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OECD Committee on Fiscal Affairs  
2, rue André Pascal  
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Submitted by Email to [transferpricing@oecd.org](mailto:transferpricing@oecd.org)

21 February 2014

Dear Sir/Madam

**Submission in response to OECD Discussion Draft on Transfer Pricing Documentation and Country by Country Reporting**

Please find enclosed our submission in response to the Discussion Draft on Transfer Pricing Documentation and Country by Country Reporting that was released on 30 January 2014.

We welcome this Public Consultation and trust that our comments can add to the constructive debate that is taking place at the minute.

We are available for further discussion on any of the matters raised in our submission.

Yours truly,

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**Helen O'Sullivan**

*President*  
*Irish Tax Institute*

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# **Irish Tax Institute**

## **Response to OECD Discussion Draft: Transfer Pricing Documentation and Country by Country Reporting**

**February 2014**

# **Response to OECD Discussion Draft: Transfer Pricing Documentation and Country by Country Reporting**

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## **About the Irish Tax Institute**

The Irish Tax Institute is the leading representative and educational body for Ireland's AITI Chartered Tax Advisers (CTA) and is the only professional body exclusively dedicated to tax. Our members provide tax expertise to thousands of businesses and individuals in Ireland and internationally. In addition many hold senior roles within professional service firms, global companies, Government, Revenue and state bodies.

The Institute is the leading provider of tax qualifications in Ireland, educating the finest minds in tax and business for over thirty years. Our AITI Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice.

A respected body on tax policy and administration, the Institute engages at the most senior levels across Government, business and state organisations. Representing the views and expertise of its members, it plays an important role in the fiscal and tax administrative discussions and decisions in Ireland and in the EU.

## **Format of our response to the Discussion Draft**

The Irish Tax Institute is writing in response to the Discussion Draft on Transfer Pricing Documentation and Country-by-Country Reporting (CbC) which was released on 30 January 2014.

The submission we have prepared is based on detailed feedback from a number of our members. We have structured this response in the following way, for ease of reference:

Section A – Key Issues identified

Section B – Further comment on Country by Country Reporting template

Section C – Response to Consultation Questions

### **Section A Key issues identified**

There are certain key principles which we believe are important to comment on, as part of our response to this overall review.

#### **1. Assessing the compliance cost to business**

The *‘Action Plan on Base Erosion and Profit Shifting’* fully acknowledges the need for business compliance costs to be recognised in any new documentation rules that are developed. *Action 13* outlines the intention to:

*“develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business”.*

*Action 10* notes that:

*“transfer pricing documentation requirements should be less burdensome and more targeted”.*

This principle is further highlighted in the Discussion Draft itself at *Paragraph 4*,

*“an important overarching consideration in developing such rules is to balance the usefulness of the data to tax administrations for risk assessment and other purposes with any increased compliance burden on taxpayers”.*

And at *Paragraph 26*,

*“taxpayers should not be expected to incur disproportionately high costs and burdens in producing transfer pricing documentation”.*

We welcome this recognition of the compliance burden to business. However, a number of the proposals currently included in the Discussion Draft would undoubtedly increase this burden.

The proposal to require a Master File to be prepared in addition to existing local country documentation requirements, adds to the complexity and cost of complying with the transfer pricing regime which goes against the aim of simplicity.

If that additional cost was to be extrapolated across the entire international business community it would undoubtedly run to many tens, if not hundreds of millions of Euros. Given the scale of this burden, we believe it is essential that a full impact assessment be carried out before any final decisions are made on the extent of increased documentation requirements.

## **2. Improving risk assessment**

The key objective of an effective transfer pricing documentation regime is to provide information necessary for tax authorities to undertake proper risk assessments. To be effective, tax authorities must identify the transfer pricing risks that need to be managed and ensure that the documentation they are seeking focuses on these risks.

The information being sought in the Country-by-Country Template and the Master File and Local File goes beyond what a tax authority would actually need and could use to assess transfer pricing risk. For example, how would information on employee numbers or withholding taxes impact on the pricing of a transaction?

For example, the Master File requires details of the taxpayers strategy for developing intangibles, details of the highest paid employees and details of APA's and tax rulings etc. There is also a considerable amount of information required in the CbC template which seems much broader than might be needed for a transfer pricing assessment e.g. number of employees, total employee expense, total withholding tax paid etc.

