

The Platform for Collaboration on Tax

Practical Toolkit to Support the Successful Implementation by Developing Countries of Effective Transfer Pricing Documentation Requirements

International Monetary Fund (IMF)

Organisation for Economic Co-operation and Development (OECD)

United Nations (UN)

World Bank Group (WBG)

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ACRONYMS

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
CAA	Competent Authority Agreement
CbC	Country-by-Country
CRS	Common Reporting Standard or Standard for Automatic Exchange of Financial Account Information in Tax Matters
CTS	Common Transmission System
DTC	Double Tax Convention
DWG	Development Working Group of the G20
EOI	Exchange of Information
EU	The European Union
GAAP	Generally Accepted Accounting Principles
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IMF	International Monetary Fund
MAP	Mutual Agreement Procedure
MAP APA	Advance Pricing Arrangement under the Mutual Agreement Procedure
MNE	Multinational Enterprise
MTC	Model Tax Convention
OECD	Organisation for Economic Co-operation and Development
QCAA	Qualifying CAA
SME	Small and Medium Enterprises
SPE	Surrogate Parent Entity
TIEA	Tax Information Exchange Agreement
UN	United Nations
UPE	Ultimate Parent Entity
WBG	World Bank Group

EXECUTIVE SUMMARY

Transfer pricing rules apply to taxpayers that conduct transactions with associated parties. In most countries, they require the taxable profit of such taxpayers to be computed in accordance with the arm's length principle – that is, on the assumption that the price and other conditions of the transactions are the same as those that would be expected had the transaction been between unrelated parties.

In establishing the prices and other conditions for transactions between associated enterprises and assessing whether such prices and conditions are consistent with the “arm's length principle”, it is necessary for enterprises and tax administrations to conduct what is often called a ‘transfer pricing analysis’. This analysis requires taxpayers or tax administrations to identify and understand the key features of a transaction between related parties, and analyze the functions performed, risks assumed and assets used by those parties in order to determine and apply the most appropriate transfer pricing method. The application of the transfer pricing method normally relies on information from external and internal sources to find one or more comparable uncontrolled transactions or, in the application of a profit split method, to determine the value of the contribution of the respective parties.¹ In some cases, this analysis involves a complex examination of a large amount of information. This Toolkit concerns the measures that tax administrations use to require taxpayers to document all stages of their transfer pricing analysis. It has a specific emphasis on developing countries.

Robust transfer pricing documentation rules are a prerequisite for the effective implementation of transfer pricing rules. The requirement to prepare, keep or submit information enhances compliance and enables tax administrations to access the information necessary to enforce their transfer pricing regulations. The access to such information also allows tax administrations to focus their efforts and to deploy their limited resources on taxpayers and transactions that pose the greatest risk of base erosion and profit shifting and should reduce any unnecessary taxpayer compliance costs, including those which arise from unfocused or misdirected audits. However, comprehensive documentation can be costly for the taxpayer, and finding the right balance between the tax authorities' needs and avoiding excessive and unnecessary compliance costs is not always an easy task.

The outcome of Action 13 of the OECD/G20 BEPS initiative outlined a standardized approach to transfer pricing documentation aimed at balancing compliance imperatives with compliance costs. The approach consists of three elements: a master file, containing information on the overall multinational enterprise (MNE) group; a local file, containing specific information on the local enterprise; and a Country-by-Country (CbC) Report, which describes the high-level financial and economic position of the MNE group. This Toolkit takes the view that all three elements are potentially beneficial for developing countries and focuses on the issues related to the implementation of each of them. It should be noted that CbC reporting is one of the four BEPS

¹ The process of the comparability analysis has been described in the Toolkit “Addressing Difficulties in Assessing Comparable Data for Transfer Pricing Analysis”, <http://www.oecd.org/tax/toolkit-on-comparability-and-mineral-pricing.pdf>. See also Section 3.5 of the UN Practical Manual on Transfer Pricing for Developing Countries (2017).

minimum standards, and that members of the OECD's Inclusive Framework² commit to its implementation, and to take part in the Inclusive Framework's peer review process.

This Toolkit also describes additional approaches to documentation, including information required in or to be filed along with the tax return (such as transfer pricing return schedules), and other measures such as questionnaires.

² In response to the call of G20 Leaders in November 2015, the OECD and G20 members established an Inclusive Framework which allows interested countries and jurisdictions to work on an equal footing with OECD and G20 members on the implementation of the OECD/ G20 BEPS Package.

Membership of the Inclusive Framework builds on the existing OECD Committee on Fiscal Affairs, to include interested countries and jurisdictions that commit to the comprehensive BEPS package and its consistent implementation. They participate in the decision-making plenary body, as well as all of the technical working groups. As of October 2020 there are over 135 members and 14 observer organisations. See the list of members and observers of the Inclusive Framework at <https://www.oecd.org/tax/beps/>

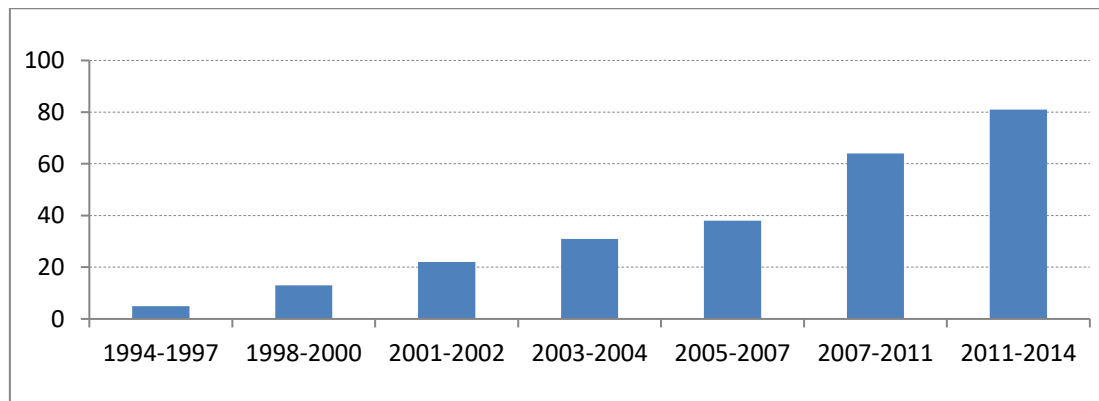
PART I. INTRODUCTION

1.1 Introduction: Why a toolkit on implementing Transfer Pricing documentation?

The relevance of transfer pricing to developing countries, together with the challenges faced by low-capacity or inexperienced tax administrations, has been high on the regional and global tax agenda in the last several years. The OECD/G20 Base Erosion and Profit Shifting (BEPS) initiative brought the issue to the fore, and served to highlight the relevance to, and challenges faced by, developing countries, which were specifically discussed in a two-part report to the G20 Development Working Group: 'The Impact of BEPS on Low Income Countries' (July and August 2014).³ This is being followed up with a number of Toolkits developed by International Organizations,⁴ which are intended to support developing countries implement those anti-BEPS measures that have most relevance to them.

Research using firm-level information and selected country experiences suggest that the introduction of effective documentation obligations is a critical component of compliance management strategies to address transfer mispricing. Since 1994 the number of countries with transfer pricing documentation requirements has increased more than tenfold (see Figure 1 below), and this has been linked to a reduction in observable indicators of profit shifting,⁵ possibly related to better-targeted enforcement activities and self-compliance induced by the obligations to revisit the related party dealings more systematically.

Figure 1 : Timeline of Effective Transfer Pricing Documentation Rules by number of countries 1994–2014



Source: World Bank (2016), based on Oosterhoff, 2008 and PwC, 2014.

³ OECD (2014), Two-part report to G20 Development Working Group on the impact of BEPS in Low Income Countries 2014, OECD Publishing, Paris. [//www.oecd.org/tax/tax-global/report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf](http://www.oecd.org/tax/tax-global/report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf)

⁴ IMF, OECD, UN, WBG

⁵ Cooper, Joel, Randall Fox, Jan Loeprick, and Komal Mohindra. 2016. Transfer Pricing and Developing Economies: A Handbook for Policy Makers and Practitioners. Directions in Development. Washington, DC: World Bank. doi:10.1596/978-1-4648-0969-9. License: Creative Commons Attribution CC BY 3.0 IGO p.7; and Beer and Loeprick, 2015. 'Profit Shifting Drivers of Transfer (Mis)Pricing and the Potential of Countermeasures'. International Tax and Public Finance 22 (3): 426-51

1.2 Structure of this Toolkit

This toolkit is intended to provide an analysis of policy options and a “source book” of guidance and examples to assist low capacity countries in implementing efficient and effective transfer pricing documentation regimes. Key points from these sources are reproduced, for ease of reference.

This first part of the Toolkit provides information on the background, context and objectives of transfer pricing documentation regimes. Part II then discusses a number of general policy options and legislative approaches relevant to all types of documentation requirements.

Part III focuses more specifically on each kind of documentation in turn and examines the specific policy choices that are relevant to each, as well as providing a number of examples of country practices. This format inevitably involves some repetition; however, a reader interested in implementing a particular type of documentation requirement can find all of the relevant information in a single section.

The final part sets out a number of conclusions.

1.3 Scope

For the purposes of this Toolkit, the term ‘transfer pricing documentation’ comprises the following:

1. Group level documentation. This category includes documents such as the master file and the Country-by-Country (CbC) Report described in Action 13 of the OECD/G20 BEPS initiative (“BEPS Action 13 Report”). Note that while there is a high degree of standardization of the CbC Report (as it applies globally), countries have taken a variety of approaches on the implementation of the master file.

2. Entity level documentation, generally comprising one or more of the following:

- The local file or similar (e.g. transfer pricing study), providing details of a local taxpayer’s intragroup transactions, and a description of the transfer pricing analyses giving rise to the selected method and comparables;
- A transfer pricing specific return or schedule, separate from the income tax return, that may be required to be lodged periodically with the tax administration;
- Any schedule to the tax return i.e. one or more transfer pricing specific questions included on a tax return or a schedule to the tax return; and
- Questionnaires issued by the tax authority on a regular or ad-hoc basis.

It should be noted that the term ‘transfer pricing documentation’ does not include business documents or records such as invoices, contracts, communications etc., which might be used to support or substantiate amounts of assessable income or deductible expenses. Typically, however, tax administrations require taxpayers to keep this type of information and to submit specified items during an audit. Legislation may stipulate the records that taxpayers are required to keep, and the

length of time they should be kept. For completeness and comparison purposes, this type of record keeping requirement is briefly discussed at various points in this Toolkit.

Table 1 : Type and scope of transfer pricing documentation

Type of Documentation	Group or local entity documentation	Entity submitting document	Required by legislation, and enforced by penalties	BEPS minimum standard
Transfer pricing returns or schedules	Local	Local taxpayer	Yes (where applicable)	No
Local file	Local	Local taxpayer	Generally, yes	No
Master file	Group	Local taxpayer	Generally, yes	No
CbC Reports	Group	Depends on domestic legal obligations. The Action 13 standard generally requires that the report is submitted by the ultimate parent entity, or specified surrogate entity, to that entity's tax jurisdiction. In exceptional circumstances it may be required to be submitted by the local taxpayer.	Yes	Yes
Questionnaires	Local	Local entity	Generally, no, but depends on how framed	No
Further information, data and documents	Local	Local entity	Generally, yes	No

The following table summarizes the different practices of a number of countries:

Table 2 : Country practices on transfer pricing documentation requirements

	Local file or similar transfer pricing study	Master file	CbC Report	Transfer pricing return	Questions in Tax Returns	Questionnaires or ad-hoc requests
Argentina						
Australia ^{1/}						
Austria						
Canada ^{2/}						
Colombia						
Czech Republic						
Dominican Republic						
Finland						
Georgia						
Latvia						
Liberia						
Lithuania						
Mexico						
Netherlands						
Nigeria						
Peru ^{3/}						
Spain						
Slovak Republic						
Turkey						
United States ^{4/}						
Uruguay						
Vietnam						

^{1/} The preparation of transfer pricing documentation is not compulsory, but taxpayers are recommended to do so (with details of comparables and transfer pricing policies) to defend their position and to mitigate any administrative penalties that may apply in the event the tax authority amends an assessment. Australia has an International Dealings Schedule which includes questions on transfer pricing. It is not exclusively a transfer pricing return, but it is a compulsory disclosure form that must be filed with the tax return. Questionnaires or other ad hoc requests for information may arise during the course of an examination.

^{2/} Canada has legislation in place for something similar to the local file – it is referred to as “contemporaneous documentation” and it has been in place since 1999 (see Annex 2). With respect to the master file, Canada can request a master file from a Canadian taxpayer based on certain provisions in their law.

^{3/} The master file and the local file constitute compulsory returns, which must be submitted electronically annually.

^{4/} The general documentation requirements under United State law are not legally mandated, but as a practical matter are voluntarily followed by taxpayers in the vast majority of cases because voluntary compliance is a prerequisite for penalty protection.

It can be seen that there is no single approach to transfer pricing documentation requirements, or combination of approaches, that is universally adopted. Furthermore, other than for CbC reporting (which is a BEPS minimum standard) there is no internationally agreed form and format of documentation. The OECD Transfer Pricing Guidelines,⁶ the UN Practical Manual on Transfer Pricing for Developing Countries⁷ (UN Transfer Pricing Manual) and the World Bank Transfer Pricing Handbook for Policy Makers and Practitioners⁸ provide guidance at the level of general principles, including specifying the types of information to be included in the documentation, but do not attempt to prescribe documentation requirements in detail. Rather than reproducing such guidance, this toolkit aims to help translate those principles into practically administrable transfer pricing documentation regimes. See [Part III](#).

1.4 Context and background of transfer pricing documentation requirements

Guidance on transfer pricing documentation was first included in the OECD Transfer Pricing Guidelines in 1995, following the introduction of documentation requirements in the United States one year earlier. Since then, an increasing number of countries have adopted documentation requirements (see Figure 1, above).

The proliferation of individual country documentation regimes resulted in a wide range of differing requirements around the world, contributing to an increased compliance burden for multinational enterprises. In response to this, a number of initiatives to coordinate country transfer pricing documentation requirements have been undertaken, for instance by the Pacific Association of Tax Administrators⁹ in 2003, within the European Union¹⁰ in 2006, and finally as part of the OECD/G20 BEPS project in 2015.

The BEPS Action 13 Report required the development of transfer pricing documentation rules that enhanced transparency for tax administrations while taking into consideration the compliance costs for business.¹¹ As a result, a three-tiered, standardized approach, comprising a local file, master file and, for large MNEs with world-wide group turnover of EUR 750 million or

⁶ See OECD (2017), "Documentation", Chapter V in *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en>.

⁷ See UN (2017), "Documentation", Section C.2 in *Practical Manual on Transfer Pricing for Developing Countries 2017*, UN Publishing, New York, <http://www.un.org/esa/ffd/wp-content/uploads/2017/04/Manual-TP-2017.pdf>.

⁸ Cooper, Joel, Randall Fox, Jan Loeprick, and Komal Mohindra. 2016

⁹ The Pacific Association of Tax Administrators (Australia, Canada, Japan and the United States) released documentation principles to assist taxpayers in creating one set of documentation which would satisfy the requirements of each of the PATA member countries. While application of the PATA requirements was voluntary for taxpayers, the package included an exhaustive list of documents which was more comprehensive than the requirements of any one of the member countries.

¹⁰ The EU Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union, agreed by the Council of the EU in June 2006, consisted of a common master file relevant to all EU group members of a multinational enterprise (and had to be provided to all relevant EU member states), as well as standardised country-specific documentation. Application of the Code of Conduct was optional for taxpayers.

¹¹ See OECD (2013), "Action 13" in *Action Plan on Base Erosion and Profit Shifting 2013*, OECD Publishing, Paris, p. 23, <http://dx.doi.org/10.1787/9789264202719-en>

more, the CbC Report was developed and then incorporated into the OECD Transfer Pricing Guidelines. A similar approach is taken in the UN Transfer Pricing Manual.

As has been noted above, only the CbC Report is a BEPS minimum standard. The BEPS Action 13 Report acknowledges that the specific content of the CbC Report template was the subject of compromise by participating countries and its implementation will be reviewed no later than the end of 2020.¹² As part of this review, aspects related to the scope and content of the CbC Report may be modified.¹³ The outcomes of the 2020 review are expected to be released in 2021.

1.5 Objectives of transfer pricing documentation requirements

Fundamentally, transfer pricing documentation enables taxpayers to demonstrate their compliance (or attempt of compliance) with transfer pricing rules.

The BEPS Action 13 Report identifies three main objectives of transfer pricing documentation requirements:

- To ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated enterprises and in reporting the income derived from such transactions in their tax returns.
- To provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment and selection of cases for audit.
- To provide tax administrations with information necessary to conduct a transfer pricing audit of entities subject to tax in their jurisdiction.

As part of the process of complying with reporting obligations, taxpayers may also be incentivized to focus attention on their transfer pricing arrangements and their compliance with transfer pricing rules. Through preparation of transfer pricing documentation taxpayers can place themselves in a better position to defend their transfer pricing policies in the event of an audit by the tax authorities.

For tax administrations, requirements for contemporaneous transfer pricing documentation will help to ensure the integrity of the taxpayer's position.¹⁴

In summary, requiring enterprises to document their transfer pricing positions could be expected to enhance compliance.

¹² OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD publishing, Paris, [p.10](http://dx.doi.org/10.1787/9789264241480-en), <http://dx.doi.org/10.1787/9789264241480-en>;

¹³ In February 2020 the Inclusive Framework released the public consultation document: Review of Country-by-Country Reporting. The document requested comments on all aspects of the BEPS Action 13 report, but specifically invited comments on a number of questions concerning the scope and content of the CbC Reports. See at <https://www.oecd.org/tax/beps/public-consultation-document-review-country-by-country-reporting-beps-action-13-march-2020.pdf>

¹⁴ OECD (2017), Paragraph 5.7 in *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris.

While various types of documentation may serve a number of purposes, they generally provide different types of information which can be particularly useful for different purposes, for example:

- **For risk assessment purposes:** Transfer pricing return schedules, CbC Reports and questionnaires are primarily relevant for risk assessment purposes.¹⁵ These tools can be used in identifying taxpayers or transactions to be audited, or which may warrant further investigation. They also provide auditors with early-stage indications of potential audit issues.
- **For audit purposes:** information contained in the local and the master files are a critical source of information for tax auditors during an audit. They contain detailed information needed by tax administrations to effectively verify whether the country's transfer pricing laws, including the arm's length principle, are being complied with.
- **To encourage voluntary compliance:** As noted above, all types of transfer pricing documentation discussed in this Toolkit can also be expected to focus taxpayers' attention on their compliance responsibilities and thus enhance voluntary compliance.

1.6 Policy principles

Country requirements on the preparation and maintenance of transfer pricing documentation should aim at the following objectives:

- To be clear enough to provide some certainty to a taxpayer on how to demonstrate to the tax administration that its transfer pricing is consistent with the country's transfer pricing rules;
- To provide the tax administration with the information they need in conducting risk assessments, planning and conducting audits and testing the validity and reliability of the transfer prices established by taxpayers;¹⁶ and
- To be balanced, so that reporting obligations fulfil tax administrations' need for information to be able to enforce the transfer pricing rules and at the same time avoid the imposition of excessive documentation requirements on taxpayers. It is important that the costs to a taxpayer of complying with these requirements are not disproportionately high relative to the size and complexity of the controlled transactions in point, and the tax at risk. For this reason, countries often provide exemptions or simplified documentation requirements for smaller and low risk taxpayers or transactions.

¹⁵ Under the minimum standard in BEPS Action 13 Report, the CbC Report may be used only for risk assessment purposes and for collection of data for statistical analyses.

¹⁶ Formal transfer pricing documentation may be supplemented by additional information requests made during the course of an audit.

Ensuring international consistency

Both the OECD Transfer Pricing Guidelines and the UN Transfer Pricing Manual recognize the advantages of consistent documentation rules to minimize transfer pricing compliance burdens on taxpayers. International consistency and alignment of the content and format of required documentation, for example, reduces the compliance costs of MNEs. This is particularly relevant for the group level documentation referred to above. A standardized framework also facilitates the sharing of experiences and good practices and it might also help to ease MAP APAs and MAPs negotiations between countries.

As noted in the UN Transfer Pricing Manual, when considering the implementation of the BEPS Action 13 documentation approach in developing economies, almost all MNE groups will likely be required by at least one tax administration to prepare a master file; and MNE groups exceeding the EUR 750 million annual global turnover threshold will also need to prepare a CbC Report. Consequently, requiring these documents to be delivered to the local tax administration in a developing country in a standard format should not impose disproportionate compliance burden on a MNE group.¹⁷

¹⁷ UN (2017), "Implementation of Global Documentation Standards in Developing Countries", Paragraph C.2.2. 2.2 in *Practical Manual on Transfer Pricing for Developing Countries 2017*, UN Publishing, New York.

PART II. OPTIONS FOR COUNTRIES TO IMPLEMENT TRANSFER PRICING DOCUMENTATION

This section discusses various policy considerations and options relevant to designing a regime for transfer pricing documentation. These include:

1. The regulatory framework, through a combination of primary legislation, secondary legislation and guidance;
2. Confidentiality of taxpayers' documentation and information;
3. Timing issues concerning when documentation must be in place and when it is required to be submitted to the tax administration;
4. Enforcement, including penalties and measures to assist and promote voluntary compliance;
5. Dealing with access to information outside the jurisdiction; and
6. Simplification and exemptions.

These are discussed in turn below.

2.1 Regulatory framework

2.1.1 General considerations

Developing a transfer pricing documentation regime raises a number of questions, which concern not only the type and combination of documentation requirements to be introduced but also the type and level of legal instruments introducing such requirements. The balance between primary and secondary legislation varies between countries. For example, some countries include detailed specifications on, for example, the format and content of documentation in their primary law. Others include only a general provision in primary law and detailed specifications in secondary law or regulations.

The choice of regulatory approach refers to the different levels of law that will apply in practice to institute a legal obligation. These are:

- Primary law, consisting of statutes or legislation;
- Secondary law, consisting of regulations and procedures, executive orders and presidential decrees, common law/case law, codes of conduct and policies;
- Supplementary guidance or statutory documents, including administrative procedures such as 'practice notes' issued by the tax administration or Ministry of Finance;

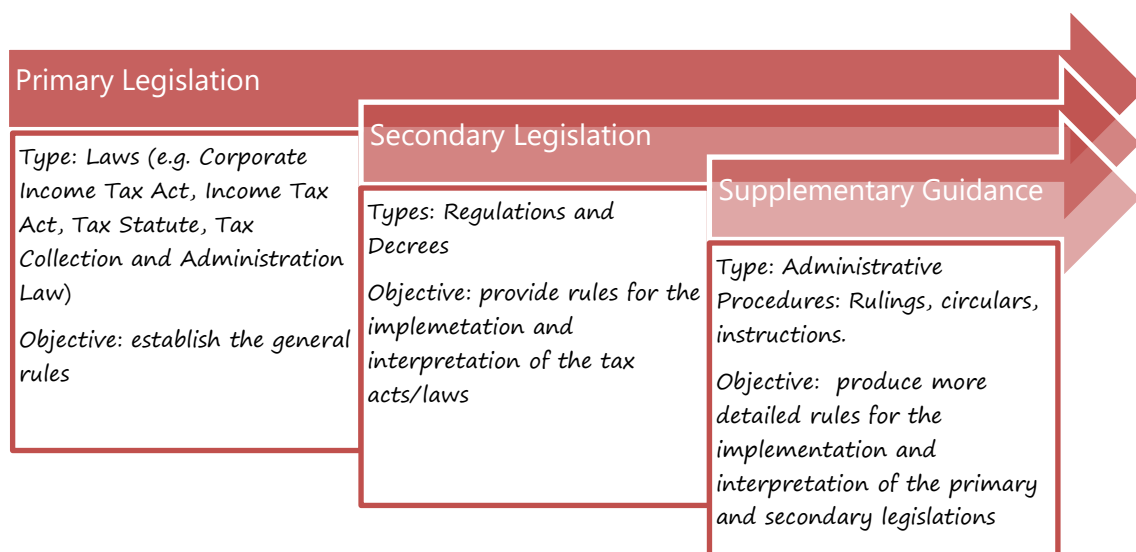
Each of these elements fits into, or interacts with, the domestic legal system in different ways depending on the country.

The starting point for all forms of transfer pricing documentation is a provision in the primary law (e.g. tax code, tax statute or tax law), which may or may not be specific to transfer pricing, and which is usually supplemented in secondary regulations.

In addition, countries often supplement these with administrative guidance. While such guidance is not normally binding on taxpayers, it is in practice generally considered binding on the tax administration. This means that care needs to be taken to ensure that guidance accords with primary and secondary law, and government policy.

Countries follow different approaches when drafting legislation for transfer pricing documentation requirements. Some countries adopt very brief language setting out the basic principles in primary law and then elaborate those principles in secondary law and/or supplementary guidance. In such cases, the primary legislation is typically intended to legislate core taxpayer obligations and tax administration powers, which the secondary legislation builds on with more comprehensive and detailed rules. Other countries have more extensive language in the primary law leaving only few specific aspects for secondary law. In all cases, the primary law would normally have a provision allowing the government, ministry or tax administration to introduce and amend secondary law.

An advantage of establishing general principles in the primary law and more detailed specific rules in subrogated or secondary law is the flexibility for future updates. Primary law usually tends to be less flexible than secondary law and the process for its amendment requires more time and approval steps from different government branches. By contrast, amendments to secondary laws are usually primarily approved at government, ministry or tax administration level, and thus offers greater flexibility.



It should be noted that the ability to receive CbC Reports filed with other tax jurisdictions requires exchange of information instruments (e.g. treaties or membership of a multilateral agreement), together with appropriate competent authority agreements, to be in place. (This is discussed further in Section [3.4](#) below.)

