



Financing for Sustainable Development

**Transfer Pricing Intermediate Level
Regional Workshop
Nairobi, Kenya
5-6 December 2019**

DOCUMENTATION



DESA

Department of
Economic and
Social Affairs

<http://www.un.org/esa/ffd/>



IBFD

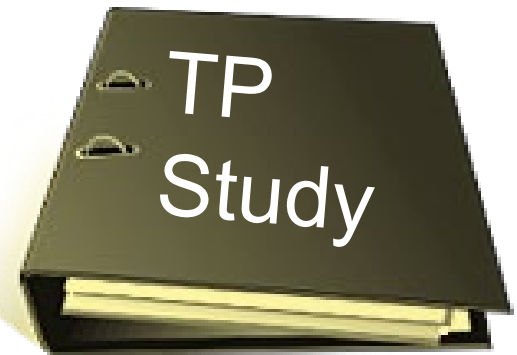
Transfer Pricing Documentation

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Nairobi, 5 December 2019**

The Era of Transparency



The Era of Documentation





**Does documentation increase
transparency?**

Objectives of TP Documentation

- ▶ ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated enterprises
- ▶ provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment
- ▶ provide tax administrations with useful information to use in evaluating a taxpayer's transfer pricing positions upon audit, thereby contributing to the avoidance of many disputes and to the timely resolution of any transfer pricing disputes that may arise

The need for transfer pricing documentation

- ▶ **Until recently, some countries had very general TP documentation requirements (US, UK, the Netherlands) some very specific (Italy, Spain, Denmark, China, Australia...)**
- ▶ **More and more countries now have specific filing requirements (US, China, Australia, France, Denmark, Norway, Mexico...)**
- ▶ **Post-BEPS, broad documentation requirements that go beyond the “current” requirements of many countries**
- ▶ **Who has moved already?**

Action 13 – Re-examine transfer pricing documentation

- ▶ Rules on transfer pricing documentation to enhance transparency for tax administrations
- ▶ Guidance on transfer pricing documentation and country-by-country (CbC) reporting
 - ▶ OECD September 2014 deliverable
- ▶ Guidance on filing process Master file and CbC report
 - ▶ OECD February 2015
- ▶ Final documents released 5 October 2015

Current Landscape – Three-Tiered Approach

Master File

High level information about the MNC's business, transfer pricing policies and agreements with tax authorities in a single document available to all tax authorities where the MNC has operations.

Local File

Detailed information about the MNC's local business, including related party payments and receipts for products, services, royalties, interest, etc.