Some of the information which businesses are being asked to provide is already available to tax authorities from other sources e.g. Capital and Accumulated Earnings are already available in the Financial Statements. Unnecessary duplication of work is the inevitable result which is highly inefficient and costly.

The information being sought should be **necessary** for the assessment of the transfer pricing risk identified and not otherwise already available to the tax authorities - the provision of information has a high cost attached in terms of resources and it is important to strike the correct balance here.

### **3. One size does not fit all**

Flexibility is key to allow businesses of various types in different sectors that are structured differently to report differently. Different businesses will find it easier to provide information in different formats e.g. some groups structure their information around their brands, some around business units, some around legal entities. A large number of groups operate different ERP systems across the group which will add to the complexity and cost of compliance. A bottom up approach might be easier for some and a top down approach for others etc. Taxpayers should also be provided with flexibility in deciding whether to file CbC reports at entity or country level.

We would therefore urge that flexibility and optionality for taxpayers be allowed in determining the format that information is provided in. Flexibility can play a significant role in reducing the compliance costs for taxpayers and provided a taxpayer adopts that particular approach on a consistent basis, this flexibility should not reduce the usefulness of the information provided.

### **4. Confidentiality of information**

Some of the information that is being sought in the CbC template and the Master file/local file is very sensitive commercial information and businesses are understandably concerned to ensure its confidentiality. To provide reassurance to business that their confidential information will be safeguarded, it is imperative that the information only be shared by tax authorities under treaty exchange provisions.

### **5. Materiality**

Materiality is key in ensuring that compliance costs are kept proportionate to the risks at issue. It is important that consistent and reasonable materiality limits are agreed and adhered to by all participating countries. A requirement to include low value and low risk inter-company transactions could greatly increase the compliance burden and cost on taxpayers.

SMEs, who may currently not be required to comply with comprehensive transfer pricing regimes, may nonetheless have to complete CbC reports which could add significant costs. Materiality limits must be applied in this area.

### **6. Achieving simplicity**

This Public Consultation is a useful opportunity to consider simplification measures that could otherwise improve the transfer pricing compliance regime. There are some useful suggestions in the Discussion Draft, such as 3 yearly reviews of comparables at Paragraph 34. There needs to be more emphasis on this important aspect of the review, particularly in light of the significantly

increased transfer pricing documentation requirements and the Country-by-Country reporting regime being proposed. We have set out some additional simplification measures in our responses to the consultation questions in Section C.

## **7. Consistent interpretation by countries/companies**

Different countries may adopt different interpretations to the information being requested. Greater clarity is therefore needed as to exactly what information is required for the CbC template and the Master/Local files to ensure a consistent approach. It is also vital that countries cooperate to ensure that consistent approaches are applied by countries to accepting price comparables and to help quickly resolve any disputes that arise.

Different companies also adopt different measures and the information provided could be inconsistent in dealing with different industry groupings or even within the same industry (see Section B for examples of this).

Different interpretations will inevitably increase the complexity and cost of compliance, limit the usefulness of the information to tax authorities and in some situations will create confusion.

## **Section B Further comment on Country by Country Reporting (Annex III template)**

We appreciate the objectives that the OECD is trying to achieve by introducing a country by country reporting requirement. The Irish Government in its October 2013 *'International Tax Strategy Statement'* expressed its support for the on-going work at OECD level on country-by-country reporting.

However, some concerns arise for businesses as to the level and type of information required to be included in the CbC reporting template and the manner in which it is to be submitted to tax authorities.

