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A World Without FATCA

by Ross McGill

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Discerning the New Documentation Standards: A Sensible Response to BEPS Action 13

by Andrew Cousins

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In this article, the author outlines a practical strategy to help multinational enterprises comply with the new standards for transfer pricing documentation arising from BEPS action 13.

Action 13 of the OECD's base erosion and profit-shifting project introduced a standardized approach to transfer pricing documentation using a three-tiered structure that includes a country-by-country report, master file, and local file.[1] This standard is being implemented inconsistently and at varying paces across jurisdictions, creating confusion regarding what needs to be done, by whom, where, and when. Various solutions are being put forth by advisers, often to questions that are not asked, muddying the water at best and, at worst, potentially undermining established transfer pricing practices to no advantage and at great expense (particularly in the context of value chain analysis).

This article maps out a sensible, practical response to ensure that companies meet the minimum standard while avoiding the pitfalls of unnecessary and costly distractions.

A Practical Response

CbC Reporting

CbC reporting, the wholly new level of transfer pricing documentation, is all but guaranteed to affect all multinationals of the appropriate size for periods from January 1, 2016. Multinational enterprises should be preparing for it now and should stay alert for evolving rules.

Up to 100 jurisdictions have given at least some indication that they will be introducing CbC reporting. As of April, 96 jurisdictions had joined the inclusive framework that commits them to implementing the minimum standards of BEPS, including CbC reporting.[2] As of late May, 57 have signed the Multilateral Competent Authority Agreement, allowing them to exchange CbC reports under the Multilateral Convention for Mutual Administrative Assistance in Tax Matters.[3] The number of jurisdictions that have already implemented legislation introducing CbC reporting is around 50 and constantly growing.

Many of the problems faced by multinational enterprises involving CbC reporting result from the hurried nature of its wide introduction, with countries implementing reporting requirements before the global infrastructure needed to handle the intended dissemination of reports between jurisdictions has been put in place. Hopefully, tax administrations will take a pragmatic view of the difficulties (and even impossibilities) faced by multinationals in the first year of CbC reporting caused by the rush to have it up and running as soon as possible.

[1] OECD, "Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report" (2015).

[2] OECD, "Inclusive Framework on BEPS Composition" (Apr. 2017).

[3] OECD, "Signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) and Signing Dates" (Jan. 26, 2017).

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Many of the problems existing now will be resolved with time, but the question remains: What should MNEs be doing to demonstrate compliance with the web of regulations currently in place and those still being introduced?

Notification

Identifying the reporting entity or entities. The OECD's model legislation for CbC reporting allows for notification of the group's reporting entity to be prescribed.[4] This requirement has been incorporated into many countries' implementing legislation. When advance notification of a group's reporting entity is required, many MNEs will face a practical problem in identifying with certainty the group's reporting entity. The U.S., for example, has signed few of the competent authority agreements (CAAs) that will be necessary for it to exchange CbC reports under its double taxation agreements and tax information exchange agreements. Although it has finalized development of the CAAs and is in the process of negotiating with its treaty partners, if all the CAAs are not signed before the end of 2017, U.S. resident multinationals may not be able to rely on the IRS to share their CbC report with all other relevant tax administrations.

In these circumstances, MNEs may need to consider surrogate filing, the filing of the CbC report by an entity other than the ultimate parent entity. Practically, it is preferable for this to be done by a group entity resident in a country that is party to the Multilateral Convention for Mutual Administrative Assistance in Tax Matters and that has signed the Multilateral Competent Authority Agreement on CbC reporting. This would maximize the opportunities for exchanging the report with counter-signatory jurisdictions, so long as the signatories to the agreement are jurisdictions that are relevant to the MNE for disclosure purposes. Where gaps remain in the treaty network and it is foreseeable that jurisdictions will not receive the CbC report by exchange, local filing will be necessary. Nevertheless, some jurisdictions, such as Ireland and Jersey, have indicated flexibility when it comes to providing notification of which entity will be the filing entity, allowing for revised notification when necessary.[5] Following this lead, groups should make their best estimate of the most likely reporting entity at the time of the notification deadline and submit a revised notification later if necessary.

The ultimate decision as to which entity (or entities) should file the CbC report will become clearer as the intergovernmental exchange-of-information (EOI) infrastructure for the CbC reports is put in place this year. The best advice is to be vigilant as the year progresses and notify according to local requirements on the basis of the information available, being ready to revise as necessary.