Country-by-Country Report

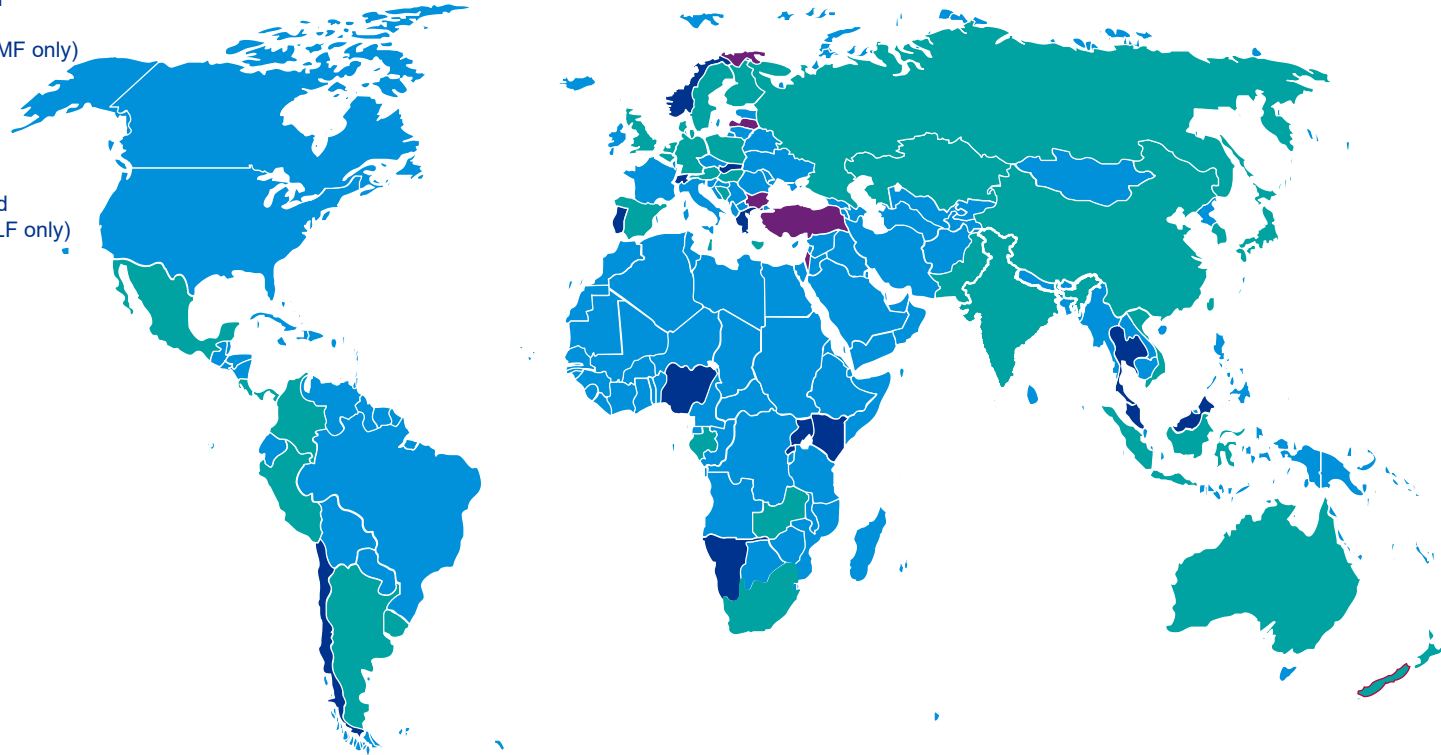
High level information about the jurisdictional allocation of profits, revenues, employees and assets.

Master File / Local File: Country Implementation Summary

- Argentina (MF only)
- Australia
- Austria
- Belgium
- Bosnia and Herzegovina
- China
- Colombia
- Costa Rica
- Curacao
- Denmark
- Finland
- France
- Gabon
- Germany
- Hong Kong
- Hungary
- India (MF only)
- Indonesia
- Japan
- Kazakhstan
- Latvia
- Liechtenstein
- Lithuania
- Malaysia
- Mexico
- Netherlands
- New Zealand
- Pakistan
- Panama
- Peru
- Poland
- Russia
- South Africa
- South Korea
- Spain
- Sweden
- Taiwan
- United Kingdom
- Uruguay (MF only)
- Vietnam
- Zambia
- Bulgaria
- Israel
- Turkey
- Chile (LF only)
- Greece
- Isle of Man
- Kenya
- Malaysia (MF only)
- Namibia
- Nigeria
- Norway
- Rwanda
- Slovakia
- Switzerland
- Thailand (LF only)
- Uganda

