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## **EU JOINT TRANSFER PRICING FORUM**

### **Discussion paper on improving the functioning of the EU TPD**

**Meeting of 24 October 2014**

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**Secretariat's Note**

*This discussion paper should inform an initial discussion on improving the functioning of the EU TPD, to be held at the October 2014 JTPF meeting. The discussion will indicate how to proceed with improving the functioning of the EU TPD with respect to the substance of a possible revision, as well as with respect to its timing.*

## A. Background

1. The Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD)<sup>1</sup> was developed by the EU Joint Transfer Pricing Forum (JTPF) and was officially adopted on 27 June 2006. According to it “Member States will accept standardised and partially centralised transfer pricing documentation for associated enterprises in the EU and to consider it as a basic set of information for the assessment of a multinational enterprise group's transfer price”.
2. As part of its 2011-2015 Work Programme (doc. JTPF/016/2011) the JTPF monitored the implementation of the EU TPD within the EU in 2013. Member States (MS) and nongovernment stakeholders were surveyed with respect to the impact of the EU TPD on MS’ legislation and administrative practice, the extent to which the EU TPD is used by multinational enterprises (MNEs) and what value the EU TPD approach had been adding to an efficient application of transfer pricing rules. The findings of the survey were presented at the JTPF meeting in November 2013.
3. The monitoring revealed that MS’ national practices<sup>2</sup> are in line with the EU TPD, although actual requirements vary from one MS to another – i.e. some have no formal rules/guidance while others rather comprehensive rules/guidance. Documentation submitted in the EU TPD format would therefore be accepted in all MS. Nevertheless, some MS could still request additional information and/or translation of documentation in the local language.
4. The EU TPD requires MNEs to file a Master file and Local file with tax administrations. Responses to the EU TPD survey indicated that the concept of a Master file and Local file which is central to the EU TPD is perceived to be widely used in practice by MNEs across the EU. At the same time the monitoring revealed a diversity of experiences of non-government stakeholders<sup>3</sup> with the EU TPD across the EU. This can be explained, on the one hand, with the fact that the EU TPD was conceived as an optional TP documentation format for enterprises – with no ambition to serve as a single EU standard – and, on the other hand, with the different approaches of MS to its actual implementation, combined with the fact that some non-government stakeholders have chosen to use the EU TPD informally, rather than formally (e.g. as a template) and/or selectively (e.g. in part rather than in full; only as regards entities in certain MS, rather than for their corporate group as a whole; in some cases, rather than in all cases, etc.).
5. Although respondents to the survey emphasised the importance of the EU TPD as the first commonly established tool on structuring transfer pricing documentation and its contribution to a better standard of documentation within the EU, it was recognised that the functioning of the EU TPD could be improved. At its meeting in March 2014 the JTPF agreed to undertake work to this end. Possible issues/questions for

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<sup>1</sup> OJ C 176, 28.7.2006, p.1

<sup>2</sup> See [Summary of EU Member States’ responses to the questionnaire on the implementation of the EU TPD](#) (Summary MS responses)

<sup>3</sup> See [Summary of responses non-government stakeholders to the questionnaire on the implementation of the EUTPD](#) (Summary NGS responses)

consideration<sup>4</sup> in this process were identified. It was decided that developments at the level of the OECD would be monitored closely.

6. On 16 September 2014 the OECD published its revised guidance on transfer pricing documentation and a template for country-by-country reporting (Chapter V of the OECD Transfer Pricing Guidelines, TPG) in the framework of its work on Action 13 of the Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan). The EU TPD is consistent with the revised OECD guidance on transfer pricing documentation, as in fact the latter draws on the earlier experiences of the EU with the EU TPD and builds on the concept of a Master file and a Local file.
7. This first discussion paper addresses some of the main issues raised in the monitoring of the EU TPD. It compares the EU TPD with the OECD's new guidance on transfer pricing documentation and country-by-country reporting (Chapter V of the OECD Transfer Pricing Guidelines, TPG) and refers to some of the findings of the JTPF survey. Its purpose is to give orientations for the future work of the JTPF on improving the EU TPD.

## **B. Items for discussion**

### ***B.1. Survey findings***

8. The main issues for consideration in light of the survey on the EU TPD are listed below:

- 8.1. Compulsory EU-wide use of the EU TPD?

The use of the EU TPD is optional for MNEs. The majority of non-governmental stakeholders who responded to the relevant question in the survey saw a benefit in the optionality of the EU TPD<sup>5</sup>. The majority of MS who did not stay neutral on this question expressed a negative view on the optional use of the EU TPD<sup>6</sup>. Problems with what “opting in” for the EU TPD means in practice and how/where it actually should be done were reported<sup>7</sup>. Some MS suggested a mandatory application of the EU TPD to ensure a common set of information for all MS<sup>8</sup>. Others suggested providing incentives for opting for the EU TPD (including guaranteed non-application of documentation penalties in case the EU TPD is used).