2.1.2 Burden of proof

An important consideration for developing countries when devising transfer pricing regimes is to define who bears the burden of proof. That is, who (either the taxpayer or the tax administration) has to prove that the pricing is in accordance with the arm's length principle.

It is not always straightforward to determine how the burden of proof operates in different jurisdictions and legal systems. It is often the case that when there is a self-assessment or similar system requiring taxpayers to comply with the arm's length principle, the burden of proof, in this case that the measure of profit filed in a tax return accords with the arm's length principle, is placed on the taxpayer. In such cases, there should be a general provision requiring the taxpayer to keep documentation to that effect in support of the tax return, and one of the purposes of such documentation is to provide the taxpayer with the means of demonstrating that, in the taxpayer's opinion, it has made a correct return and fulfilled that burden. If the tax administration then chooses to audit the tax return, in many instances, the burden of proof in relation to any adjustment to profit is shifted to the tax administration. If the transfer pricing documentation fails to meet the legal requirements, however, the tax administration may contend that the initial burden of proof remains with the taxpayer. An example of an option to legislate this approach is illustrated in the sample legislation at Annex 1.

In some countries however, the transfer pricing rules may be interpreted to allow the tax administration to adjust taxable profit if needed to enforce the arm's length principle, but not to require the taxpayer to return an arm's length measure of taxable profit¹⁸. In such cases, the burden of proof lies with the tax administration and general documentation requirements within the tax code may not apply to transfer pricing.

Where the tax administration holds the burden of proof and there are no, or only very limited, requirements for taxpayers to provide transfer pricing documentation, a perverse incentive can be created whereby taxpayers are effectively encouraged not to provide information that would be needed by the tax administration to undertake and support a transfer pricing analysis that could result in amendments to the taxpayer's returns. In such cases, it is essential that adequate penalty-backed information powers are in place to allow the tax administration to conduct a comprehensive and effective audit.

According to country practices, the burden of proof:

- Could be defined in the law: this is generally contained in the primary law and applicable in the ordinary course of the tax administration examination process, i.e. the provision is not necessarily exclusive to transfer pricing. The stipulated burden of proof could be placed on the taxpayer, the tax administration or split between them (See example on Spain below).
- Could be placed on taxpayers, through the specific documentation requirements. It is generally the case that when domestic legislation requires taxpayers to prepare, maintain and/ or submit transfer pricing documentation the burden of proof lies with the taxpayer (e.g. Argentina and Mexico).

Where the burden of proof lies with the taxpayer, it is helpful for countries to provide guidance on how taxpayers should satisfy this requirement.

¹⁸ This is, the law may not be self-executing and while it may provide the tax administration with the power to make an adjustment, it may not technically require anything of the taxpayer.

Box 1 : Example of countries' provisions on the burden of proof

In Spain,¹⁹ the tax law provides that:

- 1. In tax proceedings, the constituent facts of a right must be proved by the party seeking to exercise that right.*
- 2. The taxpayers will fulfil their duty of proof if they provide specific evidence to the tax administration.*

More specifically, specific transfer pricing provisions in Spain's tax law states²⁰ that, in order to justify that controlled transactions are valued according to the arm's length principle, associated entities should maintain at the disposal of the Tax Administration the transfer pricing documentation. So, the burden of proof in relation to transfer pricing transactions is placed primarily on taxpayers. However, if the Tax Administration disagrees with the valuation derived from the documentation included in the tax return, the Tax Administration must prove its position.

2.2 Confidentiality

In most countries, taxpayer-specific information provided to the tax administration must, by law, be kept confidential except where specifically provided for (e.g. specific disclosures, disclosures to a court of law).

Confidentiality of taxpayer information is a fundamental tenet of most tax systems.

Confidentiality is likely to be a particularly important issue in relation to transfer pricing documentation which may contain commercially sensitive material. In order to have confidence in their tax system and comply with their obligations under the law, taxpayers need to have confidence that such commercially sensitive information is not disclosed inappropriately. Ensuring confidentiality of sensitive taxpayer information requires a legal framework as well as systems and procedures to ensure that the legal framework is respected in practice and that there is no unauthorized disclosure of information.²¹

Confidentiality requirements would apply to transfer pricing documentation in the same way that they apply to other information provided by a taxpayer to the tax administration, and taxpayers should be assured that the information presented in transfer pricing documentation will remain confidential, except as may be provided for by law. Further, confidentiality requirements specified in BEPS Action 13 Report relating to CbC Reports form an element of the BEPS minimum

¹⁹"Ley 58/2003 General Tributaria" [General Tax Law], Article 105. At: <https://www.boe.es/buscar/act.php?id=BOE-A-2003-23186>

²⁰"Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades" [Corporate Income Tax Law], Article 18.3. At: <https://www.boe.es/buscar/act.php?id=BOE-A-2014-12328>

²¹OECD (2012), Keeping It Safe: The OECD Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes, OECD, Paris. <http://www.oecd.org/ctp/exchange-of-tax-information/keeping-it-safe.htm>

standards, which are subject to peer review under the BEPS Inclusive Framework process. (This is discussed further in Section 3.4 below).

Section D.8 of the BEPS Action 13 Report encourages tax administrations to 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 that will be part of transfer pricing documentation. A relatively small number of countries including Australia²², Finland, Norway and Sweden provide for public disclosure of certain tax return data in relation to (large) corporations. In most cases, only high-level tax data is made available, e.g. total taxable income and taxes paid, rather than detailed disclosures or breakdowns of income and expenses.

Many civil society organizations (NGOs) and political observers have called for public disclosure of CbC Reports. The issue of public disclosure was addressed, and broadly rejected, in the final report of BEPS Action 13.

The European Commission's current proposal for a directive on corporate tax transparency, if agreed, would require MNE groups to publish a yearly report on profits and tax paid in each country where they are active in a business register.²³

2.3 Timing Issues

A number of timing issues arise in the context of transfer pricing documentation regimes:

- When the taxpayer is required to have specified information in place;
- When the taxpayer is required to submit specified information to the tax administration;
- The length of time that records need to be kept.

Country information requirements - and associated penalty provisions - need to be tailored to domestic rules concerning time limits for, for example, conducting an audit. Some countries may have less time to review transfer pricing documentation, perform risk assessment and complete an audit and, therefore, would need information to be provided within a shorter timeframe.

Timing and submission requirements may vary depending on the type of documentation, reflecting their different purposes. For instance, high level information for risk assessment would be most useful if filed regularly; other, more detailed information may be best kept by the taxpayer and made available on request. Typical scenarios are summarized below. The next section discusses in more detail these options for each type of transfer pricing documentation, i.e. master file, local file, CbC Report, transfer pricing returns and transfer pricing questionnaires.

²² Australia requires the disclosure of total income, taxable income and income tax payable amounts for large corporate entities that meet the eligibility criteria. This requirement is enshrined in legislation.

²³ This proposal (commonly known as Public country-by-country reporting), should be distinguished from the existing and adopted Council Directive (EU) 2016/881 that requires the MNEs with more than EUR 750 million consolidated group revenue per fiscal year that are either established or with a permanent establishment in any of the EU Member States to file a CbC Report to the tax authorities of a given Member State.

Table 3 : Timing and submission of transfer pricing documentation

Type of Documentation	When taxpayer is required to have in place	When the tax administration may request	When taxpayer is required to submit to the tax administration
Transfer pricing annual returns or schedules	Normally by time of filing annual tax returns.	N/A – normally required by specified filing date.	Normally required to be submitted with, or as part of, the annual tax return.
Local file	Either contemporaneous to the transaction or time of filing return or combination.	At any time after filing tax return, typically during an audit. In some cases, the local file must be submitted annually to the tax administration.	Within a specified time following request, or in some cases, submitted with, or as part of, the annual tax return.
Master file	Either contemporaneous to the transaction or time of filing or combination ^{1/} .	At any time after filing tax return, typically during an audit. In some cases, the master file must be submitted annually to the tax administration.	Within a specified time following request, or in some cases, submitted with, or as part of, the annual tax return.
CbC Reports	By filing date.	N/A – normally required by a specified filing date.	Normally specified filing date.
Questionnaires	N/A	At any time after filing tax return, typically during an audit.	As requested by the tax administration or at a time agreed upon with the taxpayer. (Such requirements are often informal).
Further information, data and documents	Depends on legislation relating to information powers.	Normally at any time during the course of an audit.	Within a specified time following request.

^{1/} some countries allow local subsidiary entities to lodge the master file in line with the fiscal year of their foreign parent / filing entity of the group. See discussion in Section 3.3.

2.4 Penalties and compliance incentives

As transfer pricing documentation is vital for the enforcement of transfer pricing rules, effective penalties are essential. Some penalties may be applied for failing to provide required documentation, others may be tied to transfer pricing adjustments and, in other cases, failure to fulfil documentation requirements may lead to a higher penalty in relation to a transfer pricing

adjustment. Generally, omissions and misinformation should be subject to penalties and the penalty should be sufficient to dissuade taxpayers from not complying with their obligations.

A penalty should be proportionate to the gravity of the infringement, for instance, by taking into account the level of culpability of the taxpayer and the level of harm, including tax lost, caused by the non-compliance. Penalties should allow for mitigating circumstances.

A summary of approaches to penalties on transfer pricing documentation is shown in **Table 4**.²⁴ These are discussed further in [Part III](#).

Penalties relating to transfer pricing documentation may rely on a specific regime or on general documentation or record keeping rules that are not specific to transfer pricing. In the latter case, the general rules are most likely to be found in the primary legislation, and then elaborated for transfer pricing purposes in regulations or guidance.

Table 4 : Penalty and compliance incentive approaches

Type of Documentation	Penalty conditions	Possible approaches to penalty	Based on specific or general penalty provisions
Transfer pricing annual returns or schedules	a) Failure to file a return by a required date. b) Submission of an incomplete return. c) Making an incorrect return.	For a) and b) a penalty may be determined according to the delay in filing a complete return, computed by reference to a sum per day between a) the due date and b) the submission of a complete return. For c) a penalty may be based on a fixed sum, and/or the amount of any subsequent adjustment to taxable income or tax payable.	In cases where the transfer pricing return is part of the annual tax return, the penalty may be linked to that in place for failure to file a return or a complete return, or for filing an incorrect return. In other cases, a specific penalty may be required.

²⁴ For further discussion on policy design of penalties see Waerzeggers, Christophe, Cory Hillier, and Irving Aw, 2019, "Designing Interest and Tax Penalty Regimes", Tax Law IMF Technical Note 1/2019, IMF Legal Department

<p>Transfer pricing studies (master file or local file)</p>	<p>a) Failure to maintain adequate documentation at a specified date. b) Failure to submit adequate documentation upon request or by a specified date. c) Submission of incorrect documentation.</p>	<p>Penalties may be: i. a fixed sum ii. based on any subsequent adjustment to taxable income iii. based on any subsequent adjustment to tax payable. Alternatively, for b) the penalty may be determined according to the delay in making a complete submission, computed by reference to a sum per day between a) the due date for submission and b) the submission of a complete transfer pricing study.</p>	<p>The penalty may be based on either a general penalty regime, or specific penalty provisions contained in the transfer pricing rules.</p>
<p>CbC Reports</p>	<p>a) Penalty for failure to submit a complete CbC Report by a specified date. b) Penalty for making an incorrect CbC Report.</p>	<p>For a) penalty may be determined according to the delay in making a complete submission, computed by reference to a sum per day between (i) the due date for submission and (ii) the submission of a complete CbC Report. For b) a penalty may be based on a fixed sum, and/or on the value of the consolidated MNE revenue.</p>	<p>In both cases, the penalty may be based on either a general penalty regime, or specific penalty provisions contained in the transfer pricing rules.</p>
<p>Questionnaires</p>	<p>In most cases, a questionnaire will be non-statutory, and thus may not be subject to penalties. Some questionnaires will be purely of an advisory nature and/or used for risk assessment. However, a failure to comply with valid requests for information during an audit may impact on penalties which are applied to transfer pricing adjustments, which may take account of, for example, whether the taxpayer will be regarded as having co-operated or obstructed the tax administration, or whether the taxpayer's position is assessed as being 'reasonably arguable'.</p>		
<p>Further information, data and documents</p>	<p>a) Penalty for failure to submit complete information by the due date.</p>	<p>For a) a penalty may be determined according to the delay in making a complete submission, computed by reference</p>	<p>In both cases, the penalty is most likely to be based on either a general penalty regime, or</p>

requested during an audit	b) Penalty for supplying incorrect information	to a sum per day between (i) the due date for submission and (ii) the submission of complete information as requested. For b) a penalty may be based on a fixed sum, and/or the amount of any subsequent adjustment to taxable income or tax payable.	specific penalty provisions contained in the transfer pricing rules.
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Relationship with burden of proof

Another way to encourage taxpayers to fulfil transfer pricing documentation requirements is to design compliance incentives in the form of a shift in the burden of proof. In this case, where the initial burden of proof lies with a taxpayer, it may be shifted to the tax administration if the taxpayer complies with the transfer pricing documentation requirements. This approach, which is illustrated in Paragraph 3 of the illustrative transfer pricing documentation legislation in Annex 1, is most appropriate in respect of contemporaneous transfer pricing studies such as a the local and master file.

Likewise, where the initial burden of proof may be with the tax authorities, a failure to adhere to transfer pricing documentation requirements may lead to shifting the burden of proof to the taxpayer.

2.5 Accessing documents held outside the jurisdiction

Some countries report that MNE group subsidiaries or permanent establishments in their jurisdiction sometimes contend that they do not have access to information held by the group outside the jurisdiction. As a result, they argue that they are unable to make certain information available to the tax administration. This issue will involve information held by foreign parent, head office or sister companies. It should not affect information held by foreign subsidiaries of a locally headquartered company – in such cases, the local company will normally have the power to require its subsidiaries or branches to submit information and data to them.

This issue potentially affects the different categories of documentation to different extents.

1. Transfer pricing studies²⁵ and transfer pricing return schedules are required to be submitted under domestic rules and, typically, penalties will apply for a failure to submit them. Despite this, developing countries report that MNEs exceptionally contend that they do not have access to sufficient information to be able to submit complete schedules or transfer pricing studies. For those countries that adopt the BEPS Action 13 approach to transfer pricing documentation, the

²⁵ The term transfer pricing study includes the 'local file' and the 'master file' described in the BEPS Action 13 Report.

issue is likely to affect the master file (which provides a global analysis, and will normally be prepared by the ultimate parent entity (UPE)) more so than the local file (which provides an analysis of intercompany transactions affecting the domestic taxpayer).

Such contentions should be resisted:

- The information required in these types of documentation is necessary in order to establish that the price and other conditions of transactions within the scope of the transfer pricing rules have been determined in accordance with the arm's length principle. If the local entity does not have access to this information, then it follows that said entity has not been able to establish the arm's length nature of transfer prices applied and thus that it has made a correct tax return in accordance with the domestic rules.
- MNE groups are increasingly integrated organizations, with regional or global management structures and supply chains. This means that it is increasingly unlikely that local entities will be denied access to information concerning the wider operations.

It is important that penalties for failure to provide this information are sufficiently robust, and effectively applied, to ensure that such information is submitted locally. An additional option may be to apply measures such as those described in Section 3.3.5 (1), which involves shifting the burden of proof to the taxpayer.

2. In the cases where CbC Reports are required to be filed locally, as described in [Section 3.4.2](#), the local entity could contend that it does not have access to the report. Therefore, it will be important that penalties for failure to provide the report are sufficiently robust and effectively applied to ensure that they are submitted locally.

3. A request to foreign affiliates of the local taxpayer to return questionnaires will often be informal and unenforceable in law. In such cases, there will be little scope for the tax administration to enforce submission. In some countries, the law may provide that where a taxpayer has not provided such information when requested, they cannot later rely on the same information in a court of law. Where the tax administration is unable to compel a taxpayer to provide such information, a request under exchange of information provisions may be possible. This will depend, however, on whether the information requested falls within the scope of exchange of information provisions.²⁶

4. Information required by auditors during the course of an audit may include information that can legitimately be contended by the tax administration should be available, or made available, to the local entity. However, there may also be information that is

²⁶ Article 26.1 of the OECD Model Tax Convention on Income and on Capital as well as Article 26.1 of the UN Model Double Taxation Convention between Developing and Developed Countries allow exchange of information that is 'foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of domestic laws concerning taxes of every kind...'

See also Chapter III, Section I, on Exchange of Information in OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264115606-en>.

genuinely not available to a local entity – for example submissions made by a foreign related entity to its tax administration. In such cases, exchange of information processes may be appropriate.²⁷

It is further noted that tax authorities should request only information that is relevant and reasonable.

2.6 Simplification and exemptions.

The costs of compliance with transfer pricing rules can be very significant for taxpayers. It is important that measures are taken to avoid unnecessary or disproportionately high compliance costs when designing a transfer pricing documentation regime. This is recognized in the UN Transfer Pricing Manual, in relation particularly for small and medium-sized enterprises (SMEs) that engage in cross-border related transactions.²⁸ Many countries address this concern by simplifying the transfer pricing documentation rules for smaller or lower risk taxpayers (e.g. entities with only limited related party transactions). Alternatively, countries may exempt such taxpayers from the documentation rules (but not transfer pricing rules). In such cases, the exemption would not cover a requirement, under general information powers, to submit information about cross-border transactions during the course of an audit. Approaches to this are summarized in the table below. These are discussed further in [Part III](#).

Table 5 : Simplification and exemptions

Type of Documentation	Possible simplification or exemption measures
Transfer pricing annual returns or schedules	<ol style="list-style-type: none"> 1. Exemption for smaller or low risk taxpayers 2. Simplified return schedule for smaller taxpayers 3. Exemptions from disclosure of transactions below a certain value
Local file	<ol style="list-style-type: none"> 1. Exemption for smaller or low risk taxpayers 2. Exemptions for taxpayers belonging to a group whose consolidated turnover is less than a certain amount 3. Exemption for taxpayers within the scope of a safe harbour or for transactions covered by an APA 4. Simplified documentation requirements for smaller taxpayers
Master file	Exemption or simplification for taxpayers belonging to a group whose consolidated turnover is less than a certain amount
CbC Reports	Exemption for MNE groups with a global consolidated revenue of less than EUR 750 million ²⁹

²⁷ Again, the request must be within the scope of the exchange of information instrument. See Footnote 15, above.

²⁸ See UN (2017), "Documentation", Section C.2.4.4.1 in Practical Manual on Transfer Pricing for Developing Countries 2017, UN Publishing, New York, <http://www.un.org/esa/ffd/wp-content/uploads/2017/04/Manual-TP-2017.pdf>.

²⁹ This criterion is specified in BEPS Action 13, and forms part of the minimum standards on BEPS Action 13.

Questionnaires	As these are generally non-statutory, tax administrations may choose to issue these to the larger or higher risk taxpayers only
Further information, data and documents	Such information is requested by the tax administration during an audit – statutory exemptions are therefore not relevant

These measures require the term ‘smaller taxpayer’ or ‘low risk taxpayer’ to be defined. There are several possibilities:

- Existing definitions of small or medium enterprises. Where such a definition is used, exemptions may be denied to taxpayers undertaking higher risk transactions – for example a taxpayer that conducts one or more transactions with an entity in a low tax jurisdiction;
- By reference to the value of the related party transactions. This may be problematic if the taxpayer undervalues related party transactions;
- By reference to the proportion of the value of related party transactions to third party non-related transactions. This may be problematic if the taxpayer undervalues related party transactions;
- By exemption for purely domestic transactions between local related entities, where both parties to the transactions are subject to the same taxation regime and rate of taxation.

Countries need to tailor definitions of ‘smaller taxpayer’ or ‘low risk taxpayer’ to the context of their specific markets.

Where feasible, regional alignment of simplifications and exemptions might be considered. Such consistency would help to prevent harmful tax competition between countries.

PART III. SPECIFIC DOCUMENTATION ELEMENTS

3.1 Introduction

This part will look in more detail at each of the categories of transfer pricing documentation discussed in Part II, i.e. transfer pricing returns, transfer pricing studies (including the master and local files described in the BEPS Action 13 Report), CbC Reports and questionnaires. It provides some examples of country approaches.

3.2 Transfer pricing returns

A transfer pricing return is a specified set of information concerning transfer pricing that affected taxpayers must periodically submit to the tax administration, typically annually.

This information may be submitted with the annual income tax return, or in a schedule generally lodged at the same time as the return. The taxpayer is required to disclose, in a standardized format, information relating to its transactions with related parties. This is in addition to other transfer pricing documentation requirements.

A transfer pricing return contains information on related-party transactions. This generally includes, at minimum, a list of related party transactions and the countries in which the counterparties are resident.

3.2.1 Functions of transfer pricing returns

The transfer pricing return serves several purposes, including:

- 1. Risk assessment and case selection.** The information it provides can be used to:
 - Identify and analyze risks at a macro level. For example, risks arising from a category of transactions or by sector;
 - Identify taxpayers that present a high risk to the revenue, including as a part of an audit case-selection process;
 - Identify specific transactions to be followed up in the context of an audit.

A transfer pricing return is very unlikely to provide sufficient information to conduct an audit and to decide on the arm's length nature of transactions. It is normally viewed as a tool for use in the first step of an audit process – the selection of cases for audit, and identification of specific issues to follow up in an audit.

The information provided in transfer pricing returns is usually in a tabular format consisting mainly of quantitative information, which may make it suitable to be prepared in electronic format. Where a tax administration has the resources, electronic submission using automated

processes enables analysis of mass information using techniques such as data mining and data matching.³⁰

2. Transfer pricing returns can promote positive MNE behavioral changes and assist in the creation of a compliance culture. The requirement to submit data as part of, or as a supplement to, a tax return, is likely to raise awareness of the need to consider transfer pricing and focus attention on the responsibility to comply with transfer pricing rules.

In the design of this type of form, care should be taken not to request information that would be overly burdensome for taxpayers by requiring more information than is needed for risk assessment purposes, or information already in the possession of the tax administration by other means. Simplicity, non-duplication and standardization might usefully be the governing principles of disclosure forms and specific transfer pricing returns.

If disclosure forms are to be used, tax authorities may want to consider the extent to which these can follow a consistent regional format. A regional approach may have the potential to be beneficial to both taxpayers and tax administrations. These include:

- a. **The capacity to improve investment climate.** Taxpayer compliance costs will be reduced if countries apply similar formats in their documentation requirements.
- b. **Prevention of 'tax competition'.** A non-aligned application of transfer pricing rules has the potential to create tax competition between countries. For example, non-application, or preferential application, of documentation rules, could create intended or unintended incentives to inwards investment.
- c. **Alignment and co-operation between countries can also establish 'best practice'** approaches and create opportunities for cooperation and mutual support in policy development, legislation, administration and skills-building.

3.2.2 Format and content

The format and content of the transfer pricing return varies among countries. For simplicity, these may be classified into two main types:

Disclosure by means of a specific standardized form that is not part of an annual tax return. Examples of countries following this approach include: Argentina, Canada, Colombia, Dominican Republic, Finland, Liberia, Mexico, Nigeria, and the United States.

Disclosures that form part of the annual tax return. In such cases, transfer pricing specific questions are included on a tax return or a schedule to the return. For instance, Australia, Lithuania,

³⁰ For example, transfer pricing audit programs in Colombia are designed using statistical, logarithmic and risk score procedures to select the best possible audit cases, depending on risk assessment variables and tax evasion hypotheses. Data from the transfer pricing return is entered into the DIAN database and, combined with information in the Income Tax Return, is used to screen taxpayers for international audits.

Czech Republic, the Netherlands, Slovak Republic, and Spain require disclosure of transfer pricing transactions in the tax return.

Box 2: Example - Requiring taxpayers to respond one or more transfer pricing specific questions included on a tax return.

The Netherlands - The questions asked in a tax return can change year by year. Example questions included in 2016 returns included whether a business restructuring occurred and whether the entity falls within the scope of the requirement to prepare a local file (which in the Netherlands is only required to MNE group with consolidated group revenue of at least EUR 50 million). There are also other questions which have a link to transfer pricing rather than being transfer pricing specific questions (for example whether the entity is engaged in group financing activities).

As a minimum, countries typically require taxpayers to report whether they have entered into cross-border controlled transactions to provide identity information and country of residence of the foreign related parties, the monetary amounts of the transactions and pricing methodology applied. However, some countries request much more detailed information (e.g. Mexico, Dominican Republic).

Information commonly requested in such returns include:

- Identity information of the taxpayer
- Identification of foreign related parties with which the resident taxpayer has transactions
- Country of residence of the related parties
- Nature of the transaction (e.g. provision of services, sale of goods, financial transactions (i.e. loans, financial guarantees, hedging, etc.))
- Monetary amount of the transaction
- Arm's length value of the transaction
- Quantity of units covered by the transaction
- Transfer pricing method used
- Type of comparable used (external or internal)
- Whether the application of the method results in any adjustment to taxable income (e.g. year-end adjustment).

Disclosure of transactions subject to a safe harbor or an APA are also generally required.

Examples of country returns are provided in Annex 3.

3.2.3 Submission mechanism

Many tax administrations have made significant efforts and investment in automating filing and management of tax returns and other taxpayer information; for example, through online filing platforms. The advantage of the online filing of tax returns and other tax information is that

it allows tax administrations ready access to documentation for risk assessment and audit purposes and reduces the number of documents required to be stored, maintained and secured. Digitalized information can also be searched and accessed more effectively. Taxpayers also benefit from filing and retaining tax documents more easily by using online filing platforms.