Key: ■ Implemented ■ draft bills ■ Intensions to Implement ■ No Development

Total Count: 41 Countries 3 Countries 13 Countries



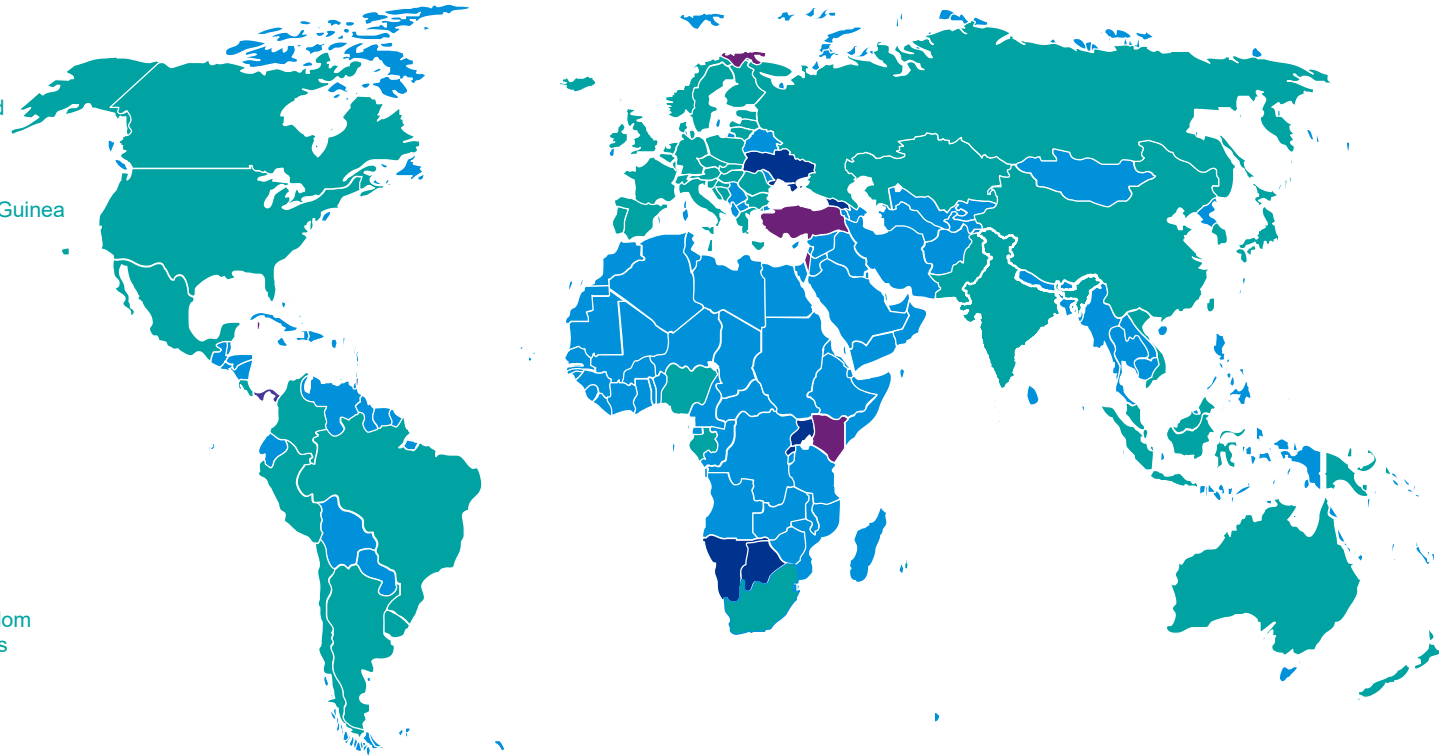
Updated 5 March 2019

Country-by-Country Reporting: Country Implementation Summary

- Andorra
- Argentina
- Australia
- Austria
- Belgium
- Bermuda
- Bosnia and Herzegovina (Fed. of Bosnia and Herzegovina)
- British Virgin Islands
- Brazil
- Bulgaria
- Canada
- Cayman Islands
- Chile
- China
- Colombia
- Costa Rica
- Côte d'Ivoire
- Croatia
- Curacao
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Gabon
- Germany
- Gibraltar
- Greece
- Guernsey
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Ireland
- Isle of Man
- Italy
- Japan
- Jersey
- Kazakhstan
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malaysia
- Malta
- Mauritius
- Mexico
- Monaco
- Netherlands
- New Zealand
- Nigeria
- Norway
- Pakistan
- Papua New Guinea
- Peru
- Poland
- Portugal
- Qatar
- Romania
- Russia
- Singapore
- Slovenia
- Slovakia
- South Africa
- South Korea
- Spain
- Sweden
- Switzerland
- Taiwan
- United Kingdom
- United States
- Uruguay
- Vietnam
- Bahamas
- Israel
- Kenya
- Turkey
- Botswana
- Georgia
- Namibia
- Panama
- Rwanda
- Trinidad & Tobago
- Ukraine
- Uganda