- 8.2. Comparables/benchmarks

- Standardised use of pan-European comparables?
- Pan-European benchmarks?
- Guidance as regards benchmarking analysis and the selection of comparables?

Non-government stakeholders who responded to the EU TPD have identified the search for comparables and the quality of benchmark studies as an area of

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<sup>4</sup> See doc. JTPF/003/2014/EN

<sup>5</sup> See summary of NGS' responses, Q 3 (iii).

<sup>6</sup> See summary of MS' responses, Q2 C.

<sup>7</sup> See summary of MS' responses, Q.2 A and Q.2 B.

<sup>8</sup> See summary of MS' responses, Q3.

concern.<sup>9</sup> It is reported that although in general pan-European comparables are accepted in all but one MS, local comparables are usually preferred by most MS when available. There have been cases when pan-European comparables were challenged and/or rejected in the absence of sufficient domestic comparables in searches. It is noted that benchmarking studies are increasingly difficult, due to the decreasing number of comparable companies each year. At the same time, some tax auditors have very restrictive requirements: loss making companies are not accepted; comparables with fewer sales than the tested party are questioned/rejected; pure/exact comparables are requested. Responses to the survey suggest that guidelines as regards benchmarking analysis and the selection of comparables would be most helpful.

### 8.3. Acceptance of English as language for TP documentation?

The EU TPD provides that in order to minimise costs and delays caused by translation MS should accept TP documentation in a foreign language as far as possible. The results of the EU TPD survey indicate that certain MS accept TP documentation in English (Master file more likely to be accepted in English than the Local file), but tax inspectors usually have the right to request a translation in the local language, if deemed necessary. Other MS accept submissions in English only under certain conditions, for specific documents/parts and/or after prior approval by the concerned tax administration/tax inspector. In addition, courts usually accept information only in the local language. It is suggested that uniform acceptance of English across the EU as language for TP documentation (at least for the Master file), would have clear benefits for business.

### 8.4. Master file and Local file

- EU-wide harmonisation of Local file requirements?
- Simplifying/reducing the content required of the Master file?
- Moving content related to specific MS to Local files?
- Removing sensitive information from Local files?
- Harmonisation of the EU TPD with other documentation standards outside the EU?
- Guidance on the possibility to produce more than one Master file or to have a group member exempt from the EU TPD?

As regards the EU-wide harmonisation of Local file requirements, a distinction should be made between documentation required under domestic law and the country specific documentation requested in the EU TPD. In case a taxpayer opts for the EU TPD, the information requested in the EU TPD should be sufficient. Paragraph 18 of the CoC states that additional information may be required by specific request or during a tax audit. This means that country specific requirements are harmonised when the EU TPD is used. However, documentation requirements in MS' domestic law may very well differ. Harmonisation would be achieved if the EU TPD would be implemented as a common standard rather than as an optional system.

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<sup>9</sup> See summary of NGS' responses, Q5 (ii).

## 8.5. SMEs

- Common EU definition of SMEs for TP documentation purposes?
- Guidance on the use of the EU TPD by SMEs ('light' EU TPD for SMEs)?

Some non-governmental stakeholders<sup>10</sup> and MS<sup>11</sup> regard the preparation of the EU TPD as resource and cost intensive which makes it burdensome and time consuming in general and especially for SMEs<sup>12</sup>. Although many MS have introduced thresholds and specific rules for SMEs<sup>13</sup> further simplification and EU TPD "light" is suggested<sup>14</sup>. Some propose less documentation for simple/routine transactions.

## 8.6. Deadlines

- Guidance as regards deadlines for submission of TP documentation?

Non-governmental stakeholders have reported very short deadlines in some MS for the submission of TP documentation and/or for responding to clarification requests. It is suggested that common EU deadlines/guidelines on setting deadlines for documentation would be most helpful.

## 8.7. Subsequent periods

- Guidance on considering documentation as relevant for subsequent periods?

Non-governmental stakeholders have suggested guidance that in appropriate cases documentation prepared for a certain tax period should be accepted for further periods.

## 9. With respect to risk-based approaches in the context of documentation, R8 of the JTPF report on risk management in transfer pricing recommends to take the following aspects into account:

- Quantitative aspects, e.g. lower documentation requirements for low amount transactions,
- Qualitative aspects, e.g. lower documentation requirements for certain low risk transactions,
- Timing aspects, e.g. not imposing annual documentation requirements for continuous transactions where the facts and circumstances stay the same and
- Simplification for certain transactions in accordance with the conclusions of the OECD on safe harbours in revised paragraphs 4.93 – 4.131, especially paragraph 4.105 of the OECD TPG<sup>15</sup>.