Some electronic formats that can be used include:

- **Electronic transmission format (e.g. XML Schemas, Web Services).** The tax administration develops and makes available to taxpayers the parameters and specifications for creating the file. The relevant file should then be submitted electronically through Internet file transfer. A pre-validator (i.e. an automated validation check) is provided in the format and contributes to verifying the information prior to its submission. Electronic transmissions are recommended especially for big files. Some countries that allow electronic transmission of transfer pricing returns are Australia, Colombia and the Dominican Republic.
- **Web forms.** Web forms or HTML forms on the tax administration web page allow taxpayers to enter data that is sent to a server for processing. Forms can resemble paper or database forms where web users fill out the forms using checkboxes or text fields. These forms are not recommended for high volumes of data as it could be burdensome for taxpayers to fill in, for example, detailed information on a significant number of transactions. Web forms may have validation checks included for accuracy of information.
- **PDF fillable/saveable forms.** Once completed the file in the form of a Portable Document Format (PDF), the file can be submitted electronically to the tax administration. In particular, PDF fillable forms may be suitable for small files. This type of format is easy to devise and use but has fewer in-built mechanisms to detect errors. An example of a country that allows filing electronically transfer pricing returns in PDF fillable forms is Canada.³¹

To assist taxpayers and to ensure consistency and accuracy of the information provided, guidance for completing the forms is generally provided by tax administrations.

3.2.4 Regulatory framework

The submission of a transfer pricing return is typically mandatory for affected taxpayers. The scope, format and content of regulations vary from country to country. The most common practice is to establish the general obligation in the primary law and provide more detailed, specific rules through the secondary law or supplementary guidance.³²

Secondary law and supplementary guidance can be very detailed. For example, some countries' rules provide detailed specifications on, for example, the process of documentation submissions, the forms to be completed, and required information technology systems and formats. Examples of such rules are contained in the box below.

³¹ Canada's instructions on how to prepare transfer pricing returns can be consulted here: <https://www.canada.ca/en/revenue-agency/services/forms-publications/about-forms-publications.html#h1>.

³² See also Section 2.1.1

Box 3 : Examples of rules on transfer pricing returns

1. Colombia – (unofficial English translation)

Extract from Primary law

Article 260-9. Duty to submit an Information Return.

Taxpayers of income tax and complementary taxes, bound to apply the rules governing the transfer pricing system, whose gross assets on the last day of the taxation year or period are equal to or greater than the equivalent of one hundred thousand (100,000) Tax Units ("TU"),³³ or whose gross income for the respective year is equal to or greater than sixty-one thousand (61,000) Tax Units, who enter into transactions with related parties pursuant to Articles 260-1 and 260-2 of this Statute shall annually submit an Information Return for the transactions carried out with said related parties.

Extract from RESOLUTION NUMBER 000065 from 18 JUNE 2020

ARTICLE 3. Information to be provided by taxpayers obliged to file the Transfer Pricing Information Return – Form 120.

Pursuant to Article 1 of Resolution 000019 of March 10, 2020, the information to be filed for the 2019 taxation year or part of the 2020 taxation year referred to in Sheet 2 of Form 120 "Transfer Pricing Information Return", which must be filed in Form 1125, is the following:

Form 1125. Transactions with foreign related parties, located in free trade zones or with persons, companies, entities or companies located, residing or domiciled in tax havens – Transfer Pricing Return – Sheet 2.

- Type of document
- Tax identification number
- First surname
- Second surname
- First name
- Other names
- Company name
- Relationship
- Type of operation
- Country code
- City
- Nature of the transaction
- Amount of the transaction
- Cost/Expense deduction (from the tax return)
- Amount of principal
- Balance of principal
- Method used
- Profitability indicator of the transaction
- Unadjusted margin or price – (Positive or negative)
- Adjusted margin or price – (Positive or negative)
- Value of the comparable

- Global or segmented data
- Type of adjustment
- Type of range
- Positive/negative minimum value or lower limit
- Positive/negative median
- Positive/negative maximum value or upper limit
- Tested party
- Amount of primary adjustment
- Restructuring
- Cost-sharing agreements

2. India

Section 92E of the Income-tax Act, 1961 requires that every person who has entered into an international transaction with an associated enterprise must obtain a report from an accountant which must be furnished to the tax authorities before a specified date.

The report, which must be made in Form 3CEB, requires disclosure of information related to the international transactions that the taxpayer has entered into with its associated enterprises. Form 3CEB requires comprehensive information that has some overlap with the requirements of a local file. It requires details, for example, of the nature of the international transaction, the related party's name and location, amount involved, and the transfer pricing method adopted for justifying the transfer price. Additional details can be submitted by way of annexes.

The report must be signed and verified by the accountant.

A description of the Section 92E requirement, and a copy of the Form 3CEB, may be found in **Annex 3**.

3.2.5 Timing issues

Transfer pricing returns are usually a standardized form to be submitted to the tax administration within a defined period of time. Where the transfer pricing return is part of a tax return, the deadline for submission will correspond to that of the tax return itself. In cases where the transfer pricing return does not constitute part of the tax return, the deadline could be different.

³³ In fiscal year 2017, the 1 TU = COP 31.859 (EUR 11.20 approx.)

Table 6 : Country practices

Country	Filing date
Argentina	No later than six months after the year-end (the income tax return is due five months after the year-end)
Canada	By the filing date for the annual tax return
Colombia	Filing dates are established annually by regulation. These dates fall three or four months after the filing date of the Income Tax Return
Dominican Republic	No later than 180 days following the end of the fiscal year
Finland	By the filing date for the annual tax return
Liberia	By the filing date for the annual tax return
Lithuania	By the filing date for the annual tax return
Mexico	By the filing date for the annual tax return
Nigeria	At the time of filing the company's annual returns. i.e. within 6 months of end of the company's accounting year-end
Uruguay	No later than nine months after the end of the fiscal year (the income tax return is due four months after the fiscal year end)

3.2.6 Enforcement

Penalties may result from failure to file returns at all, late filing (filing after the due date), providing false information or omission of relevant information. These penalties could be specific to the requirement or could be linked to a more general obligation in the law (e.g. non-filing of tax returns i.e. when transfer pricing disclosure is contained or appended to the tax return). The table below details some countries' penalties practices for non-compliance with the obligation to prepare specific transfer pricing returns.

Unlike the requirement to have contemporaneous transfer pricing documentation, or to file a transfer pricing study, the filing of transfer pricing returns usually does not protect against transfer pricing penalties, nor does it generally alter which party bears the burden of proof.

Table 7 : Country practices on penalties related to non-filing or late filing of transfer pricing returns

Country	Penalties ³⁴
Argentina	<p>For non-filing or late filing of transfer pricing return, the taxpayer may be fined ARS 10 000 (~ EUR 102) up to ARS 20 000 (~ EUR 210).</p> <p>In addition to the penalties above, where the Federal Tax Authority has served a demand to file the transfer pricing return, a penalty of ARS 45 000 (~ EUR 460) is imposed, for each failure to comply. In the case of taxpayers with gross revenue above ARS 10 million (~ EUR 10 244) after a third demand to file, an additional penalty of up to ARS 450 000 (~ EUR 4 600) may be imposed.</p> <p>Further, if an omission is detected, the taxpayer will fall within an increased category of risk of being monitored.³⁵</p>
Canada³⁶	<p>Late Filing – A late filing penalty or multiple late filing penalties for more than one T106 Slip may be assessed under subsection 162(7) of the Income Tax Act where T106 documentation is filed after the due date. The penalty is equal to the greater of CAD 100, and CAD 25 per day (~ EUR 65 and EUR 16 respectively) as long as the failure to file continues, to a maximum of 100 days.</p> <p>Failure to file – A failure to file penalty may be assessed under subsection 162(10) of the Income Tax Act where reporting persons or partnerships knowingly, or under circumstances amounting to gross negligence, fail to file or fail to comply with a request by the Canada Revenue Agency (CRA) for T106 documentation. The minimum penalty is CAD 500 (~ EUR 320) per month, to a maximum of CAD 12,000 (~ EUR 7 750) for each failure to comply. Where the CRA has served a demand to file T106 documentation, the minimum penalty is CAD 1,000 (~ EUR 645) per month, to a maximum of CAD 24,000 (~ EUR 15 500) for each failure to comply.</p> <p>False statement or omission – A false statement or omissions penalty may be assessed under subsection 163(2.4) of the Income Tax Act where information provided on the T106 Summary or Slip is incomplete or incorrect, the penalty is CAD 24 000 (~ EUR 15 500).</p>
Colombia	<p>Late filing — within five days after the deadline - 0.02% of the total value of the transactions carried out with related parties, limited to 313 Tax Units (~EUR 3 030). After five days – 0.1% of the total value of the transactions carried out with related parties, for each month or part of the calendar month of delay in the presentation of the Information Return, limited to 1 250 Tax Units (~EUR 12 100) per each month or 15,000 Tax Units (~EUR 145 200) in total.</p> <p>Incorrect information – 0.6% of the total value of the transactions carried out with related parties, limited to 2 280 Tax Units (~EUR 22 070).</p>

³⁴ Exchange rate of reference as of November 30, 2020.

³⁵General Resolution 4717 and 3985 available at: http://biblioteca.afip.gob.ar/dcp/REAG01004717_2020_05_14 and http://biblioteca.afip.gob.ar/dcp/REAG01003985_2017_01_12

³⁶T106 E (10/2017). www.canada.ca/content/dam/cra-arc/migration/cra-arc/E/pbg/tf/t106/t106-fill-10-17e.pdf.

	<p>Omitted information (transactions) – 1.3% of the total value of the transactions carried out with related parties, limited to 3 000 Tax Units (~EUR 29 040); additionally, denial of deductions of cost and expenses related to omitted operations may apply</p> <p>Omitted information (related parties located in tax havens) – 2.6% of the total value of the transactions carried out with related parties, limited to 6 000 Tax Units (~EUR 58 080); additionally, denial of deductions of cost and expenses related to omitted operations may apply.</p> <p>Non-filing of transfer pricing return – 4% of the total value of the transactions carried out with related parties, limited to 20 000 Tax Units (~EUR 193 060).</p>
Mexico	Penalty for non-filing, late or incomplete filing - MXN 77 230 to MXN 154 460 (~ EUR 3 210 to ~ EUR 6 420). ³⁷
Uruguay	Penalties for non-filing, late or incomplete filing – the penalties are graduated depending of the gravity of the infringement. Fines range from ~ EUR 184 to ~ EUR 184 200.

3.2.7 Confidentiality

In common with other documentation requirements, information contained in a transfer pricing return should be treated as confidential in the same way as information provided in a tax return.

3.2.8 Simplification and exemptions

In the first instance, transfer pricing returns will normally be required from any taxpayer conducting any related party transaction that falls within the scope of local transfer pricing rules. This means that taxpayers that are outside the scope of the general transfer pricing rules will be exempted from the responsibility to file a transfer pricing return.

However, as noted in Part II, the requirement to compile the schedule may create unnecessary or disproportionately high compliance costs for some taxpayers. For that reason, some countries have introduced specific exemptions or simplifications for smaller taxpayers or less material transactions.

Practices on exemptions from filing requirements vary among countries. It is the practice in some countries to limit the obligation to prepare and file the transfer pricing return on the basis of criteria such as the value of related party transactions not exceeding a certain amount; or based on the size of the taxpayer. While in other countries, all taxpayers subject to transfer pricing rules may be required to file the returns. Exemptions might not apply when taxpayers have conducted transactions with related parties in jurisdictions considered to be tax havens or other low tax or non-tax jurisdictions, or when those related parties benefit from a preferential regime.

³⁷ These figures are updated annually.

Table 8 : Country practices on simplification and exemptions of transfer pricing returns

Country	Exemption from transfer pricing returns³⁸
Canada	Total amount of the controlled transactions does not exceed CAD 1 000 000 (~ EUR 646 000)
Colombia	Taxpayers whose gross equity on the final day of the fiscal year is below 100 000 TU, or whose gross revenue is less than 61 000 TU (~ EUR 590 048)
Dominican Republic	No exemption applicable
Liberia	Simplified return for smaller taxpayers, defined legal or natural person carrying on a trade or business with turnover of less than LRD3 000 000 (~ EUR 16 000) per year. ³⁹
Lithuania	Amount of each related party transaction or sum of all similar transactions is below EUR 90 000.
Uruguay	Total amount of the controlled transactions carried out during the fiscal year does not exceed 50 million indexed units (~ EUR 4.5 million)

³⁸ Exchange rate of reference as of November 30, 2020.

³⁹ Article 6.1. a) Liberia Transfer Pricing Regulations, 2016 and Section 200 c) of Liberia Revenue Code

3.3 Transfer pricing studies

In this context, transfer pricing studies refer to a set of documents and information that affected taxpayers are required to prepare, keep and submit to the tax administration if and when this is required. Although this category of documentation is typically referred to as 'transfer pricing documentation', for the purposes of this Toolkit it is referred to as a 'transfer pricing study' in order to distinguish it from other categories of documentation. The term transfer pricing study encompasses the 'local file' and the 'master file' described in the BEPS Action 13 Report.

The main features of transfer pricing studies are described below.

1. MNEs are normally required to develop a separate study for each of the entities within the scope of transfer pricing rules in the jurisdictions in which the MNE group operates. However, there may be elements of the transfer pricing studies that are common to more than one entity in an MNE group, or indeed all of them;
2. They are normally drafted specifically for transfer pricing compliance purposes;
3. MNEs are typically (though not always) required to have the documentation in place before they file the tax return, and then submit it to the tax administration on request; and
4. For larger MNE groups with multiple or multifaceted intra-group arrangements, transfer pricing studies can be lengthy and complex. They can also be very expensive to produce – advisors can charge fees running to hundreds of thousands of euros, or even millions of euros in the largest of cases, for developing and drafting transfer pricing studies for a large MNE.

3.3.1 Functions of transfer pricing studies

From the taxpayer's perspective, the primary function of a transfer pricing study is to demonstrate compliance with the transfer pricing rules of the relevant jurisdiction(s). At a minimum, the study should: identify and describe the relevant transactions; show how the most appropriate transfer pricing method was selected; and describe how that method has been applied.

Transfer pricing studies can thus provide:

- evidence that the taxpayer has sought to comply with the transfer pricing rules. In some jurisdictions, this is important, because it may also provide evidence to counter contentions that a penalty should be applied in the event a transfer pricing audit results in an adjustment (for example, because the tax authorities may seek to apply a different transfer pricing method or question the validity of comparable(s) used);
- the tax administration with information to consider whether to initiate or continue an audit on transfer pricing and, if so, which transactions to focus on;
- the tax administration with information and data relevant for an audit. The information provided in transfer pricing studies, however, is rarely sufficient to conduct a complete audit, and will nearly always need to be supplemented with additional information.

Transfer pricing documentation can also encourage taxpayers actively to consider the way in which they determine and substantiate arm's length transfer prices used for tax purposes.

Box 4 : How can a transfer pricing study be used in the audit process?

As mentioned above, transfer pricing studies can be lengthy and complex. Large, professionally produced studies can be daunting to some auditors, who may be reluctant to challenge the conclusions contained in a transfer pricing study, or even to request the submission of such a study in the first place. However, a well-produced transfer pricing study typically contains information and analysis that are vitally important for the auditor to understand, and where a transfer pricing study is available, one of the key elements of an audit is to test the reliability of the analyses and conclusions contained in the study.

a) Information and analyses contained in a transfer pricing study

A well-produced transfer pricing study should provide the auditor with:

- Details of the structure of the MNE's business operations in which the taxpayer participates, including a clear picture of the supply chain
- The main features of the industry or sector in which the MNE and taxpayer operates
- Details of the related party transactions undertaken by the taxpayer, including any contractual arrangements
- An analysis of the functions carried out by the taxpayer and its associated parties, as well as the assets used and risks assumed in relation to the intra-group transactions.

This information should assist the auditor in drawing up a picture of the business in which the taxpayer participates, and, importantly, understanding the value drivers of that business. In doing so, it should also allow the auditor to understand: the most important intangibles (where relevant), and where in the business the return to such intangibles should lie; the most important risks taken and where in the business the return to those risks should be recognized.

Furthermore, well-produced transfer pricing study should provide the auditor with:

- An analysis, employing the information above, resulting in the taxpayer's conclusions on the most appropriate transfer pricing method (and the appropriate tested party, where relevant);
- An understanding of the application of that method, including, where relevant, the identification and selection of reliable comparables.

This information is crucially important. It tells the auditor the taxpayer's conclusions regarding the application of the arm's length principle; and how the taxpayer reached those conclusions. An analysis and review of these conclusions is often the starting point for the transfer pricing audit.

b) Auditing the reliability of the transfer pricing study.

One of the starting points in any transfer pricing audit will be to test the reliability of the conclusions recorded in a transfer pricing study. There are many aspects to this (and a detailed discussion is outside the scope of the Toolkit). However, the key audit issue will normally be to test whether the facts on which the analysis is based align with the substance of the actual

transactions and in particular, the functions, assets (including intangibles) and risks related to them. The selection of the most appropriate transfer pricing method, for example, will be made based on assumptions in relation to the functions carried out by the taxpayer and its related parties, the assets they use or contribute and the risks they assume. This should take account of the key value drivers including valuable intangibles, and the economically significant risks in the business. It is important to establish that the analyses and conclusions in the transfer pricing study, in particular with regards to where value is created, align with the substance of the business operations

3.3.2 Format and content

This section addresses the various approaches that countries take in specifying the format and content of transfer pricing studies. There is a wide variety of approaches. All tax administrations which oversee active transfer pricing regimes emphasize the importance of obtaining transfer pricing studies as part of the fact-finding process. The extent to which specific documentary requirements are spelled out in countries' legislation varies significantly. Some countries specify general criteria concerning the purpose and objectives of the transfer pricing studies, without specifying particular documents or items of information. In such cases, taxpayers may choose the format of the study and the specific documents they consider to be relevant. This approach provides some flexibility and allows taxpayers to create and maintain only the documentation they consider necessary. Some countries are more specific in their requirements, detailing the documents and categories of information required. The latter approach has been adopted for a 'local file' and a 'master file' described in BEPS Action 13 Report. A more detailed approach increases certainty and helps to ensure that studies contain the information needed by the tax administration to verify that the pricing of a transaction between associated enterprises is consistent with the transfer pricing rules, but it can come with a higher overall compliance burden.

Box 5 : Country approaches to the format and content of the transfer pricing study

Specifying a detailed list of documents to be maintained⁴⁰.

Ghana

"Except as otherwise provided in these Regulations, a person who enters into an arrangement with another person with whom that person has a controlled relationship shall maintain contemporaneous documentation of the arrangement engaged in by that person in each year of assessment.

(2) A person shall file with the Commissioner-General not later than four months after the end of each basis period, an electronic copy of the contemporaneous documentation regarding the arrangements engaged in by that person.

(3) The documentation referred to in (2) shall include

⁴⁰ See also in Annex 2 the transfer pricing studies requirement in Canada and Georgia.

- a) a Master file; and
- b) a Local file.

[A detailed list of the information that the local file and the master file should contain is provided in the regulation.]⁴¹

Nigeria

"A connected taxable person shall record, in writing or on any other electronic device or medium, sufficient information or data with an analysis of such information and data to verify that the pricing of controlled transactions is consistent with the arm's length principle and the connected taxable person shall make such information available to the Service upon written request by the Service". [Regulation 16(1) of the Income Tax (Transfer Pricing) Regulations, 2018].

"For the purposes of regulation 16, a connected person shall maintain contemporaneous documentation consistent with the provisions of the Schedule to these Regulations". [Regulations 17 (1)]

[The referenced schedule requires a master file and a local file and provides a detailed list of information these files should contain.]⁴²

Until recently, the OECD Transfer Pricing Guidelines simply described general principles and addressed no more than a high-level overview of the information that needs to be included in a transfer pricing study. More recently, however, the OECD Transfer Pricing Guidelines (through the G20/OECD BEPS Action 13 Report) introduced a more detailed approach, consisting of a local file and a master file (discussed below). A similar approach is suggested in the UN Transfer Pricing Manual. The guidance provides a detailed list of information to be provided in each of these files. This Toolkit recognizes the advantages of adopting a common approach to transfer pricing studies, including:

- 1. Taxpayer compliance costs will be reduced if countries apply similar formats in their documentation requirements,** so that MNEs are able to provide similar information in the same format, and (for the master file) the same document, in each of the countries in which they operate. Taxpayers will also have more certainty about the expected content of the documentation requested;
- 2. Tax administrations should expect better compliance with their local transfer pricing documentation requirements as a result of greater standardization.** The marginal cost of

⁴¹ See for further details Section 12 of the Transfer Pricing Regulations, 2020. L.I. 2412.

⁴² See for further details Section 16 (1) and 17 of the Regulation 16(1) of the Income Tax (Transfer Pricing) Regulations, 2018 and the Schedule to these Regulations. Available at: [https://www.firs.gov.ng/sites/Authoring/contentLibrary/a7b75064-cd91-4135-ae14-b3b4b8662409Income%20Tax%20\(Transfer%20Pricing\)%20Regulations%202018.pdf](https://www.firs.gov.ng/sites/Authoring/contentLibrary/a7b75064-cd91-4135-ae14-b3b4b8662409Income%20Tax%20(Transfer%20Pricing)%20Regulations%202018.pdf)

compliance with a country's documentation rules will be reduced where these rules are aligned across countries; and

3. Alignment and co-operation between countries can also help establish 'best practice' approaches and create opportunities for co-operation and mutual support in drafting and implementing the rules and using the information contained in the documentation.

The box below describes the main features of the BEPS Action 13 Report approach to transfer pricing studies (i.e. local file and master file). Detailed information may be found in the report and Chapter V of the OECD Transfer Pricing Guidelines.

Box 6 : BEPS Action 13 approach to transfer pricing documentation

The recommended master and the local file contents laid out in Annex I and II of the BEPS Action 13 Report provide a platform on which taxpayers with material transfer pricing risks can meaningfully describe their compliance with the arm's length standard. They are aimed at providing tax administrations with a picture of the business operations in organizational and contractual terms, from the perspective of the local entity and the group as a whole. Together, they would also aim to provide tax administrations with detailed information of the individual intra-group transactions, the local taxpayer and the global transfer pricing policy of the group: information needed as a basis for a well-informed transfer pricing audit.

The master file is aimed at providing a high-level overview in order to place the MNE group's transfer pricing practices in their global economic, legal, financial and tax context. That is, the master file provides background and context to the more detailed information contained in the local file.

Local file and master file – brief overview of content ⁴³

Master file

In the master file the MNE should provide information on the overall MNE group describing the nature of its global business operations, its overall transfer pricing policies, and information on key value drivers, intangibles and the financing of the group. As part of the master file taxpayers are also required to prepare other tax information, such as consolidated financial statements of the MNE group, and provide information on key intra-group agreements. The information required in the master file is broad in nature intended to provide tax administrations only with a high-level overview of the MNE group's transfer pricing practices in their global economic, legal, financial and tax context.

⁴³ See OECD (2017) *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, Chapter V, Annexes I and II for a complete list of the documents specified to be contained in the master file and the local file. See also UN (2017), Chapter on Documentation, in *Practical Manual on Transfer Pricing for Developing Countries 2017*, UN Publishing, New York, <http://www.un.org/esa/ffd/wp-content/uploads/2017/04/Manual-TP-2017.pdf>.

The OECD Transfer Pricing Guidelines recommend that a master file includes five categories of information:

- organizational structure;
- description of the MNE's business or businesses;
- intangibles;
- intercompany financial activities; and
- financial and tax positions.

Local file

The local file requires detailed information relating to specific transactions taking place between local country affiliate and associated enterprises, including information on the identity of related parties, relevant financial information regarding those specific transactions, a comparability analysis and the selection and application of the most appropriate transfer pricing method.⁴⁴ The information contained in this report should reflect the analysis, elements taken under consideration and sources of information used by the taxpayer to substantiate their application of the arm's length principle.

The following categories of information are required in the local file:

- Information on the local entity
- Detailed information on each material category of controlled transactions in which the entity is involved, including a functional analysis of each, an indication of the most appropriate transfer pricing method (including which party is selected as the 'tested party') and the application of that method.
- Financial information

Some of the information to be provided in the local file might be also contained in the master file. In those cases, the guidance in the BEPS Action 13 Report recommends that the taxpayer should be allowed to cross reference to the information contained in the master file.

Filing requirements for the master and local files

At the time of drafting over 50 countries (including OECD and non-OECD economies) had introduced or were in the process of introducing the master and local files documentation structure based on the BEPS Action 13 proposal. BEPS Action 13 Report does not provide specific guidance on all aspects of the local file and the master file approach, and there is thus some variation in their implementation on issues such as deadlines for submission, penalties and level of detail required.

⁴⁴ OECD (2015), "Local File", Paragraph 22 in Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project.

This section discusses some of these issues and evaluates the different approaches adopted by different countries.

1. Master file by line of business: Under the recommendations of BEPS Action 13 Report, MNEs should prepare a single file comprising information on the operations of the MNE group as a whole. The master file may be presented by line of business where this is justified by the facts, e.g. where the structure of the MNE group is such that some significant business lines operate largely independently or were recently acquired. Notwithstanding this, the MNE's affiliate local taxpayer should make available the entire master file consisting of all business lines to assure that a complete overview of the MNE group's global business is provided.⁴⁵

Box 7 : Country Practices – the master file by line of business

In **Finland**, it is possible to file the master file for a line of business that the Finnish entity is part of. The business line has to be independent enough from other business lines and a description of centralized functions and transactions of the Group has to be also included.

2. To simplify administrative burden to domestic entities, Mexico offers the possibility of lodging only one master file when several entities of the same MNE operate in the country. This approach makes sense especially where all entities of the same group are dealt with by the same office in the tax administration.

