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1. OECD BEPS Action point 13 – Transfer pricing documentation

As a result of the report released in February 2013, *Addressing Base Erosion and Profit Shifting*, OECD and G20 countries adopted a 15-point Action Plan. The Action Plan aims to address Base Erosion and Profit Shifting (BEPS) matters and define instruments that will ensure that taxation right of specific countries is exercised in accordance where economic activities take place and value is created. After two years of work, the 15 actions have been completed.

Final report regarding Action point 13 has been published in 2015. The report revises OECD standards for transfer pricing documentation and defines a three-tiered transfer pricing documentation. Please find below most important changes about transfer pricing documentation.

1.1. Types of transfer pricing documentation files

- **Masterfile** – a document based on which Multinational Enterprises (MNEs) should provide to their tax administrations general information on their business activity and transfer pricing policy applied within the MNE group;
- **Local file** – a document that is complementary to Masterfile at the level of each country and includes detailed information about local entities, data on related party transactions and transfer pricing analysis of such transactions;
- **Country-by-Country (CbC) Report** – a document that certain MNEs should prepare, covering each tax jurisdiction in which they operate. CbC Report contains information about global allocation of revenues between members of the MNE group, taxes paid, number of employees, value of assets, equity and retained earnings, per each jurisdiction in which the MNE group operates.

The purpose of preparing the three-tiered documentation is to ensure implementation of a consistent transfer pricing policy at the level of an entire MNE group.

1.2. To whom it applies?

Masterfile and Local transfer pricing documentation file should be prepared and submitted by all taxpayers directly to their tax administrations. All members within a MNE group with minimum annual consolidated group revenue in the previous year of EUR 750 million are obligated to prepare CbC Report. However, CbC Report is to be submitted only by the ultimate parent of a MNE group to their own tax administration, while



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data reported in such submitted CbC Report shall be automatically exchanged between different tax jurisdictions i.e. tax administrations.

1.3. Timeframe

Changes provided in Action point 13 should be implemented for all fiscal years starting from 1 January 2016, as follows:

- CbC Report should be filled within 12 months from the end of a fiscal year for which it is prepared, with recommendation that first CbC Report should be filled by 31 December 2017. In case a MNE group operates in a fiscal year that differs from a calendar year, recommendation is that CbC Report should be filled within 12 months from the end of the relevant fiscal year;
- Deadline for submitting Masterfile and Local file is not precisely defined and it depends on local legislation. Best practice requires that Local file should be finalised no later than the deadline for submitting tax return for the fiscal year in question. Masterfile should be reviewed and updated, if necessary, by the deadline for submitting tax return of the ultimate parent company of the MNE group. These files are to be submitted directly to tax administrations together with tax returns or upon request of tax administrations.

1.4. Frequency of transfer pricing documentation update

Masterfile, Local file and CbC Report should be reviewed and updated annually.

For the purpose of simplicity, some tax jurisdictions may determine in their local legislation that the comparable search in available databases is to be carried out every three years, instead of each year, but only providing the business activity conditions remained unchanged. However, financial data of the comparable companies for the purpose of benchmarking analysis should be updated once a year in order to support the arm's length character of the analysed transaction.

2. Legal requirements with regards to transfer pricing documentation in Serbia

Transfer pricing legislation in Serbia, including liability to prepare and submit transfer pricing documentation file, has not been changed so far nor has been harmonized in accordance with the recommendations of BEPS Action point 13. However, the Corporate Income Tax Law recognizes significance of the OECD transfer pricing guidelines by envisaging that the transfer pricing legislation in Serbia is to be developed further in accordance with the OECD's sources relevant to this matter.

Consequently, it can be concluded that, in the course of practical application of general legislation framework, Serbian taxpayers may rely on the OECD transfer pricing guidelines.



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2.1. Types of transfer pricing documentation files

A taxpayer is required to submit the following local transfer pricing documentation file to the tax administration:

- **Full-scope transfer pricing report** – includes analysis of the group of related entities, business activity analysis, functional analysis, selection of transfer pricing method, benchmarking analysis and conclusion of the transfer pricing analysis; or
- **Simplified transfer pricing report** – includes only basic data about intercompany transactions of a taxpayer, without detail analysis and supporting the arm's length character of the intercompany transactions.

Which of the above reports should be prepared by a taxpayer depends on the value and nature of transactions between related parties. Thus, the simplified transfer pricing file shall be submitted if the following conditions were met:

- Specific related party transaction is regarded to be one-off transaction and does not exceed RSD 8 million in a fiscal year; and/or
- Total value of all transactions with a specific related party during a fiscal year does not exceed RSD 8 million.

2.2. To whom it applies?

Transfer pricing documentation file should be submitted by all entities who had transactions with related parties during a fiscal year, irrespective of these transactions were domestic or cross-border.

2.3. Timeframe

Transfer pricing documentation file should be submitted annually, together with corporate income tax return, within 6 months from the end of a fiscal period.

2.4. Frequency of transfer pricing documentation update

Transfer pricing documentation should be prepared and submitted annually. Benchmarking analysis should include last available financial data at the time of submitting the documentation.

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3. Transfer pricing documentation: OECD vs. Serbia

Please see breakdown of OECD Action 13 vs. Serbian transfer pricing documentation requirements

OECD BEPS Action point 13	Serbian legislation
What?	
<ul style="list-style-type: none"> • CbC Report • Masterfile • Local file 	Local file
Who?	
<ul style="list-style-type: none"> • CbC Report: ultimate parent company of a MNE group with annual consolidated revenue of the group > EUR 750 mil. • Masterfile and Local file: all taxpayers 	All taxpayers
When?	
<ul style="list-style-type: none"> • CbC Report: within 12 months from the end of the relevant fiscal year; • Masterfile and Local file: according to local regulations 	6 months after the end of a fiscal year, together with corporate income tax return
Update and benchmarking analysis?	
<ul style="list-style-type: none"> • Annual update • New benchmarking analysis every 3 years providing business activity conditions remain unchanged 	Annually

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Your contact in Serbia:

Bojan Žepinić

Tax Advisor, Managing Partner

Tel: +381 11 655 88 00

E-Mail: bojan.zepinic@tpa-group.rs



Thomas Haneder

Tax Advisor, Partner

Tel: +381 11 655 88 00

E-Mail: thomas.haneder@tpa-group.com

This Newsletter is a service of TPA Serbia

Kind regards

your TPA Team

Contact:

TPA Tax and Accounting d.o.o.

Makedonska 30, 3rd floor

11000 Belgrade

Tel.: +381 11 655 88 00

<http://www.tpa-group.rs>

<http://www.tpa-group.com>

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