Where, when, and how to give notification of the reporting entity. Not all countries require advance notification of the group's reporting entity. The U.S., for example, does not. In countries that do require advance notification of the reporting entity, the deadline is often (following OECD guidance) the last day of the fiscal year being reported. This is the case in Austria, Ireland, and Spain.

Given the imperfect infrastructure that exists between governments for the exchange of CbC reports, this requirement was almost impossible for most MNEs to meet with any degree of certainty for the fiscal year starting January 1, 2016. Recognizing this, many jurisdictions have deferred the initial notification deadline for the first year of CbC reporting. For example, Belgium and the Netherlands delayed the notification deadline for the first year to September 2017, reverting to the end of the reporting period for the second year of filing (that is, December 31, 2017, for MNEs using a calendar year). However, even allowing for those concessions, notification deadlines in several countries have already come and gone, well in advance of the introduction of the necessary intergovernmental EOI infrastructure; Luxembourg and Slovakia, for example, both required notification by March 31, 2017.

Again, multinationals must keep abreast of the notification requirements in all the countries

[4] Action 13 report, *supra* note 1, at 42.

[5] *See* Irish Tax and Customs, "Country-by-Country Reporting: Some Frequently Asked Questions," at 15, no. 28 (Dec. 23, 2016).

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in which they operate and notify authorities of the reporting entity according to local requirements. The tax administrations of many countries have set up their own online portal through which notification is to be made. Though burdensome from a compliance perspective, there is little option other than to keep track of local variations on a jurisdiction-by-jurisdiction basis.

Filing

Misalignments in introduction. Aside from complications over notification, complications will inevitably arise in this first year of filing because of the delayed introduction of intergovernmental EOI infrastructure and because of misalignments between the date of CbC reporting's introduction in different jurisdictions. For example, in the U.S., CbC reporting is not being introduced for periods commencing before June 30, 2016. For U.S.-parented multinationals with consolidated group accounts operating on a calendar-year basis, the first year of required reporting in the U.S. is the year that started on January 1, 2017. Yet many U.S. multinational groups have subsidiaries in jurisdictions where CbC reporting requirements began with the year that started January 1, 2016. The IRS has said that it will accept voluntary early filing of CbC reports,[6] which may avoid the need for multiple local filings (or a single surrogate filing) of CbC reports in other jurisdictions.

Early filing deadlines. What if the jurisdiction of a subsidiary entity has an earlier filing deadline than the ultimate parent entity's jurisdiction and intergovernmental EOI mechanisms for the exchange of CbC reports are not in place? Brazil, for example, expects the 2016 CbC reports to be filed by local ultimate parent entities by July 31, a burden that falls to the resident entity of any foreign-parented MNE group if the CbC report cannot be obtained from the ultimate parent's country of residence.

The U.S. has not ratified the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, which might have served as a shortcut to establishing the necessary EOI architecture for CbC reports with multiple jurisdictions. The U.S. is therefore negotiating a host of separate CAAs individually with each of its treaty partners. If the U.S. does not have the necessary CAA in place by July 31, a U.S.-led MNE with a Brazilian subsidiary would need to file its 2016 CbC report (assuming a calendar financial year) in Brazil by July 31, 2017. The OECD and the countries involved are aware of this potential challenge, and further guidance is expected, but groups should already be preparing their CbC reports to meet filing requirements as early as this summer.

Where, when, and how to file. As the preceding examples demonstrate, the question of where to file the CbC report for the year of the regime's introduction may not be clear-cut and depends on factors entirely outside the control of MNEs themselves. There are no obvious shortcuts. MNEs hoping to do a single filing of the CbC report for the group in the country of the ultimate parent entity or of a surrogate parent entity will need to track the introduction of the necessary intergovernmental EOI infrastructure for CbC purposes in that country. If it appears that the necessary infrastructure will not be in place in time, those multinationals may find that they also need to file the CbC report locally in several other jurisdictions with secondary filing requirements.

Once the multinational determines where it needs to file a CbC report, the form, manner, and timing of the submission must be ascertained for each jurisdiction. While most jurisdictions allow 12 months from the reporting year-end to file the CbC report, there are a limited number of exceptions. Brazil's July 31 deadline was mentioned above. China has an even earlier filing date of May 31 for locally resident ultimate parent entities or surrogate filing entities.

