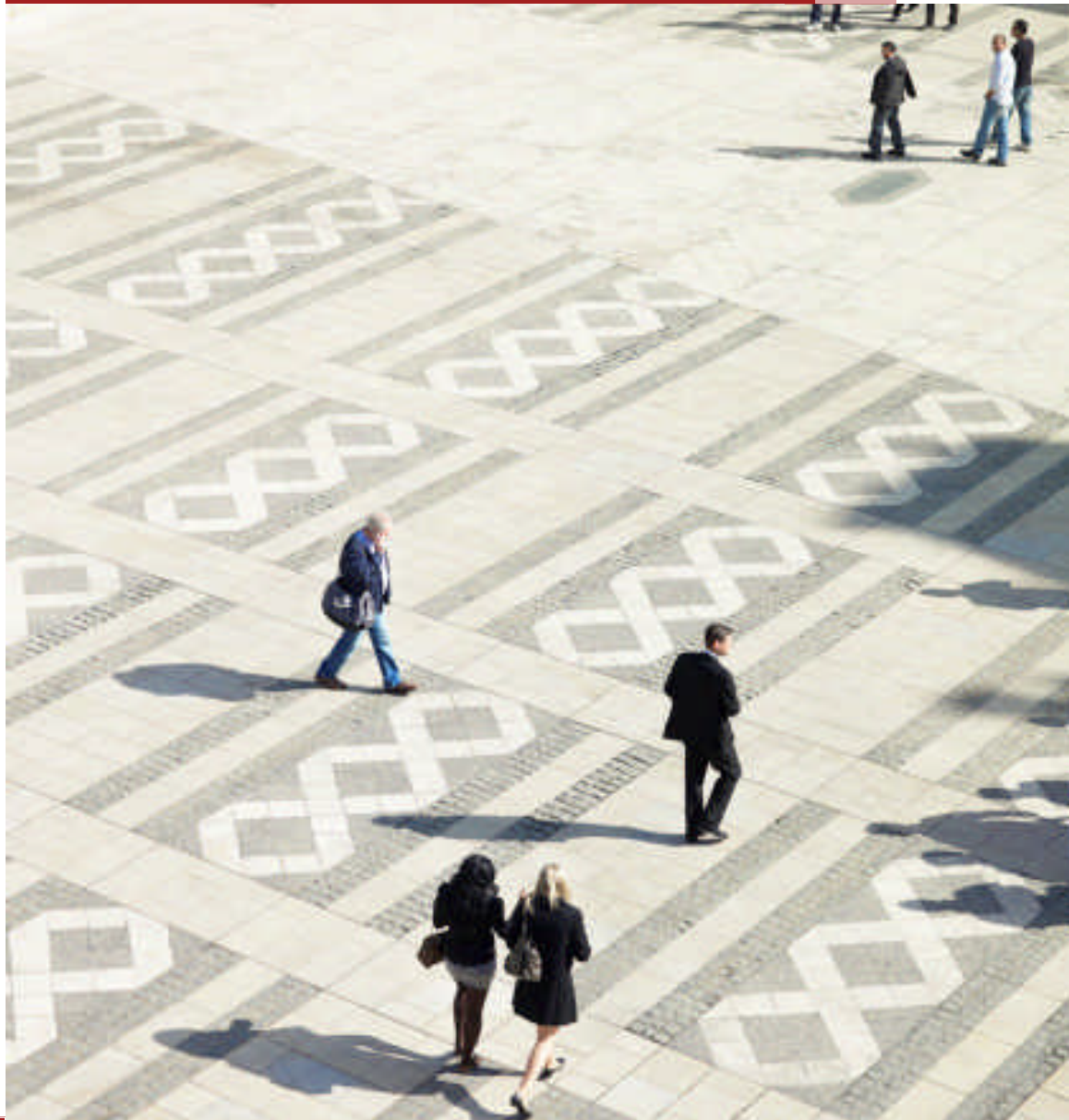


Tax Newsletter#2

OECD issues first BEPS-related
TP recommendations

19 September 2014



OECD issues first BEPS-related TP recommendations

On 16 September 2014, the OECD published several reports as part of its Action Plan for combating tax Base Erosion and Profit Shifting (BEPS). This includes a report on Action 13 — Guidance on Transfer Pricing (TP) Documentation, as well as on reporting for each country in which a Multinational Enterprise (MNE) operates (Country-by-Country Reporting - CbC).*



I. About BEPS

The BEPS Action Plan was backed by the G20 at the organisation's Heads-of-State Summit in St Petersburg in September 2013 and at subsequent G20 meetings (including the G20 Finance Ministers and Central Bank Governors Meeting in February 2014 in Sydney). The documents published on 16 September will be on the agenda for discussion at the upcoming G20 Finance Ministers and Central Bank Governors Meeting on 20-21 September 2014 in Cairns, Australia.

Further steps for supporting the OECD's proposed measures are planned for the G20 Heads-of-State Summit in November 2014 in Brisbane.

In essence, the CbC report will be incorporated into TP Guidelines approved by the OECD and thus will have recommendatory nature.

- 1) master files — information on global operations and approaches to transfer pricing;
- 2) local files — information on transactions pertaining to a specific country;
- 3) CbC report documenting operations including a set of financial and other indicators.

Local files should be submitted by an MNE to the tax authorities of the relevant countries.

The mechanism for submitting master files and reports on a country-by-country basis has not yet been defined and will be further examined by Working Group 6 of the OECD Committee on Fiscal Affairs. It was previously reported that the relevant recommendations should be drafted by early 2015.

II. What you should be paying attention to

1. TP documentation

The Guidelines introduce a three-tiered TP documentation approach for MNEs:

2. Information that should be contained in the documentation

The report contains a rather detailed list of information to be included in master files and local files, as well as a CbC reporting table form. The latter should include the following information for each separate country:

* <http://www.oecd.org/ctp/beps-2014-deliverables.htm>

- revenues (broken down by related-party and unrelated contractors);
- profit (loss) before income tax;
- income tax;
- registered capital;
- accumulated earnings;
- staff headcount;
- tangible assets;
- list of entities in each country specifying their type of activities.

3. *Who prepares the report and why*

The CbC report is prepared by the MNE's ultimate parent company based on data from the consolidated financial statements or compulsory financial statements for each country and /or financial statements for regulatory /management accounting purposes.

There is no need to reconcile data by country and/or consolidated statements and/or amendments in accordance with various accounting methods.

Sources of information (and the reasons for changing them) must be included in comments.

The purpose of these three levels of TP documentation is to assist the tax authorities in assessing the risks of tax base understatement (thus, such documentation cannot replace tax audits).

4. *Certain specific features of preparing TP documentation*

Domestic legislation on submission of TP documents must take transaction materiality into account. That said, a CbC report does not account for materiality.

OECD recommends to revise such documentation on an annual basis (although a significant part of the relevant information may remain unchanged). The tax authorities may, at their discretion, allow for updating samples of comparables taken from specialised databases once every three years, but financial data for each object must be updated annually.

A number of countries, including Argentina, Brazil, China, India and Turkey, have announced that their domestic legislation will require that more detailed information on certain payments made to related parties (royalties, interest, service payments) be included in CbC reports.

III. Further steps

Corporate groups, especially those operating in OECD and G20 countries, are advised to monitor changes in domestic TP rules (in countries where they operate), in particular those pertaining to provision of CbC reports, and adapt their internal accounting, reporting and compliance systems accordingly.

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