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**Comments to the OECD “*Discussion Draft on Transfer Pricing
Documentation and Country-by Country Reporting*”**

Prepared by the CFE Fiscal Committee

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CFE (Confédération Fiscale Européenne) is the umbrella organisation representing the tax profession in Europe. Our members are 32 professional organisations from 25 European countries (21 EU member states) with 180,000 individual members. Our functions are to safeguard the professional interests of tax advisers, to assure the quality of tax services provided by tax advisers, to exchange information about national tax laws and professional law and to contribute to the coordination of tax law in Europe.

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General Comments

1. Introduction

The “*Discussion Draft on Transfer Pricing Documentation and CbC Reporting*” (“*Discussion Draft*”), issued on January 30th, 2014 provides for some guidance on transfer pricing documentation and country-by-country reporting. The document includes a proposal to replace the text under Chapter V of the Transfer Pricing Guidelines in its entirety, with the provisions included in the Discussion Draft, as further developed.

The Discussion Draft provides guidance:

- for tax administrations, on the information necessary to conduct an informed transfer pricing risk assessment;
- for taxpayers, in identifying documentation that would be most helpful in describing that their transactions are in line with the arm’s length principle;
- in resolving transfer pricing issues and facilitating tax examinations.

If, on the one hand, it is important that tax administrations are able to access all information that is required to conduct a comprehensive audit, on the other hand, taxpayers should carefully evaluate their own compliance with the applicable transfer pricing rules.

2. Relevance of transfer pricing documentation requirements

Action 13 of the OECD BEPS Action Plan focuses on the re-examination of transfer pricing documentation and aims at developing rules “*to enhance transparency for tax administration, taking into consideration compliance costs for business. The rules to be developed will include a requirement for MNEs to provide all relevant governments with needed information on their global allocation of income, economic activity and taxes paid among countries according to a common template*”.

Transfer pricing is a key issue in today’s globalized world. Globalization enabled companies to expand their activities beyond borders, contributing to a re-organization and optimization of their value-chains on a world-scale, and helping companies maximize their returns. However, as we know, it created distortions at an international level, which contributed to heighten

awareness and increase focus on transfer pricing activities, especially by multinational enterprises (MNEs).

In the administration of transfer pricing rules, a most relevant issue is the asymmetry of information between taxpayers and tax administrations. This potentially undermines the application of (and compliance with) the arm's length principle, and enhances opportunities for the implementation of aggressive tax planning schemes leading to base erosion through profit shifting.

In many countries, tax administrations are frequently not in a position to view taxpayers' global value chain within the context of a "*greater picture*". In addition, national divergences in the approaches to transfer pricing documentation requirements lead to significant administrative costs for MNEs. In this respect, it is important that adequate information about the relevant functions performed by group members in respect of intra-group services and other transactions be made available to all tax administrations involved.

Rules regarding transfer pricing documentation should be developed, in order to:

- enhance transparency for tax administrations;
- tackle base erosion and profit shifting schemes;

taking into consideration compliance costs for businesses.

These should include a requirement that MNEs provide all relevant governments with needed information – on their global allocation of profits, taxes paid, and indicators of the location of economic activity among countries in which they operate – according to a common template (so-called, *country-by-country reporting*).

In developing clear rules on transfer pricing documentation requirements, also documentation-related penalties should be taken into consideration. Imposing sizable penalties on taxpayers that make considerable efforts to evidence – through reliable documentation – that their controlled transactions comply with the arm's length principle could be unfair. In this regard, no penalties should be applied to taxpayers that are not able to access data/information requested by tax administrations. However, whenever a decision not to impose penalties is made, this should have no impact on the adjustments to be made to prices that are not consistent with the arm's length principle.

The Confédération Fiscale Européenne (CFE) welcomes and supports any initiative aimed at improving consistency in the development of transfer pricing documentation guidance, which:

- is clear;
- ensures a level-playing field for businesses;
- guarantees fairness for taxpayers;
- avoids differences among national transfer pricing regulations.

The desired approach should point at a standardisation, in order to favor consistency, transparency and reduce compliance costs connected to the collection and organization of transfer pricing documentation in the different countries in which the MNE operates.

It is well acknowledged at international level that the current transfer pricing documentation rules place a substantial burden on taxpayers. In other words, it is hardly possible for an MNE to follow a consistent documentation approach due to the differences in the requirements imposed by national transfer pricing legislations. Simplified and consolidated compliance obligations by businesses, if achieved, would provide the balance which is currently lacking in the approach to transfer pricing documentation.