Some countries have already begun to publish templates. Examples include the U.S.'s Form 8975, Canada's Form RC 4649, and Spain's Form 231. Although largely consistent, the form and manner of submission must be determined according to the individual requirements of each jurisdiction.

As with notifications, the manner of filing the CbC report with the tax administration will depend on local requirements. Intergovernmental exchanges will be based on the XML schema developed by the OECD. Many, but by no means all, jurisdictions have indicated that they will expect the CbC file to be filed in a similar way

[6] U.S. Internal Revenue Service, Rev. Proc. 2017-23, 2017-7 IRB 1.

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through an online tax administration portal. Once the filing mechanism becomes clear, MNEs will have to decide how they will adopt the technology for generating the report in the required format. Although it may be relatively simple to develop, companies will need to decide whether to develop that technology in-house, acquire it from a third-party technology provider, or delegate the filing process to an agent with its own technological capability.

Content

As multinationals prepare their CbC reports, they will inevitably encounter several questions concerning content, largely because the OECD's guidance is not exhaustive. The best advice is not to get bogged down in trying to discern exact definitions that simply do not exist, but instead to adopt sensible positions appropriate to the business and the industry within which the company operates, aiming to be reasonable, practical, and consistent in the approach adopted. Although the OECD continues to publish expanded guidance on CbC reporting as it is prepared, many open questions remain, some of which are complicated by contradictory local guidance from implementing jurisdictions.[7]

Consider the question of how to report in-country related-party transactions for Table 1 of the OECD's model CbC report. Assume, for example, that a chain of associated holding companies pays intercompany interest from one to another along the line, all within the same jurisdiction. Does the group report this interest as an aggregated total, potentially inflating the scale of revenues when there is no tax at stake and possibly distorting the picture presented of the group, or should those in-country transactions be consolidated, perhaps presenting a more balanced picture of group revenues at the expense of concealing some of the related-party transactions?

In the U.S., the regulations specify that the figures be reported as an aggregate of the information for all constituent entities resident in the tax jurisdiction.[8] In Australia, the Australian Taxation Office has said that data for a jurisdiction may be reported either on an in-country consolidated basis (eliminating domestic related-party transactions) or as an aggregation of the data for each individual entity within the jurisdiction.[9] The Canada Revenue Agency has said that the financial results of all intercompany transactions within the same jurisdiction must be aggregated and not consolidated.[10] Ireland provides the same explicit advice as Canada in its guidance on CbC reporting.[11]

As this example demonstrates, the potential exists that different groups, or even the same group, will present the same data in different ways, depending on the jurisdiction of the filing entity or entities. The sensible approach is to observe any specific rules and regulations published by the jurisdiction or jurisdictions where the CbC report is to be filed and adopt the most practical approach based on factors such as the availability of reliable data from systems, ensuring consistency across the organization and year-on-year.

In many cases, definitions of categories are unclear. By way of example, "stated capital" is a required category of information in Table 1 of the OECD's model CbC report, but no definition is provided. Different sources provide differing definitions of stated capital, describing it, for example, as the par value of the shares of stock that have been issued or as an amount equal to the cash consideration received by a corporation in exchange for the issue of shares. Some groups have invested significant time and resources, working with advisers in an attempt to establish exact definitions for completion of the CbC report. Yet hard and fast definitions often do not exist. When definitions are unclear, the best advice is to consult the OECD guidance and the guidance of the country where the CbC report is to be filed. In absence of any clarification in the guidance notes, companies should adopt a sensible definition that allows reasonable, practical, and consistent reporting and should explain the approach

[7] OECD, "Guidance on the Implementation of Country-by-Country Reporting – BEPS Action 13" (Apr. 6, 2017).

[8] U.S. Treas. reg. section 1.6038–4(d)(2).

[9] Australian Taxation Office, "Country-by-Country Reporting: Questions and Answers" (2016).

[10] Canada Revenue Agency, "Guidance on Country-by-Country Reporting in Canada" (2017).

[11] Irish CbC FAQ, *supra* note 5, at 10, no. 18(B).

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adopted in Table 3 of the report, which is provided for just such a purpose.