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<sup>10</sup> See Summary of NGS' responses, Q2.

<sup>11</sup> See Summary of MS' responses, Q5.

<sup>12</sup> See summary of MS' responses, Q6 A.

<sup>13</sup> See JTPF website:

[http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/transfer\\_pricing/forum/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm)

<sup>14</sup> See summary of MS' responses, Q6 A and Q6 B.

<sup>15</sup> 4.105 OECD TPG: "Properly designed safe harbours may significantly ease compliance burdens by eliminating data collection and associated documentation requirements in exchange for the taxpayer pricing qualifying transactions within the parameters set by the safe harbour. Especially in areas where transfer pricing risks are small, and the burden of compliance and documentation is disproportionate to the transfer pricing exposure, such a trade-off may be mutually advantageous to taxpayers and tax administrations. Under a safe

**Note from the Secretariat:**

**The JTPF is invited to have a first discussion on a possible revision of the EU TPD and the questions listed.**

## ***B.2. OECD revised guidance***

In addition to issues raised in the monitoring of the EU TPD the revision of Chapter V OECD TPG should also be given consideration in the context of a revision of the EU TPD.

### ***B.2.1. Content of the Master file and Local file***

10. The Annex to this document contains a comparison table of the content required in the Master file and the Local file of Chapter V OECD TPG and in those of the EU TPD, respectively. The comparison suggests that the information requested under the EU TPD and Chapter V is to a large extent similar.

### ***B.2.2. Country-by-country reporting (“CbCR”)***

11. The revised Chapter V OECD TPG recommends a three-tiered approach to transfer pricing documentation which includes, in addition to the Master file and the Local file, a so-called country-by-country report (CbCR). This CbCR requires aggregate tax jurisdiction-wide information relating to the global allocation of income, the taxes paid and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates<sup>16</sup>. The OECD has recognised the need for implementing the guidance on documentation effectively and consistently. There are however different views about the filing process for the Master file and the country-by-country reporting. The OECD will discuss these issues on implementation within the next months.<sup>17</sup>
12. OECD member countries have agreed to monitor the implementation of the new standards, especially of the country-by-country reporting and will reassess no later than 2020 whether modifications to the content of these reports should be made.
13. The EU has recently introduced CbCR regimes (general, not just for transfer pricing) of its own - for the extractive and logging industries<sup>18</sup> and for banks and investment firms<sup>19</sup> in the EU. In addition, a CbCR regime on reporting non-financial and diversity information<sup>20</sup> is in the process of adoption, but it does not have a tax component. CbCR in the EU requires public disclosure of tax information either via companies’ financial statements, annual reports or other means.

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*harbour, taxpayers would be able to establish transfer prices which will not be challenged by tax administrations providing the safe harbour without being obligated to search for comparable transactions or expend resources to demonstrate transfer pricing compliance to such tax administrations.”*

<sup>16</sup> See section C.3 of Chapter V OECD TPG (new)

<sup>17</sup> See section E of Chapter V OECD TPG (new)

<sup>18</sup> Directive 2013/34/EU (Accounting Directive) and Directive 2013/50/EU (Transparency Directive)

<sup>19</sup> Directive 2013/36/EU (Capital Requirements Directive) and Regulation (EU) No 575/2013 (Capital Requirements Regulation)

<sup>20</sup> Directive 2014/.../EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (not adopted yet).

14. The EU CbCR regimes are still being transposed by MS in their national legislation. As regards CbCR for banks and investment firms in particular, the Commission plans to assess the potential consequences of the CbCR for banks including its impact on “competitiveness, investment and credit availability and the stability of the financial system” by 31 December 2014. Depending on the results of this assessment the Commission may propose changes to the obligations.
15. In comparison with the EU CbCR regimes the OECD reporting template is, in general:
  - more detailed, as regards reporting on tax, and less detailed as regards other issues
  - applicable to MNEs active in all industries, not just in the extractive industries and in banking,
  - only intended for tax authorities, i.e. there will not be public disclosure.
16. Overall, the comparison of the EU TPD with the new OECD Chapter V TPG indicates no major differences regarding the content of the Master file and the Local file and with respect to many compliance items. Indeed, unlike the new OECD guidance on transfer pricing documentation, the EU TPD does not require a country-by-country report on transfer pricing. However, the OECD implementation arrangements in relation to the country-by-country report are currently not clear and will be discussed in the future.