In addition, the CFE stresses the importance of transparency for tax administrations and tax compliance by taxpayers. Any action in the field of country-by-country reporting should be carried out taking into account the right balance between the usefulness of the data to the tax administrations for risk assessment purposes and the compliance burdens on the taxpayers, while ensuring that specific information must be kept confidential.

Finally, it is important to take a measured approach towards proportionality:

- in identifying the content and the timing of information that is to be provided by taxpayers to tax authorities;
- in setting forth specific provisions on the application of documentation-related penalties.

Specific comments to the issues outlined in the discussion draft

B.1. Transfer pricing risk assessment

Comments are requested as to whether work on BEPS Action 13 should include development of additional standard forms and questionnaires beyond the country-by-country reporting template.

With the objective of simplifying the documentation burden on taxpayers and ease the work of tax authorities when assessing transfer pricing risk and conducting audits, a further detailed guidance and the development of simplified and standardized forms would certainly be useful.

The current transfer pricing disclosure standards are still left to the single countries, often leading to diversified forms and reporting standards and inefficiencies.

Common standards/guidelines (such as the EU TPD Code of Conduct) and common sources of information (such as commercial databases) already exist and, if constructively coupled with the proposed content of the Master file and Local file contained in Appendix I and II of the *Discussion Draft on Transfer Pricing Documentation and CbC Reporting*, they will provide tax authorities and taxpayers with the necessary tools in order to identify and evaluate transfer pricing policies and relative risks.

What is mainly needed is a common (mandatory) OECD framework among countries that will eliminate local divergences and ease the compliance burden on taxpayers and allow tax authorities to have information presented in a standard format for all countries.

Comments are also requested regarding the circumstances in which it might be appropriate for tax authorities to share their risk assessment with taxpayers.

Removing asymmetry of information among tax administrations and taxpayers is a fundamental element for successfully tackling aggressive tax planning and for tax inspections.

Dialogue and sharing of information between tax administrations and taxpayers should be encouraged, including the disclosure of the risk assessment measures and results to taxpayers.

B.3. Transfer pricing audit

Comments are specifically requested on the appropriate scope and nature of possible rules relating to the production of information and documents in the possession of associated enterprises outside the jurisdiction requesting the information.

While it is appreciated that tax administrations should be in the position of having all the relevant documentation in order to conduct an audit/risk assessment, excessive burdens should not be imposed on taxpayers. It is often the case that taxpayers, especially local subsidiaries, will not have the financial results of associated enterprises (especially of sister or controlling companies). While taxpayers should make reasonable efforts in order to provide complete and adequate documentation, tax administrations should exploit existing instruments, such as information-exchange mechanisms, in order to obtain information in the possession of associated enterprises located outside their jurisdictions.

Standards and smoother processes should thus be developed/enhanced in order to improve existing mechanisms that impose excessive/unnecessary burdens on taxpayers.

C. A Two-tiered approach to transfer pricing documentation

C.1. Master file

Comments are requested as to whether preparation of the master file should be undertaken on a line of business or entity wide basis. Consideration should be given to the level of flexibility that can be accommodated in terms of sharing different business line information among relevant countries. Consideration should also be given to how governments could ensure that the master file covers all MNE income and activities if line of business reporting is permitted.

The preparation of a Master file on an entity basis is preferable to a line of business approach.

An entity-based approach will most likely suit all different MNEs' business structures. Having a complete entity-based approach will in any case allow tax administrations to gain complete information on all MNE income and activities concerning the different lines of businesses. In fact, Annex I to Chapter V of the Discussion Draft already provides a description of the MNEs business(es) by business line.

A number of difficult technical questions arise in designing the country-by-country template on which there were a wide variety of views expressed by countries at the meeting of Working Party n 6 held in November 2013. Specific comments are requested on the following issues, as well on any other issues commentators may identify:

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

Preferably, we suggest the country-by-country report to be a separate document rather than an annex to the 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? What are the additional systems requirements and compliance costs, if any, that would need to be taken into account for either the “bottom-up” or “top-down” approach?

Taxpayers should be allowed the flexibility to choose the option that best suits their business and company structure.

The information to be included in the country-by-country report is probably best assembled by the company consolidating the accounts using internal reporting information (“top-down” approach). However, information taken from the local statutory accounts is most representative and can provide a greater level of detail (“bottom-up” approach).

A “bottom-up” approach is probably the less costly as data are readily available, although some form of consolidation standard might be required (IAS/IFRS), as the use of different accounting GAAPS could lead to uneven information.

