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Via Email: TransferPricing@OECD.org

27 January 2015

BEPS-Action Point 13: Guidance on Transfer Pricing Documentation and Country-by-Country Reporting

Dear Sir or Madam,

As the leading eight associations of trade and industry in Germany, we wish to bring to your attention our concerns regarding compliance burdens and the disclosure of confidential corporate information that arise from the action-point-13 deliverable "Guidance on Transfer Pricing Documentations and Country-by-Country-Reporting".

The Base Erosion and Profit Shifting (BEPS) project is a very ambitious project in the field of international taxation. We are very interested in achieving a level playing field for multinational companies. However, with regard to the report on Transfer Pricing Documentation and Country-by-Country Reporting, we would like to express our serious concerns especially as to safeguarding the confidentiality of the data requested as well as to the additional administrative burden for businesses.

I. Confidentiality of Corporate Data must be safeguarded

From the group parent company's perspective it would often not be prudent to disseminate master file data or country-by-country reports amongst its subsidiaries, as this would create the risk of the information ending up in the hands of a competitor buying a subsidiary. This means that the subsidiary would not be able to demand access to the data against the will of the group parent company. Consequently, an obligation to report master file and the country-by-country report can only be imposed on the ultimate parent company with respect to the tax authorities in that parent company's jurisdiction. We appreciate that this appears to be the approach of the OECD recommendations. However, it is important that data confidentiality is also maintained when country-by-country reports and master files are exchanged with other countries, i.e. countries in which other group companies are resident.

II. Risk of Double Taxation calls for Dispute Resolution Mechanisms

Conflicts between countries over the proper allocation of a company's tax base, arising out of country-by-country reporting must not be fought out at the expense of the company.

The report on action point 13 proposes that companies provide a master file, a local file and a country-by-country report. The country-by-country report is to contain aggregate company data such as revenue, number of employees and physical assets as well as payments to be allocated to the tax jurisdictions in which the group operates. However, the figures stated in the country-by-country report are not necessarily required for the verification of transfer prices since the arm's-length principle is based on an analysis of individual transactions. A global profit split, which could be deduced from the country-by-country report, would not be in line with the OECD approach. We foresee a risk of countries disregarding the OECD-transfer-pricing rules and using the data of the country-by-country report to carry out transfer price adjustments, resulting in double taxation.

Some states tend to demand a greater portion of the group's income based on purported location-specific advantages, even where service fees for routine functions (e.g. low-risk distributors) are concerned. As Mutual Agreement Procedures and Advance Pricing Agreements are in some cases not available, any transfer pricing adjustments demanded by the tax authorities of these countries

inevitably lead to double taxation. It is probable that the same countries would in future rely on country-by-country reports to continue this aggressive stance. For example, it is conceivable that a state may use local revenue in relation to group revenue in order to legitimise transfer pricing adjustments on grounds of an asserted seller's market advantages. A similar logic could conceivably be applied to assert low wage advantages. Hence, there is a risk that the exchange of country-by-country reports between jurisdictions could lead to increased double taxation.

Therefore, when data are to be forwarded by the country of residence of the parent company to other tax jurisdictions, a treaty based dispute resolution mechanism must exist in order to adequately resolve cases of double taxation. Also, this provides an avenue for each country to assess and confirm that the other country has appropriate rules and practices that will keep the information confidential and enables the countries to take action if a country later fails to safeguard the information.

III. Documentation Burden must be minimised

Documentation requirements must be reasonable in relation to the resulting cost of companies to produce the documentation.

The proposed reporting obligations represent considerable compliance burdens on the companies. Any compliance burden must be justified by a commensurate benefit for the tax authorities. Since the data from the country-by-country report are not necessary for transfer-pricing purposes, it is hard to justify a requirement to produce such reports based on any benefit for the tax authorities.

For the above-mentioned reasons we are highly critical of the envisaged country-by-country reporting requirement.

Sincerely yours

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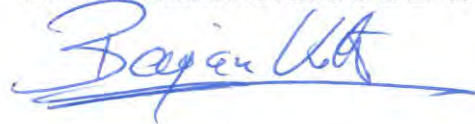
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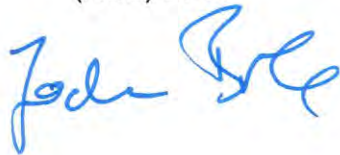
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