3. Some countries (e.g. Austria, China) require local taxpayers to file the master file, even if the domestic entity falls within the exemption threshold which would otherwise apply,⁴⁶ in cases where there is another entity of the MNE group that must prepare a master file in a foreign jurisdiction. For China, the local MNE entity is required to file a master file if either: a) the Chinese entity is part of a multinational group that files a master file; or b) related party transactions exceed CNY 1 billion (~ EUR 125 million).⁴⁷

Form of documentation

Another issue to be evaluated is whether the maintenance of electronic files would fulfil transfer pricing documentation requirements. In this respect, the OECD Transfer Pricing Guidelines note that because the tax administration's ultimate interest would be satisfied if the necessary documents were submitted in a timely manner when requested in the course of an examination, the way that the documentation is stored – whether in paper, electronic form, or any other system – should be at the discretion of the taxpayer, provided that relevant information can promptly be made available to the tax administration in the form specified by the local country rules and practices. Countries might wish to ensure that their domestic rules do not prohibit them

⁴⁵ See OECD (2017) *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, Chapter V, Paragraph 20.

⁴⁶ Some countries only require filing transfer pricing documentation when the transactions or the taxpayer's revenue exceed a certain amount. See Section 3.3.7

⁴⁷ Exchange rate conversion at November 30, 2020.

from requiring documentation in written form when required (for example, as evidence in courts), or restrict the use of other formats when appropriate.

Electronic submission of transfer pricing studies.

Transfer pricing studies usually require a significant amount of information and analysis from a taxpayer. Moreover, as transfer pricing studies should be tailored to the specific business operations of the MNE group, it may be difficult to fully standardise such studies so that they are easily amenable to e-filing. Nevertheless, the advantages of having such information available in electronic form mean that tax administrations may want to consider providing for electronic filing of transfer pricing studies, bearing in mind the necessity to allow for flexibility in the form and content of the information provided.

Some countries have tailored the local file and master file to allow electronic submission.

This approach facilitates the use of information contained therein for risk assessment purposes. For example, Australia allows the local file and the master file to be submitted to the tax administration electronically; an XML schema is available for this purpose together with associated validation rules. Annexes such as contracts can also be provided in PDF format through the Australian Tax Office online Portal. Peru also allows for electronic submission of the local file and master file.

Belgium has also structured its local file as an e-form file. The local form must be filed electronically in XML format through a mandatory on-line filing tool. Annex 5 includes the templates of the local form and the master file in Belgium.

Language

Generally, countries require transfer pricing studies to be prepared in the local language. As a way to reduce compliance costs for taxpayers, however, countries can permit taxpayers to file transfer pricing documentation in commonly used languages and make specific requests for the translation of relevant documents as needed. Such an approach would also allow, for example, an MNE to prepare a master file in one language for all jurisdictions in which it operates, together with local files in the relevant local language. Similarly, some information such as contracts, the functional analysis pertaining to the foreign affiliate (where relevant), or invoices, might only be readily available in the foreign language, and tax administrations might, for example, require translation only if and when they are required to be submitted.

Some options are available:

1. Many jurisdictions require translation to be performed by certified translators before documentation can be considered as evidence in a court. One option for tax administrations is generally to allow uncertified translation and to require an official translation only where it is believed that the case is to be brought before a court. In such a case, it is advisable to request translations as early as possible.
2. Jurisdictions requiring the master file in their local language might consider providing longer deadlines, so taxpayers have enough time to prepare and translate the file.
3. Jurisdictions may also allow taxpayers to file transfer pricing studies in a commonly used language. If so, the option to submit documentation in a foreign language should be established (or at least not precluded) in domestic law.

(See Annex 6 for different countries' practices)

3.3.3 Regulatory framework

This section discusses the various approaches that countries take in legislating rules on transfer pricing studies.

Provisions (whether in primary or secondary legislation or in guidance) relating to transfer pricing studies would normally contain at least the following items:

- A statement of the scope of the legislation, including any exemptions for, for example, smaller taxpayers;
- A requirement to maintain documentation;
- A list of documents or information required to be included in the study; or general criteria concerning the purpose and objectives of the documentation (i.e. what the study must achieve);
- The time by which the study should be in place;
- The retention period of the documentation;
- The circumstances in which the study must be submitted to the tax administration;
- The time by which the study should be submitted to the tax administration;
- The form in which it should be provided (e.g. whether electronic filing is permitted or required), and the language;
- Penalties for failure to maintain or submit complete documentation; or for providing incorrect information.

See Annex 1, which provides an illustration of a possible approach to drafting primary legislation requiring transfer pricing documentation consisting of the Master File, Local File and CbC Report.

3.3.4 Timing issues

When introducing the requirements for the submission and preparation of transfer pricing studies countries should consider the following:

1. the fiscal period for which a new transfer pricing obligation will first be effective;
2. whether transfer pricing studies should be merely prepared, or also submitted to the tax administration at a set time (for example with the tax return); and
3. when the transfer pricing studies should be prepared.

Guidance on these three questions and the approach taken by some countries is provided below.

Fiscal Year the transfer pricing study will be effective

When introducing a requirement for taxpayers to prepare transfer pricing studies for the first-time, countries can consider allowing a reasonable amount of time to taxpayers to prepare for new regulations. For instance, if the transfer pricing studies are required to be

prepared contemporaneously, taxpayers should be allowed a period before the reporting obligation becomes effective.⁴⁸

Whether transfer pricing studies should be prepared and submitted to the tax administration at a set time

The OECD Transfer Pricing Guidelines and the UN Transfer Pricing Manual do not prescribe whether transfer pricing studies should automatically be submitted to tax administrations. Current practices vary among countries.

In relation to local files and master files, the guidelines in BEPS Action 13 Report suggest that a local file be finalized no later than the due date for the filing of the tax return. The master file should be required by the tax return due date for the UPE of the MNE group. The rationale is that the master file will most likely be prepared by the parent company.

Box 8 : Mismatches with different deadlines for lodging the master file

Mexico allows the domestic entity to lodge the master file in line with the fiscal year of the foreign filing entity of the group preparing it.

Japan and **Belgium** require the master file to be submitted within one year of the last day following the date when the UPE's fiscal year ends; the local file must be made available at the request of the tax administration

The most common practice is to require taxpayers to prepare and maintain transfer pricing studies by the jurisdictions' timeframes set out in the relevant regulation and make them available on request from the tax administration. This is the approach followed by Austria, China, Costa Rica, Dominican Republic, Finland, Germany, the Netherlands, Poland and Spain. In contrast, some countries (e.g. Colombia, Mexico, and Peru) request the transfer pricing studies to be submitted on a regular basis (e.g. annually) to tax administrations. Annex 6 provides some further examples of country practices.

Each approach has its own advantages and disadvantages. It might be preferable to require studies to be kept by taxpayers and be submitted on request (e.g. for conducting risk assessment or evaluation, or where the taxpayers have been selected for audit). Such an approach should be complemented by appropriate penalty or incentive regimes, as described in Section [3.3.5](#), to encourage compliance. Allowing the tax administration to request the studies also on a random basis could supplement the penalty / incentives regime in encouraging compliance.

Requiring taxpayers to submit transfer pricing studies annually has the advantage that the tax administration will have documentation available when conducting risk assessment or audits. The availability of such a source of information may also assist the tax administration in undertaking broad (e.g. industry-wide), systematic risk assessment activities as well as in

⁴⁸ Contemporaneous transfer pricing documentation generally implies that enterprises must determine their transfer prices based on the relevant available information at the time the transaction has taken place.

monitoring tax compliance and broader economic and commercial trends. Another advantage of this approach is that it may increase the compliance effect.

However, in many cases, tax administrations are not able to conduct comprehensive risk assessment of all taxpayers each year and so require documentation to be submitted only on request. In some countries, failure to consider, and act upon, contemporaneous information submitted by a taxpayer may prohibit the authority from auditing or reopening the relevant period at a later date, or at least provide implicit approval of the tax return as lodged. This would mean if transfer pricing documentation for a tax period is submitted but not analyzed, the tax authority may not be able to revisit that period at a later date, on the basis that it had implicitly agreed to the tax position for the period and had all the information needed to do so. Further, as a purely practical matter, the secure storage of large quantities of documentation will require resources on the part of the tax administration.

When should the transfer pricing study be prepared?

Tax administrations typically require that transfer pricing studies be prepared on a contemporaneous basis. This would mean that the documentation would be prepared at the time of the transaction, or, in any event, no later than the time of completing and filing the tax return for the fiscal year in which the transaction takes place. Other countries have opted to require taxpayers to prepare documentation only in the event of an audit. For instance, Germany is a country that requires TP documentation to be prepared once an audit is announced and documentation is requested (can be done in one step/document).⁴⁹

Box 9 : Country example on preparation of a local file and master file

Mexico – the local file must be submitted by December 31 with regard to the information of fiscal year ending December 31 of the prior year. Information in the local file must be contemporaneous with the income tax return for the same period.

Frequency of documentation updates

In general, transfer pricing studies should be reviewed and updated annually by taxpayers in order to determine whether the functional and economic analyses are still accurate, and to confirm the validity of the applied transfer pricing methodology. The OECD Transfer Pricing Guidelines recognize that in many situations, business descriptions, functional analyses and descriptions of comparables may not change significantly from year to year. To simplify compliance, tax administrations may allow taxpayers to update comparables searches for example, once every three years rather than annually, provided the operating conditions (and functional analysis) remain unchanged. It would normally be appropriate that financial data for the comparables be updated every year to apply the arm's length principle reliably.

⁴⁹ Note that this does not apply to so-called extraordinary transactions, which need to be documented contemporaneously. This includes, for example, transactions that arise under a business restructuring.

Retention period of documents

An issue to consider is the number of years records and information must be kept before their final disposal. The BEPS Action 13 Report notes that taxpayers should not be obliged to retain documents beyond a reasonable period consistent with the requirements of domestic law. The Global Forum standards on EOI and the Financial Action Task Force recommend countries keep documentation for a period of at least five years⁵⁰. In many countries, the retention period is aligned with the statute of limitations for transfer pricing adjustments. Additional consideration for the retention period may be necessary or crucial both from a taxpayer and tax administration perspective to take into account the time required for double taxation dispute resolution mechanisms.

3.3.5 Enforcement

A number of countries have mechanisms in place to ensure taxpayers prepare their transfer pricing studies. However, practices vary among countries.

1. Some countries establish a transfer pricing enforcement regime intended primarily to reward timely and accurate preparation of transfer pricing documentation. Some examples of incentives regimes include:

- **Penalty protection in case of a transfer pricing adjustment.** Where the documentation meets the requirements and is submitted in a timely fashion, the taxpayer could be exempted from penalties or subject to a lower penalty rate if a transfer pricing adjustment is ultimately made and sustained.
- **Shift in the burden of proof.** This would occur if the taxpayer complies with documentation requirements.⁵¹ In the Netherlands, for example, it is established that if transfer pricing documentation is inadequate, the burden of proof can shift back to the taxpayer. (See also sample legislation at Annex 1)

2. Some countries apply general administrative penalties to enforce taxpayers' submission of transfer pricing study on request in the course of a tax audit.

3. Others apply specific transfer pricing penalties. Penalties might be in place for taxpayers failing to prepare or submit transfer pricing studies, or for providing transfer pricing studies which contain false or misleading information or relevant omissions. Such penalties could be applied in addition to other sanctions applicable under the tax code. Monetary penalties are the most common type of sanction. They could be based on fixed amounts, or on data from the previous year's tax return (gross taxable income, profit before tax, etc.) depending on the severity of the infraction (e.g. recurrence; time elapsed after the due date, errors, omissions or non-filing), or be linked to the amount of any transfer pricing adjustment that may be sustained following an audit.

⁵⁰ See Exchange of Information on Request: Handbook for Peer Reviews 2016-2020. (OECD 2016) P. 32 and 170

⁵¹ See further discussion in Section [2.1.2](#)

Box 10 : Country practices

Penalty protection in case of a transfer pricing adjustment – Australia⁵², Canada⁵³, Mexico, and the United States.

Shifting the burden of proof – Mexico, the Netherlands, Nigeria and the United Kingdom.

General Administrative penalties - Slovak Republic, Slovenia⁵⁴

Specific transfer pricing penalties - Dominican Republic, Mexico, Peru and Singapore.

Both the OECD Transfer Pricing Guidelines and the UN Transfer Pricing Manual note that it would be unfair to impose significant penalties on taxpayers that have made reasonable efforts in good faith to undertake a sound transfer pricing analysis, or to a taxpayer for failing to submit data to which the MNE group did not have access at the time of the documentation process.⁵⁵

Table 9 : Country practices on transfer pricing studies enforcement measures

Country	Description of the enforcement measure ⁵⁶
Argentina	<p>Local file: Transactions with related parties abroad are exempted if:</p> <ul style="list-style-type: none">a) the total amount of transactions does not exceed ARS 30 000 000 (~ EUR 303 120);b) the local entity (i) is a member of an MNE group that is obliged to present the CbC Report, or (ii) is obliged to present the Master Report (equivalent to the master file in Action 13) and the sum of related party transactions in the fiscal period does not exceed ARS 3 000 000 (~ EUR 30 300), or each transaction does not exceed ARS 300 000 (~ EUR 3 030). <p>Transactions with persons located in non-cooperating, low or no tax jurisdictions are exempted, when the sum of these transactions in the</p>

⁵² In Australia, a taxpayer cannot demonstrate that they have a 'reasonably arguable position' (RAP) in relation to their transfer pricing (which consequently would provide for lower penalties in case of an adjustment) unless they maintain adequate transfer pricing documentation. This RAP terminology is important from a penalties perspective. Without a RAP, the entity is not able to argue for any remissions on the penalties that are applied on a transfer pricing adjustment. Penalties can apply to the primary tax adjustment and also on interest due from back payments of tax.

⁵³ In Canada, a taxpayer might be subject to a transfer pricing penalty if they have not made reasonable efforts to determine and use arm's length transfer prices, as demonstrated in their contemporaneous documentation. If their contemporaneous documentation is complete and accurate in all material respects, was prepared before the documentation due date and was submitted within a specified period, there will not be a penalty.

⁵⁴ Slovenia Transfer Pricing Country Profile in www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-slovenia.pdf.

⁵⁵ See OECD Transfer Pricing Guidelines (2017) at paragraph 5.42 and the UN Practical Manual on Transfer Pricing for Developing Countries (2017) at paragraph C.2.4.3.4.

⁵⁶ Exchange rate of reference as of November 30, 2020.

	<p>fiscal period does not exceed ARS 3 000 000 (~ EUR 30 300), or each transaction is below ARS 300 000 (~ EUR 3 030).</p> <p>Master file: local entities are exempt if:</p> <p>a) the total amount of the consolidated annual revenue of the MNE group does not exceed ARS 2 000 000 000 (~ EUR 20 200 000) in the previous fiscal period; and</p> <p>the total amount of related party transactions in the fiscal period does not exceed ARS 3 000 000 (~ EUR 30 300) or each transaction does not exceed ARS 300,000 (~ EUR 3 030).</p>
Canada	<p>Sub-Section 247(3) of the ITA provides for a transfer pricing penalty when the net amount of transfer pricing adjustments exceeds specific thresholds. The penalty is intended to be a compliance penalty focusing on the efforts that a taxpayer makes to determine an arm's length price and not solely on the ultimate accuracy of the transfer prices. Therefore, provided that a taxpayer makes reasonable efforts to determine and use arm's length prices or allocations, the transfer pricing penalty does not apply. The provisions of subsection 247(4) may deem that taxpayers have not made reasonable efforts to determine and use arm's length prices or allocations.⁵⁷</p>
Mexico	<p>Where an examination by the tax authority results in a tax shortfall, a penalty of 55% to 75% of the shortfall is imposed. Where an examination results in a tax adjustment but the taxpayer has recorded a tax loss, a penalty of 30% to 40% of the adjustment loss amount is imposed. However, in both cases, if the taxpayer has prepared adequate transfer pricing documentation, the penalty may be reduced by half.</p> <p>Where the taxpayer fails to identify and report transactions with related parties residing abroad, a penalty of MXN 1 550 to MXN 4 670 (~ EUR 65 to EUR 200) is imposed for each transaction. The public sector will not enter into contracts with taxpayers who fail to submit a tax return.</p>
Peru	<p>Non-filing or late filing, incomplete or nonconforming information – the penalty is a fine of 0.6% of the company's net income for the year prior to the due date of the obligation to file the report. The penalty cannot be less than 10% of a Tax Unit or more than 25 Tax Units (1 Tax Unit = ~ EUR 1 110 for 2020).⁵⁸</p> <p>Where transfer pricing adjustments are made by the tax administration following an audit, an amended return would be required to correct the total income originally reported, and a penalty may be assessed for a misstatement of such income, including a corresponding interest amount (1% monthly). The penalty is</p>

⁵⁷ Canada Transfer Pricing Country Profile in www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-canada.pdf.

	equivalent to 50% of the tax shortfall amount and can be reduced by up to 95% if the taxpayer, in addition to the correction, complies with the payment of the reduced fine.
The United States	Where a US taxpayer is examined by the IRS and a transfer pricing adjustment is made that results in a tax assessment over a specific threshold, the IRS may assert penalties. In order to avoid those penalties, taxpayers can provide to the IRS upon request transfer pricing documentation they prepared contemporaneous with their tax return filing to demonstrate they had reasonable cause for their pricing and they acted in good faith. The documentation required to meet the penalty exception is specified in USA Treasury Regulations section 1.6662-6(d).
Vietnam	The penalty regime applicable to transfer pricing offences is referenced to the existing provisions on tax penalties, as specified in the Law on Tax Administration. These penalties vary from 20% to 300% of the additional tax due and late interest payments.

3.3.6 Confidentiality

Transfer pricing studies submitted to a tax administration should be subject to the same level of confidentiality as that applying to tax returns and to other tax information.

3.3.7 Simplification and exemptions

Both the UN Transfer Pricing Manual and the OECD Transfer Pricing Guidelines recommend countries implementing transfer pricing studies rules establish some simplification measure or objective materiality standard. Different approaches can be considered, for example:

- 'Prudent business manager' test for comprehensiveness of transfer pricing documentation;
- Exemptions or simplification options for small or low risk transactions, e.g.: transactions below certain value threshold; or for purely domestic transactions⁵⁹ between local related entities, where both parties to the transactions are subject to the same taxation regime and rate of taxation;
- Exemption regimes for small and medium enterprises; and
- Reduced documentation requirements for transactions covered by APAs or safe harbours.

Simplification or exemptions regimes for small transactions are commonly used in respect of the local file. In contrast, for the master file countries commonly define the exemption threshold based on the size of the taxpayer or the MNE group to which taxpayer belongs.

⁵⁹ Note that the scope of domestic transfer pricing rules varies. In some countries, only cross-border transactions are within scope, meaning that such purely domestic transactions would, in any case, not be subject to transfer pricing provisions

It is often the case that such exemptions do not apply when taxpayers conduct transactions with associated enterprises located in low or no tax jurisdictions, or that benefit from preferential tax regimes.

Some country practices are shown in Table 10 below.

Prudent business manager test

The ‘prudent business manager’ test requires that the larger or more complex (or more uncertain) a transaction or group of transactions, the more comprehensive should be the supporting documentation.

The guidance in the OECD/G20 BEPS Action 13 Report regarding the master file emphasises that *“in producing the master file, including lists of important agreements, intangibles and transactions, taxpayers should use prudent business judgment in determining the appropriate level of detail for the information supplied, keeping in mind the objective of the master file to provide tax administrations a high-level overview of the MNE’s global operations and policies. ... For purposes of producing the master file, information is considered important if its omission would affect the reliability of the transfer pricing outcomes.”*

Simplification provisions for certain small or low risk transactions

Measures of materiality may be considered in relative terms (e.g. transactions not exceeding a percentage of revenue or percentage of cost measure) or in absolute amount terms (transactions not exceeding a certain fixed amount). Individual countries should establish their own objective materiality standards for local file purposes based on local conditions.

Where the transfer pricing rules apply to all related party transactions, including those which are purely domestic (e.g. between two related parties, both of which are resident in the same jurisdiction), such purely domestic transactions may be regarded as low risk, particularly where both related parties are subject to the same taxation regime and tax rates.⁶⁰

In order to reduce compliance and administrative costs and better focus tax administration resources, consideration may be given to simplifying or exempting low risk transactions from certain documentation requirements. Where this is the case, the focus shifts from evaluating the transactions themselves to considering the eligibility of the taxpayer for the simplification or exemption.

Simplification or exemptions: SME taxpayers

Consideration can also be given to rules that exempt SMEs from documentation requirements or that limit the extent of the documentation to be provided by such entities.

A simplification or exemption measure can be expressed in various forms. It can be defined taking into account either the group level information or only information at the level of the local entity. Some of these criteria include:

⁶⁰ The risk to the revenue may be significantly higher where one of the related parties has tax attributes such as tax losses.

- Total turnover, revenue or gross operating income
- Value of assets
- Number of employees
- A combination of the above.

There are limitations on using the indicators above. For instance, companies can outsource certain services and use leased assets, while earning a significant amount of revenue. Therefore, countries should weigh up these limitations and consider introducing additional factors such as amounts paid for, and the nature of, independent contractors and other service providers, and the nature of and amounts paid for leased fixed assets.

Where the country or the tax administration has defined criteria for SMEs, this could be used as the parameter(s) to set the exemption threshold. See in Box 11: European Commission definition of SMEs the European Commission definition of SMEs which has been adopted by some of the EU members for setting the exemption threshold.

Box 11: European Commission definition of SMEs⁶¹

The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

Reduced documentation requirements for transactions covered by Advance Pricing Arrangements or safe harbors

Where an APA or safe harbor measure has been adopted there will be no need for a detailed comparability study, although other information and documentation, specified in the APA or the safe harbor rules, should be made available to the tax authorities. See for instance, the exemption regime for transfer pricing studies in Singapore in Annex 7.

⁶¹ Article 2 of Annex to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises

Table 10 : Simplification or exemption measures for transfer pricing studies⁶²

Country	Threshold/exemptions ⁶³
Austria	Any Constituent Entity of an MNE Group, whose revenues in the two preceding fiscal years exceeded EUR 50 million must complete the regular transfer pricing documentation requirements. Entities which do not meet this threshold are exempt.
Colombia	<p>Taxpayers do not need to comply with the transfer pricing documentation requirements unless either: (a) gross equity on the last day of the fiscal year or period equals at least 100 000 Taxable Units (~ EUR 824 000); or (b) gross revenues of respective year equal at least 61 000 TU (~ EUR 502 640).</p> <p>Additionally, to the said threshold, taxpayers will need to prepare and submit the Local and Master files for transactions carried out with related parties, when their annual cumulative amount exceeds the equivalent of 45 000 Tax Units (~ EUR 436 000) for the reporting fiscal year.</p> <p>If the transaction is carried out with companies located, residing or domiciled in non-cooperating jurisdictions with low or no taxation or preferential tax regimes, the Local and Master Files must be prepared and submitted when their annual cumulative amount exceeds the equivalent to 10 000 Tax Units (~ EUR 97 000) for the reporting fiscal year. Otherwise, no exemption applies.</p>
Denmark	Small MNEs (less than 250 employees and with either an annual balance sheet total of less than DKK 125 million (~ EUR 17 million) or annual revenue of less than DKK 250 million (~ EUR 34 million) are only required to provide partial documentation.
Finland	SMEs according to the recommendation of the European Commission (of 6 May 2003, 2003/361/EC) ⁶⁴ are not required to prepare transfer pricing documentation. In addition, if the total amount of the taxpayer's arm's length transactions in relation to each of its related parties does not exceed EUR 500 000, there is no requirement to submit a master file. In addition, there are provisions providing for a local file with more limited content when the taxpayer only has minor transactions with its related parties.
India	The Transfer Pricing Study Report – which mirrors the local file – is to be maintained only by taxpayers who have entered into international transactions exceeding INR 10 million (~ EUR 113 240).
Japan	Master file: It is only required for MNE Groups with a total consolidated revenue in the preceding fiscal year of JPY 100 billion (~ EUR 803 million) or more.

⁶² See also Annex 7 on Singapore's exemption regime for transfer pricing studies.

⁶³ Exchange rate of reference as of February 15, 2019.

⁶⁴ See Box 11

	<p>Local file: controlled transactions ⁶⁵ are exempted from the duty of contemporaneous documentation if:</p> <p>(1) the amount of the controlled transaction (total of receipts and payments) in the previous business year (or the current business year if there was no transaction in the previous year) was less than JPY 5 billion (~ EUR 40.1 million); and</p> <p>(2) the amount of the controlled transaction involving intangibles (total of receipts and payments) in the previous business year (or the current business year if there was no transaction in the previous year) was less than JPY 300 million (~ EUR 2.4 million).</p>
<p>Lithuania</p>	<p>The master file must only be prepared by the Lithuanian entities and permanent establishments of the foreign entities acting in Lithuania which have turnover in the previous taxable year exceeding EUR 15 million.</p> <p>The local file must be prepared by the Lithuanian entities and permanent establishment of the foreign entities acting in Lithuania, which have turnover in the previous taxable year exceeding EUR 3 million. This exemption is not applied to financial undertakings, credit institutions and insurance companies which are obliged to prepare the transfer pricing documentation despite the size of their turnover.</p>
<p>Mexico</p>	<p>Taxpayers engaging in business activities whose income in the immediately preceding fiscal year did not exceed MXN 13 000 000 (~ EUR 539 100) and taxpayers whose income from the provision of professional services did not exceed MXN 3 000 000 (~ EUR 124 400) shall not be bound to prepare transfer pricing documentation, except those taxpayers:</p> <ul style="list-style-type: none"> • That enter into transactions with entities in low tax jurisdictions; • Taxpayers that are contract or assignment holders in terms of the Hydrocarbons Law. <p>Taxpayers that do not meet the following requirements are not bound to prepare the Master File and Local file:</p> <ul style="list-style-type: none"> • Taxpayers that in the immediately preceding fiscal year reported in their annual return revenue equal to or exceeding MXN 708 898 920⁶⁶ (~ EUR 29 400); • Companies included in the optional tax regime for groups; • State owned companies; or • Foreign resident legal entities with a permanent establishment in Mexico.
<p>Netherlands</p>	<p>A master file and a Local file must be prepared by MNE groups having total consolidated group revenue of at least EUR 50 million in the fiscal year that immediately preceded the year for which a tax return is being filed.</p>

⁶⁵ The exemption is determined by controlled transactions on the basis of an entity by entity. See article 66.4 paragraph 7 of the Act on Special Measures Concerning Taxation (Japanese text only) at: <https://elaws.e-gov.go.jp/document?lawid=332AC0000000026>.

