

GFIA comments on the OECD Discussion Draft on Transfer Pricing Documentation (“TPD”) and Country By Country Reporting (“CbCR”)

Executive Summary

The GFIA supports the principle of disclosure of information to tax authorities and providing them with a high level risk assessment tool that gives tax authorities around the world a better view of multinational groups as a whole.

The GFIA’s understanding is that the draft CbCR template is to be used by tax authorities as a risk assessment tool. GFIA believes that the level of detail proposed in the current draft goes beyond what is needed for effective risk assessment and may significantly increase the compliance burden on insurance companies.

Flexibility in compiling the CbCR template is needed in order to avoid a disproportionate compliance burden on the insurance sector. In our view granting such flexibility will still enable tax authorities to carry out a high level risk assessment.

In developing the CbCR standard, a uniform global solution is needed. Inconsistent national or regional tax information rules would lead to duplicate reporting, excessive costs and complex system designs for tax authorities and insurance companies who operate with scarce resources.

Introduction

The GFIA welcomes the opportunity to comment on the OECD draft discussion paper on Transfer Pricing Documentation (“TPD”) and Country-By-Country Reporting (“CbCR”).

GFIA recognizes the importance of transfer pricing documentation within multi-national entities (“MNEs”) and the need to enhance transparency for tax administration purposes taking into account the compliance costs to businesses. However, GFIA believes that both improving transparency and reducing compliance burden should both be at the very heart of this initiative. Therefore, the OECD should make sure that its common standard would eliminate local differences and reduce the compliance burden for the insurance sector.

Inconsistent national or regional tax information rules on the other hand would lead to duplicate reporting, excessive costs and complex system designs for tax authorities and insurance companies who operate with scarce resources. The risk of overlapping and inconsistent reporting requirements is real, as there are currently a number of different ongoing initiatives in the area of CbCR. For instance, in addition to the OECD proposal, the European Parliament has recently proposed¹ to introduce country-by country

¹ ECON opinion on the EC proposal for Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of nonfinancial and diversity information by certain large companies and groups.

reporting to large undertakings. We believe it is essential that there is consistency of approach between the different initiatives in order to keep the compliance burden manageable and avoid confusion.

Despite our general support for the introduction of a common global standard, we are concerned that the level of detail proposed in the current draft goes beyond what is needed for effective risk assessment and may significantly increase the compliance burden on insurance companies. In particular, we are concerned that this proposal would result in a need to establish an entirely new reporting system by the insurance sector.

In this respect, GFIA would like to highlight seven key messages that require further attention in order to ensure a pragmatic balance between providing tax authorities with the information they need in order to conduct transfer pricing risk assessment on the one hand, and compliance burden imposed on business on the other.

Key messages

1. Flexibility over a “bottom-up” or “top-down” approach (C.1. Master File).

Should the country-by-country template be compiled using “bottom-up” reporting from local statutory accounts as in the current draft, or should it require (or permit) a “top-down” allocation of the MNE group’s consolidated income among countries?

We are of the view that taxpayers should be given the flexibility of using either a “bottom-up” or a “top-down” approach in their CbCR. Insurance companies are organised in different ways and use different systems to report financial information both internally and externally.

2. Flexibility over an entity or country based reporting (C.1. Master File)

Should the country-by-country template be prepared on an entity by entity basis as in the current draft or should it require separate individual country consolidations reporting one aggregate revenue and income number per country if the “bottom-up” approach is used?

The GFIA believes that taxpayers should be given the option of disclosing aggregate financial information on an entity or country basis.

Some groups will have hundreds or even thousands of entities and some level of country consolidation is likely to be required to ensure that the volume of data is manageable and so that the information is useful for tax authorities’ high level risk assessments. Furthermore, CbCR on an entity-by-entity basis could result in a significant compliance burden, especially for those taxpayers who have limited financial information readily available on an individual entity basis such as partnerships or trusts.

On the other hand, for smaller groups preparing the information on an entity basis may be more manageable and useful. Therefore, it is essential that flexibility is permitted.

3. CbCR should be submitted as a separate document (C.1 Master File).

Should the country-by-country report be part of the master file or should it be a completely separate document?

We believe that the CbCR report should be a stand-alone document, which is separate from the master and local file of TP documentation. The CbCR report and the TP documentation serve different purposes, and may be subject to different filing timeline and materiality standards. Therefore, keeping the two documents separate would help streamline both taxpayer compliance and tax authority administration of the reported information.

Furthermore, the proposed CbCR template would contain detailed group-wide information that is not generally available to local entities. It is also likely to contain confidential information that should not be distributed to local tax authorities automatically unless it is relevant to the local tax position.

4. Reporting on tax due basis (C.1 Master File).

Should the country-by country template require one aggregate number for corporate income tax paid on a cash basis or tax due basis per country?

The GFIA believes that the aggregate corporate income tax paid by country should be collected on a "tax cost basis" (including both, current and deferred tax charge or expense). The collection of cash tax paid for the period may not present the full picture for risk assessment purposes. This is especially important for the insurance industry where timing differences between income for accounting and taxation can be significant and volatile. Furthermore, many jurisdictions impose other basis of taxation, such as tax on gross premiums, capital employed or investment income. Where these taxes are imposed in lieu of regular corporate income taxes, these taxes should be included in the relevant CbCR.

5. No reporting on intra-group payments (C.1 Master File).

Should reporting of aggregate cross-border payments between associated enterprises be required? If so at what level of detail? Would a requirement for reporting intra-group payments of royalties, interest and service fees impose significant additional burdens on taxpayers?

Keeping in mind that the CbCR template is intended to be a high level risk assessment tool, in our view there is no need to include intra-group payments of royalties, interest and service fees, because reporting on such payments goes beyond the original idea of providing a high level risk assessment for tax authorities.

Furthermore, reporting on intra group payments would significantly increase the administrative burden since intra group payments will already be included in the transfer pricing documentation (master file and local file).

As a result, groups with many entities would be required to report thousands of separate transactions, in multiple local currencies and multiple local GAAPs.

6. Materiality thresholds should be introduced (D.3 Materiality)

Comments are requested as to whether any more specific guideline on materiality could be provided and what form such materiality standards could take.

The GFIA believes that the materiality thresholds should be provided in order to ensure effective risk assessment and to reduce the compliance burden on businesses.

Furthermore, as preparing transfer pricing documentation is time consuming and expensive, special consideration should be given to small and medium sized groups. Such groups should not be required to incur compliance costs that are disproportionate to the nature, scope and complexity of their intra-group transactions.

7. Master file should be submitted only in the parent company's jurisdiction (E. Implementation).

Comments are requested regarding the most appropriate mechanism for making the master file and country-by-country reporting template available to relevant tax administrations. Possibilities include:

The direct local filing of the information by MNE group members subject to tax in the jurisdiction;

Filing of information in the parent company's jurisdiction and sharing it under treaty information exchange provisions;

Some combination of the above.

GFIA's preference is to file only in the parent company jurisdiction. Information to other local tax authorities should only be shared under treaty or information exchange agreements. These provisions can provide protection of confidentiality from inappropriate use of information.

About the GFIA

Through its 37 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers in 56 countries. These companies account for around 87% of total insurance premiums worldwide. The GFIA is incorporated in Switzerland and its secretariat is based in Brussels.