#### **Note from the Secretariat**

**The Secretariat believes that CbCR for transfer pricing purposes in the EU should not be discussed at this stage for two reasons:**

- **The EU Commission’s position has been that CbCR should be public;**
- **The OECD is already working on CbCR for transfer pricing purposes and the JTPF might want to make use of the results [expected for January 2015].**

**Do you agree?**

### **C. Way forward**

17. The objective of transfer pricing documentation is to ensure that taxpayers give appropriate consideration to transfer pricing in establishing prices and to provide tax administrations with information necessary for risk assessment and useful for audit.
18. The monitoring of the EU TPD has indicated that that MS’ national practices are in line with the EU TPD, but that the functioning of the EU TPD can nevertheless be improved in certain respects. A discussion on the EU TPD is also desirable in light of the revised Chapter V OECD TPG. However, the OECD’s BEPS Action Plan contains various other action points with possible impact on transfer pricing<sup>21</sup> and the continuing work of the OECD on BEPS may result in further guidance touching upon transfer pricing documentation in 2015.

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<sup>21</sup> Action 1, Digital Economy; Action 4 interest deduction and other financial payments; Actions 8, 9, 10 on intangibles and transfer pricing in line with value creation



**Note from the Secretariat**

The Secretariat suggests having a first discussion on the items outlined above at the meeting in October 2014 and give consideration to the following:

- results of the EU TPD survey,
- revised Chapter V OECD TPG,
- future deliverables on transfer pricing-related BEPS items.

With respect to the timing of a possible revision of the EU TPD, work may start under the current mandate of the JTPF and be completed under its new mandate.

**The JTPF is invited to discuss the suggested way forward.**

Annex

**Comparison OECD Chapter V and EU TPD**

The table below summarises and compares the EU TPD with the recent update of Chapter V OECD TPG as published on September 16 2014. The content of Chapter V is summarised in the left column, the related guidance in the EU TPD is listed in the right column.

<b>OECD Chapter V, Content and key conclusions</b>	<b>EU TPD, Content and key conclusions</b>
<b>B. Objectives</b>	
<p><u>B. 1 price setting</u></p> <p>ensure that taxpayers give appropriate consideration to transfer pricing in establishing prices at or before filing the tax return (5)</p> <p>Contemporaneous documentation helps to ensure integrity of taxpayers positions (7, 8)</p> <p>Administrative burden to be taken into account by reasonableness of documentation requirements (9)</p>	<p><u>Nr. 16. EU TPD:</u> Where in its tax return, a taxpayer makes an adjustment to its accounts profit resulting from the application of the arm's length principle, documentation demonstrating how the adjustment was calculated should be available.</p> <p><u>Nr. 17. EU TPD:</u> The aggregation of transactions must be applied consistently, be transparent to the tax administration and be in accordance with paragraph 1.42 of the OECD Transfer Pricing Guidelines (which allow aggregation of transactions that are so closely linked or continuous that they cannot be evaluated adequately on a separate basis). These rules should be</p>

	<p>applied in a reasonable manner, taking into account in particular the number and complexity of the transactions.</p> <p><u>Nr. 27. EU TPD:</u> Documentation does not need to replicate the documentation that might be found in negotiations between enterprises acting at arm's length (for example, in agreeing to a borrowing facility or a large contract) as long as it includes adequate information to assess whether arm's length pricing has been applied.</p>
<p><u>B.2 risk assessment</u></p> <p>provide tax administrations with information necessary for risk assessment at an early stage (5)</p> <p>Variety of tools available (see OECD report on TP risk management) (10-12)</p>	<p><u>Nr. 1. EU TPD:</u> The EU TPD should contain enough details to allow the tax administration to make a risk assessment for case selection purposes or at the beginning of a tax audit, ask relevant and precise questions regarding the MNE's transfer pricing and assess the transfer prices of the inter-company transactions. Subject to paragraph 31, the company would produce one single file for each Member State concerned, i.e. one common masterfile to be used in all Member States concerned and a different set of country-specific documentation for each Member State</p> <p><u>Nr. 22. EU TPD:</u> Where a Member State requires a taxpayer to submit information about transfer pricing with its tax return, that information should be no more than a short questionnaire or an appropriate risk assessment form.</p>
<p><u>B.3 audit</u></p> <p>provide tax administrations with information for audit (5)</p> <p>When conducting an audit all relevant information needs to be provided (13)</p>	<p>See <u>Nr. 1 EU TPD</u> above</p> <p><u>Nr. 2 EU TPD:</u> Each of the items of the EU TPD listed below should be completed, taking into account the complexity of the enterprise and the</p>