- *Place of effective management:* Different tests are likely to be applied in different jurisdictions.
- *Business activity codes:* It is unclear how this information is useful/to be used by tax authorities. In fact, some businesses/companies may be involved in a number of different types of activities which will create confusion in trying to use the relevant code.
- *Revenues:* It is unclear if the term “revenue” refers to the gross revenue or net revenue figure. Additionally, given the differences in local GAAPs and local currencies, the information may not be usefully compared to information from entities in other countries.  
*Income Tax Paid – Cash Basis:* It is unclear how this information will assist in transfer pricing risk assessment. Requiring tax paid to be reported across each jurisdiction may lead to misleading information due to factors such as double tax credits. The template should instead require only the company’s total tax charge to be reported.
- *Total Withholding Tax paid:* It is unclear how this information will assist in transfer pricing risk assessment. Further guidance is also necessary as to which what withholding taxes this requirement would apply to.
- *Capital and Accumulated Earnings:* This information is already available to tax authorities from the entity’s financial statements.
- *Number employees and related compensation expense:* It is unclear why this information is relevant from a transfer pricing risk assessment perspective. The number of employees may not be related to the value adding activities of the group. Significant costs are likely to be incurred in compiling this information for each group entity. Additionally there may not be consistency in how compensation is calculated, for example, different approaches may be taken in valuing share options.
- *Tangible non-cash assets:* Book values will vary depending on accounting treatments adopted by various entities. The information is already available from an entity’s financial statements.
- *Intercompany payments:* This information should be available from the local transfer pricing files. In the absence of an appropriate materiality threshold, compiling this information would be very costly for taxpayers.

Our responses to the Consultation Questions in Section C below, provide further detail and analysis on CbC reporting.

## Section C Response to Consultation Questions

1. *Comments are requested as to whether work on BEPS Action 13 should include development of additional standard forms and questionnaires beyond the country-by-country reporting template. Comments are also requested regarding the circumstances in which it might be appropriate for tax authorities to share their risk assessment with taxpayers.*

For the reasons noted above, we feel that the compliance burden already associated with the CbC reporting template is very extensive and an impact assessment is required to try and quantify this cost. We are not in favour of increasing the compliance costs even further with additional standard forms and questionnaires.

In the interests of transparency, it would be useful for tax authorities to provide details of risk assessments to taxpayers.

2. *Comments are specifically requested on the appropriate scope and nature of possible rules relating to the production of information and documents in the possession of associated enterprises outside the jurisdiction requesting the information.*

Taxpayers should not be required to produce information from any group entities in which the group does not have a controlling interest. Otherwise the taxpayer may not have access to the relevant information.

We have concerns about any proposals which could override bilateral tax treaties.

3. *Comments are requested as to whether preparation of the master file should be undertaken on a line of business or entity wide basis. Consideration should be given to the level of flexibility that can be accommodated in terms of sharing different business line information among relevant countries. Consideration should also be given to how governments could ensure that the master file covers all MNE income and activities if line of business reporting is permitted*

Flexibility is needed for taxpayers in order to minimise the cost of compiling information and taxpayers should therefore be given a choice as to whether the master file is compiled on a line of business or entity wide basis. There is no 'one-size-fits all' approach for all taxpayers as different businesses have very different organisational structures. Requiring all taxpayers to comply with one approach would greatly increase the compliance costs for certain taxpayers. Provided that a taxpayer adopts a particular approach on a consistent basis, this should not reduce the quality of the information provided.

4. *A number of difficult technical questions arise in designing the country-by-country template on which there were a wide variety of views expressed by*

*countries at the meeting of Working Party n°6 held in November 2013. Specific comments are requested on the following issues, as well on any other issues commentators may identify:*

- a. Should the country-by-country report be part of the master file or should it be a completely separate document?*

We would advocate that the CbC reports are not filed as part of the master file. This would provide greater flexibility in terms of the filing date for the reports. The deadline for an entity to file should be based on the entity's reporting period rather than the parent company's reporting period especially given the differences in reporting dates by country.

- b. Should the country-by-country template be compiled using "bottom-up" reporting from local statutory accounts as in the current draft, or should it require (or permit) a "top-down" allocation of the MNE group's consolidated income among countries? What are the additional systems requirements and compliance costs, if any, that would need to be taken into account for either the "bottom-up" or "top-down" approach?*

Taxpayers should be allowed to choose between a "top-down" or a "bottom-up" approach. We refer to our comments above, on the need for a flexible approach.

