Mr Joseph L. Andrus
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AH/DN

Dear Mr Andrus

**White Paper on Transfer Pricing Documentation**

BDO welcomes the opportunity to comment on the OECD's White Paper on Transfer Pricing Documentation (the "White Paper") and the efforts undertaken by Working Party No. 6 of the Committee on Fiscal Affairs to seek outside consultation.

We support the OECD's efforts to create clearer and more consistent expectations for the purpose, content and use of transfer pricing documentation, in particular the explicit linking of transfer pricing documentation with the OECD's Handbook on Transfer Pricing Risk Assessment (the "Risk Assessment Handbook"). Where this can reduce or replace the different requirements, formats and levels of stringency applied by fiscs, the proposals of the White Paper could result in an improvement for multinational enterprises from administratively burdensome current arrangements. To do so in a context of enhanced engagement (discussed in paragraph 49 as well as in the Risk Assessment Handbook) should be of further assistance in quantifying and focusing documentation requirements.

We note that a trade off for a more consistent approach to documentation and risk assessment is the provision of greater transparency of the global value chain for tax authorities. This should not be a concern for multinational enterprises that consider their transfer pricing policies robust, and may increase the focus and effectiveness of risk assessment and audit. However, we would encourage the OECD to ensure that where this additional information is provided, it is used by tax authorities in a way that is consistent with principles in the Risk Assessment Handbook and not in a way that give rise to additional information requests which have the net effect of increasing the compliance burden on taxpayers.

In preparing this letter we have received comments from BDO firms in our global transfer pricing network which we have incorporated into this letter.

**Comments and suggestions**

We support the OECD's approach of focusing on higher level information and a "big picture overview of the transfer pricing policies of an MNE group" (paragraph 68) together with areas giving rise to particular transfer pricing risk. This should enable transfer pricing documentation to be an effective tool for the risk assessment process, both for multinational enterprises and tax authorities.

The Masterfile concept is a practical way to achieve this aim that is already well known through its adoption by the EU and use, in one form or another, by many multinational enterprises. In light of the OECD's comments in paragraph 55, we would stress that here we also envisage a bespoke set of documentation specific to the subject business. However, we have identified the following points as areas the OECD may wish to examine further as part of its considerations in this area.

- The Masterfile will set out an overview of the business and its divisions. The inclusion of a functional analysis together with details of recent restructurings and intangibles could create a large document for some businesses. If, say, the group's only entity in France is a distributor for a single division, would the full Masterfile document need to be provided where much of its content is irrelevant to the entity in question? The White Paper might helpfully address this and provide guidance to assist tax authorities to manage their expectations and the level of information they receive.

- When "material transfer pricing arrangements" are referred to (paragraph 70), materiality might be specified further or linked explicitly to the considerations set out in the Risk Assessment Handbook. This should enable businesses to provide the appropriate level of documentation in the areas carrying higher transfer pricing risk, rather than purely the greatest transaction value.

- The current drafting of the White Paper appears to envisage the documentation process from the perspective of a head office, which would prepare a Masterfile to which local files would be appended. A practical risk implicit in this is that the 'top down' approach could lead to a more generic characterisation of local entities that, whilst well-intentioned, might reflect a central model more than the variations of local substance. Alternatively, this may be perceived by local tax authorities to be the case. Either way, the resulting need for local specification together with the analysis of local transactions (paragraph 74) may not relieve much of the administrative burden on business. The OECD might consider being more specific on whether the Masterfile concept is in practice an addition to existing local files or a genuine consolidation of activity at a group level, which may be reflected in the document's focus.

- If it is accepted that there is to be more of a global structure and tone to transfer pricing documentation, it would be useful for the OECD to provide guidance on how business might set out their documentation and disclosure where different fiscs operate different qualifying thresholds for transfer pricing, for example varying definitions of connected parties. The risk for business is that global disclosure otherwise becomes anchored to the requirements of the most onerous territory.

- Similarly, for the Masterfile concept to be an effective step towards consistency, the OECD might recommend that this type of global approach based on OECD principles be accepted for penalty protection purposes (at least at the risk assessment stage). Otherwise existing local variations of requirements and the resulting duplication of activity will remain.

We would add further comments and suggestions regarding the practical implementation of the concepts in the White Paper.

- Where financial information based on management accounts is required (paragraph 72), for example to show global results and tax impact, could the OECD be more specific on the level of detail that tax authorities might reasonably require to tie amounts up to metrics that may differ due to subsequent adjustments, for example statutory filed accounts or local GAAP?

- In a global transfer pricing policy, some inconsistency may result from operations in territories where local rules differ substantially from OECD principles, for example Brazil. The situation may arise where operations in such a territory attract a greater return under local rules than had they applied the arm's length standard. The OECD might helpfully add to the White Paper guidance for tax authorities in the group's OECD territories on how they might reasonably acknowledge this or respond in a way that does not trigger an automatic enquiry.

- Support in the Handbook for wider co-operation would also be beneficial. Acknowledging that some territories fall outside the OECD's sphere of influence, explicit consideration of synergies or differences with similar guidance published by the United Nations or others would further increase clarity and comfort to businesses in preparation of transfer pricing documentation for transactions which cross these boundaries.

- The expectations of tax authorities for the information contained in transfer pricing documentation, and thereby their approach to risk assessment, will be linked to their view of the appropriateness of whether the policy in question is set and supported ex ante or post hoc. A link between the White Paper and the OECD's work on timing differences might usefully be made.

- On a related point, the approach proposed in the White Paper appears to envisage a settled business documenting established policies. This is not always the case. Those businesses expanding into new territories are often smaller multinationals without extensive resources to devote to transfer pricing documentation, and might reasonably prioritise commercial implementation. In these cases, the more extensive Masterfile/local file structure is less likely to provide the same economies of scale available where a policy is established and so maintaining effective compliant documentation may in fact prove more onerous for businesses in that position. The OECD might consider whether guidance can be provided in this area.

- The Guidelines (1.32) and other documents such as the OECD's Action Plan on Base Erosion and Profit Shifting (in the preamble to Actions 8, 9 and 10) reject global formulary apportionment. The proposed inclusion in the Masterfile of a "schedule showing for each country in which the MNE does business the total number of employees in the country" (Table 1, p24) could lead to tax authorities employing a comparison of employees and income or profit, thereby effectively applying a formulary apportionment as part of the risk assessment using employees as an allocation key. There would be benefit in the OECD explicitly stating that this use is not the intention of this information (if this is the case) and referencing the sections of the Guidelines relevant to formulary apportionment.

If the inclusion of employee numbers is viewed as essential for risk assessment purposes, it would be helpful for the OECD to link this to concepts such as control and performance. For example, differentiating between numbers of employees in routine functions from those performing more value added activities may provide more relevant information to those undertaking the risk assessment; this type of information should anyway be found in the Masterfile/local file package.

**Conclusion**

We support the OECD's efforts to put in place a transfer pricing documentation framework that is both effective for tax authorities' risk assessment and practical for businesses. However we would support further consideration and potential refinement of the White Paper to ensure that its implementation is proportionate for all sizes of multinational enterprise, not just those with the greatest size, complexity and resources. Similarly, further guidance and clarity would be beneficial to ensure that the balance of transparency and practicality is achieved in practice and that requirement do not become weighted by default to the tax authority with the most onerous regulation and practice.

We would like to thank the OECD again for this opportunity to comment and should be happy to expand on these points and contribute further to later stages of this review if required.

For clarification of any aspects of this response sent on behalf of the BDO transfer pricing network, please contact:


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Yours sincerely

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Global Transfer Pricing Leader
For and on behalf of BDO LLP