	<p>masterfile and the respective country-specific documentation available to its national tax administration.</p>
<p><b>C. Approach</b></p> <p>The information listed in C1 – C3 should be available for risk management and provide the starting point for audit (16, 17)</p>	<p><u>Nr. 1. EU TPD:</u> A multinational enterprise (MNE) group's standardised and consistent EU TPD consists of two main parts:</p> <ul style="list-style-type: none"> <li>(i) one set of documentation containing common standardised information relevant for all EU group members (the 'masterfile'), and</li> <li>(ii) several sets of standardised documentation each containing country-specific information ('country-specific documentation').</li> </ul> <p>The EU TPD should contain enough details to allow the tax administration to make a risk assessment for case selection purposes or at the beginning of a tax audit, ask relevant and precise questions regarding the MNE's transfer pricing and assess the transfer prices of the inter-company transactions. Subject to paragraph 31, the company would produce one single file for each Member State concerned, i.e. one common masterfile to be used in all Member States concerned and a different set of country-specific documentation for each Member State.</p> <p><u>Nr. 28. EU TPD:</u> The sort of documentation that needs to be produced by an enterprise that is a subsidiary enterprise in a group may be different from that needed to be produced by a parent company, i.e. a subsidiary company would not need to produce information about all of the cross-border relationships and transactions between associated enterprises within the MNE group but only about relationships and transactions relevant to the</p>

	subsidiary in question.
<p><u>C.1 Master file</u></p> <p>Overview on MNE group business (18 – 21)</p> <p>Cross references to other existing documents possible (18)</p> <p>Should cover whole MNE. If well justified, business line reporting possible but whole masterfile should nevertheless at least be available (20)</p> <p><i>The following information should be included in the master file (Annex I)</i></p>	<p><u>Nr. 4.1 EU TPD:</u> The masterfile should follow the economic reality of the business and provide a 'blueprint' of the MNE group and its transfer pricing system that would be relevant and available to all EU Member States concerned.</p> <p><u>Nr. 3 EU TPD:</u> The EU TPD covers all group entities resident in the EU including controlled transactions between enterprises resident outside the EU and group entities resident in the EU.</p> <p><u>Nr. 31. EU TPD:</u> In well justified cases, e.g. where an MNE group has a decentralised organisational, legal or operational structure or consists of several large divisions with completely different product lines and transfer pricing policies or no intercompany transactions, and in the case of a recently acquired enterprise, an MNE group should be allowed to produce more than one masterfile or to exempt specific group members from the EU TPD.</p> <p><u>Nr. 4.2 EU TPD:</u> <i>The masterfile should contain the following items:</i></p> <p><i>(c) the general identification of the associated enterprises engaged in controlled transactions involving enterprises in the EU;</i></p> <p><i>(g) the MNE group's inter-company transfer pricing policy or a description of the group's transfer pricing system that explains the arm's length nature of</i></p>

<p><b>Organisational structure</b></p> <ul style="list-style-type: none"> <li>• <i>Chart illustrating the MNE's legal and ownership structure and geographical location of operating entities.</i></li> </ul> <p><b>Description of MNE's business(es)</b></p> <ul style="list-style-type: none"> <li>• <i>General written description of the MNE's business including:</i> <ul style="list-style-type: none"> <li>○ <i>Important drivers of business profit;</i></li> <li>○ <i>A description of the supply chain for the group's five largest products and/or service offerings by turnover plus any other products and/or services amounting to more than 5 percent of group turnover. The required description could take the form of a chart or a diagram;</i></li> <li>○ <i>A list and brief description of important service arrangements between members of the MNE group, other than R&amp;D services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services;</i></li> <li>○ <i>A description of the main geographic markets for the group's products and services that are referred to in the second bullet point above;</i></li> </ul> </li> </ul>	<p><i>the company's transfer prices;</i></p> <p><i>(b) a general description of the MNE group's organisational, legal and operational structure (including an organisation chart, a list of group members and a description of the participation of the parent company in the subsidiaries);</i></p> <p><i>(a) a general description of the business and business strategy, including changes in the business strategy compared to the previous tax year;</i></p> <p><i>(d) a general description of the controlled transactions involving associated enterprises in the EU, i.e. a general description of:</i></p> <ul style="list-style-type: none"> <li><i>(i) flows of transactions (tangible and intangible assets, services, financial),</i></li> <li><i>(ii) invoice flows, and</i></li> <li><i>(iii) amounts of transaction flows;</i></li> </ul>
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- *A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used;*
- *A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.*

***MNE's intangibles (as defined in Chapter VI of these Guidelines)***

- *A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.*
- *A list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and which entities legally own them.*
- *A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements.*
- *A general description of the group's transfer pricing policies related to R&D and intangibles.*
- *A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year*

