

## Final version of the BEPS transfer pricing documentation concept has been published

On 5th October 2015, the Organisation for Economic Cooperation and Development (OECD) issued a final package of reports in connection with its Action Plan to address base erosion and profit shifting (BEPS).

The OECD's BEPS Action Plan, which was launched in July of 2013 and endorsed by the G20, included 15 key areas for identifying and curbing aggressive tax planning and practices and modernizing the international tax system.

OECD assigns key importance to considering transfer pricing principles in the BEPS package as well as related documentation liability. Additionally, the main transfer pricing related areas in question are, inter alia, interest deduction, intangible assets, permanent establishment status, low-value adding intra-group services and cost contribution arrangements.

From a practical transfer pricing perspective, the most relevant change is to be introduced by Action point 13. This report focuses on a company group's global value chain and transfer pricing policy. It recommends introducing consistent documentation and access to information to ensure that all relevant tax authorities have access to the same information about a group's value chain and the resulting tax consequences. This should enhance the transfer pricing transparency for tax administrators and provide them with relevant and reliable information to enable them to perform efficient and robust transfer pricing risk assessment analyses.

Accordingly, Action point 13 introduces a standardized three-tiered approach to transfer pricing documentation including core documentation ('Master file'), detailed country specific transfer pricing documentation ('Local file') and, as a new development, a so called country-by-country report ('CbC Report'). To summarize, Action point 13 sets out the following requirements about the content of the above:

- **Master file:** general overview of the company group; description of the supply chain for the group's five largest products and/or services; functional analysis describing the principal contributions to value creation by individual entities within the group; description of intercompany financial activities; general description of the company group's overall strategy for the development, ownership and exploitation of intangibles; list and brief description of the company group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income in various countries, etc.
- **Local file:** description of the local entity (e.g. management structure, local organization chart, business and business strategy, indication of business restructurings or intangibles transferred in the current year or year just finished, key competitors, etc.); description of the controlled transactions plus functional and comparability analysis, etc.
- **CbC report:** a description of the group's activities; pre-tax profit data; details of taxes paid and sales revenues realized

by the group members broken down according to related and unrelated parties, number of employees, stated capital, accumulated earnings, tangible assets, etc.

Rules related to the CbC report will affect all company groups realizing an annual consolidated group revenue equal to or exceeding EUR 750 million (or equivalent in local currency) in the immediately preceding fiscal year.

For timing purposes, the first implementation of the CbC report is recommended to fall in the accounting period beginning on or after 1st January 2016 (the latter – i.e. after that date – would be applicable to those company groups which operate with non-calendar financial years). The required CbC report shall be filed no later than within 12 months after the last day of the reporting fiscal year of the company group.

It is recommended that transfer pricing documentation be periodically reviewed in order to determine whether functional and economic analyses are still accurate and relevant and to confirm the validity of the applied transfer pricing methodology. In general, the master file, the local file and the CbC Report should be reviewed and updated annually.

It is recommended by OECD that both the master file and local file should be filed directly with the tax administrations in each relevant jurisdiction. The CbC report should be filed by the ultimate parent entity (alternatively, if the ultimate parent entity is not obliged to file as such under local regulations, then a surrogated group member may assume this responsibility) and the local tax administration(s) will share such filed data automatically with relevant entities in countries where the company group has a taxable presence.

Participating jurisdictions endeavour to introduce domestic legislation in a timely manner, as may be deemed necessary.

The expected timeframe for the implementation of Action point 13 – as well as the entire BEPS package – into Hungarian legislation is still unclear. In Hungary the transfer pricing documentation concept based on Master files and Local files – similarly to the system currently recommended by OECD – is already established. Nevertheless, in connection with the CbC report, and independent of the timing of domestic implementation, Hungarian taxpayers might even be affected by the related data gathering and provision obligations required by their parent entities. Therefore it is recommended to assess whether the current internal accounting and reporting systems are appropriate to obtain and forward such information.

If you have any further questions concerning the points above, please do not hesitate to contact our colleagues.

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