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VIA EMAIL

Mr. Pascal Saint-Amans
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**Re: USCIB Comments on the Annexes of the OECD Discussion Draft on Transfer Pricing
Documentation and Country-by Country Reporting**

Dear Mr. Saint-Amans,

This letter supplements our earlier letter which provided general comments on taxpayer burden reduction, flexibility, confidentiality, transition rules, recognition of transfer pricing adjustments, and dispute resolution. We stand by those earlier comments and will not repeat them here. We have additional comments on the annexes.

General comments on the annexes

USCIB has some general comments on the annexes. First, as we understand the concept, the master file should contain only information that is relevant to the transfer pricing of the entire MNE group. So we believe that much of the information that is contained in the master file would more properly be in a local country file or files because it relates to some, but not all of the group members. Companies should have substantial discretion to determine whether information is properly in the master file or the local file based on its relevance to either the group as a whole or only to individual entities within the group. Second, to the extent that definitions are important, definitions need to be clear. For example, what is the standard for determining whether an entity should be included with the MNE group? Business needs consistency on these definitions or they will not be able to provide the required information. Third, many of the items are not readily available and will take significant effort to prepare, even such seemingly simple items as total revenues. This is more of an issue if simplifying changes, as suggested below, are not made to the country-by-country report.

Master file comments

- The chart indicating the legal ownership structure and geographical location of operating entities should largely be duplicated by the country-by-country report and is therefore unnecessary.

- Chart showing supply chain for material products and services should be provided in the local file to the countries that participate in or are affected by the supply chain.
- A description of important business restructuring transactions occurring during the fiscal year. This information is required to be provided in the local file to the extent that a company is affected by the restructuring and is not otherwise relevant. There is a separate question whether acquisitions and divestures ought to be reported at all since these are third-party transactions and should not raise transfer pricing issues.
- The title and principal office of the most highly compensated individuals raises personal security issues. This information is of questionable relevance to transfer pricing and ought to be deleted.
- A 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. This is some of the most sensitive commercial information in any corporate structure. Requiring this information for the entire corporate group be available to any country in which a company does business no matter how minor those investments, may very well discourage trade and investment and therefore ought to be excluded from the master file. To the extent the information is relevant to a jurisdiction it ought to be included in the local file.
- A list of important related party agreements related to intangibles, cost contribution arrangements, principal research service agreements and license agreements. Countries have been insistent that even regional comparables are not comparable, so it is hard to see how either the taxpayer or a country could argue that information on the worldwide structure is relevant to every entity. If, for example, a company licenses an intangible to an unrelated party in Country X, which is not in the same region as Country Y, would Country Y consider that transaction relevant in determining the arm's length royalty between related parties of the same intangible? If not, the risk of the information being disclosed and harming the company's ability to negotiate transactions is significant and the information ought not to be disclosed. Further some intangibles may not raise any transfer pricing issues. If, for example, an associated enterprise locally creates and exploits intangibles, there may be no transfer pricing issues because there are no cross border transactions relating to the intangible.
- A description of the group's transfer pricing policies relating to R&D and intangibles. Transfer pricing policies will differ depending on the nature of the intangible. Certain intangibles will be relevant to some jurisdictions, but not others. Information that is relevant to a jurisdiction ought to be available in the local file, but irrelevant information ought not to be made available whether through the master file or otherwise.
- A description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises. Again, if a policy relates to the transfer pricing within a jurisdiction, then that information ought to be available in the local file, if not, it ought not to be made available.
- A description of any material transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

This is obviously relevant to the entities and countries involved, but seems irrelevant to others and therefore ought to be excluded from the master file.

- A list and brief description of the MNE group's applicable unilateral and bilateral/multilateral APAs and advance rulings. These items will be known to and in the possession of all the parties involved. A list and brief description of the rulings seems likely to generate a request from the local countries that are not involved in the agreement/ruling to see the ruling. The rulings should not be made available to other jurisdictions because the details of the particular agreement could represent concessions that will not necessarily be made in other circumstances. Further, the IRS took a long look at publication of redacted APAs and ultimately concluded publication would kill the program. The OECD needs to be very careful concerning this information or it may reduce the utility of APAs and rulings.

Country-by-Country Template

The purpose of the country-by-country report is high-level risk assessment. In other words, are there companies with lots of income that are paying very little tax or companies with lots of activity and very little income. Thus, the key elements are revenues, pre-tax profits, taxes, and activities. Everything else is surplus and ought to be eliminated from the report.

- It seems the information in the first three columns could be simplified down to place of tax residence. It may be that the OECD required all three columns to identify both entities with no tax residence or entities with dual residence. It would seem to be much easier to simply ask for this information, rather than making every entity provide both place of organization and place of effective management, which may not always be straightforward.
- It should be made clearer that unaudited and unreconciled numbers are acceptable for this purpose. If reconciliation is required, then companies will likely have to manually collate information that is not readily available from the primary accounting system used by the parent entity.
- Income tax paid. As explained in our earlier comments, companies should be able to use cash taxes or financial statement taxes, at the company's option. In addition, however, it is not clear why taxes paid to the country of organization are the default category. As we in the US are constantly reminded, most jurisdictions do not use place of organization to determine tax residence. So, place of organization is not necessarily the better default criteria. It seems that the place of tax residence ought to be the default criteria. It is also not clear why it is necessary to identify taxes paid to other countries. The relevant information ought to be the total income tax number regardless of where taxes are paid.
- Total withholding taxes paid is not information that companies necessarily keep track of as it is not generally relevant whether a tax is withholding tax. It is also what relevant for high-level risk assessment purposes. Determining this information may require substantial additional work with no risk assessment benefit.
- Total employee compensation ought to be deleted. USCIB is very concerned that, despite the OECD's continued support for the arm's length standard, that some countries will

inappropriately use this information to apply a form of global formulary apportionment. In our view, the only way to prevent this is to eliminate this number for the country-by-country report. Employee compensation is also not relevant for high-level risk assessment, as long as the report contains, revenues, pre-tax profit and total taxes there is no need for employment expenses. A tax authority looking at this could see whether there is significant revenue, pre-tax profit and taxes (or low-taxes) and that is all they need to know for high-level risk assessment. Further the number of employees will give a significant indication of the level of activity within a jurisdiction.

- Everything to the right of total employee expenses ought to be eliminated. The book value of tangible assets is not particularly relevant for high-level risk assessment determination since the book value of assets will not necessarily reflect the return to those assets. Also, as discussed above, in order to avoid the improper use of the country-by-country report, the book value of tangible property should be deleted. The other categories should all be deleted because they are not relevant to high-level risk assessment and are reflected in more detail in the local country report. Duplicative reporting is burdensome and providing this information in the country-by-country report may result in countries being buried with information that is irrelevant detail to countries that are not affected by the transaction.

USCIB understands the urgency of this project and is willing to assist the OECD in meeting with interested members if that is appropriate.

Sincerely,



William J. Sample
Chair, Taxation Committee
United States Council for International Business

cc: Joseph Andrus, Head of Transfer Pricing Unit, CTPA, OECD
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