⁶⁶ Figures are updated every year

Peru	<p>Local file: Taxpayers whose accrued income does not exceed 2 300 Tax Units (~EUR 2.6 million) and transactions subject to the transfer pricing rules are below 100 Tax Units (~EUR 111 000) are exempted. Taxpayers with transactions subject to the transfer pricing rules between 100 and 400 Tax Units (~EUR 111 000 and EUR 444 000), are only required to prepare a simplified local file.</p> <p>Master file: Taxpayers whose accrued group income does not exceed 20 000 Tax Units (~EUR 22.2 million), and transactions subject to the transfer pricing rules are below 400 Tax Units (~EUR 444 000) are exempted.</p>
Spain	<p>Exemptions to document controlled transactions apply to: (i) transactions below EUR 250 000; (ii) transactions within entities which form part of a tax consolidated regime, (iii) transactions under the tax regimes of temporarily business unions and associations of economic interest; and (iv) the sale and acquisition of securities through public offering.</p> <p>Simplified transfer pricing study (local file) for medium (with income not exceeding EUR 45 million a year) and small taxpayers (with income not exceeding EUR 10 million a year) also apply.⁶⁷</p> <p>Groups with income not exceeding EUR 45 million a year are exempted from the master file.</p>
Uruguay	<p>When the aggregate transactions subject to transfer pricing rules, undertaken during the fiscal year, do not exceed 50 million Indexed Units (~ EUR 4.5 million), taxpayers are exempt from submitting the transfer pricing study⁶⁸.</p>

⁶⁷ See Article 16.3 of the Income Tax Regulations [“Reglamento de Impuesto a las Sociedades”]. <https://www.boe.es/buscar/act.php?id=BOE-A-2015-7771>

⁶⁸ Notwithstanding, taxpayers must maintain documentation to support their transfer pricing determination and must be provided to the tax authority at its request.

3.4 Country by Country Reporting

3.4.1 Introduction

Country by Country reporting was introduced as an outcome of Action 13 of the OECD/G20 BEPS initiative. Discussions on this subject, however, had been taking place for many years prior to this.⁶⁹ In 2002/2003 civil society organizations started to argue for some form of public country-by-country reporting in order to help address both tax avoidance/evasion and corruption. The Extractive Industries Transparency Initiative (EITI), which requires disclosure of all payments made by relevant listed mining and petroleum companies, was one concrete outcome of this process. The concept was discussed widely from 2013 when country-by-country reporting for the banking sector was introduced in the EU, and the topic was placed on the G20's agenda.⁷⁰ From 2013 to 2015, the OECD, working under a mandate from the G20, developed a standard for the CbC Report which was incorporated into the BEPS Action 13 Report.

Under the BEPS project the development of a template for CbC reporting was central. In the 19 July 2013 BEPS Action Plan, the OECD was directed to "develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into account the compliance costs for business. The rules to be developed will include a requirement that MNE's provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template".

In January 2014 the OECD launched a discussion draft proposing a two-tiered approach to transfer pricing documentation comprising a local file and a master file. The latter included a template of a CbC Report. The proposed template included certain information relating to the global allocation of profits, the taxes paid, and certain indicators of the location of economic activity (tangible assets, number of employees and total employee expense) among countries in which the MNE group operates. It also required reporting of the capital and accumulated earnings as well as aggregate amounts of certain categories of payments and receipts between associated enterprises. One of the questions raised in the discussion draft was whether the CbC Report should be part of the master file, or whether it should be a separate document.

Another question was on the most appropriate mechanism for making the CbC Reports available to tax administrations. Three potential options were raised: (i) the direct filing of the information by local MNE group members subject to tax in the jurisdiction; (ii) filing of information in the parent company's jurisdiction and the sharing of such information under treaty information exchange provisions; or (iii) some combination of (i) and (ii).

⁶⁹ In an analysis of different initiatives against corporate tax avoidance Ylönen M (2017) shows that discussions on country-by-country reporting dates back to 1970. CbC reporting initiative had already been developed and discussed in the 1970s by the United Nations Commission and Centre for Transnational Corporations. See, Ylönen M 2017. Back from oblivion? The rise and fall of the early initiatives against corporate tax avoidance from the 1960s to the 1980s", p49-50.

⁷⁰ Meinzer, M 2017. Lobbyism in International Tax Policy: The Long and Arduous Path of Country-by-Country Reporting. See also: Bennet et al Transparency in Reporting Financial Data by Multinational Corporations, Centre for Business Taxation, Oxford University, June 2011

From the point of view of the business community, a significant amount of potentially commercially confidential data would be made available in the CbC Reports and this data would need to be safeguarded. In contrast, some NGOs supported public disclosure of the CbC Reports. They did not see any justification for secrecy of aggregate information on items such as employees, assets, profits and taxes by country. For them, the only valid reason for non-publication was commercial confidentiality. Since the proposal was for a template which would be used globally, many NGOs were of the view that public disclosure of CbC Reports would not affect the competitive position of specific firms.⁷¹ However, such views in favor of public disclosure were broadly rejected and addressed in the BEPS Action 13 output.

Ultimately, confidentiality, which is also required under treaties and domestic law, was a necessary part of the compromise reached by countries to implement the CbC Report as a minimum standard under the BEPS project. Under the BEPS Action 13 minimum standard on CbC reporting, only the UPE of an MNE is typically required to file a CbC Report to its local tax administration, which is then obliged to provide the report to relevant tax administrations around the world under exchange of information (EOI) instruments. Mechanisms are in place to help ensure wide adoption and access to CbC Reports by relevant countries notwithstanding that such reports would not be made public. The key features of CbC Reports are⁷²:

- **They provide valuable information to tax administrations** – providing data on the global operations of the large MNE groups operating in the local jurisdiction, including the amount of revenue, profit before income tax, income tax paid, number of employees, stated capital, retained earnings and tangible assets in each jurisdiction;
- **CbC Reports are intended to assist tax administrations with their case selection and risk assessment processes.**⁷³ They do not provide sufficient information to make an adjustment to profit solely on the information they contain;
- **Only large MNEs groups, i.e. those with global consolidated revenue of EUR 750 million or more (or a local equivalent) are required to produce a CbC Report;**

⁷¹ OECD (2014), "PUBLIC COMMENTS RECEIVED VOLUME I - Letters A to C Discussion Draft on Transfer Pricing Documentation and CbC Reporting" OECD, Paris, www.oecd.org/ctp/transfer-pricing/volume1.pdf.

⁷² As has been noted elsewhere, all aspects of the CbC reporting standard are subject to review in the context of the 2020 review of the standard. The outcomes of the 2020 review are expected to be released in 2021.

⁷³ Countries such as Brazil, India, Mexico, the Netherlands, Spain and the UK have started to introduce CbC reports information into their risk assessment models. For instance, the UK has fully incorporated CbC reporting within its risk assessment process. The UK makes the CbC reports available to tax specialists so they can be reviewed as part of annual risk reviews. In addition, risk analysis profiles are conducted on CbC reports to identify possible risks. The resulting CbC reports are subject to further analysis and the UK will utilise other data it holds to ascertain if a risk exists. The UK uses a number of risk profiles and continues to refine these to identify potential risks. The UK has a training programme which all staff must complete before using a CbC report. CbC reports sent to case teams are stored in limited access, secure folders.

Moreover, the OECD International Compliance Assurance Programme initiative uses also CbCR information to assess risks of large MNE groups. More information on ICAP is available at: <https://www.oecd.org/tax/forum-on-tax-administration/international-compliance-assurance-programme.htm>

- **The CbC Report is potentially available to the tax administration in each tax jurisdiction** in which the MNE operates, whether the MNE operates through a local subsidiary or a permanent establishment, either directly from the local taxpayer (and subject to 'local filing' conditions⁷⁴) or through exchange of information mechanisms;
- **CbC reporting is one of the BEPS minimum standards**, which means that members of the OECD's Inclusive Framework will be expected to adopt CbC reporting in accordance with the stipulated standards, and commit to participate in the peer review process⁷⁵ to be undertaken under the authority of the Inclusive Framework;
- **CbC Reports contain confidential and potentially sensitive information.** For this reason, the minimum standard includes conditions regarding confidentiality;
- **The OECD has produced substantial guidance on the implementation of CbC Report, which is intended to result in consistent implementation internationally.** Box 19 lists the guidance provided by the OECD.
- **Under the Inclusive Framework minimum standard, CbC Reports will normally be filed by the UPE of each affected MNE group** to the tax administration of the jurisdiction in which that entity is resident. The Report will then be provided to the other tax jurisdictions in which the MNE has a presence, through the exchange of information mechanisms;
- **In specified exceptional cases⁷⁶ the BEPS Action 13 Report provides for a back-up mechanism whereby subsidiaries or permanent establishments may be required to file the CbC Report directly with their local tax administration.** This is known as 'local filing'.

3.4.1.1 Country by Country Reporting and developing countries

CbC Reports contain data that can assist in building a high-level picture of the global operations of MNEs operating in their jurisdiction. Without the CbC Report, this information would typically be very difficult to obtain directly from local MNE group entities.

CbC Reports can have relevance beyond transfer pricing and can assist tax administrations to identify, at a high level, other risks relating to base erosion and profit shifting. For example, a CbC Report may help to identify risks relating to permanent establishments or the location of a

⁷⁴ The conditions in which local filing of a CbC Report are permitted (i.e. filing of the report by a constituent entity of the MNE Group that is not the Ultimate Parent Entity) can be found in paragraphs 8(c) and 8 (d) of OECD (2017), *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf. See also Section 3.4.2, below.

⁷⁵ The peer review process works through an evaluation made by 'the peers' (other jurisdictions of the Inclusive Framework) through a monitoring process carried out by an ad-hoc group (the "CbC Reporting Group") of the framework put in place by a jurisdiction to implement the CbC reporting standard.

⁷⁶ See Section 3.4.2, below.

company's tax residence. A CbC Report may also help to identify entities within the scope of controlled foreign company rules or transactions within the scope of anti-avoidance measures applying to low-taxed payments.

Countries that are not members of the Inclusive Framework will take a view on whether or not to adopt CbC reporting, but it is likely to be beneficial to such countries. Countries that are members of the Inclusive Framework are committed to adopt CbC reporting, although they may temporarily 'opt out' of the BEPS Action 13 peer review, in limited circumstances. Such an 'opt out' is available only for those countries that do not have any MNE groups headquartered in their jurisdiction that would be subject to CbC reporting.⁷⁷ Choosing to 'opt out' also means that the country will not be able to take advantage of exchange of information processes to receive CbC Reports relating to resident subsidiaries or permanent establishments of the MNE groups operating in its jurisdiction.

Alternatively, a country may opt to become a non-reciprocal jurisdiction, i.e. they would collect, and exchange CbC Reports for affected MNE groups headquartered in their jurisdiction with relevant other jurisdictions. They would not, however, receive CbC Reports from other jurisdictions.

As described above, the primary mechanism by which many developing countries will be able to access CbC Reports will be mainly through the exchange of information with the tax jurisdiction of the UPE. There are, however, substantial prerequisites to such exchanges. These are:

1. The country must have domestic legislation in place requiring any local UPE company of an MNE group that meets the CbC Report size criterion to submit a CbC Report. This is the case even if there are no such MNE groups headquartered in the country. This requirement reflects the 'principle of reciprocity'⁷⁸ in exchange of information, including the exchange of CbC Reports, which means that countries will not exchange information with other jurisdictions unless the latter is able to reciprocate.

It is recommended that countries base such domestic legislation on the model provided in the BEPS Action 13 Report (which is discussed in detail below).

⁷⁷ For the purpose of the peer review process, the terms of reference on CbC reporting notes that "... it is possible that there are developing countries that do not have any MNE Groups headquartered in their jurisdiction that would be subject to CbC reporting, and that are not yet ready to receive CbC Reports. In such cases, rather than find such developing countries to have failed to implement CbC reporting, the peer review will instead require a certification process whereby the jurisdiction could confirm that there are no MNE Groups within scope that are headquartered in the country and documenting how that fact is known for the year in question."

⁷⁸ The commentary on Article 26 in the OECD Model Tax Convention on Income and on Capital concerning to the principle of reciprocity in EOI procedures the following: "...It follows that a Contracting State cannot take advantage of the information system of the other Contracting State if it is wider than its own system. Thus, a State may refuse to provide information where the requesting State would be precluded by law from obtaining or providing the information or where the requesting State's administrative practices (e.g. failure to provide sufficient administrative resources) result in a lack of reciprocity."

2. Exchange of information mechanisms must be in place. These can be in the form of membership of a multilateral exchange agreement (in most cases, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters); tax treaties incorporating exchange of information provisions or specific tax information exchange agreements (TIEAs);

3. Protocols to allow for automatic exchange of CbC Reports under any such agreements must be in place. These may take the form of:

- The Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports ('CbC Report MCAA'), or
- Competent Authority Agreement on the Exchange of Country-by-Country Reports on the basis of a Double Tax Convention ("DTC CAA"); or
- Competent Authority Agreement on the Exchange of Country-by-Country Reports on the basis of a Tax Information Exchange Agreement ("TIEA CAA").

4. Adoption of the CbC Report XML Schema. The format used for the exchange of information between countries must comply with the OECD XML Schema and the information provided must be in accordance with the OECD XML Schema User Guide.

5. To meet the 'appropriate use' condition i.e. that the information received is used only for the purposes of assessing high-level transfer pricing and other BEPS-related risks, as well as for economic and statistical analysis. (This is discussed in more detail below). Jurisdictions will not exchange CbC Reports with countries which have not met the 'appropriate use' condition (discussed below). This requires:

- domestic legislation or guidance containing the 'appropriate use' condition (This is included in the model CbC Report legislation mentioned above);
- the introduction of safeguards to ensure that the 'appropriate use' criterion is implemented in practice.

The provisions of the CbC MCAA and bilateral CAAs require a number of procedural steps in regard to appropriate use, which are described in the box below. This appropriate use condition is subject to a peer review.

Box 12 : OECD Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports (September 2017)

Paragraph 15

Under the **recitals** to the multilateral and model bilateral CAAs, jurisdictions indicate that they have, or expect to have, in place by the time the first exchange of CbC Reports takes place, appropriate safeguards to ensure that information received is used for the purposes of assessing high-level transfer pricing risks and other BEPS-related risks, as well as for economic and statistical analysis, where appropriate. Further, under paragraph 1(d) of Section 8 of the multilateral CAA, a jurisdiction's competent authority must provide notification to the Co-ordinating Body Secretariat "that it has in place the necessary legal framework and infrastructure to ensure [...] the appropriate use of the information in the CbC Reports". As such, tax authorities will not exchange CbC Reports until this condition is met and, under the multilateral CAA, until such notification has been provided. Similarly, under the Action 13 minimum standard, a jurisdiction may not require a CbC Report to be submitted by an entity that is not the UPE of its group (also referred to as local filing), unless that jurisdiction satisfies the appropriate use condition and the other conditions for local filing in the Action 13 Report are met. Where a jurisdiction imposes local filing in circumstances that are not permitted under the Action 13 Report, this will be identified during the jurisdiction's peer review evaluation. *(emphasis added)*

6. **To meet the confidentiality condition**, discussed in more detail below. This requires:

- the adoption of confidentiality conditions in domestic law (see Section 3.4.1.3 Further note on appropriate use of CbC Report information);
- appropriate confidentiality conditions in international exchange of information mechanisms;⁷⁹
- mechanisms to be in place to ensure that the conditions are met in practice.

Meeting the confidentiality and appropriate use conditions are prerequisites to receiving and using CbC Reports. Jurisdictions may therefore want assurance that their exchange partners meet these conditions.

The box below outlines the specific items under scrutiny in the peer review process:

⁷⁹ At least equivalent to the protections that would apply if such information were delivered under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax matters, a Tax Information Exchange Agreement or a tax treaty that meets the internationally agreed standard of information upon request. See paragraph 57 of the BEPS Action 13 Final Report.

Box 13 : BEPS Action 13 on Country-by Country Reporting Peer Review Documents
OECD Feb 2017

Paragraph 11

With respect to confidentiality, jurisdictions should:

- (a) Have international exchange of information mechanisms which provide that any information received shall be treated as confidential and, unless otherwise agreed by the jurisdictions concerned, may 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 taxes covered by the exchange of information clause. Such persons or authorities should use the information only for such purposes unless otherwise agreed between the parties and in accordance with their respective laws;
- (b) Have the necessary domestic rules or procedures to give effect to the restrictions contained in the International Agreement and related Qualifying Competent Authority Agreement;
- (c) Have in place and enforce legal protections of the confidentiality of the information contained in CbC Reports which are received by way of local filing, which preserve the confidentiality of the CbC Report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD, 2011), a Tax Information Exchange Agreement or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum;
- (d) Have effective penalties for unauthorized disclosures or unauthorized use of confidential information;
- (e) Ensure confidentiality in practice, for instance having in place a review and supervision mechanism to identify and resolve any breach of confidentiality;
- (f) Respect the terms of the International Agreement and related Qualifying Competent Authority Agreement, including the limitation on use of information received for taxable periods covered by the agreement.

Many developing countries have legislation in place to ensure confidentiality of information from taxpayers. As many developing countries are members of the Global Forum on Transparency and Exchange of Information for Tax Purposes,⁸⁰ they would have undergone a review of their domestic legislation and international agreements in order to verify whether they offer sufficient

⁸⁰ As at October 2020, 125 jurisdictions have been assessed by the Global Forum on EOI upon request.

safeguards to preserve confidentiality.⁸¹ Many of them were found to have sufficient safeguards in place to ensure confidentiality and others have modified their legislation and introduced systems and procedures to ensure confidentiality of documentation received on request from foreign authorities. However, CbC reporting relies on automatic exchange of information, and few developing countries have been reviewed in respect of the specific confidentiality aspects required under this form of exchange of information. The confidentiality standard for the purpose of CbC reporting requires countries taking some additional measures, such as protection of the information systems.⁸²

7. To meet the consistency condition, discussed in detail below (see 3.4.1.4 Further note on the Consistency condition).

These seven prerequisites to obtaining CbC Reports can be challenging for many developing countries, which may not yet have the requisite exchange mechanisms in place. Even where they are in place, some developing countries will face delays in entering into the necessary protocols for the exchange of CbC Reports, and establishing the processes for ensuring consistency, appropriate use and confidentiality in practice.

These factors may cause obstacles or delays for developing countries in receiving CbC Reports. To address this, developing countries may consider giving some priority to putting in place the relevant **exchange of information mechanisms**. The first step for many countries will be signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.⁸³

Requiring local filing under the 'systemic failure' condition (discussed below) could also help countries to avoid obstacles or delays in receiving CbC Reports in cases where a jurisdiction fails to exchange CbC Reports without adequate justification.

The BEPS Action 13 minimum standard⁸⁴ provides that local filing of the CbC Report may be accepted in three specific circumstances, so long as a jurisdiction also meets conditions on confidentiality, consistency and appropriate use of CbC reporting data. Some countries have introduced a local filing obligation that is wider than that envisaged under BEPS Action 13, for at least a transitional period until they are able to put in place the frameworks required to receive CbC Reports from partner tax administrations. This would require local subsidiaries and permanent establishments of MNEs that meet the CbC Report criteria to file CbC Reports directly with the local tax administration. Such an option poses significant risks, including possibly in terms of investment climate. This requirement will also negatively impact on any review of the jurisdiction's compliance

⁸¹ This refers to the Peer Review process for EOI on request. This review consists of a review of the legal framework (Phase I) and the practical application of the Standards (Phase II).

⁸² For the peer review purposes, the review relies on the confidentiality preliminary assessments carried out by the Global Forum for the purpose of Common Reporting Standard.

⁸³ By joining the Multilateral Convention, countries can access to a large exchange network. For information on how to join see: A Toolkit for Becoming a Party to the Convention on Mutual Administrative Assistance in Tax Matters, at https://www.oecd.org/tax/transparency/documents/MAAC-toolkit_en.pdf

⁸⁴ Action 13 restricts 'local filing' by entities other than an ultimate parent entity to very specific circumstances. See Box 15 on Description of the main provisions of the CbC Report model legislation.

with the BEPS Action 13 minimum standard. Countries covered by the Action 13 peer review that introduced a filing requirement wider than provided by the BEPS minimum standard have received recommendations to address this during their peer review by the Inclusive Framework and a number have since introduced changes or address these recommendations.

3.4.1.2 Further Note on Confidentiality Condition

The report on BEPS Action 13 makes it clear that CbC Reports must be subject to confidentiality safeguards at least equivalent to those contained in an exchange of information instrument that meets the internationally agreed standard reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes:

*"Jurisdictions should have in place and enforce legal protections of the confidentiality of the reported information. Such protections would preserve the confidentiality of the Country-by-Country Report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a Tax Information Exchange Agreement (TIEA) or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes. Such protections include limitation of the use of information, rules on the persons to whom the information may be disclosed, ordre public, etc."*⁸⁵

Accordingly, information obtained through CbC Reports may only be disclosed to and used by courts, administrative bodies and others involved in and for the purposes of assessment, collection, or administration, enforcement or prosecution, or determination of appeals concerning the taxes covered by the agreement. With very limited exceptions, tax administrations cannot disclose exchanged information to persons or agencies not authorized under the information exchange agreement or use such information for non-tax purposes.

In addition to the protections afforded by the confidentiality provisions of information exchange instruments, confidentiality of CbC Report should be guaranteed in domestic laws. Countries implementing CbC Reports should ensure confidentiality provisions in their domestic laws equivalent to the international standard under an international agreement. Civil liability and criminal penalties should be also in force for unauthorized disclosure of taxpayer data.

To ensure the protection of confidential information, countries will therefore need:

- Protection in EOI mechanisms;
- Robust domestic rules and procedures ensuring confidentiality in practice;
- Effective penalties for unauthorized use or disclosure;
- Procedures to address efficiently any confidentiality issues that may arise;

⁸⁵ BEPS Action 13, Paragraph 57.

- Information security management systems (i.e. monitoring of systems; application of sanctions in case of unauthorized disclosures, etc.)

3.4.1.3 Further note on appropriate use of CbC Report information

The Final Report on BEPS Action 13 makes it clear that CbC Reports must be used only for specific purposes, which constitute the condition on ‘appropriate use’.

“Jurisdictions should use appropriately the information in the Country-by-Country Report template in accordance with paragraph 25. In particular, jurisdictions will commit to use the Country-by-Country Report for assessing high-level transfer pricing risk. Jurisdictions may also use the Country-by-Country Report for assessing other BEPS related risks. Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the Country-by-Country Report. They will further commit that if such adjustments based on Country-by-Country Report data are made by the local tax administration of the jurisdiction, the jurisdiction’s competent authority will promptly concede the adjustment in any relevant competent authority proceeding. This does not imply, however, that jurisdictions would be prevented from using the Country-by-Country Report data as a basis for making further enquiries into the MNE’s transfer pricing arrangements or into other tax matters in the course of a tax audit.”⁸⁶

“... the information in the Country-by-Country Report should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. The information in the Country-by-Country Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate. It should not be used by tax administrations to propose transfer pricing adjustments based on a global formulary apportionment of income.”⁸⁷

Guidance on ‘appropriate use’ is provided in the OECD publication: Country-by-Country Reporting: Handbook on Effective Implementation⁸⁸. The Report contains useful guidance on the meaning of appropriate use, the consequences of non-compliance with the appropriate use condition and approaches to ensure appropriate use (e.g. measures to restrict the access to CbC Reports and measures to ensure that appropriate use is adequately evidenced). As a checklist, a jurisdiction should be able to answer “yes” to six basic questions or should expect to be able to do so before the first exchange of CbC Reports takes place as described in the box below.

⁸⁶ BEPS Action 13, Paragraph 59.

⁸⁷ Ibid, Paragraph 25.

⁸⁸ See annex of the handbook.

Box 14 : Questionnaire on appropriate use of CbC Reports

(OECD Guidance on appropriate use)

1. Do the multilateral and/or bilateral competent authority agreements concerning CbC Reporting signed by your jurisdiction include the appropriate use of information contained in CbC Reports, as a condition of obtaining and using CbC Reports?
2. Does your tax authority have a clear written policy in place governing the use of CbC Reports, including guidance on appropriate use?
3. Is this policy effectively communicated to all staff likely to have access to CbC Reports in the course of their work?
4. Is the use of CbC Reports controlled or monitored to ensure appropriate use, which may include: (i) imposing restrictions on access to CbC Reports, and/or (ii) ensuring that appropriate use is adequately evidenced?
5. Is guidance or training provided to appropriate tax authority staff in your jurisdiction that clearly sets out their commitments:
 - (i) to notify the Co-ordinating Body Secretariat (for exchanges pursuant to the multilateral CAA) or other competent authority (for exchanges pursuant to the model bilateral CAAs) immediately of any cases of non-compliance with the appropriate use condition; and
 - (ii) to promptly concede any competent authority proceeding that involves a tax adjustment using an income allocation formula based on CbC Report information?
6. Are there measures in place to ensure controls are reviewed and updated as required, and the outcomes of these reviews documented?

3.4.1.4 Further note on the Consistency condition

The Final Report on BEPS Action 13 makes it clear that domestic CbC reporting regimes must be implemented in accordance with the internationally agreed standards.