Additional guidance on uncertain aspects of CbC reporting is expected from the OECD. For example, we know that the OECD is producing commentary on topics such as the consolidation of in-country transactions and the treatment of joint ventures. Until further guidance is made available, groups should follow any existing OECD guidance and any regulations implemented in the jurisdiction of their filing entity or entities. However, no one should lose sight of the fact that CbC reporting is in its infancy. The details of the rules are still not fully formed, and the purpose of the CbC report should never be forgotten. The OECD guidance explicitly states that the CbC report is a risk-assessment tool, not a substitute for detailed transfer pricing analysis or a basis for transfer pricing adjustments.[12] Practicality, reasonableness, and consistency should be the guiding principles in preparing the report, rather than a slavish desire to adhere to exact standards that have not been fully defined.

Multinational groups can choose the most appropriate or practical source of the data to be used in compiling the CbC report, whether that is the group's consolidation reporting packages, the separate entity statutory financial statements, regulatory financial statements, or internal management accounts. The OECD explicitly states that there is no need to reconcile the figures in the CbC report to the consolidated financial statements. Even when consolidated financial statements are the source of information used, the CbC report may not reconcile to the consolidated accounts if aggregated figures are used in the report. MNEs should therefore feel free to use whichever source of data is most practical and gives reliable results, ensuring that the same approach is applied consistently thereafter. Whichever approach is adopted, it should be disclosed in Table 3 of the CbC report.

Completion of Table 3 of the model CbC report, left blank for additional comments, should not be considered optional, but rather viewed as a crucial element of the report. This section allows the company to explain any of the uncertainties or individual approaches adopted in the earlier parts of the report. Liberal use of Table 3 is recommended as it allows the company to explain the approach adopted to any particular reporting issue that requires the exercise of judgment.

Master File

Far from the global initiative that CbC reporting may be seen to be, including a master file in transfer pricing documentation requirements has been left to the prerogative of individual jurisdictions.[13] Unlike the CbC report, the master file is not intended to be filed in the jurisdiction of the group's ultimate parent entity and shared by the tax administration with other relevant jurisdictions. On the contrary, the master file will have to be prepared (and sometimes filed) according to the local requirements of each jurisdiction in which the MNE operates.

Preparation and Filing

Interest in preparing a master file is, at present, much more limited than interest in the CbC report. While countries including the U.S., the U.K., and France have given no indication of introducing formal master file requirements, more than 30 countries have outlined plans for its introduction. Fewer than 25 countries have legislation in effect requiring preparation of a master file. This piecemeal introduction has created an administrative burden in itself for MNEs. Companies will need to keep track of the jurisdictions concerned and address the requirements on an individual country basis.

The trigger for requiring preparation of a master file, where one is required at all, varies greatly among jurisdictions. While Austria, Belgium, and the Netherlands have imposed a €50 million turnover threshold for filing of the master file, this is far from a universal standard. Other countries use a wide range of criteria, variously focusing on revenues, related-party transactions, number of employees, and size of balance sheet.

Companies not only must follow the trigger for preparation of the master file in a relevant jurisdiction, they also must keep track of the

[12] Action 13 report, *supra* note 1, at 16.

[13] *Id*. at 20.

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preparation and filing dates of the master file as well as language requirements in different jurisdictions. Indonesia, for example, requires companies to prepare the master file in the local Bahasa Indonesia language and have it available within four months of the end of the 2016 tax year. Countries such as Australia and Belgium require that the master file be submitted to the tax administration within 12 months of the year-end, while other jurisdictions require merely that the document be prepared by a specific date.[14]

Content

In terms of content, while there are some minor differences in wording, the majority of countries appear to be adopting the OECD's requirements for master file contents without significant deviation from the criteria laid out in the OECD transfer pricing guidelines.[15] How those requirements are to be addressed, however, is open to interpretation, leading to some widely divergent proposals for satisfying the specified criteria.

While we have seen examples of master files that extend to many hundreds of pages, that level of copious detail is not likely to be necessary to satisfy the OECD stipulation for a "high-level overview" that does not require "exhaustive listings of minutiae." A master file template provided by the South Korean tax administration compresses the OECD criteria into an eight-page form for completion by the taxpayer. While we would expect most groups' master files to expand beyond the limited framework of that template, it is important to bear in mind the OECD's encouragement to "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."[16]

A "less is more" approach to the master file is recommended. Companies should supply sufficient information to meet any specific requirements and to fulfill the goal of providing a "blueprint" of the MNE group, but should not be tempted to exceed the requirements and certainly should not veer off and provide information that has not been requested and may only serve to tempt tax administrations to question areas that might otherwise have passed without challenge. This advice is particularly pertinent in the treatment of the key drivers of business profit.