*(e) a general description of functions performed, risks assumed and a description of changes in functions and risks compared to the previous tax year, e.g. change from a fully fledged distributor to a commissionaire;*

*(e) a general description of functions performed, risks assumed and a description of changes in functions and risks compared to the previous tax year, e.g. change from a fully fledged distributor to a commissionaire;*

*(f) the ownership of intangibles (patents, trademarks, brand names, know-how, etc.) and royalties paid or received;*

*(h) a list of cost contribution agreements, Advance Pricing Agreements and rulings covering transfer pricing aspects as far as group members in the EU are affected; and*

*(g) the MNE group's inter-company transfer pricing policy or a description of the group's transfer pricing system that explains the arm's length nature of the company's transfer prices*



<p>concerned, including the entities, countries, and compensation involved.</p> <p><b>MNE's intercompany financial activities</b></p> <ul style="list-style-type: none"> <li>• A general description of how the group is financed, including important financing arrangements with unrelated lenders.</li> <li>• The identification of any members of the MNE group that provide a central financing function for the group, including the country under whose laws the entity is organised and the place of effective management of such entities.</li> <li>• A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.</li> </ul> <p><b>MNE's financial and tax positions</b></p> <ul style="list-style-type: none"> <li>• The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.</li> </ul> <p>A list and brief description of the MNE group's existing unilateral APAs and other tax rulings relating to the allocation of income among countries</p>	<p><u>Nr. 4.2. (d) (i) EU TPD:</u></p> <p>(g) the MNE group's inter-company transfer pricing policy or a description of the group's transfer pricing system that explains the arm's length nature of the company's transfer prices</p> <p>(h) a list of cost contribution agreements, <b>Advance Pricing Agreements and rulings covering transfer pricing aspects as far as group members in the EU are affected;</b> and</p>
<p><u>C.2 Local file</u></p>	<p><u>Nr. 5.1 EU TPD:</u> The content of the country-specific documentation supplements the masterfile. Together the two constitute the documentation file for the relevant EU Member State. The country-specific documentation</p>

<p>The following information should be included in the local file (Annex II):</p> <p><b><u>Local entity</u></b></p> <ul style="list-style-type: none"> <li>• A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.</li> <li>• A detailed description of the business and 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.</li> </ul> <p>Key competitors.</p> <p><b><u>Controlled transactions</u></b></p> <p>For each material category of controlled transactions in which the entity is</p>	<p>would be available to those tax administrations with a legitimate interest in the appropriate tax treatment of the transactions covered by the documentation.</p> <p><i>Nr. 5.2 EU TPD: Country-specific documentation should contain, in addition to the content of the masterfile, the following items:</i></p> <p>(a) a detailed description of the business and business strategy, including changes in the business strategy compared to the previous tax year;</p> <p>a detailed description of the business and business strategy, including changes in the business strategy compared to the previous tax year;</p> <p>(b) information, i.e. description and explanation, on country-specific controlled transactions, including:</p>
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<sup>22</sup> To the extent this functional analysis duplicates information in the master file, a cross-reference to the master file is sufficient.

<p><i>involved, provide the following information:</i></p> <ul style="list-style-type: none"> <li>• <i>A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licenses of intangibles, etc.) and the context in which such transactions take place.</i></li> <li>• <i>The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payor or recipient.</i></li> <li>• <i>An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.</i></li> <li>• <i>Copies of all material inter-company agreements concluded by the local entity.</i></li> <li>• <i>A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior years.<sup>22</sup></i></li> <li>• <i>An indication of the most appropriate transfer pricing method with</i></li> </ul>	<p><i>(i) flows of transactions (tangible and intangible assets, services, financial),</i></p> <p><i>(ii) invoice flows, and</i></p> <p><i>(iii) amounts of transaction flows;</i></p> <p><i>c) a comparability analysis, i.e.:</i></p> <p><i>(i) characteristics of property and services,</i></p> <p><i>(ii) functional analysis (functions performed, assets used, risks assumed),</i></p> <p><i>(iii) contractual terms,</i></p> <p><i>(iv) economic circumstances, and</i></p> <p><i>(v) specific business strategies;</i></p> <p><i>(d) an explanation of the selection and application of the transfer pricing method(s), i.e. why a specific transfer pricing method was selected and how</i></p>
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<p><i>regard to the category of transaction and the reasons for selecting that method.</i></p> <ul style="list-style-type: none"> <li><i>• An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.</i></li> <li><i>• A summary of the important assumptions made in applying the transfer pricing methodology.</i></li> <li><i>• If relevant, an explanation of the reasons for performing a multi-year analysis.</i></li> </ul> <p><i>A list and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information.</i></p> <ul style="list-style-type: none"> <li><i>• A description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both.</i></li> <li><i>• A description of the reasons for concluding that relevant transactions were priced on an arm's length basis based on the application of the selected transfer pricing method.</i></li> <li><i>• A summary of financial information used in applying the transfer pricing methodology.</i></li> </ul> <p><i>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</i></p>	<p><i>it was applied;</i></p> <p><i>(e) relevant information on internal and/or external comparables if available;</i> <i>and</i></p>
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to controlled transactions described above.