“Jurisdictions should use their best efforts to adopt a legal requirement that MNE groups’ ultimate parent entities resident in their jurisdiction prepare and file the Country-by-Country Report, unless exempted as set out in paragraph 52. Jurisdictions should utilize the standard template contained in Annex III of Chapter V of these Guidelines. Stated otherwise, under this condition no jurisdiction will require that the Country-by-Country Report contain either additional information not contained in Annex III, nor will it fail to require reporting of information included in Annex III.”⁸⁹

Consistency thus focuses on:

1. Implementing the CbC Report with a consistent format following the standard template designed for these purposes and contained in the BEPS Action 13 Report. To avoid unnecessary compliance burdens on taxpayers and to provide for efficiencies in analyzing the CbC Reports, it is essential that countries follow closely the template as laid out in Annex III of BEPS Action 13 Report. (See in Annex 8).

⁸⁹ Ibid. Paragraph 58.

2. Requiring that MNE groups' UPEs resident in their jurisdiction prepare and file the CbC Report. A basic feature of the CbC Report is that it is generally filed only in the UPE's country of residence.

3.4.2 Filing mechanism

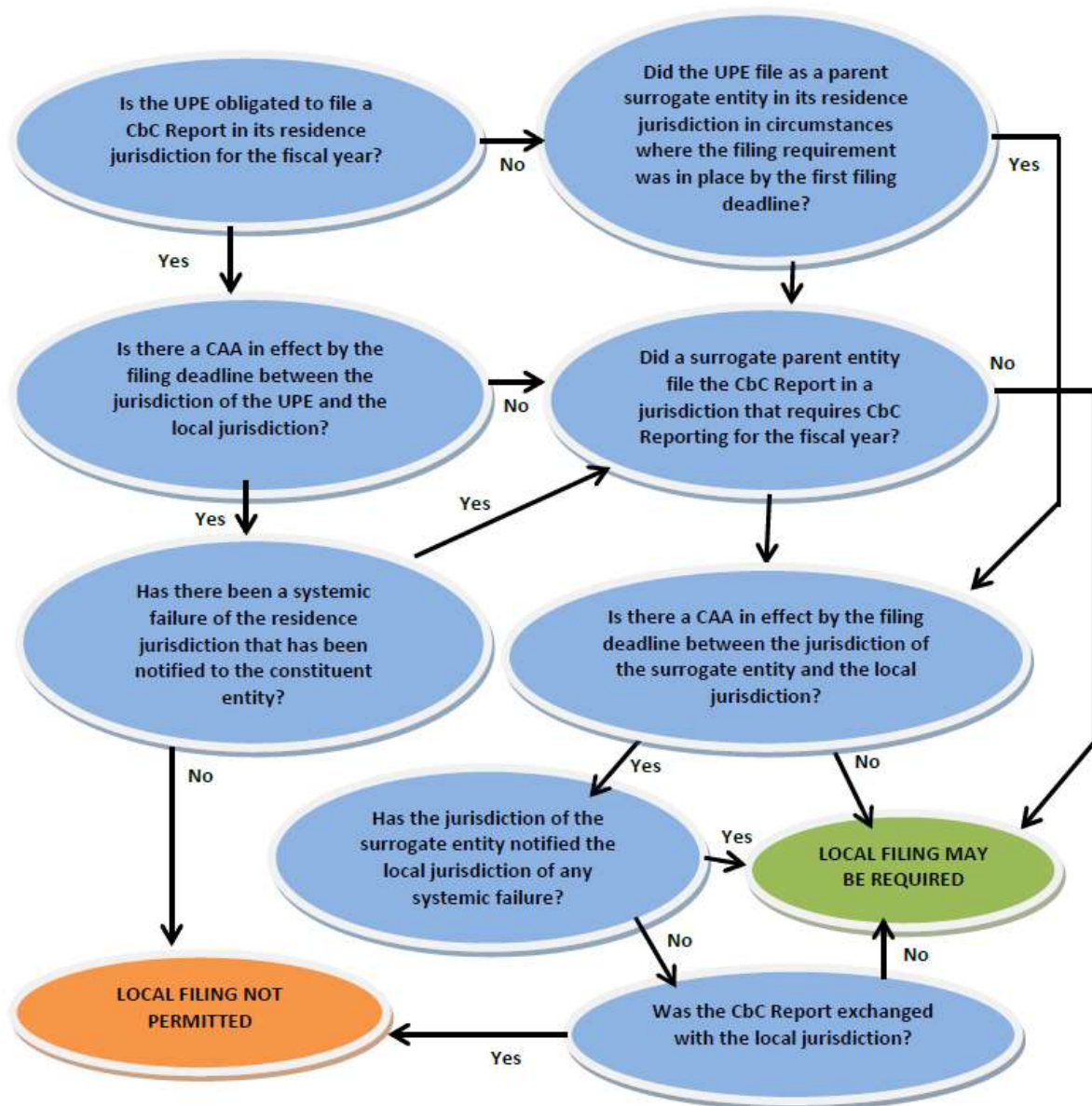
A CbC Report should be filed by UPE of the MNE in its jurisdiction of tax residence. This will generally be the entity at the top of the ownership chain that is required to prepare consolidated financial statements in its jurisdiction of residence, or would be required, if its equity interests were traded on a public securities exchange in that jurisdiction.⁹⁰

Action 13 thus restricts 'local filing' by entities other than an UPE to very specific circumstances, i.e. surrogate entity filing and constituent entity filing (also known as local filing). There is no obligation under the minimum standard for a jurisdiction to introduce any of these mechanisms. However, if a jurisdiction allows local filing (under the specific circumstances described in Action 13 Report) or surrogate entity filing, the other required elements of the minimum standard (e.g. the content of the report) should be applied to those reports in the same way as to CbC Reports filed by UPEs resident in that jurisdiction. See Box 15 for further discussion on surrogate and local filing, including the three circumstances under which local filing can be invoked.

⁹⁰ OECD (2017), Country-by-Country Reporting: Handbook on Effective Implementation, OECD, Paris: p16. www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf.

Figure 2 : Local filing of CbC Reports

This diagram⁹¹ illustrates the circumstances under which a local filing requirement would be consistent with the minimum standard. It assumes that the constituent entity is a resident of the local jurisdiction while the UPE is a resident of another jurisdiction and that there is an international agreement which permits automatic exchange of information to which the residence jurisdiction and the local jurisdiction are parties.



⁹¹Ibid. p21.

3.4.3 Format and Content

The BEPS Action 13 minimum standard requires the CbC Report to include aggregate jurisdiction-wide tax information in three standard tables (see Annex 8) consisting of:

- Information on the allocation of income, taxes and business activities by tax jurisdiction (Table 1 of the Template);
- A list of all constituent entities of the MNE group by tax jurisdiction (Table 2 of the Template); and
- Any further brief information or explanations that might be considered necessary or that would facilitate the understanding of the compulsory information provided in the CbC Report (Table 3 of the Template).

Table 1 of the template provides an overview of the MNE group's allocation of income, taxes and business activities, aggregated by tax jurisdiction. The information required consists of:

- Revenues, broken down between unrelated and non-related parties
- Profit (Loss) before Income Tax
- Income Tax Paid (on Cash Basis)
- Income Tax Accrued – Current year
- Stated Capital
- Accumulated Earnings
- Number of Employees
- Tangible assets other than Cash and Cash Equivalents

Table 2 requires information to be provided by tax jurisdiction and consists of:

- The list of Constituent Entities Resident in each Tax Jurisdiction
- The Tax Jurisdiction of Organization or Incorporation if Different from Tax Jurisdiction of Residence
- The main Business Activity(ies): for the purpose of determining the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction Table 2, contains a predetermined list of economic activities, which includes, among other the following activities: research and development; purchasing or procurement; manufacturing; sales, marketing or distribution; administrative, management or support services; provision of services to unrelated parties; financing; insurance; Holding Shares or Other Equity instruments; Dormant; and other (which nature should be specified in Table 3 of the template).

All the terms listed above and contained in the CbC Report template are defined in Action 13 report and additional guidance issued by OECD.⁹²

3.4.4 Legislative and regulatory framework

3.4.4.1 Introduction

The BEPS Action 13 Report includes model legislation available to jurisdictions to use when developing their own domestic rules.⁹³ Jurisdictions can adapt this as needed, and supplement if required with secondary legislation or supplementary guidance. The model addresses the 'consistency' issues mentioned above and includes provisions on confidentiality and appropriate use.

This Toolkit suggests that developing countries base their domestic legislation as far as possible on the 'model', to achieve consistency and certainty of approach. Building on the model legislation will also help countries meet the terms of reference of the peer review process.

The model legislation does not include a provision on penalties. It is thus up to countries to supplement the legislation to include enforcement measures in line with domestic policies.

3.4.4.2 The use of primary legislation, secondary legislation and guidance

Guidance on implementation of CbC Reports is still being developed. Taking into account that the guidance in the report is currently being revised in the context of the 2020 review of the standard and the outcomes of the 2020 review are expected to be released in 2021, developing countries can consider regulating through the primary legislation the high-level principles, leaving scope to enable the subsequent introduction of the more detailed reporting requirements through subsidiary legislation/regulations or guidance. This is to ensure greater flexibility when making any subsequent amendments. Cross-referencing the OECD guidance in domestic guidance is a solution adopted by some countries to help ensure consistency and to maintain up-to-date information for taxpayers.

⁹² OECD (2018), Guidance on Country-by-Country Reporting: BEPS Action 13, OECD, Paris.
<http://www.oecd.org/tax/beps/guidance-on-country-by-country-reporting-beps-action-13.htm>

⁹³ BEPS Action 13. p39.

3.4.4.3 Interpreting the model legislation

Box 15 : Description of the main provisions of the CbC Report model legislation

Article 1 – Definitions

Article 1 of the model legislation sets out a list of defined terms which should be contained in the CbC reporting legislation such as: the definition of an MNE group, and which MNE groups are subject to CbC Reporting; the definition of a reporting entity; the definition of a reporting fiscal year. Additionally, if not regulated elsewhere, the definition of Consolidated Financial Statements, should be also considered.

Further clarifications on these definitions have been provided in the OECD Guidance on the Implementation of CbC reporting which is regularly updated.

Article 2 – Filing obligation

Paragraph 1 is about who must file the CbC Report. According to the BEPS Action 13 minimum standard, CbC Reports should be required only by MNE groups with annual total consolidated group revenues of EUR 750 million or a near equivalent in domestic currency as of January 2015, as reflected in their Consolidated Financial Statements for the preceding fiscal year.

In principle, the filing obligation falls on the UPE. However, it is possible for an MNE group under certain conditions to appoint a different reporting entity to file the CbC Report on behalf of the MNE group.⁹⁴ This entity is known as the Surrogate Parent Entity.

The determination as to whether an MNE Group must file a CbC Report should generally be made based on the accounting principles used by the UPE of the group. However, if the MNE group is not listed on a public securities exchange, it may choose to apply either its domestic accounting principles (local Generally Accepted Accounting Principles (GAAP)) or International Financial Reporting Standards (IFRS).⁹⁵

For further guidance on the definitions of ‘Consolidated Financial Statements’ and the term ‘revenues’, countries might want to refer to the guidance prepared and updated regularly by the OECD.

OECD Guidance on the Implementation of Country-by-Country Reporting

<http://www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.htm>

Paragraph 2 sets out provisions which would require local filing of CbC Reports in particular circumstances. These provisions are not part of BEPS Action 13 minimum standard and are therefore optional: it is up to each country to decide whether or not to introduce this secondary, back-up mechanism in its domestic legal framework. Local filing refers to a situation

⁹⁴ BEPS Action 13, Article 2.3 of the Model Legislation. P.41.

⁹⁵ OECD, (2018), Guidance on the implementation of Country-by-Country Reporting - BEPS Action 13, OECD, Paris, p20. www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf.

where a constituent entity of an MNE group (e.g. a local subsidiary) which is neither the UPE nor the group's nominated surrogate parent entity is required to file the CbC Report directly with its local tax administration. The limited circumstances where the local filing is permitted under the Action 13 minimum standard are where:

- the UPE of the MNE group is not obligated to file a CbC Report in its jurisdiction of tax residence; or
- the jurisdiction in which the UPE is resident for tax purposes has a current International Agreement to which the local jurisdiction is a party but does not have a Qualifying Competent Authority Agreement in effect to which the local jurisdiction is a party by the time for filing the CbC Report for the Reporting Fiscal Year; or,
- there has been a Systemic Failure of the jurisdiction of tax residence of the UPE and the local MNE affiliate taxpayer has been notified of this failure by its tax administration.

Under the BEPS minimum standard, local filing cannot be applied in any other circumstance: in particular, it is noteworthy that with respect to the second condition mentioned above, local filing cannot be applied in the absence of an International Agreement.

The term "**Systemic Failure**" with respect to a jurisdiction, means that a jurisdiction has a qualifying competent authority agreement in effect, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to a treaty partner relevant CbC Reports in its possession.

Article 3 – Notification

The notification requirements impose an obligation on local MNE affiliates to provide advise their tax administration as to:

- whether it is the UPE or the group's nominated surrogate parent entity of an MNE group that is required to file a CbC Report, and
- where the local entity will not itself be responsible for filing the CbC Report, the identity and tax residence of the entity filing the CbC Report on behalf of its MNE group (i.e. typically its UPE).

This provision also does not form part of the minimum standard. It is an optional requirement whose purpose is to assist a jurisdiction in applying its domestic rules and anticipating the number of CbC Reports it will receive locally as well as from other jurisdictions through automatic exchange of information.

Article 4 – Country-by-Country Report

This Article describes the content of CbC Reports. It expressly provides that CbC Reports should be filed in a form identical to the standard template set out at Annex III of the BEPS Action 13 Report, applying the definitions and instructions contained in that Report.

Article 5 – Time for filing

The BEPS Action 13 Report requires the CbC Report to be submitted within twelve months after the last day of the reporting fiscal year of the MNE group.⁹⁶

This extended period recognizes that in some instances final statutory financial statements and other financial information that may be relevant for the CbC Report may not be finalised until after the due date for tax returns in some countries.⁹⁷

Article 6 – Use and Confidentiality of CbC Report information

This Article defines two of the conditions underpinning the obtaining and the use of the Country-by-Country Report: confidentiality and appropriate use.

Article 7 – Penalties

Jurisdictions' domestic laws will normally impose penalties where entities do not comply with filing requirements. The model legislation does not include provisions regarding penalties for failure to comply with filing requirements, recognizing that jurisdictions might choose to apply their transfer pricing documentation penalty regime to the requirement to file the CbC Report.

Penalties should be applied by the tax authority of the reporting entity, which could be the jurisdiction of the UPE, jurisdiction of another entity of the group appointed by the UPE (under surrogate filing) or the jurisdiction of the local jurisdiction (in the case of local filing).

Article 8 – Effective Date

Defines the date when legislation will be effective.

3.4.5 Enforcement

To ensure compliance with the obligation to file CbC Reports countries might want to consider introducing penalties in respect of:

- failure by a resident UPE of large MNE group (or other local entity required to file locally) to file a complete CbC Report to the local tax administration;
- late filing of CbC Report; and
- filing of an incorrect CbC Report.

The tax administration of the entity obliged to file a CbC Report is responsible for levying penalties in respect of CbC reporting, i.e. the tax administration of the UPE, the tax administration

⁹⁶ A majority of jurisdictions allow 12 months from the reporting year-end to file the CbC Report, with legislation providing language consistent with the proposal of Article 5 of the model legislation contained in the Action 13 Report.

⁹⁷ BEPS Action 13, Paragraph 31.

of the surrogate parent entity or the local tax administration in case of local filing, as relevant. Note that in addition to penalties which may apply in relation to the CbC Report itself, in some jurisdictions there may be requirements for local constituent entities of an MNE group to notify their tax administration of the identity of the group reporting entity, i.e. the entity within the MNE group that is obliged to file the CbC Report. In such cases, penalties might also apply to the local taxpayer in case of failure of notification⁹⁸.

One option is to impose a penalty according to the delay in making a complete submission, computed, for example, by reference to a sum per day for the period between the due date for submission and the submission of a completed CbC Report. A second option is to provide for a penalty based on a fixed sum, or an amount based on the size of the MNE group (e.g. as measured by its global consolidated turnover).

Many countries will vary the amount of the penalty to take account of the level of culpability. For example, a simple arithmetical error may attract a smaller penalty than a deliberate attempt to misstate figures. Some countries may deem the submission of a willfully incorrect CbC Report as a matter of criminal law.

Penalty provisions may be specific to CbC Report or based on existing general penalties for failure to file a return or for making an incorrect return. Section 6 of the sample legislation in Annex 1 includes provisions on penalties for non-compliance with CbC Reports.

⁹⁸ Belgium is one of the countries which has a notification obligation concerning CbC reporting. This is mandatory for all Belgian constituent entities of an MNE group which have to submit a CbC Report. These Belgian constituent entities have to inform the Belgian tax administration at the very latest on the last day of the reporting fiscal year of the multinational group if they are the ultimate parent entity, the surrogate parent entity or the Belgian constituent entity as described in Article 321/2, § 2 BITC, or, if they are none of those, they have to indicate the identity of the reporting entity. See Annex 5 on the Belgium transfer pricing documentation package.

Box 16: Country Practices - CbC Reporting' penalties for non-compliance

Extract from Nigeria's (CbC Reporting) Regulations⁹⁹

"11. [Late filing] Where a Reporting Entity fails to file the Country-by-Country Report to the Service on or before the date specified in regulation 9 of these Regulations, the Service shall impose an administrative penalty of NGN 10 000 000 in the first instance and NGN 1 000 000 for every month in which the default continues.

12. [Filing and incorrect or false CbC Report] Where a Reporting Entity files an incorrect or false Country-by-Country Report, the Service shall impose an administrative penalty of NGN 10 000 000.

13. [Failure to provide notification] Where a Constituent Entity of an MNE Group that is resident for tax purposes in Nigeria fails to provide the notification specified under regulations 6 of these Regulations, the Service shall impose an administrative penalty of NGN 5 000 000 in the first instance and NGN 10 000 for every day in which the default continues."

3.4.6 Practical issues on the implementation of CbC Reporting

CbC Reports received by a tax administration from an UPE or an MNE group's nominated surrogate entity (if applicable) should be exchanged with tax administrations in other jurisdictions where the MNE group has either resident entities or permanent establishments. For this process to be effective, two main issues may present practical challenges for developing countries. These are (i) having the technology to allow electronic filing of the reports, and (ii) the technology for exchanging the reports with treaty partners.

3.4.6.1 Electronic filing of the CbC Report

Since jurisdictions need to exchange CbC Reports in an agreed XML format (see below), it is advisable that the same format be required of taxpayers for filing purposes. This is to avoid the tax administration having to convert the data into a different format, which can be very resource-consuming.

There is no obligation under the Action 13 minimum standard for MNE groups to submit a CbC Report using the OECD XML schema (CbC XML Schema), and therefore, many jurisdictions have provided flexibility as to the format in which a CbC Report may be submitted. However, the Multilateral Competent Authority Agreement on the Exchange of CbC Reports includes a commitment for competent authorities to use the CbC XML Schema to transmit CbC Reports to other jurisdictions. Therefore, if an MNE group is allowed to submit its CbC Report in an alternative format (e.g. using Excel), the tax administration/competent authority in the jurisdiction is, in effect, committed to converting the CbC Reports into the CbC XML Schema format itself.

⁹⁹ Income Tax (Country-by-Country Reporting) Regulations, 2018. Available at: <https://www.firs.gov.ng/sites/Authoring/contentLibrary/d9dae9a0-3d22-48fa-bdec-34e59d7a001bOfficial%20Gazette%20of%20Income%20Tax%20CbC%20Regulations%202018.pdf>

While it is possible to convert alternative formats into XML, there can be technical challenges to doing so in practice. Moreover, there are validation checks built into the CbC XML schema to ensure that all required fields are completed and that the correct formatting is used. These validation checks do not exist in other formats, so there is also the risk that the CbC Reports received in other formats may be incomplete or incorrectly formatted.

Filing formats of CbC Reports vary across jurisdictions. While some countries require all CbC Reports to be submitted in XML (either OECD CbC XML schema or self-developed domestic reporting XML format),¹⁰⁰ other countries allow filing in other forms. A few examples are listed below:

Box 17 : Filing formats of CbC Reports

Only XML: UK, Australia, Cayman Islands

XML or Comma Separated Value (CSV) file:¹⁰¹ Japan

XML but allow submission of a paper return containing the CbC Report form: US, Canada

3.4.6.2 Sharing and receiving CbC Reports

The exchange of CbC Reports is governed by international agreements, i.e. bilateral double tax conventions, TIEAs or the Convention on Mutual Administrative Assistance in Tax Matters. In contrast to certain other types of tax information, CbC Reports must be exchanged automatically rather than spontaneously or on request.

The exchange will be done only with jurisdictions with a competent authority agreement in place which “operationalizes” the exchange under the international agreement. To identify the jurisdictions with which the CbC Report must be exchanged, the tax administration will rely on Table 1 of the CbC Report for the list of jurisdictions where the MNE group has operations. Tax administrations will then match this list against the jurisdictions with which it has a qualifying competent authority agreement in effect.¹⁰²

The OECD has developed an XML Schema for intergovernmental exchanges which countries have agreed to use to exchange CbC Reports through a Common Transmission System. The way this exchange takes place is described in the Handbook on Effective Implementation of Country-by-Country Reporting prepared by the OECD. An extract of this is provided in the following box.

¹⁰⁰ Although countries are free to determine the reporting format, based on their usual forms/practice etc. They all need to exchange in the OECD CbC XML format.

¹⁰¹ A Comma Separated Value (CSV) file allows data to be saved in a table structured format. The CSV file takes the form of a text file containing information separated by commas, hence the name. CSV files can be used with any spreadsheet program, such as Microsoft Excel, Open Office Calc, or Google Spreadsheets.

¹⁰² The OECD maintains a database with all bilateral exchange relationships that are currently in place for the automatic exchange of CbC Reports between tax authorities. See www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm

Box 18 : The common transmission system – Handbook on Effective Implementation of Country-by-Country Reporting¹⁰³

Except for the transmission of CbC Reports between members of the European Union through the EU CCN, CbC Reports will be largely transmitted through the CTS. The CTS is an electronic platform that facilitates the automatic exchange of information between countries, in particular for information pursuant to the Common Reporting Standard, CbC Reports, and tax rulings. The CTS will be operated by the OECD and will be available to participating jurisdictions for an annual fee. The CTS will provide a secure and standardized platform for the automatic exchange of information and relieve individual jurisdictions from the requirement to develop numerous bilateral arrangements and systems.

A competent authority that will utilize the CTS must become familiar with the specific protocols associated with sending and receiving CbC Reports through this platform. CTS users will be provided with access to the CTS portal which will contain all relevant information for using the CTS, as well as information on preparing and encrypting files to be transmitted.

The information contained in the CbC XML Schema must be prepared and encrypted prior to transmission in accordance with the common file preparation and encryption approach agreed to at the level of the OECD. In general terms, the encryption process for the CTS involves the combination of private and public encryption/decryption keys. A competent authority's public encryption key is available to other competent authorities to allow them to authenticate and encrypt files being sent to the competent authority. Each competent authority also maintains a private key that allows it to decrypt files received through the CTS.

Under the CTS, alerts will be automatically generated regarding the status of the transmission (uploaded, downloaded) and status messages are expected to be generated by the receiving competent authority indicating whether the file received contains any of the agreed file or record errors. File errors will generally entail the receiving competent authority is not in a position to open the file and, therefore, a status message would normally be sent to the sending competent authority with a view to receiving a new file.

Record level errors relate to key issues of data quality. Where record level errors are communicated to the sending competent authority by the receiving competent authority it is expected that the sending competent authority would take action to address any errors and provide the receiving competent authority with new or amended information on a timely basis. As part of its obligations to protect the confidentiality of the information contained in the CbC Reports, the competent authorities should also take measures, where applicable:

- to ensure the confidentiality and the custody of any log-in identification, passwords, and decryption keys used for the transmission of CbC Reports
- to protect any computers accessing the transmission system and ensure that only designated personnel (personnel who work with CbC Reports in the course of their duties) have access to the data
- to ensure that the CbC Reports received from other countries are securely stored while in the custody of the competent authority and then securely transmitted or made accessible to the tax authority's risk assessment personnel.

For competent authorities receiving CbC Reports outside the CTS or CCN, the receiving competent authority should put into place a system to notify the sending competent authority

¹⁰³ OECD (2017), Country-by-Country Reporting: Handbook on Effective Implementation, OECD, Paris (paragraphs 92-97) www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf

of the delivery status of the CbC Reports, to verify that it is the correct recipient, and notify the other competent authority if there are errors or problems with the quality of the data in the reports.

3.4.6.3 Implementation tools

The box below summarizes the guidance and tools developed by the OECD to assist countries implement CbC reporting requirements.

Box 19 : Implementation tools for CbC reporting

BEPS Action 13 Report

The BEPS Action 13 Report modifies Chapter V of the OECD Transfer Pricing Guidelines, which provides guidance on transfer pricing documentation, including CbC reporting. The report contains an implementation package in order to facilitate the consistent implementation of the CbC reporting standard, consisting of:

- model legislation which could be used by countries as the basis of domestic legislation to require MNE groups to file CbC Reports and
- three models of competent authority agreements may be used to facilitate the implementation of the exchange of those reports among tax administrations.

Interpretation guidance for the implementation of CbC reporting

A number of questions have arisen after the publication of Action 13 Report concerning the scope, content, filing and sharing mechanism of the CbC Reports. Guidance on interpretative questions can be found in the document: "Guidance on the Implementation of CbC Reporting: BEPS Action 13". This guidance is regularly updated by the OECD¹⁰⁴ and published on its website: www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf.