- c. Should the country-by-country template be prepared on an entity by entity basis as in the current draft or should it require separate individual country consolidations reporting one aggregate revenue and income number per country if the "bottom-up" approach is used? Those suggesting top-down reporting usually suggest reporting one aggregate revenue and income number per country. In responding, commenters should understand that it is the tentative view of WP6 that to be useful, top-down reporting would need to reflect revenue and earnings attributable to cross-border transactions between associated enterprises but eliminate revenue and transactions between group entities within the same country. Would a requirement for separate individual country consolidations impose significant additional burdens on taxpayers? What additional guidance would be required regarding source and characterization of income and allocation of costs to permit consistent country-by-country reporting under a top-down model?*

Flexibility should be provided to taxpayers in order to minimize compliance costs. Entity level reporting could create significant extra work for MNE's with multiple entities in one jurisdiction who operate a consolidated financial system.

Furthermore, a taxpayer may have entities in the same country engaging in very different lines of business. The group information may not currently consolidate information on a country basis and requiring a country level consolidation may impose a significant compliance cost on such businesses.

- d. *Should the country-by-country template require one aggregate number for corporate income tax paid on a cash or due basis per country? Should the country-by-country template require the reporting of withholding tax paid? Would a requirement for reporting withholding tax paid impose significant additional burdens on taxpayers?*

As outlined above, there is concern that the cost of compiling such information would be disproportionate to the usefulness of the information to tax authorities in performing transfer pricing risk assessments.

- e. *Should reporting of aggregate cross-border payments between associated enterprises be required? If so at what level of detail? Would a requirement for reporting intra-group payments of royalties, interest and service fees impose significant additional burdens on taxpayers?*

Reporting of this information appears to go beyond the information tax authorities' need to perform transfer pricing risk assessment. The high cost of compiling a lot of the information is likely to be disproportionate to the potential usefulness of the information to tax authorities in performing transfer pricing risk assessment.

- f. *Should the country-by-country template require reporting the nature of the business activities carried out in a jurisdiction? Are there any features of specialist sectors that would need to be accommodated in such an approach? Would a requirement for reporting the nature of the business activities carried out in a jurisdiction impose significant additional burdens on taxpayers? What other measures of economic activity should be reported?*

This information is likely to already be available to tax authorities as part of the current transfer pricing documentation requirements.

5. *Comments are requested as to whether any more specific guideline on materiality could be provided and what form such materiality standards could take.*

Guidance on materiality is needed to ensure consistency across jurisdictions. There should at a minimum be a materiality threshold for reporting intercompany transactions. Safe harbours for certain types of transactions should also be considered.

In Ireland, SMEs are not currently required to prepare transfer pricing documentation. The proposal for SMEs to be required to complete CbC reports would impose a significant compliance burden on a large number of taxpayers.

6. *Comments are requested regarding reasonable measures that could be taken to simplify the documentation process. Is the suggestion in paragraph 34 helpful? Does it raise issues regarding consistent application of the most appropriate transfer pricing method?*

The proposed approach to the frequency that transfer pricing comparables must be updated may be helpful. Flexibility should be also provided for in terms of what comparable data can be used.

Additional simplification measures such as use of safe harbours for certain types of transactions and materiality thresholds for inter-company transactions must also be considered.

7. *Comments are requested regarding the most appropriate approach to translation requirements, considering the need of both taxpayers and governments.*

While it is helpful that the proposal would only require the master file to be prepared in English, local tax authorities may require the master file to be translated to the local language and in practice this is likely to occur and cause additional administration costs to the taxpayer.

8. *Comments are requested as to measures that can be taken to safeguard the confidentiality of sensitive information without limiting tax administration access to relevant information.*

Confidentiality is of major concern to taxpayers. It is important that adequate procedures and safeguards are put in place to ensure that confidential information is not put at risk and accountability on this matter would be important.

9. *Comments are requested regarding the most appropriate mechanism for making the master file and country-by-country reporting template available to relevant tax administrations. Possibilities include:*
  - a. *The direct local filing of the information by MNE group members subject to tax in the jurisdiction;*
  - b. *Filing of information in the parent company's jurisdiction and sharing it under treaty information exchange provisions;*
  - c. *Some combination of the above.*

We would favour the option of filing information in the parent company's jurisdiction and sharing it under treaty information exchange provisions. This would be preferable from a confidentiality perspective as it may reduce the risk of confidential information being exposed.

*10. Comments are specifically requested as to whether reporting of APAs, other rulings and MAP cases should be required as part of the master file.*

Requiring this information to be reported appears to go beyond the information which tax authorities actually need to perform transfer pricing risk assessments.