

FOCUS ON

Transfer pricing

HMRC published a Transfer Pricing Documentation consultation paper on 23 March seeking views on a likely update of the Transfer Pricing documentation requirements in the UK.

The UK's current Transfer Pricing documentation requirements are governed by non-specific legislative record keeping requirements for UK businesses to deliver correct and complete returns. Until now HMRC has not prescribed any specific records that UK businesses must prepare or the format of those records.

[Link to the full text of HMRC's consul-doc is available here.](#)

Why has this action been taken now?

HMRC recognises that transfer pricing is a major source of tax uncertainty for large UK businesses and a significant area of tax risk for HMRC. To date, absence of any specific transfer pricing documentation requirements, and supporting guidance, has created a degree of uncertainty for UK businesses regarding the appropriate transfer pricing documentation they need to keep, leading to inconsistency of approach.

The proposed changes mean that HMRC would require UK businesses in scope to keep certain information relating to transfer pricing matters in standardised formats.

In addition, UK businesses will be required to extract information from existing records and present it to HMRC promptly in a consistent manner.

It is expected that introducing these requirements whereby UK businesses file an annual return summarising their cross border transfer pricing transactions with associated businesses would align the UK with the practices of comparable jurisdictions and could lead to fewer and more targeted compliance interventions.

At the same time if the data is presented in a standardised format it will enable HMRC to use more data driven autonomous risk assessment and profiling.

Summary of key points from the consultation paper

1. In line with tax practices of other jurisdictions, HMRC plans to introduce mandatory TP documentation requirements for MNEs from within the CbC reporting group to prepare a Master file and Local File in line with BEPS Action 13. The government's expectation is that the majority of groups within the CbC reporting regime would be routinely creating a master file. Consequently, providing HMRC with a copy should not impose a significant additional burden.
 - a. The master file and local file would need to be produced upon request.
 - b. Views are invited on whether 30 days upon request is an appropriate timescale to submit the Master file and the Local file.
 - c. Comments are invited on what metrics would be appropriate to determine the de minimis thresholds i.e. minimum values to focus requirements for sufficiently material transactions.
2. HMRC has also asked for views regarding supporting the local file with some form of an evidence log which sets out the key facts, potentially as an appendix to the local file documentation. This is aligned with their existing approach followed under the Profit Diversion Compliance Facility (PDCF).



3. Additionally HMRC have asked for feedback on the potential introduction of an IDS (International dealings schedule) which is similar to the TP forms in some other territories (a few examples are provided in the paper as a reference these being Australia, Belgium and Denmark) and which would be filed along with the Corporate Tax Return. HMRC believes an IDS would help gather upfront data to improve the efficiency and effectiveness of the risk assessment resulting in fewer and more targeted enquiries.
 - a. Some possible data and information details that could be expected to be reported via an IDS could include:
 - i. The nature and amount of specific types of transactions
 - ii. Details of financial dealings
 - iii. Compensation, receipts or payments of a non-financial nature
 - iv. Information on restructuring activity
 - v. Information on the transfer pricing methodologies applied
 - vi. Information on the level and type of supporting documentation for the transfer pricing
 - vii. Methodology selected and applied
 - viii. Counterparty details for transactions including identity and country location
 - ix. Information on activities
 - x. Corporate group information (to enable entity level data to be combined and attributed to a particular MNE group)
 - b. In terms of scope and applicability, HMRC proposes to exempt small and medium sized businesses from preparing the IDS;
 - c. There is a likelihood that reporting details of domestic related party transactions could be excluded;
 - d. It is possible that materiality limits would be set to exclude some transactions i.e. Transactions could be excluded according to materiality by size or nature. For example, some very small transactions may not need to be reported, or transactions of a very low risk nature could be excluded, or where a business has many small transactions of a very similar nature then these could be aggregated and reported as a single figure in the IDS

Our view on this

In the first instance, once the policy design is finalised it is likely to affect large sized businesses in the UK which have to comply with the CbCR requirements. Accordingly, after the final policy design is issued MNEs who fall in scope will have to focus on setting up internal tracking procedures for extracting relevant information.

In limiting this requirement for a specific set of the UK businesses, it appears that this is only an initial testing by HMRC before the policy is extended to cover even medium sized UK businesses or those which have complex structures and could be at high risk but which might not fall within scope currently. HMRC's own limitation of adequate resources could also be a reason why this is being set in phases with the policy testing the largest groups first.

It is yet unclear on why HMRC would want to have MNEs within the CbCR reporting groups produce / gather an additional layer of information as some of the data and information types already form part of the CbCR document. They might address this issue in the final policy document when it is brought to their attention.

If you have any questions regarding the above, or would like to discuss in greater detail, please feel free to speak to your local MHA contact.