Report on the appropriate use of the CbC Report

The guidance on the appropriate use of the information contained in CbC Reports includes guidance on the meaning of "appropriate use", the consequences of non-compliance with the appropriate use condition and approaches that may be used by tax administrations to ensure the appropriate use of CbC Report information.

www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf

¹⁰⁴ See CbC Report portal: <http://www.oecd.org/tax/beps/country-by-country-reporting.htm#guidance>.

Handbook on effective implementation of CbC Reporting

The Country-by-Country Reporting: Handbook on Effective Implementation is a practical guide to the key elements that countries need to keep in mind when introducing CbC reporting, including technical issues related to the filing, exchange and use of CbC Reports, as well as practical matters that tax administrations will need to deal with.

www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf

XML Schema and User guide

To accommodate the electronic exchange of the CbC Reports a standardised electronic format for the exchange of CbC Reports between jurisdictions (the CbC XML Schema), together with a User Guide, have been developed and made available on the OECD website.

The CbC XML Schema User Guide further explains the information required to be included in each data element to be reported. It also contains guidance on how to make corrections to data elements within a file.

Both files are available here:

<http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations-and-taxpayers.htm>

Terms of Reference and methodology for the Peer Review process

The peer review evaluates the Inclusive Framework member's implementation of the standard against an agreed set of criteria. These criteria are set out in terms of reference, which include each of the elements that a jurisdiction needs to demonstrate it has fulfilled in order to show proper implementation of the standard.

The manner in which the peer review is undertaken is set out in an agreed methodology. The methodology sets out the procedural mechanisms by which jurisdictions will complete the peer review, including the process for collecting the relevant data, the preparation and approval of reports, the outputs of the review and the follow up process.

The terms of reference and methodology are available here:

<http://www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf>

There are also some tools available to assist developing countries to assess whether their legislation and administrative practice are compliant with the G20/OECD BEPS confidentiality standards. These include the terms of reference on exchange of information which

set out the minimum standard on confidentiality,¹⁰⁵ and the Guide “Keeping It Safe”¹⁰⁶ on the protection of confidential information exchanged for tax purposes, which provides guidance on the rules and practices that must be in place to ensure the confidentiality of tax information exchanged under exchange of information instruments. Although these documents have been prepared for the purpose of ensuring confidentiality of information received from EOI treaty partners, the recommendations contained therein are best practices that will similarly apply for any type of information received by whichever means.

3.5 Other information gathering mechanisms (Transfer pricing questionnaires and *ad hoc* information requests)

Another information gathering mechanism, less commonly or systematically used by countries, is targeted transfer pricing questionnaires.

In most cases, the completion of such questionnaires by local taxpayers is not mandatory. They can be issued in the framework of:

1. the risk assessment of a specific taxpayer, in which case the transfer pricing questionnaire is requested after an initial review of the taxpayer’s tax return by the tax administration; or,
2. a general compliance program or initiative which targets certain groups of taxpayers (e.g. taxpayers operating in certain industries) and focused on particular areas of risk (e.g. financing or business restructurings) as a means for selecting taxpayers for audits and/or to facilitate actual field audits.

Requests for additional information may also be required to verify a taxpayer’s transfer prices and accompanying analysis, for example, during an audit. As such requests will necessarily need to be tailored to the particular circumstances of the case, and the type and range of additional information required; it is beyond the scope of this toolkit to discuss their content. Guidance on understanding the controlled transactions, together with the relevant contributions of each associated enterprise (e.g. their functions, assets and risks) can be found in the OECD Transfer Pricing Guidelines and the UN Transfer Pricing Manual. In addition, the Toolkit for Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses contains resources such as a sample Functional Analysis Questionnaire (at Appendix 1).

¹⁰⁵ See the Terms of Reference for Exchange of Information at: OECD (2016), Exchange of Information on Request: Handbook for Peer Reviews 2016 – 2020, Third Edition. OECD, Paris. <http://www.oecd.org/tax/transparency/global-forum-handbook-2016.pdf> and OECD (2018), Standard for Automatic Exchange of Financial Information in Tax Matters - Implementation Handbook – Second Edition, OECD, Paris. <http://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-offinancial-account-information-in-tax-matters.htm>

¹⁰⁶ OECD (2012), Keeping It Safe: The OECD Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes, OECD, Paris. <http://www.oecd.org/ctp/exchange-of-tax-information/keeping-it-safe.htm> - Available in English, French and Spanish.

3.5.1 Functions of transfer pricing questionnaires and *ad hoc* information requests

Transfer pricing questionnaires can fulfil different functions:

- They could be used for conducting risk assessments and analyses at an industry or sectoral level. In such cases the questionnaire will normally target certain groups of taxpayers and will be focused on particular areas of risk as a means for selecting taxpayers for audits and/or to facilitate actual field audits,
- They can be required, either at the beginning or during the audit, to provide additional information to tax auditors;
- They can be required to determine whether the taxpayer has maintained adequate documentation.

Ad hoc information requests are normally used to supplement existing information already available to the tax administration during the course of an audit. Such information requests are often requested to verify the taxpayer's transfer pricing analysis, including the functional analysis that underpins the determination of arm's length transfer prices. Information and documentation requests made in the context of an audit are typically issued under formal information powers, specifying a deadline for submission, and backed by penalties for non-compliance.

3.5.2 Format and content

The questions to be formulated in transfer pricing questionnaires or *ad hoc* information requests will depend on their purpose. They can include requests for financial data, other statistics (e.g., headcount by division), functional information, organizational set up, and explanations of financial/economic performance. Questions can also be aimed at seeking further explanation on the transfer pricing analysis, such as choice of method or assumptions built into an economic analysis.

3.5.3 Regulatory framework

Transfer pricing questionnaires and *ad hoc* information requests are usually subject to existing record keeping and information gathering rules.

3.5.4 Timing issues

Transfer pricing questionnaires can potentially be requested at any time, depending on their purpose, as discussed above. For instance, audit questionnaires may be required from a category of taxpayers as part of a risk assessment on a sectoral basis. Alternatively, they may be requested of an individual taxpayer as part of, or after, an initial review of the taxpayer's tax return.

***Ad hoc* information requests are typically requested during an audit.**

3.5.5 Enforcement

Where the completion of a questionnaire is mandatory, penalties may apply for failure to submit the questionnaire. In addition, a failure to comply with valid requests for information

during an audit may impact on penalties which are applied to transfer pricing adjustments. For example, such failure may be regarded as 'non-cooperation'.

In some other cases, a questionnaire will be non-statutory, and thus not subject to penalties. However, failure to return a questionnaire used for risk assessment purposes may impact on the level of perceived risk the taxpayer poses to the revenue.

The penalty regime which may apply to *ad hoc* information requests will depend on how such requests are incorporated into the domestic law and supporting regulations. Most commonly, a taxpayer's response is normally required within a specified time period, and penalties can apply if the taxpayer fails to meet this requirement. Responses to any *ad hoc* information requests during an audit will often be relevant to penalties which may be applied to any audit adjustment which ultimately ensues. For instance, a taxpayer that responds fully and within reasonable time frames to such requests during an audit may be eligible for a lower rate of penalties than a taxpayer that is less co-operative.

3.5.6 Confidentiality

Information provided to tax authorities in transfer pricing questionnaires or *ad hoc* information requests should be subject to the same level of confidentiality as that applies to tax returns and to other taxpayer information.

PART IV. CONCLUSIONS

Transfer pricing documentation is an integral component of the administration of any transfer pricing regime. In particular, the adoption of transfer pricing studies (described in Section 3.3) can be expected to significantly enhance taxpayer compliance and audit effectiveness.

In addition, there are strong arguments for the adoption by developing countries of transfer pricing returns or schedules (described in Section 3.2) and CbC Reports. It is recognized, however, that the resource commitment to implement these measures may not reflect the immediate needs and policy priorities of some low-capacity jurisdictions.

The Toolkit has illustrated that, with the exception of CbC reporting, there are marked variations in country approaches to many aspects of transfer pricing documentation. These include the form and content of legislation and regulations; the amount and type of guidance; simplification for smaller taxpayers and low risk transactions; the content and format of transfer pricing studies and return schedules; and penalties. Countries legitimately adopt approaches to these issues that best suit their circumstances and policy preferences.

There are, however, benefits to both tax administrations and taxpayers if jurisdictions are consistent in their approaches. Adopting similar requirements for transfer pricing studies and transfer pricing returns, allowing taxpayers to file in the same format, or at least collect the same information in a number of jurisdictions, can be expected to reduce taxpayer compliance costs and improve compliance. The master file and local file developed under Action 13 of the BEPS initiative provides a template to facilitate this. In particular, the marginal cost of filing a master file in developing countries should be low, given that, for many MNEs, such a file would already exist within the MNE group.

With respect to CbC reporting, international consistency is vital. Indeed, 'consistency' is an element of the BEPS minimum standard. Members of the Inclusive Framework commit to adopting the standard and to agree to be peer reviewed. There is still room for some variation, however, with regards to the wording and form of implementing legislation and on administrative issues such as penalties for non-filing.

CbC reporting can undoubtedly provide very valuable information to developing countries. Section 3.4.1.1 above notes, however, that the mechanisms and conditions for access to CbC Reports (in relation to subsidiaries and permanent establishments of foreign MNEs) may be challenging for many developing countries. This might be addressed by prioritizing the requisite international exchange mechanisms, with the support of regional and international organizations. Developing countries and international and regional organizations should monitor the effectiveness of CbC reporting with a view to inputting into any future review of the minimum standard by the Inclusive Framework.

ANNEX 1

Sample primary legislation to implement transfer pricing documentation requirements

A sample set of provisions establishing a specific transfer pricing documentation regime is set out below. These sample provisions are general in nature and in the form of simplified legal provisions. Importantly, they do not take into account the individual circumstances of any particular tax system. For example, many systems integrate their transfer pricing documentation and adjustment penalties with their general administrative and criminal penalties. The ultimate legal framework for a transfer pricing documentation regime in any given country would need to take into account the existing framework, together with the specific legal tradition and system, of the country concerned. Further, the more detailed requirements (e.g. format of required documentation) need not be reflected in the overarching law but could form part of any underlying regulations. The overarching legal framework may merely operate to support the obligation to keep transfer pricing documentation. Penalty figures provided in this sample legislation are for illustrative purposes.

1. Required documentation

- (1) If the total value of controlled transactions to which a person is a party exceeds [minimum threshold], that person must –
 - (a) prepare, maintain, and, upon request by the Commissioner-General, make available contemporaneous documentation comprising —
 - (i) a master file as set out in paragraph 1 of Schedule 1;
 - (ii) a local file as set out in paragraph 2 of Schedule 1; and
 - (b) submit, together with the person's annual tax return, a Transfer Pricing Annual Return Schedule in the format prescribed by the Commissioner-General.
- (2) A person must, in addition to the obligation under subsection (1), prepare and submit a CbC Report in accordance with [Article 2 of the model legislation related to Country-by-Country Reporting – see BEPS Action 13: 2015 Final Report].
- (3) Contemporaneous documentation means documentation and information prepared on or before the last day for the filing of the tax return for a tax year as required by the tax law that is relied upon by the person in determining the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer is a party in respect of that year.
- (4) The documentation obligations of a person under this section are in addition to any record-keeping obligations applicable to the person under the tax law.

2. Provision of documentation and CbC report

- (1) A person must provide the documentation prepared under section 1(1)(a) to the Commissioner-General within 30 days of a written request issued by the

Commissioner-General.

- (2) A person must submit a CbC Report prepared under section 1(2) to the Commissioner-General on or before the date specified in [Article 5 of the model legislation related to Country-by-Country Reporting – see BEPS Action 13: 2015 Final Report].

3. Burden of proof

- (1) Subject to subsection (2), the onus is on the taxpayer to prove, on the balance of probabilities, that the determination of the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer is a party is consistent with the arm's length principle.
- (2) Where the taxpayer has fully complied with a request received from the Commissioner-General under section 2(1) and otherwise complies with all other related requests in the course of any tax audit, the onus is on the Commissioner-General to prove, on the balance of probabilities, that the determination of the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer is a party is not consistent with the arm's length principle.

4. Power of Commissioner-General to request additional information

The obligation of a person to provide documentation under section 2 is established without prejudice to the power of the Commissioner-General to request additional information that is considered necessary in the course of a tax audit.

5. Penalty for failing to maintain documentation

- (1) A person who fails to prepare and maintain documentation as required under section 1(1)(a) is liable for a penalty not exceeding [2%] of the total value of controlled transactions to which a person is a party and in respect of which the required documentation has not been prepared and maintained.
- (2) As an alternative to the imposition of a penalty under section 5(1), a person who fails to prepare and maintain documentation as required under section 1(1)(a) commits an offence and is liable on conviction to a fine not exceeding [\$.].

6. Failure to submit documentation or CbC report

- (1) A person who fails –
 - (a) to provide documentation to the Commissioner-General when requested under section 2(1); or
 - (b) to submit a CbC Report or other document as required under a tax law,is liable to pay —

- (c) a penalty not exceeding —
 - (i) [\$•] in relation to a failure referred to in subsection (1)(a);
 - (ii) [\$•] in relation to a failure referred to in subsection (1)(b); and
 - (d) an additional penalty for each day that the failure continues of —
 - (i) [\$•] in relation to a failure referred to in subsection (1)(a);
 - (ii) [\$•] in relation to a failure referred to in subsection (1)(b).
- (2) As an alternative to the imposition of a penalty under section 6(1), a person who fails to provide documentation or submit a CbC Report or other document referred to in subsection (1) commits an offence and is liable on conviction to a fine not exceeding [\$•].

7. Tax adjustment penalty

- (1) This section applies where —
- (a) a person makes a statement to a taxation officer that is incorrect or inappropriate in a material particular with respect to the determination of the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer is a party, or fails to disclose in such statement made to a taxation officer any matter or thing without which the statement is incorrect or inappropriate in a material particular; and
 - (b) either:
 - (i) the tax liability of the person, or any other person, computed on the basis of the statement is less than it would have been had the statement not been incorrect or inappropriate (the difference being referred to in this section as the “tax liability adjustment”); or
 - (ii) a tax loss of the person, or any other person, computed on the basis of the statement is more than it would have been had the statement not been incorrect or inappropriate (the difference being referred to in this section as the “tax loss adjustment”).
- (2) Subject to subsections (3), (4) and (5), a person to whom this section applies is liable for a tax adjustment penalty equal to —
- (a) when the statement or omission was made knowingly or recklessly, the greater of —

- (i) [4%] of the total value of controlled transactions to which the person is a party and in respect of which the statement or omission relates; and
 - (ii) either:
 - (A) [75%] of the tax liability adjustment; or
 - (B) [30%] of the tax loss adjustment.
 - (b) in any other case, the greater of —
 - (i) [3%] of the total value of controlled transactions to which the person is a party and in respect of which the statement or omission relates; and
 - (ii) either:
 - (A) [20%] of the tax liability adjustment.
 - (B) [8%] of the tax loss adjustment.
- (3) The amount of a tax adjustment penalty imposed under subsection (2) on a person is increased by —
- (a) [200%] when —
 - (i) the person is a member of a MNE Group; and
 - (ii) the consolidated revenue of the MNE Group in the preceding financial year is at least [EUR 750 million or a near equivalent amount in domestic currency of adopting country];
 - (b) irrespective of whether paragraph (a) applies —
 - (i) [10%] when this is the second application of this section to the person; or
 - (ii) [25%] when this is the third or a subsequent application of this section to the person.
- (4) The amount of a tax adjustment penalty imposed under subsection (2) on a person is reduced by —
- (a) [20%] when the person voluntarily discloses to the Commissioner-General the statement or omission to which this section applies before the earlier of —

- (i) discovery by the Commissioner-General of the tax liability or loss adjustment; or
 - (ii) the commencement of a tax audit in respect of the person to whom the statement relates;
 - (b) irrespective of whether paragraph (a) applies, [30%] when the person has —
 - (i) prepared and maintained documentation as required under section 1(1)(a);
 - (ii) fully complied with any request received from the Commissioner-General under section 2(1); and
 - (iii) otherwise complied with all other related requests in the course of any tax audit.
- (5) No tax adjustment penalty is payable under subsection (2) when the tax liability or loss adjustment arose despite the taxpayer taking a reasonably arguable position with respect to the determination of the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer was a party being consistent with the arm's length principle when lodging a self-assessment return.
- (6) For the purposes of this section:

"statement made to a taxation officer" includes a statement made, in writing or orally, in any of the following circumstances —

- (a) in a self-assessment return or other tax return, Transfer Pricing Annual Return Schedule, CbC Report, or other document lodged under a tax law;
- (b) in information provided or made available under a tax law;
- (c) in a document provided to a taxation officer otherwise than pursuant to a tax law;
- (d) in an answer to a question asked of a person by a taxation officer;
- (e) in a statement to another person with the knowledge or reasonable expectation that the statement would be passed on to a taxation officer.

a **"reasonably arguable position"** arises when it would be concluded in the circumstances, having regard to the available information and relevant authorities such as the tax law, a decision of a court or other authoritative guidance, that the position taken with respect to the determination of the amount of revenue, gains, deductions, profits or losses arising in respect of controlled transactions to which the taxpayer was a party is about as likely to be consistent with the arm's length

principle as inconsistent, or is more likely to be consistent than inconsistent with that principle.

8. Incorrect disclosure penalty

- (1) This section applies where —
 - (a) a person makes a statement to a taxation officer that is incorrect or inappropriate in a material particular, or fails to disclose in a statement made to a taxation officer any matter or thing without which the statement is incorrect or inappropriate in a material particular; and
 - (b) there is no tax liability or loss adjustment in respect of the statement or omission.
- (2) Subject to subsections (3), (4) and (5), a person to whom this section applies is liable for an incorrect disclosure penalty equal to —
 - (a) when the statement or omission was made knowingly or recklessly, the greater of —
 - (i) in the case of a CbC Report:
 - (A) [1%] of the consolidated revenue of the MNE Group in the preceding financial year; and
 - (B) [\$•];
 - (ii) otherwise:
 - (A) [2%] of the total value of controlled transactions to which a person is a party and in respect of which the statement or omission relates; and
 - (B) [\$•];
 - (b) in any other case, the greater of —
 - (i) in the case of a CbC Report:
 - (A) [0.5%] of the consolidated revenue of the MNE Group in the preceding financial year; and
 - (B) [\$•];
 - (ii) otherwise:
 - (A) [1%] of the total value of controlled transactions to which a person is a party and in respect of which the statement or omission relates; and

(B) [\$•];

- (3) The amount of an incorrect disclosure penalty imposed under subsection (2) on a person is increased by —
- (a) [200%] when —
 - (i) the person is a member of a MNE Group; and
 - (ii) the consolidated revenue of the MNE Group in the preceding financial year is at least [EUR 750 million or a near equivalent amount in domestic currency of the adopting country];
 - (b) irrespective of whether paragraph (a) applies —
 - (i) [10%] when this is the second application of this section to the person; or
 - (ii) [25%] when this is the third or a subsequent application of this section to the person.
- (4) The amount of an incorrect disclosure penalty imposed under subsection (2) on a person is reduced by —
- (a) [20%] when the person voluntarily discloses to the Commissioner-General the statement or omission to which this section applies before the earlier of —
 - (i) discovery by the Commissioner-General of the incorrect or inappropriate statement; or
 - (ii) the commencement of a tax audit in respect of the person to whom the statement relates;
 - (b) irrespective of whether paragraph (a) applies, [20%] when the person has —
 - (i) prepared and maintained documentation as required under section 1(1)(a);
 - (ii) fully complied with any request received from the Commissioner-General under section 2(1); and
 - (iii) otherwise complied with all other related requests in the course of any tax audit.
- (5) No incorrect disclosure penalty is payable under subsection (2) when the incorrect or inappropriate statement arose despite the taxpayer taking reasonable care when making the statement.

- (6) Section 7(6) applies in determining whether a person has made a statement to a taxation officer.

ANNEX 2

Illustrative examples – Countries' transfer pricing documentation rules

1. Canada's contemporaneous documentation requirements

Canada's contemporaneous documentation requirements are outlined in sub-section 247(4) of the ITA. It deems a taxpayer not to have made reasonable efforts to determine and use arm's length transfer prices or allocations unless the taxpayer has prepared or obtained records or documents which provide a description that is complete and accurate in all material respects of the items listed in subparagraphs 247(4)(a)(i) through (vi). Taxpayers are not obliged to file contemporaneous documentation with their tax return.

Extract of Section 247(4) of the ITA

Contemporaneous documentation

(4) ... a taxpayer or a partnership is deemed not to have made reasonable efforts to determine and use arm's length transfer prices or arm's length allocations in respect of a transaction or not to have participated in a transaction that is a qualifying cost contribution arrangement, unless the taxpayer or the partnership, as the case may be,

- a) makes or obtains, on or before the taxpayer's or partnership's documentation-due date for the taxation year or fiscal period, as the case may be, in which the transaction is entered into, 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;
- b) for each subsequent taxation year or fiscal period, if any, in which the transaction continues, makes or obtains, on or before the taxpayer's or partnership's documentation-due date for that year or period, as the case may be, records or documents that completely and accurately describe each material change in the year or period to the matters referred to in any of subparagraphs 247(4)(a)(i) to 247(4)(a)(vi) in respect of the transaction; and provides the records or documents described in paragraphs 247(4)(a) and 247(4)(b) to the Minister within 3 months after service, made personally or by registered or certified mail, of a written request therefor.

2. Georgia: transfer pricing studies legislation

General provisions on transfer pricing studies are outlined in Articles 127(6) and 129(3)) of the tax law and more detailed guidance by Decree of the Finance Minister (Instructions on International Transfer Pricing). The provisions in the law are more general. It contains a provision allowing for future delegated legislation.

Primary legislation

Art 127 (6) on the application of Transfer Pricing explicitly provides that "Criteria that shall be satisfied in order to deem value of operation subject to examination as market value for the purpose of this chapter shall be determined by the Finance Minister;"

Art. 129(3) The methods of transfer pricing and their application, the assessment of comparability of independent operation, the rule of making correction, the information that shall be submitted to the tax authorities by the parties of operation, listing of documentation,... shall be determined under order of Minister of Finance;

Secondary legislation

(Decree #423 of the Finance Minister, December 18, 2013)

Chapter IV

Transfer Pricing Documentation

Article 17 Transfer Pricing Documentation

1. For the purpose of Article 129(1) of the GTC, a request by the Revenue Service to provide an explanation regarding the ground based on which it considers its profit consistent with the market principle shall be considered satisfied where:
 - a. The Georgian enterprise has prepared transfer pricing documentation in accordance with this article and
 - b. The documentation is provided to the Revenue Service within 30 calendar days of receipt of the request in writing.
2. Transfer pricing documentation should contain:
 - a. an overview of the Georgian enterprises' business operations, including an analysis of the economic factors that affect the pricing of its products and services;
 - b. a description of the Georgian enterprises' corporate organizational structure covering all parties potentially relevant to the controlled transactions being analyzed;
 - c. a description of the transaction being analyzed, including an analysis of the comparability factors specified in Article 5 of these Instructions and details of the group's transfer pricing policy (where relevant);

- d. a description of the transfer pricing method selected and an explanation of why this method was selected (in accordance with Article 8 of these Instructions);
 - e. a comparability analysis, including: a description of the comparable uncontrolled transactions that were utilized; explanation of the basis for the rejection of any potential internal comparable uncontrolled transaction (where applicable); details of the external comparables search process (where applicable); the assessment of comparability of the controlled transactions and the comparable uncontrolled transactions (with reference to the comparability factors specified in Article 5 of these Instructions); and, a description of any comparability adjustments that were made;
 - f. an explanation of any economic analysis and projections relied on in developing the transfer pricing methodology;
 - g. details of any advance pricing agreements or advance decisions relevant to the controlled transactions;
 - h. a conclusion as to compliance with the market principle, and where relevant, any adjustments made by the Georgian enterprise to its transfer prices/ taxable income for the relevant years in order to ensure compliance with the market principle; and
 - i. any other information that may have a material impact on the determination of the Georgian enterprises' compliance with the market principle with respect to the controlled transactions.
3. Georgian enterprises with a turnover of less than 8 000 000 GEL during a tax year, will be considered to satisfy the documentation requirements even where the external comparable transactions identified in accordance with the analysis referred to in paragraph 2 subparagraph "e" of this Article are only updated every third year, provided there have been no material changes to the Georgian enterprises business, the business operations of the comparables or to the relevant economic circumstances.
 4. Transfer pricing documentation may be submitted in Georgian or English, however, at the request of the Revenue Service translation of English documents into Georgian is required at the expense of the Georgian enterprise.
 5. Transfer pricing documentation may be submitted in either electronic or paper format

ANNEX 3

Illustrative examples - Transfer pricing annual returns

Country	Form name	Website
Canada	T106 Summary Form Information Return of Non-arm's Length Transactions with Non- residents (English)	https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t106/t106-10-17e.pdf
	Part II - T106-1 Slip Package Reporting person/partnership and information sheet (English)	https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t106/pdf/t106-1-fill-17e.pdf
	T106 Summary Form Information Return of Non-arm's Length Transactions with Non- residents (French)	https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t106/t106-10-17f.pdf
	Part II - T106-1 Slip Package Reporting person/partnership and information sheet (French)	https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t106/pdf/t106-1-17f.pdf
Colombia ¹⁰⁷	Information transfer pricing return (Form 120)	https://www.dian.gov.co/atencionciudadano/formulariosinstructivos/Formularios/2020/Formulario_120_2020.pdf
	Part II - Information transfer pricing return (Form 120) Format 1125	https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%20000065%20de%2018-06-2020.pdf

¹⁰⁷ Only available in Spanish

India Form No. 3CEB

Report from an accountant to be furnished under Section 92E relating to international transaction(s) and specified domestic transaction(s)

India requires certification from an independent third-party accountant on the veracity, genuineness and appropriateness of the transfer price that has been set for transactions between related parties.