Key: ■ Implemented ■ draft bills ■ Intentions to Implement ■ No Development

Total Count: 75 Countries 4 Countries 8 Countries



Updated 5 March 2019

Summary of Master File Content

Organizational structure

- Full chart of legal and ownership structure and location of operating entities

Descriptions for each major business line

- List of profit drivers
- Chart of supply chain (5 largest products and services + those that are more than 5% of turnover)
- List and description of non-R&D intercompany service arrangements
- Description of main geographic markets
- Functional analysis describing value contributions by individual entities
- Description of restructuring, acquisitions and divestitures during the relevant year

Intangibles

- Description of strategy for development, ownership and exploitation of IP including location of R&D facilities and management
- List of material intangibles and ownership
- List of related-party arrangements related to IP
- Description of group TP policy related to R&D and IP
- Description of internal transfers of interests in IP during the relevant year (entities, location and compensation)

Intercompany financial activities

- Description of group financing, including important arrangements with unrelated lenders
- Identification of central financing entities and their place of organization and operation
- Description of TP policies for intercompany financing arrangements

Financial and tax positions

- MNC's annual consolidated financial statement
- List and description of MNC group's Advanced Pricing Arrangements (APAs)
- List and description of other relevant tax rulings related to the allocation of income to particular jurisdictions

Master File Differences to State before New Guidance

<u>Master file content</u>	<u>Typical documentation content previously</u>
▶ Global scope	▶ Regional or transactional scope
▶ Industry and business overview dependent on analyst reports and annual statements	▶ Industry and business overview tailored to transaction including some public and private information
▶ Coverage of all major transactions based on defined materiality criteria required	▶ Does not necessarily cover all or majority of transactions or consider materiality
▶ Overall view provided through description of supply chain for main products/services	▶ Global profit analysis and global supply chain chart not typically provided
▶ Required to list intangibles, intercompany agreements related to intangibles and describe TP policy related to R&D and intangibles	▶ Usually covered in relevant country documentation (if relevant)
▶ Description of transfer of intangibles	▶ Usually not provided
▶ Description how the group is financed, including important financing arrangements with third party lenders. TP policy with respect to financing	▶ Usually not provided
▶ List of all existing APAs (unilateral)	▶ APAs not listed unless relevant to covered transaction in country documentation
▶ List of tax rulings	▶ Tax rulings not typically listed or described
▶ Global legal entity chart	▶ Only relevant legal chart typically provided

Summary of Local File Content

Local entity

- Local organization chart and description of management structure, individuals and country location of individuals to whom local management reports
- Description business, business strategy and indication whether the local entity has been involved or affected by business restructurings or intangible transfers in the present or past year, including explanation of such transactions' affect on the local entity
- Key (local) competitors

Each material category of controlled transactions

- Description of the transaction (e.g., manufacture and distribution of goods) and context in which it takes place (e.g., business activity, financial activities of the MNC group and cost contribution arrangement)
- Amount of intercompany charges, including interest, royalty and fees for services paid and received; breakdown per jurisdiction
- Identification of associated parties involved in each controlled transaction and the relationship among them
- Copies material intercompany agreements
- Detailed functional analysis with respect to each controlled transaction (i.e., functions performed, assets used and risks borne)
- Other relevant related-party transactions
- Selection of most appropriate TP method and reasons for selection, as well as a selection of the tested party

Each material category of controlled transactions (continued)

- Important assumptions made in applying the TP methodology and explanation for performing multi-year analysis (if relevant)
- Description of selected comparable uncontrolled transactions, comparable search methodology and sources
- Description of any comparability adjustments performed
- Description of the reasons for concluding that relevant transactions were conducted on an arm's length basis based on the application of the selected method
- Summary of financial information used to apply the TP methodology
- Copy existing unilateral / bilateral APAs and other tax rulings to which jurisdiction is not a party but which are related to relevant transaction

Financial information

- Annual local entity financial accounts for the relevant year
- Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements
- Summary schedules and sources of relevant comparable financial data

Action 13 Country by Country Reporting - Objectives

Stated purpose of CbC:

- ▶ High level transfer pricing risk assessment
- ▶ Evaluate other BEPS related risks
- ▶ Economic and statistical analysis

NOT

- ▶ Global formulary apportionment of income

How CbC reporting achieves this:

- ▶ Providing a global view of a multinational's value chain
- ▶ Understanding of the 'bigger picture'
- ▶ Identifying if revenues and profits generated are commensurate with substance
- ▶ Identifying artificial shifting of substantial amounts of income into tax-advantaged environments
- ▶ Visibility of where groups are located in tax havens or have tax incentives
- ▶ Greater transparency on the location of permanent establishments and branches



Summary of CbC Report Content

- Total revenue, broken down into unrelated party revenue and related party revenue
- Profit (loss) before income tax
- Income tax paid (on a cash basis)
- Income tax accrued for the current year
- Stated capital
- Accumulated earnings
- **Number of employees**
- Tangible assets other than cash and cash equivalents

Report the following on a jurisdiction-by-jurisdiction basis:

- Each constituent entity in the group that is resident in the jurisdiction;
- The jurisdiction of organization or incorporation for each constituent entity if different from the jurisdiction of residence
- The main business activities for each constituent entity of the MNE group

Final Template (Page 1) and Guidance

Tax Jurisdiction	Unrelated Party Revenue	Related Party Revenue	Total Revenue	Profit (loss) before income tax	Income tax paid (on a cash basis)	Income tax accrued – current year	Stated Capital	Accumulated Earnings	Number of employees	Tangible Assets other than Cash and Cash Equivalents
Country A	X	X	X	X	X	X	X	X	X	X
Country B	X	X	X	X	X	X	X	X	X	X
Not resident in any tax jurisdiction	X	X	X	X	X	X	X	X	X	X

Use same data source consistently year on year

Choice from:

- Consolidated reporting packages.
- Separate entity statutory financial statements^(a).
- Regulatory financial statements.
- Internal management accounts.

Group GAAP (Generally Accepted Accounting Principles) versus Local GAAP – differences, practicalities, reconciliation.

Aggregate on a country basis

Tax jurisdiction

- Reporting on tax a jurisdiction basis.
- **Self assess** tax residence – Tax treaty tie breakers, or principles of place of effective management.
- **Dual resident** entities – apply the tax treaty tie breaker, or if no treaty, report in the place of effective management.
- **Not resident anywhere** – report all such vehicles in a single line

Note: (a) Translate to the functional currency of the Reporting MNE at average rate.

Final Template (Page 2) and Guidance

Tax Jurisdiction	Constituent entities resident in the tax jurisdiction	Tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence	Activities													
			Research and development	Holding or Managing intellectual property	Purchasing or procurement	Manufacturing or production	Sales, marketing or distribution	Administrative, management or support services	Provision of services to unrelated parties	Internal group finance	Regulated financial services	Insurance	Holding shares or other equity instruments	Dormant	Other	
Country A	Entity A	Country B		✓												
	Entity B				✓	✓				✓						✓
Country B	Entity C		✓									✓				
	PE 1							✓								

Scope

Reporting Multinational Enterprise (MNE) – ultimate parent of an MNE group.

Constituent Entity – any separate business unit of the MNE group:

- Company
- Corporation
- Trust
- Partnership
- Etc....

Included in the consolidated group for financial reporting purposes.

Entities excluded from accounts due to **size/materiality** – include for CbCR.

Permanent Establishments/Branches

Report separately if separate income statement prepared for:

- Regulatory;
- Financial reporting;
- Internal management; or
- Tax purposes.

Include in the country where they are situated

Exclude from the 'parent' country

Exceptions are accumulated earnings and stated capital. Report the former in the parent and the latter in the parent unless there is a defined capital requirement in the PE jurisdiction for regulatory purposes



Key Considerations

- ▶ **Membership of the Inclusive Framework and minimum standard on CbC Reporting**
- ▶ **Monitoring through a peer review process**
- ▶ **Countries in Africa that have been successfully peer reviewed for this item include Mauritius and South Africa**
- ▶ **What lessons can be learnt from the peer review process?**

Key Considerations – cont'd

- ▶ **Framework for sharing of information on CbC reports
(generally filed with the ultimate parent entity jurisdiction)**

- ▶ **Challenges and solutions for Africa?**
 - ▶ Network of exchange agreements or tax treaties with article on exchange of information

- ▶ **Confidentiality of information contained in TP documentation and specifically CbC report**

- ▶ **Balance cost vs. benefit and other considerations**



Thank You!