Global transfer pricing update for oil and gas companies
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Agenda

► Global documentation trends
► Base Erosion and Profit Shifting (BEPS) and the impact on the industry
► Intercompany services issues
The UN is continuing work on the Transfer Pricing Practical Manual for Developing Countries, which includes chapter on transfer pricing documentation.

*Effective indicates that either the country has specific legislation or regulations regarding transfer pricing documentation or other guidance strongly suggests that transfer documentation should be in place.

** Although there is no statutory transfer pricing documentation requirement, the new ITR14 asks whether or not the taxpayer has transfer pricing documentation in place that supports an arm’s-length transfer pricing policy applied to each transaction between the company and foreign-connected persons during the year of assessment.
Documentation trends

► The OECD draft recommendations report was issued on 16 September 2014.
► The report provides the final content of the template for Country by Country (CbC) reporting.
► Most companies are monitoring BEPS initiatives on country-by-country reporting and documentation to:
  ► Proactively manage global controversy
  ► Prepare for increased reporting
► The G8 and G20 governments are strongly endorsing the OECD’s work on BEPS.
► Major developing countries, including China and India, are actively engaged with the OECD on BEPS.
► Some countries are already taking action with respect to BEPS, with recent legislative activity in Australia, Mexico, Greece and France.
Base Erosion and Profit Shifting (BEPS) and the impact on the industry
Impact of BEPS

▶ BEPS is expected to result in an increase in transfer pricing audits.
▶ Tax authorities in most countries expect an increase in resource commitments due to BEPS developments.
▶ Companies need to be ready for BEPS-related developments in all countries where they have operations, investment or activity.
BEPS TP documentation recommendation

► Provide information for tax authorities to gain transparency regarding multinational company (MNC) global operations as a whole
► Harmonize transfer pricing documentation to reduce compliance burdens for MNCs
► Proposed tiered approach focused on both global (Master File) and local country attributes (Local File)
Action 13: Transfer pricing documentation and country-by-country (CbC) reporting

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

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

Country-by-Country Report
High level information about jurisdictional allocation of profits, revenues, employees and assets.
Action 13: TP Documentation and CbC Reporting

Why:
Provide tax authorities with information on an MNC’s operations in the country but also about the MNC’s entire global footprint. Allows a high level risk assessment.

Next Steps:
Guidelines on implementation and filing.

When:
Content final. Finalization of implementation approach early 2015. Adoption by countries will vary.

What it is not:
CbC report is not intended as a substitute for a full transfer pricing analysis. And it is not intended to be used to make formulary apportionment based adjustments.
OECD CbC template – Main reporting table – Country aggregated data

<table>
<thead>
<tr>
<th>Tax Jurisdiction</th>
<th>Revenues</th>
<th>Profit (loss) Before Income Tax</th>
<th>Cash Tax Paid (CIT and WHT)</th>
<th>Current Year Tax Accrual</th>
<th>Stated capital</th>
<th>Accumulated earnings</th>
<th>Tangible Assets other than Cash and Cash Equivalents</th>
<th>Number of Employees</th>
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<td>Unrelated party</td>
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Notes:
- Aggregated rather than consolidated data
- Flexibility in data sources allowed
- Entity data aggregated on the basis of tax residence
- Revenue defined to include turnover, royalties, property and interest income.
- Revenue specifically excludes intercompany dividends
- Profit/loss before income tax includes extraordinary items
- Cash tax paid includes tax withheld by other parties on payments to the constituent entity
- Current year tax accrual is tax on current year operations only
- Number of employees may include external contractors
OECD CbC template – Table 2 - Entity details

<table>
<thead>
<tr>
<th>Tax Jurisdiction</th>
<th>Constituent Entities resident in the Tax Jurisdiction</th>
<th>Tax Jurisdiction of organization or incorporation if different from Tax Jurisdiction of Residence</th>
<th>R &amp; D</th>
<th>Holding or managing IP</th>
<th>Purchasing or Procurement</th>
<th>Mfg or production</th>
<th>Sales, marketing or distri.</th>
<th>Admin., Mgmt or support services</th>
<th>Provision of services to unrelated parties</th>
<th>Internal group finance</th>
<th>Regulated financial services</th>
<th>Insurance</th>
<th>Holding shares or other equity instruments</th>
<th>Dormant</th>
<th>Other</th>
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</tbody>
</table>