Section 92E of the Income-tax Act, 1961 requires that every person who has entered into an international transaction with an associated enterprise must obtain a report from an accountant and furnish such report to the tax authorities before the due date.¹⁰⁸ The report needs to be duly signed and verified by the accountant. The accountant must be a chartered accountant as defined in the Chartered Accountants Act or an auditor under the Companies Act.

Form 3CEB, published by the Indian Tax Department, requires the complete details of the international transactions that the taxpayer has entered into with its associated enterprise. The form provides a detailed transfer pricing report that partially mirrors the requirements of a local file¹⁰⁹ and covers all the international transactions. It requires disclosure of the nature of the international transaction, the related party's name and location, amount involved, and the transfer pricing method adopted for determining and/or justifying the transfer price. Additional details can be submitted by way of annexes.

Certification by a qualified accountant provides an assurance to the Tax Administration that all international transactions have been examined by a qualified person.

Form 3CEB is also used by the Tax Department as a risk-assessment tool. All information provided in the Form is collected digitally and is used for risk-based selection of transfer pricing audit cases. The Tax Department can readily combine this data with the information that is now being received from CbC Reports for further analysis. The Department has only recently started this process on a pilot basis and expects that this will translate into even better risk-based case selections for detailed transfer pricing audits.

By completing the Form, taxpayers can discharge the initial burden of proof of having duly complied with the rules and regulations governing transfer pricing. If the Tax Department subsequently challenges the declared transfer price through an audit, it must carry out the necessary analysis to arrive at what it considers to be the arm's length price.

The Form also provides the legal grounds for imposition of a penalty for non-reporting, mis-reporting or improper use of transfer pricing methods.

While the Indian regulations require all taxpayers having international transactions with related entities to file Form 3CEB, it would equally be possible to explore the option of setting a threshold on the value of the international transactions for certification requirements to apply.

¹⁰⁸ India has domestic transfer pricing provisions as well. The Form captures domestic related party transactions as well.

¹⁰⁹ Although the underlying documentation and the transfer pricing study is not required to be submitted with Form 3CEB, the same are required to be maintained by the taxpayer in accordance with the provisions of Section 92D of the Income Tax Act and must be provided if the taxpayer's case is taken up for transfer pricing audit. The Transfer Pricing Study Report – the second limb that mirrors the local file – is to be maintained only by those taxpayers who have entered into international transactions exceeding INR 10 million (approximately EUR 120 700).

Such thresholds, however, could run the risk of under-reporting transactions to escape greater scrutiny by an expert or the Tax Department. Countries should assess these risks against the backdrop of costs involved while developing regulations in this regard.

Form 3CEB is available at: <https://www.incometaxindia.gov.in/forms/income-tax%20rules/10312000000009614.pdf>

ANNEX 4

Master file content (from Annex I to Chapter V of the OECD Transfer Pricing Guidelines)

The following information should be included in the master file:

Organizational structure

- Chart illustrating the MNE's legal and ownership structure and geographical location of operating entities.

Description of MNE business(es)

- **General written description of the MNEs business including:**
 - Important drivers of business profit;
 - 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;
 - A list and brief description of important service arrangements between members of the MNE group, other than research and development (R&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;
 - A description of the main geographic markets for the group's products and services that are referred to in the second bullet point above;
 - 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 concerned, including the entities, countries and compensation involved.

MNE's intercompany financial activities

- A general description of how the group is financed, including important financing arrangements with unrelated lenders.
- 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 organized and the place of effective management of such entities.
- A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

MNE's financial and tax positions

- 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.
- A list and brief description of the MNE group's existing unilateral advance pricing agreements.

Local file content (from Annex II to Chapter V of the OECD Transfer Pricing Guidelines)

The following information should be included in the local file:

Local entity:

- A description of the management structure of the local entity, a local organization chart, 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 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.
- Identification of the key competitors.

Controlled transactions

For each material category of controlled transactions in which the entity is involved, provide the following information:

- 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) and the context in which such transactions take place.
- 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.
- An identification of associated enterprises involved in each category of controlled transactions and the relationship amongst them.
- Copies of all material intercompany agreements concluded by the local entity.
- 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.
- An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.
- An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.
- A summary of the important assumptions made in applying the transfer pricing methodology.
- If relevant, an explanation of the reasons for performing a multi-year analysis.
- 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.

- 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.
- 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.
- A summary of financial information used in applying the transfer pricing methodology.
- 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 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.

ANNEX 5

Belgium: Transfer pricing documentation package

Belgium's transfer pricing documentation package contains a Notification Obligation concerning the CbC Report, the CbC Report itself (where required), the Master File and the local version of the Local File (local form). Documentation reporting requirements are laid out in the Belgian Income Tax Code (BITC) (Article 321/1 to 321/7 BITC) as from 2016.

The Notification Obligation concerning CbC reporting is mandatory for all Belgian constituent entities of a multinational group which have to submit a country-by-country report. These Belgian constituent entities have to inform the Belgian tax administration by the last day of the reporting fiscal year of the multinational group if they are the ultimate parent entity, the surrogate parent entity or a Belgian constituent entity as described in Article 321/2, § 2 BITC. Where they are not the reporting entity, the identity of the MNE group's reporting entity must be disclosed.

The obligation to file a local form and the master file is mandatory for Belgian entities of a multinational group that exceed any one or more of the following criteria:

- operational and financial revenue of at least EUR 50 million (excluding non-recurring revenue);
- balance sheet total of EUR 1 billion; or
- annual average number of employees of 100 full-time equivalents;

The local form contains three parts:

- (1) a form compiling general company information with regard to the local entity (Part A of the form);
- (2) a detailed information form per material business unit within the local entity concerning the transfer pricing analysis of the transactions (goods, services, financial and other) between the local entity and the foreign entities of the MNE, in particular the relevant financial information of these transactions, the comparability analysis and the selection and application of the most appropriate transfer pricing method (Part B of the form). This part contains mainly quantitative information; and
- (3) an optional section (Part C of the form) that allows the entities concerned to upload documents (pdf format) that would allow a better interpretation of the document. Such information can consist of documents explaining the transfer pricing methodology, framework agreements and contractual arrangements, transfer pricing studies, management or organization structures.

The detailed information (Part B) should only be filled out for the business units within the local entity which have realized intra-group cross-border transactions of more than EUR 1 million.

The Master File mirrors the template in Annex I to Chapter V of the OECD Transfer Pricing Guidelines. The Master File may be submitted with the local form as annex(es) (in text-searchable pdf format).

Filing requirements:

The documentation package must be updated and filed on a yearly basis. The filing of the local form should be done no later than the filing of the tax return. For enterprises with financial years

ending on 31 December, this is usually around mid-October of the following year. The Master File, however, should be filed within 12 months after the last day of the reporting period of the group.

The filing of the Notification Obligation concerning CbCR, Master and Local file must be done electronically using the XML format through a mandatory on-line filing tool (MyMinfin).

The Notification Obligation concerning CbCR, Master file and Local file forms are available in English, French and Dutch and can be found at:

CbCR Notification – <https://financien.belgium.be/sites/default/files/downloads/126-notification-obligation-20170517.pdf>

Local File - <https://financien.belgium.be/sites/default/files/downloads/126-local-file-20170517.pdf>

Master File - <https://financien.belgium.be/sites/default/files/downloads/126-master-file-20170517.pdf>

There is also a website available in Dutch and French with an overview of all the relevant information about the Belgian transfer pricing documentation package:

<https://financien.belgium.be/nl/ondernemingen/internationaal/verrekenprijzen-beps-13#q4>

ANNEX 6

Master file and local file - Filing obligations in selected countries

Country	Master file/Local file filing deadline	Local language requirement
Argentina	Master file: To be submitted within 12 months of end of fiscal year. Local file: To be submitted within 6 months of end of fiscal year (3 months before Corporate Tax Returns filing obligation)	Spanish
Australia	Master file: To be submitted within 12 months of end of fiscal year. Local file: compulsory filing requirement by significant global entities within 12 months of end of fiscal year ¹¹⁰ .	English
Austria	Master/Local file: To be submitted within 30 days upon request (can only be requested after filing of the tax return).	German or English
Belgium	Master file: To be submitted within 12 months of end of fiscal year of the UPE of the MNE group; Local file: to be submitted with income tax return.	Dutch, English, French or German
China	Master file: To be prepared within 12 months of end of fiscal year of the UPE of the MNE group; Local file: To be prepared by 30 June following the tax year in question. Filing within 30 days upon request.	Chinese
Colombia	Master/Local file: To be submitted within the following fiscal year, three or four months after the filing date of the Corporate Income Tax Return.	Master file: Spanish or English Local file: Spanish
Denmark	Master/Local file: To be submitted within 60 days upon request.	Danish, Swedish, Norwegian or English
Finland	Master/Local file: To be submitted within 60 days upon request (cannot be requested earlier than 6 months from the end of the accounting period).	Finnish, Swedish or English

¹¹⁰ Only a "Short Form" is required where international related party dealings is below AUD 2 million or other exclusions apply.

Japan	Master file: To be submitted within the year following the fiscal year-end of the UPE of the MNE group. Local file: To be prepared by the time of submission of the tax return and to be submitted within 45 days upon request	Master file: Japanese or English Local file: Not specified ¹¹¹
Latvia	Master/Local file: Depending on the amount of the transactions and net revenue of the entity, two approaches may apply: To be submitted within 12 months after the end of the relevant reporting year ¹¹² ; or To be prepared within 12 months after the end of the relevant reporting year and to be submitted within a month after receipt of the request ¹¹³ .	Master file: Latvian or English Local file: Latvian
Lithuania	Master/Local file: To be prepared by the corporate tax return filing deadline. To be submitted within 30 days upon request.	Lithuanian or English
Mexico	Master/Local file: To be submitted within 12 months of end of fiscal year.	Master file: Spanish or English Local file: Spanish
Nigeria	Master/Local file: To be submitted within 21 days upon request.	Master file: English Local file: English
Peru	Master File: To be submitted in October (exact deadlines depend on the tax ID number of the company). Local File: To be submitted in June each year (depending on the tax ID number of each company).	Spanish

¹¹¹ Japanese translation may be required for master file provided in English and local file provided in foreign language.

¹¹² Master file to be submitted if at least one of the following conditions is present: a) amount of the controlled transactions exceeds EUR 15 000 000 in the relevant reporting year, b) the net turnover of the taxpayer exceeds EUR 50 000 000 in the relevant reporting year and the amount of the controlled transactions exceeds EUR 5 000 000 in the relevant reporting year.

Local file to be submitted if the amount of the controlled transactions exceeds EUR 5 000 000 in the relevant reporting year.

¹¹³ Master file to be submitted if the net turnover of the taxpayer does not exceed EUR 50 000 000 in the relevant reporting year and the amount of the controlled transactions does not exceed EUR 15 000 000 but exceeds EUR 5 000 000 in the relevant reporting year.

Local file to be submitted if the amount of the controlled transactions exceeds EUR 250 000 but does not exceed EUR 5 000 000 in the relevant reporting year.

Poland	Master/Local file: To be prepared by the corporate tax return filing deadline ¹¹⁴ . To be submitted within 7 days upon request.	Polish
Russia	Master/Local file: To be submitted within 3 months upon request (cannot be requested earlier than 15 months after the end of the income year).	Russian
Singapore	Master/Local file: To be prepared not later than the filing due date of the tax return. To be submitted within 30 days upon request.	English
Slovak Republic	Master/Local file: To be submitted within 15 days upon request	Slovak (English, German or French may also be accepted on request)
Spain	Master/Local file: To be prepared by the corporate tax return filing deadline. To be submitted upon request.	Spanish or English
Sweden	Master file: To be prepared at the time of the submission of the annual income tax return of the group's parent entity. Local file: To be prepared at the time of the submission of the annual income tax return.	Swedish, Danish, Norwegian or English
The Netherlands	Master/Local file: Must be included in the taxpayer's records within the term set for submission of the corporate income tax return.	Dutch or English
Turkey	Master File: To be prepared within 12 months of end of fiscal year. To be submitted upon request. Local File: To be prepared by the filing deadline of the annual corporate income tax return. To be submitted upon request.	Turkish
Vietnam	Master/Local file: To be prepared by the filing date of the corporate income tax return (90 days after fiscal year end). To be submitted within 15 days upon request.	Vietnamese

¹¹⁴ Taxpayers are obligated to make a statement on the preparation of their transfer pricing documentation to the tax office.

ANNEX 7

Example - Exemptions regimes (transfer pricing studies)

Singapore exemption regime for transfer pricing studies (documentation)

Singapore does not require taxpayers to prepare transfer pricing documentation under the following situations [Nonetheless, the usual business records for the transactions should still be kept]:

- a) Where the taxpayer transacts with a related party in Singapore and such local transactions (excluding related party loans) are subject to the same Singapore tax rates or exempt from tax for both parties;
- b) Where a related domestic loan is provided between the taxpayer and a related party in Singapore and the lender is not in the business of borrowing and lending money;
- c) Where the taxpayer applies a 5% cost mark-up for routine services prescribed by the Inland Revenue Authority of Singapore (IRAS) and such services are only provided to related parties within the group;
- d) Where the taxpayer applies the indicative margin prescribed by the IRAS for related party loans not exceeding S\$ 15 million;
- e) Where the related party transactions are covered by an agreement under an APA. In such a situation, the taxpayer will keep relevant documents for the purpose of preparing the annual compliance report to demonstrate compliance with the terms of the agreement and the critical assumptions remain valid; or
- f) Where the value or amount of the related party transactions (excluding the value or amount in sub-paragraphs (a) to (e)) disclosed in the current year's financial accounts does not exceed the thresholds shown in this Table:

Category of related party transactions	Threshold (S\$) per financial year
Purchase of goods from all related parties	15 million
Sale of goods to all related parties	15 million
Loans owed to all related parties	15 million
Loans owed by all related parties	15 million
All other categories of related party transactions (e.g. income and expense from service, royalty, rental and guarantee)	1 million per category of transactions

IRAS e-Tax guide on Transfer Pricing Guidelines, Section 6. Available at:
<https://www.iras.gov.sg/irashome/e-Tax-Guides/>

ANNEX 8

CbC Report template (from Annex III to Chapter V of the OECD Transfer Pricing Guidelines)

A. Model template for the Country-by-Country Report

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group: Fiscal year concerned: Currency used:										
Tax Jurisdiction	Revenues			Profit (Loss) before Income Tax	Income Tax Paid (on Cash Basis)	Income Tax Accrued – Current Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:															
Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Main Business Activity(ies)												
			Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity instruments	Dormant	Other*
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

1. Please specify the nature of the activity of the Constituent Entity in the “Additional Information” section.

Table 3. Additional Information

Name of the MNE group: Fiscal year concerned:	
<i>Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information</i>	

Template for the Country-by-Country Report – General instructions

Purpose

This Annex III to Chapter V of these Guidelines contains a template for reporting a multinational enterprise's (MNE) group allocation of income, taxes and business activities on a tax jurisdiction-by-tax jurisdiction basis. These instructions form an integral part of the model template for the Country-by-Country Report.

Definitions

Reporting MNE

A Reporting MNE is the ultimate parent entity of an MNE group.

Constituent Entity

For purposes of completing Annex III, a Constituent Entity of the MNE group is (i) any separate business unit of an MNE group that is included in the Consolidated Financial Statements of the MNE group for financial reporting purposes, or would be so included if equity interests in such business unit of the MNE group were traded on a public securities exchange; (ii) any such business unit that is excluded from the MNE group's Consolidated Financial Statements solely on size or materiality grounds; and (iii) any permanent establishment of any separate business unit of the MNE group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

Treatment of Branches and Permanent Establishments

The permanent establishment data should be reported by reference to the tax jurisdiction in which it is situated and not by reference to the tax jurisdiction of residence of the business unit of which the permanent establishment is a part. Residence tax jurisdiction reporting for the business unit of which the permanent establishment is a part should exclude financial data related to the permanent establishment.

Consolidated Financial Statements

The Consolidated Financial Statements are the financial statements of an MNE group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the Constituent Entities are presented as those of a single economic entity.

Period covered by the annual template

The template should cover the fiscal year of the Reporting MNE. For Constituent Entities, at the discretion of the Reporting MNE, the template should reflect on a consistent basis either (i) information for the fiscal year of the relevant Constituent Entities ending on the same date as the fiscal year of the Reporting MNE, or ending within the 12 month period

preceding such date, or (ii) information for all the relevant Constituent Entities reported for the fiscal year of the Reporting MNE.

Source of data

The Reporting MNE should consistently use the same sources of data from year to year in completing the template. The Reporting MNE may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts. It is not necessary to reconcile the revenue, profit and tax reporting in the template to the consolidated financial statements. If statutory financial statements are used as the basis for reporting, all amounts should be translated to the stated functional currency of the Reporting MNE at the average exchange rate for the year stated in the Additional Information section of the template. Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

The Reporting MNE should provide a brief description of the sources of data used in preparing the template in the Additional Information section of the template. If a change is made in the source of data used from year to year, the Reporting MNE should explain the reasons for the change and its consequences in the Additional Information section of the template.

Template for the Country-by-Country Report – Specific instructions

Overview of allocation of income, taxes and business activities by tax jurisdiction (Table 1)

Tax Jurisdiction

In the first column of the template, the Reporting MNE should list all of the tax jurisdictions in which Constituent Entities of the MNE group are resident for tax purposes. A tax jurisdiction is defined as a State as well as a non-State jurisdiction which has fiscal autonomy. A separate line should be included for all Constituent Entities in the MNE group deemed by the Reporting MNE not to be resident in any tax jurisdiction for tax purposes. Where a Constituent Entity is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker should be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the Constituent Entity should be reported in the tax jurisdiction of the Constituent Entity's place of effective management. The place of effective management should be determined in accordance with the provisions of Article 4 of the OECD Model Tax Convention and its accompanying Commentary.

Revenues

In the three columns of the template under the heading Revenues, the Reporting MNE should report the following information: (i) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with associated enterprises; (ii) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with independent parties; and (iii) the total of (i) and (ii). Revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenues should exclude payments received from other Constituent Entities that are treated as dividends in the payor's tax jurisdiction.

Profit (Loss) before Income Tax

In the fifth column of the template, the Reporting MNE should report the sum of the profit (loss) before income tax for all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The profit (loss) before income tax should include all extraordinary income and expense items.

Income Tax Paid (on Cash Basis)

In the sixth column of the template, the Reporting MNE should report the total amount of income tax actually paid during the relevant fiscal year by all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. Taxes paid should include cash taxes paid by the Constituent Entity to the residence tax jurisdiction and to all other tax jurisdictions. Taxes paid should include withholding taxes paid by other entities (associated enterprises and independent enterprises) with respect to payments to the Constituent Entity. Thus, if company A resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B should be reported by company A.

Income Tax Accrued (Current Year)

In the seventh column of the template, the Reporting MNE should report the sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The current tax expense should reflect only operations in the current year and should not include deferred taxes or provisions for uncertain tax liabilities.

Stated Capital

In the eighth column of the template, the Reporting MNE should report the sum of the stated capital of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital should be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes.

Accumulated Earnings

In the ninth column of the template, the Reporting MNE should report the sum of the total accumulated earnings of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings should be reported by the legal entity of which it is a permanent establishment.

Number of Employees

In the tenth column of the template, the Reporting MNE should report the total number of employees on a full-time equivalent (FTE) basis of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions and from year to year. For this purpose, independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees. Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.

Tangible Assets other than Cash and Cash Equivalents

In the eleventh column of the template, the Reporting MNE should report the sum of the net book values of tangible assets of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, assets should be reported by reference to the tax jurisdiction in which the permanent establishment is situated. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction (Table 2)

Constituent Entities Resident in the Tax Jurisdiction

The Reporting MNE should list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name, all the Constituent Entities of the MNE group which are resident for tax purposes in the relevant tax jurisdiction. As stated above with regard to permanent establishments, however, the permanent establishment should be listed by reference to the tax jurisdiction in which it is situated. The legal entity of which it is a permanent establishment should be noted (e.g. XYZ Corp – Tax Jurisdiction A PE).

Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence

The Reporting MNE should report the name of the tax jurisdiction under whose laws the Constituent Entity of the MNE is organised or incorporated if it is different from the tax jurisdiction of residence.

Main Business Activity(ies)

The Reporting MNE should determine the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes.

Business Activities
Research and Development
Holding or Managing Intellectual Property
Purchasing or Procurement
Manufacturing or Production
Sales, Marketing or Distribution
Administrative, Management or Support Services
Provision of Services to Unrelated Parties
Internal Group Finance
Regulated Financial Services
Insurance
Holding Shares or Other Equity Instruments
Dormant
Other ¹

1. Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

REFERENCES

Beer and Loeprick (2015), Profit Shifting Drivers of Transfer (Mis)Pricing and the Potential of Countermeasures. *International Tax and Public Finance* 22 (3): 426-51.

Canada Revenue Agency (n.d.), "Forms and Publications" - Canada's instructions on how to prepare transfer pricing returns, webpage, Government of Canada, <https://www.canada.ca/en/revenue-agency/services/forms-publications/about-forms-publications.html#h1> (accessed December 2020).

Canada Revenue Agency (n.d.), "Information Return of Non-arm's Length Transactions with Non-residents - T106 Summary Form", webpage, Government of Canada, <https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/t106.html> (accessed December 2020).

Cooper, Joel, Randall Fox, Jan Loeprick, and Komal Mohindra (2016), "Transfer Pricing and Developing Economies: A Handbook for Policy Makers and Practitioners", Washington, DC, The World Bank, p.7, <https://elibrary.worldbank.org/doi/book/10.1596/978-1-4648-0969-9>.

European Commission (2003), Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. (2003). *Official Journal of the European Union*, L124, 36-41.

Gobierno de España, Agencia Tributaria (n.d), [Spanish Government, Tax Agency], Ley 58/2003 General Tributaria" [Law 58/2003 - General Tax Law], Article 105 <https://www.boe.es/buscar/act.php?id=BOE-A-2003-23186> (accessed November 2020).

Gobierno de España, Agencia Tributaria (n.d), [Spanish Government, Tax Agency], Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades. [Law 27/2014 - Corporate Income Tax Law]. <https://www.boe.es/buscar/act.php?id=BOE-A-2014-12328> (accessed November 2020).

OECD/Council of Europe (2011), The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol, OECD Publishing, Paris, <https://doi.org/10.1787/9789264115606-en>.

OECD (2012), Keeping It Safe: The OECD Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes, OECD, Paris. <http://www.oecd.org/ctp/exchange-of-tax-information/keeping-it-safe.htm>.

OECD (2013), Action Plan on Base Erosion and Profit Shifting 2013, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264202719-en>.

OECD (2014), Two-part report to G20 Development Working Group on the impact of BEPS in Low Income Countries 2014, OECD Publishing, Paris, <https://www.oecd.org/tax/global-report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf>.

OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD publishing, Paris, <http://dx.doi.org/10.1787/9789264241480-en>.

OECD (2016), Exchange of Information on Request: Handbook for Peer Reviews 2016 – 2020, Third Edition, OECD publishing, Paris, <http://www.oecd.org/tax/transparency/global-forum-handbook-2016.pdf>.

OECD (2017), Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en>.

OECD (2017), Country-by-Country Reporting: Handbook on Effective Implementation, OECD, Paris www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf.

OECD (2017), Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publishing. http://dx.doi.org/10.1787/mtc_cond-2017-en.

OECD (2017), OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017, OECD Publishing, Paris. <http://dx.doi.org/10.1787/tpg-2017-en>.

OECD (2018), Guidance on Country-by-Country Reporting: BEPS Action 13, OECD, Paris. <http://www.oecd.org/tax/beps/guidance-on-country-by-country-reporting-beps-action-13.htm>.

OECD (2018), Guidance on the implementation of Country-by-Country Reporting - BEPS Action 13, OECD, Paris, www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf.

OECD (2018), Standard for Automatic Exchange of Financial Information in Tax Matters - Implementation Handbook – Second Edition, OECD publishing, Paris. <https://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-account-information-in-tax-matters.htm>.

OECD (2020), “Public consultation document: Review of Country-by-Country Reporting (BEPS Action 13)”, <https://www.oecd.org/tax/beps/public-consultation-document-review-country-by-country-reporting-beps-action-13-march-2020.pdf>

OECD (n.d.), “Country-by-Country reporting”, webpage, <http://www.oecd.org/tax/beps/country-by-country-reporting.htm#guidance> (accessed April 2019).

OECD (n.d.), “Global Forum on Transparency and Exchange of Information for Tax Purposes”, webpage, www.oecd.org/tax/transparency (accessed April 2019).

OECD (n.d.), “Transfer Pricing Country Profile”, webpage, <https://www.oecd.org/ctp/transfer-pricing/transfer-pricing-country-profiles.htm> (accessed April 2019).

Tax Platform for Collaboration on tax (2017), A Toolkit for Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses, <http://www.oecd.org/tax/toolkit-on-comparability-and-mineral-pricing.pdf>.

UN (2017), Practical Manual on Transfer Pricing for Developing Countries 2017, UN Publishing, New York, <http://www.un.org/esa/ffd/wp-content/uploads/2017/04/Manual-TP-2017.pdf>

Waerzeggers, Christophe, Cory Hillier, and Irving Aw, (2019), Designing Interest and Tax Penalty Regimes, Tax Law IMF Technical Note 1/2019, IMF Legal Department, <https://www.imf.org/en/Publications/Tax-Law-Technical-Note/Issues/2019/04/04/Designing-Interest-and-Tax-Penalty-Regimes-46648>

Ylönen, M. (2017), Back from oblivion? The rise and fall of the early initiatives against corporate tax avoidance from the 1960s to the 1980s, Transnational Corporations, vol. 23/3, <https://doi.org/10.18356/1a4feae2-en>.