**Financial information**

- Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
- 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.

(f) a description of the implementation and application of the group's inter-company transfer pricing policy.

Nr. 6. EU TPD: An MNE should have the possibility of including items in the masterfile instead of the country-specific documentation, keeping, however, the same level of detail as in the country-specific documentation. The country-specific documentation should be prepared in a language prescribed by the Member State concerned, even if the MNE has opted to keep the country-specific documentation in the masterfile.

Nr. 7. EU TPD: Any country-specific information and documents that relate to a controlled transaction involving one or more Member States must be contained either in the country-specific documentation of all the Member States concerned or in the common masterfile.

Nr. 8. EU TPD: MNEs should be allowed to prepare the country-specific documentation in one set of documentation (containing information about all businesses in that country) or in separate files for each business or group

	<p><i>of activities in that country.</i></p> <p><i>Nr. 9. EU TPD: The country-specific documentation should be prepared in a language prescribed by the Member State concerned.</i></p>
<p><u>C.3 Country by country reporting</u></p> <p>Helpful for high level risk assessment purposes, not for global formulary apportionment purposes (25)</p>	
<p><b>D. Compliance Issues</b></p>	
<p><u>D.1 Contemporaneous documentation</u></p> <p>Transfer prices established at the time of transaction with information reasonably available (26)</p> <p>Transfer prices to be confirmed at the time of filing the tax return (27)</p> <p>Costs and burden set limit to what can be requested (28)</p>	<p><u>Intr. 6. EU TPD:</u> Member States should:</p> <p>a) not impose unreasonable compliance costs or administrative burden on enterprises in requesting documentation to be created or obtained;</p> <p>b) not request documentation that has no bearing on transactions under review;</p>
<p><u>D.2 Time frame</u></p> <p>Best practice:</p>	<p><u>Nr. 13. EU TPD:</u> MNEs should undertake to prepare the masterfile in time to comply with any legitimate request originating from one of the tax</p>

<p>Local file: not later than the tax return of local entity (30)</p> <p>Master file: tax return due date of ultimate parent company (30)</p> <p>Cbcr: one year following the last day of the fiscal year of the ultimate parent of the MNE Group (31)</p>	<p>administrations involved.</p> <p><u>Nr. 14. EU TPD:</u> The taxpayer in a given Member State should make its EU TPD available, upon request by a tax administration, within a reasonable time depending on the complexity of the transactions.</p> <p><u>Nr. 21 EU TPD:</u> Taxpayers should be required to submit their EU TPD, i.e. the masterfile and the country-specific documentation, to the tax administration only at the beginning of a tax audit or upon specific request.</p>
<p><u>D.3 Materiality</u></p> <p>Materiality thresholds should be included in documentation requirements by local law (32)</p> <p>Measures for materiality (33):</p> <ul style="list-style-type: none"> <li>• Absolute figure of transaction</li> <li>• Relative figure of transaction</li> <li>• Enterprise related, i.e. excluding or limiting data for SMEs but oblige them to have information on their cross border transactions</li> </ul> <p>Cbcr should include all entities regardless of size etc. (34)</p>	<p><u>Intr. 5. EU TPD:</u> Member States undertake not to require smaller and less complex enterprises (including small and medium-sized enterprises) to produce the amount or complexity of documentation that might be expected from larger and more complex enterprises</p>
<p><u>D.4 Retention of documentation</u></p>	





