in transfer pricing for almost ten years.

Michelle Messere
Consultant, Transfer Pricing and Value Chain Transformation, PwC, Zürich

Michelle Messere is a Consultant in the Transfer Pricing and Value Chain Transformation team based in Zurich, Switzerland. She graduated in Law and Accounting in Brazil and is an admitted attorney at the Brazilian Bar Association. She is currently studying the LL.M of International Contracts and Arbitration at the University of Fribourg, Switzerland.

United Kingdom

Danny Beeton
Editor in Chief and Panelist for United Kingdom
Managing Director, Transfer Pricing, Duff & Phelps, London

Danny Beeton is a Managing Director in the London office of Duff & Phelps and is part of the Transfer Pricing practice. He has over 25 years' experience advising multinational companies on global transfer pricing issues, bringing a management consulting perspective to business analysis and transfer pricing advice, supported by deep economics skills and extensive international experience. Prior to joining Duff & Phelps, Danny was global head of transfer pricing economics at Freshfields Bruckhaus Deringer and, before that, was a partner and global head of transfer pricing in an international accounting firm. He advises on the pricing of all types of transactions including financial transactions and transfer pricing for financial services, with a particular focus on international tax planning and transfer pricing dispute resolution. He is well known as an international speaker and author on transfer pricing. Danny is listed in various directories including The World's Leading Transfer Pricing Advisers and received his PhD in economics from Queen Mary College in the University of London.

Murray Clayson
Editorial Board Member and Panelist for United Kingdom
Tax Partner, Freshfields Bruckhaus Deringer, London

Murray Clayson is a partner in Freshfields' tax practice group and is based in London, and leads the firm's international transfer pricing practice. He specializes in international tax, finance and capital markets taxation, corporate structuring, transfer pricing, banking and securities tax, asset and project finance, derivatives and financial products, particularly cross-border. Murray is listed in *Chambers Europe, Chambers UK, The Legal 500 UK, Who's Who Legal, PLC Which Lawyer? Yearbook, Tax Directors Handbook, Legal Experts and International Tax Review's World Tax*. He is a

fellow of the Chartered Institute of Taxation, past-Chairman of the British branch of the International Fiscal Association and a member of the CBI's Taxation Committee and International Direct Taxes Working Group. Murray is a graduate of Sidney Sussex College, Cambridge, and holds a PhD from the University of London for research in the field of transfer pricing. He joined the firm in 1983 and has been a partner since 1993.

Andrew Cousins
Director, Duff & Phelps, London

Andrew is an international tax practitioner in the Duff & Phelps Transfer Pricing practice, with more than 18 years of cross-border experience in private practice, industry and in government. He brings a comprehensive regulatory, commercial and advisory perspective to the fields of transfer pricing and business restructuring, with a focus on practical implementation. Before joining Duff & Phelps Andrew was Deputy Comptroller of Taxes in the Jersey tax authority, acting as competent authority for all of Jersey's international tax agreements. He also served as Jersey's delegate to the Global Forum on Transparency and Exchange of Information for Tax Purposes, as well as representing Jersey at the OECD's Global Forums for Transfer Pricing and for Tax Treaties. Andrew spent eight years in industry as a global head of transfer pricing, and has led the transfer pricing practice in two FTSE 100 FMCG multinationals.

Andrew is a graduate of Oxford University and is an Associate of the Institute of Chartered Accountants in England and Wales. He qualified as a chartered accountant at Deloitte before focusing on transfer pricing at Ernst & Young, where he was a member of its Tax Effective Supply Chain Management team.

United States

Jeffrey S. Korenblatt
Reed Smith LLP, Washington, D.C.

Jeffrey S. Korenblatt is a tax attorney with more than 15 years of experience. He has a broad-based transactional tax practice and focuses on international tax planning and transfer pricing. Jeff delivers tax solutions to clients in multiple industries, including, but not limited to, manufacturers, retailers, franchisors, web-based providers of goods and services, and taxpayers in life-sciences industries.

Patrick McColgan
Duff & Phelps LLP, Atlanta

Patrick McColgan is a managing director in Duff & Phelps' Atlanta office and part of the transfer pricing team. He has a strong focus on assisting growth companies with their global transfer pricing needs through the design of defensible and pragmatic solutions. Patrick has more than 11 years of transfer pricing experience and has worked across several industries including automotive, chemical, consumer products, medical products, pharmaceutical, software, internet, and manufacturing.

Emily Sanborn
Duff & Phelps LLP, Altanta

Emily Sanborn is a director in the Atlanta office of Duff & Phelps' Transfer Pricing practice. Emily has more than nine years of transfer pricing experience and has both led and assisted in the design and implementation of practical and effective transfer pricing solutions to address a broad spectrum of transfer pricing issues, including management fees, license and migration of intangible property, and tangible goods transfers. Emily also has experience assisting clients throughout the transfer pricing lifecycle, from planning to documentation to litigation and arbitration support.

Adriano Suckow
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Emily Sanborn is a Transfer Pricing Analyst in the Atlanta office of Duff & Phelps' Transfer Pricing practice.