Value Chain Analysis. Annex I to Chapter V of the OECD's transfer pricing guidelines describes the contents of the master file, including a general written description of the MNE's business, the "important drivers of business profit," and "a brief written functional analysis describing the principal contributions to value creation by individual entities within the group." This, possibly in combination with the global overview contained in the CbC report, has led some advisers and maybe even a few tax administrations to talk of the need to provide a "value chain analysis" (VCA) as part of the master file. Without a firm reference point defining a VCA, there has been a wide range of speculation, and some have proposed a quantitative numerical assessment of the MNE's global value chain, a proposal that looks very much like a form of formulary apportionment, with little or no tie to the arm's-length principle.

A VCA, however it is defined, is not specified in the master file requirements. Therefore, there is no need to make a disclosure of that nature. The master file does require a description of the important drivers of business profit. This is a clearly defined requirement for a narrative about what makes the business successful. In most cases, a few succinct paragraphs will suffice. There is no suggestion that the company must take the added step of attempting to allocate profit across the group based on this assessment.

Aside from the sheer impracticality and subjectivity of attempting to allocate global profits based on an assessment of value of the individual elements of the business, no accepted definition of VCA exists in this context. More widely, the term "VCA" has crept into the U.K.'s guidance on material to be submitted in connection with a diverted profit tax assessment and into China's requirements for a local file, but

[14] *See, e.g.* , Income Tax Assessment Act 1997 (Commonwealth of Australia), Subdivision 815-E ("Reporting Obligations for Significant Global Entities").

[15] Action 13 report, *supra* note 1, at 27.

[16] *Id*. at 15-16.

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there is no common understanding of the contents of a VCA between those two.

It is neither necessary nor wise to include any kind of formulary apportionment of profits masquerading as a VCA in the master file; that kind of information is likely to provide tax administrations with ammunition to challenge transfer pricing based on the arm's-length principle. Further, several members of Working Party 6 of the OECD's Committee on Fiscal Affairs have stated that they have no idea what is meant by a VCA, and the idea that the OECD expects a quantitative exercise allocating profits of a global business, based on subjective assessments of value, divorced from the arm's-length principle, has been categorically laid to rest, at least from the perspective of the OECD.[17] To the extent that a VCA is simply a comprehensive form of functional analysis that sets the transactions under analysis within their wider context, the VCA is nothing new. In this sense, it should arguably always have been part of the transfer pricing analysis, but it is not asked for in the master file.

Local File

As is the case with the master file, introduction of a local file requirement based on the OECD's model has occurred on a much more limited basis than the introduction of CbC reporting. MNEs will need to check the individual jurisdictions concerned to ascertain their requirements and whether they supplement or replace any existing documentation requirements. Further, a greater degree of variation has been observed in the content requirements for the local file than the master file; MNEs may need to perform significant tailoring to the OECD template in order to satisfy the regulations of each country.

Preparation and Filing

That the requirement for a local file, like the master file, has been introduced on a more limited basis than the requirement for a CbC report generally should come as no surprise. Many countries have existing transfer pricing documentation requirements that may already perform to some degree the function of the local file. On the whole, countries that have introduced a requirement for a master file post-BEPS have also introduced a local file requirement, although there are exceptions, such as Uruguay, which has not amended its existing local file requirements.

The preparation and filing date requirements for the local file, where introduced, usually match the master file requirements, but there are jurisdictions where a distinction is made — for example, Belgium, Japan, and Sweden. Once again it is necessary to keep track of requirements on an individual country basis. Japan, for example, requires that the master file be submitted in the year following the fiscal year-end of the MNE's ultimate parent company, but there is no such submission requirement for the local file.[18]

Thresholds for local file requirements vary, and there is little consistency from one country to another. Some countries (such as Australia, Austria, and Belgium) maintain the same threshold for preparation of both the master file and the local file; other jurisdictions (such as China, Japan, Peru, and Poland) set a lower threshold for preparation of the local file. Each country sets its own parameters, ruling out the application of any common standard along the lines of CbC reporting.

Content

The fundamental advice regarding the preparation of the master file — namely, that sufficient information and no more be provided — applies equally to the local file. However, by its nature, the local file requires more detailed information regarding specific transactions than the master file does. A high-level overview is not appropriate here, and a local file typically calls for a significant amount of information.