<p><u>D.6 Language</u></p> <p>Generally to be established under local law (39)</p> <p>States should permit filing in a commonly used language (39)</p> <p>Translation can be requested but sufficient time should be provided (39)</p>	<p><u>Nr. 9. EU TPD:</u> The country-specific documentation should be prepared in a language prescribed by the Member State concerned.</p> <p><u>Nr. 23. EU TPD:</u> It may not always be necessary for documents to be translated into a local language. In order to minimise costs and delays caused by translation, Member States should accept documents in a foreign language as far as possible. As far as the EU Transfer Pricing Documentation is concerned, tax administrations should be prepared to accept the masterfile in a commonly understood language in the Member States concerned. Translations of the masterfile should be made available only if strictly necessary and upon specific request.</p>
<p><u>D.7 Penalties</u></p> <p>Governed by local law (40)</p> <p>List of possibilities to calculate documentation related penalties (41)</p> <p>Other approach: penalty protection and change in burden of proof (43)</p> <p>Internal shift of responsibility for documentation does not shift responsibility</p>	<p><u>Intr. 7.</u> Member States should not impose a documentation-related penalty where taxpayers comply in good faith, in a reasonable manner and within a reasonable time with standardised and consistent documentation as described in the Annex or with a Member State's domestic documentation requirements, and apply their documentation properly to determine their arm's length transfer prices.</p> <p><u>Nr. 20 EU TPD:</u> Taxpayers avoid cooperation-related penalties where they have agreed to adopt the EU TPD approach and provide, upon specific request or during a tax audit, in a reasonable manner and within a reasonable time, additional information and documents going beyond the EU TPD referred to in paragraph 18.</p> <p><u>Nr. 15. EU TPD:</u> The taxpayer responsible for making documentation available to the tax administration is the taxpayer that would be required to</p>

<p>for penalties (42)</p>	<p>make the tax return and that would be liable to a penalty if adequate documentation were not made available. This is the case even if the documentation is prepared and stored by one enterprise within a group on behalf of another. The decision of an MNE group to apply the EU TPD implies a commitment towards all associated enterprises in the EU to make the masterfile and the respective country-specific documentation available to its national tax administration.</p>
<p><u>D.8 Confidentiality</u></p> <p>Needs to be ensured (44)</p> <p>OECD Guide “Keeping it Safe” (45)</p>	<p><u>Intr. 6. EU TPD:</u> Member States should:</p> <p>a) not impose unreasonable compliance costs or administrative burden on enterprises in requesting documentation to be created or obtained;</p> <p>b) not request documentation that has no bearing on transactions under review;</p> <p>c) ensure that there is no public disclosure of confidential information contained in documentation.</p>
<p><u>D. 9 Other issues</u></p> <p>Desire to simplify, e.g. by using regional comparables should not undermine the requirement for most reliable available information (46)</p> <p>Not recommended to require certification by an outside auditor (47)</p>	<p><u>Nr. 25. EU TPD:</u> Member States should evaluate domestic or non-domestic comparables with respect to the specific facts and circumstances of the case. For example, comparables found in pan-European databases should not be rejected automatically. The use of non-domestic comparables by itself should not subject the taxpayer to penalties for non-compliance.</p>

<p><b>E. Implementation</b></p>	
<p>Generally: recommendation</p> <p><i>(follows)</i></p>	<p>Generally: recommendation</p> <p><u>Intr. 1.</u> Member States will accept standardised and partially centralised transfer pricing documentation for associated enterprises in the European Union (EU TPD), as set out in the Annex, and consider it as a basic set of information for the assessment of a multinational enterprise group's transfer prices</p> <p><u>Intr. 2. EU TPD:</u> The use of the EU TPD will be optional for a multinational enterprise group</p> <p><u>Intr. 3. EU TPD:</u> Member States will apply similar considerations to documentation requirements for the attribution of profits to a permanent establishment as apply to transfer pricing documentation.</p> <p><u>Intr. 4. EU TPD:</u> Member States will, wherever necessary, take duly into account and be guided by the general principles and requirements referred to in the Annex</p> <p><u>Nr. 10. EU-TPD:</u> Use of the EU TPD is optional for MNE groups. However, an MNE group should not arbitrarily opt in and out of the EU Transfer Pricing Documentation approach for its documentation purposes but should apply the EU TPD in a way that is consistent throughout the EU and from year to year.</p> <p><u>Nr. 11. EU TPD:</u> An MNE group that opts for the EU TPD should generally apply this approach collectively to all associated enterprises engaged in controlled transactions involving enterprises in the EU to which transfer pricing rules apply. Subject to paragraph 31, an MNE group opting for the EU</p>

	<p>TPD would, therefore, need to keep the documentation specified in Section 1 in respect of all its enterprises in the Member State concerned, including permanent establishments.</p> <p><u>Nr. 12. EU TPD:</u> Where an MNE group has opted for the EU TPD for a given fiscal year, each member of the MNE group should inform its tax administration accordingly.</p>
<p><b>Monitoring:</b></p> <p><u>Box in section E:</u> The transfer pricing documentation standards and country-by-country reporting standards will be revisited by countries participating in the BEPS project no later than the end of 2020 with a view to continuously improving the operation of those standards. In the course of the review, further consideration will be given to whether the documentation standards provide an adequate basis for transfer pricing risk assessment.</p>	<p><b>Monitoring</b></p> <p><u>Intr. 8. EU TPD:</u> In order to ensure the even and effective application of this Code, Member States should report annually to the Commission on any measures they have taken further to this Code and its practical functioning.</p>