Notes:
- Constituent entities rather than legal entities
- Multiple activities may be chosen
## Master File – Information required

<table>
<thead>
<tr>
<th>Organisational Structure</th>
<th>Business description</th>
<th>Intangibles</th>
<th>Intercompany financial activities</th>
<th>Financial and Tax positions</th>
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</thead>
<tbody>
<tr>
<td>Structure chart:</td>
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<tr>
<td>► Legal ownership</td>
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<td>► Geographic location</td>
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<tr>
<td>Important drivers of business profit</td>
<td>Overall strategy description</td>
<td>Financing arrangements for the group (related and unrelated lenders)</td>
<td>Annual consolidated financial statements</td>
<td></td>
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<tr>
<td>Supply chain of:</td>
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<tr>
<td>► 5 largest products/services by turnover</td>
<td>List of important intangibles and legal owners</td>
<td>Identification of financing entities</td>
<td>List and description of existing unilateral advance pricing agreements (APAs) and other tax rulings</td>
<td></td>
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<tr>
<td>► Products/services generating more than 5% of turnover</td>
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<tr>
<td>Main geographic markets of above products</td>
<td>List of important intangible agreements</td>
<td>Details of financial transfer pricing policies</td>
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<tr>
<td>List and brief description of important service arrangements</td>
<td>R&amp;D and intangible transfer pricing policies</td>
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<tr>
<td>Functional analysis of principal contributions to value creation by individual entities</td>
<td>Details of important transfers</td>
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<tr>
<td>Business restructuring/ acquisitions/ divestitures during fiscal year</td>
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</tbody>
</table>
## Local File – Information required

<table>
<thead>
<tr>
<th>Local Entity</th>
<th>Controlled transactions</th>
<th>Financial Information</th>
</tr>
</thead>
</table>
| Management structure  
Local organisation chart  
Details on individuals to whom local management reports | Description of material controlled transactions and context in which they take place.  
Identification of associated enterprises party to controlled transactions and relationship  
Functional analysis  
Transfer pricing methods used  
Comparables and details of methodology | Local entity financial statements |
| Description of business and business strategy pursued | Amounts of intra group payments and receipts for controlled transactions (i.e. products, services, royalties, interest etc.) | Reconciliation to show how financial data used in applying the transfer pricing method ties to the financial statements |
| Details of business restructurings and/or intangible transfers | Unilateral and bilateral/multilateral APAs and other tax rulings related to the controlled transactions | Summary of relevant financial data for comparables and sources from which data was obtained |
| Key competitors | | R&D and intangible transfer pricing policies |
| | | Details of important transfers |
Countries with TP audits with oil and gas companies

- Australia
- Canada
- Chad
- China
- Colombia
- Gabon
- Germany
- India
- Indonesia
- Italy
- Kazakhstan
- Malaysia
- Mexico
- Nigeria
- Norway
- Russia
- Thailand
- US
- Venezuela

Oil and gas companies have or are in the process of getting APAs involving Australia, Canada, Colombia, Mexico, Singapore, the UK and the US.
Intercompany services issues
Upstream – JOAs

- Upstream companies frequently enter into joint operating agreements (JOAs) with unrelated parties to jointly develop upstream assets - this is done primarily to pool risk.

- JOAs are usually unincorporated joint ventures and have one party acting as the “operator” who runs the production process – in practice a single company will have dozens of operated and non-operated assets.

- JOA activity gives potential rise to some unrelated party transactions that are similar the intercompany (I/C) transactions occurring.
Upstream – I/C transactions

► As a corollary of the centralized “hub” model, the primary intercompany transaction is the provision of technical and non-technical services from the hub to the exploration and production assets.

► These services may be provided by seconded personnel or remotely from the central hub; they represent income for the hub country and deductions for the local operations.

► Tangible goods transactions arise as the local production assets sell the produced oil & gas to another affiliate – however, these intercompany sales are tangible property sales, not a services transaction.
Upstream – key issues

- The identification of the cost base related to the I/C services and its appropriate allocation among benefitting local affiliates is key; fortunately, due to prevalence of JOAs most companies have fairly developed cost allocation processes because when acting as operators they can recoup their cost from the unrelated JOA partners.

- Industry practice is charge only cost (not including a markup) to unrelated JOA partners; however, companies should apply a markup to I/C services because while in the JOA case the operator has a claim to the income stream from the well, in the I/C situation there is no profit element except for the markup.
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