The question of materiality frequently arises when MNEs are faced with deciding the level of transaction to be included in the local file. The OECD does not provide specific guidance on the materiality threshold for the local file, either in absolute or relative terms, ceding this decision to

[17] Andrew Hickman, formerly head of the OECD's Transfer Pricing Unit, and Michael McDonald, chairman of Working Party 6, at the NABE transfer pricing conference (July 20, 2016).

[18] Japanese National Tax Agency, "Outline of the Revision of the Transfer Pricing Documentation" (June 2016).

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individual countries.[19] If local regulations do not provide a materiality standard, it will be at the discretion of the multinational to determine the level at which it sets the materiality bar. The MNE should apply prudent business judgment and take into account any established local practice.

To a far greater degree than applies to CbC reporting or to the master file, many countries have pre-existing local transfer pricing documentation requirements, and only some jurisdictions will replace these with a requirement based on the OECD model. While some countries, such as Austria, have followed the OECD template closely regarding local file requirements, more idiosyncrasies exist at this level of the documentation hierarchy (among those jurisdictions that adopt a local file requirement) than for either the CbC report or the master file. Belgium, for example, has introduced requirements for a local file that differ from the OECD model.[20] Notably, China has requirements for the content of the local file that are much more extensive than the OECD model, including (as noted earlier in this article) a value chain analysis that includes "measurement and attribution of value creation contributed to the enterprise by location specific factors."[21]

MNEs must assess the documentation requirements of each jurisdiction individually and produce documentation that meets the standards of the individual country. In the case of China, for example, MNEs need to pay careful attention to the Chinese State Tax Administration's statement on the treatment of location-specific advantages.[22] This should be interpreted in conjunction with the OECD's latest guidance on location savings and other local market features.[23]

[19] Action 13 report, *supra* note 1, at 17.

[20] Déclaration 275 LF – dossier local prix de transfert, Arrêté royal fixant le modèle de formulaire tel que visé à l'article 321/2, para. 5, du Code des impôts sur les revenus 1992 (Oct. 28, 2016).

[21] Chinese State Administration of Taxation, "Public Notice on Matters Regarding Refining the Filing of Related Party Transactions and Administration of Contemporaneous Transfer Pricing Documentation," Public Notice 42, article 14 (2016).

[22] *See* United Nations, "Practical Manual on Transfer Pricing for Developing Countries," at Part D.2 China Country Practice (2017).

[23] OECD, "Aligning Transfer Pricing Outcomes With Value Creation, Actions 8-10 - 2015 Final Reports" (2015), at 43 (2015).

Conclusion

As is evident from this review, few shortcuts are available to reduce the compliance burden arising from BEPS action 13. There are, however, practical steps that MNEs should take to ensure they are in control of their obligations, to the extent possible. Transfer pricing documentation requirements must be monitored carefully in each jurisdiction where a multinational operates, no small task given the changes currently taking place across the globe, in order to have assurance that all documents meet the required standard by the necessary deadline and are filed when and where appropriate.

Nevertheless, while burdensome, MNEs should not allow the process to grow unduly onerous and extend beyond the expectations of the OECD guidance. While it is always important to satisfy the criteria of the new documentation standards, it is not necessary to exceed them. "Less is more" is the recommended approach, especially when completing the group's master file. In particular, it is a misrepresentation to suggest that BEPS action 13 requires any group to launch into a special new quantitative analysis, sometimes referred to as a VCA, that involves a formulary apportionment divorced from the arm's-length principle. Multinationals should not be tempted to divert money and resources to prepare a quantitative VCA, an exercise of dubious provenance, when it is not required and could provoke an audit or other challenges from the tax administration to established pricing arrangements.

Groups should stick to the guidance presented for completing the documentation and not to try to read more into the requirements than is there. At this stage in the introduction of the new transfer pricing documentation hierarchy, a consensus regarding best practices often simply does not exist. In the context of the CbC report, the reality is that many definitions are not yet clear and guidelines are still being formulated. MNEs will often need to make a best effort for the moment, including sufficient explanation in the report to justify the position adopted. Over time, guidance will be refined and a consensus will emerge for most of the open questions, but for now groups would be well advised to keep the OECD's advice to employ prudent business judgment at the forefront of their approach to completing the new standard of transfer pricing documentation. ■

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