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? Those suggesting top-down reporting usually suggest reporting one aggregate revenue and income number per country. In responding, commenters should understand that it is the tentative view of WP6 that to be useful, top-down reporting would need to reflect revenue and earnings attributable to cross-border transactions between associated enterprises but eliminate revenue and transactions between group entities within the same country. Would a requirement for separate individual country consolidations impose significant additional burdens on taxpayers? What additional guidance would be required regarding source and characterization of income and allocation of costs to permit consistent country-by-country reporting under a top-down model?

Depending on the MNEs’ structure and complexity, a country consolidation can be envisaged, keeping in mind that information would have to be gathered and aggregated by one of the entities. In this case, guidance should be provided on the type of data to be used (statutory/reporting format).

Also, attention should be paid to Permanent Establishment and on the entity that should report its information (the headquarters vs. the country affiliate).

The separate entity approach would probably seem more straightforward as information is already available on each entity’s tax return. As such, minimal further elaboration of the data would be required in order to complete the country-by-country template. However, the complexity of the entity has to be borne in mind as a detailed reporting could be summed up to several hundreds of lines/entities in case of considerable MNE size.

Under a “*top-down*” model, more guidance is needed on which data source it is best to use (consolidated accounts/specifically designed reporting data) considering that any standard deviating from the one used by the MNE would lead to increased compliance costs.

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

A separate entity approach would probably be less burdensome as information is already available on each entity’s tax return. Country consolidation would impose an additional activity on taxpayers since the information on income tax paid/due would have to be aggregated in a consistent manner by one of the entities.

Increased consolidation issues may arise due to possible ongoing litigation/settlement procedures, whereby taxes due are still to be defined. An entity-by-entity approach would facilitate the reporting of this information.

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

This would be useful information since it will allow different tax administration to locate the country of origin of the taxes paid by the taxpayers in each country, without the need to refer to exchange of information mechanism.

Would a requirement for reporting withholding tax paid impose significant additional burdens on taxpayers?

If a separate entity approach is adopted it would be less burdensome as information is already available on each entity’s tax return. However, a common standard for consolidation of this information would have to be developed by the taxpayers (*e.g.*, common currency definition and conversion).

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?

According to Annex I and II, the above information should already be documented in the master file and local file as part of the analysed transactions; therefore, the collection of this information and its inclusion in the country-by-country report should not impose a significant burden on taxpayers.

The level of detail proposed by the local file could be considered sufficient.

Some tax administrations (*e.g.*, Italy), as part of the documentation, require taxpayers to disclose all intercompany transactions. As such, the above information can be readily available to most companies without excessive additional burdens.

Should the country-by-country template require reporting the nature of the business activities carried out in a jurisdiction? Are there any features of specialist sectors that would need to be accommodated in such an approach? Would a requirement for reporting the nature of the

business activities carried out in a jurisdiction impose significant additional burdens on taxpayers? What other measures of economic activity should be reported?

The above information is already documented in the master file and local file as part of the analysis of the business and industry features affecting the analysed transactions.

As such, the above information can be readily available to most companies without excessive additional burdens. Therefore, adding a specific synthetic requirement in the country-by-country reporting could provide tax administrations with a straightforward insight of the main industry conditions having an impact in transfer pricing policies.

D. Compliance issues

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.

A specific guideline and definition of materiality is paramount in order to avoid creating an excessive burden on taxpayers and allowing tax authorities to focus on important transactions.

Materiality could be defined in terms of:

- Transaction amount: either in absolute terms (*e.g.*, specific monetary threshold) or in relative terms (*e.g.*, a percentage of turnover/assets/income generated by a specific activity);
- Type of transaction: concentrate on specific transaction type (*e.g.*, company's core business) and leave aside ancillary transactions;
- Line of business: in case of conglomerate companies with multiple and diversified business units/markets;
- Company dimension: requirements imposed on SMEs should be less stringent and more proportionate.

D.5. Frequency of documentation updates

Comments are requested regarding reasonable measures that could be taken to simplify the documentation process. Is the suggestion in paragraph 34 helpful? Does it raise issues regarding consistent application of the most appropriate transfer pricing method?

The proposal in paragraph 34 is most welcome, as a clear guidance on the update of database searches is strongly needed. As a matter of fact, such an approach has been already adopted by many taxpayers and will allow having yearly updated financial information while not imposing the burdensome comparables screening process every year.

Nothing is said on the comparables selection process. Specific wording discouraging *cherry picking* from both taxpayers and tax administration could be added in paragraph 34.

Clear guidance should also be provided on the “*timing issues*”, by including specific wording on the fact that information required to prepare substantial documentation can be usually gathered at various times:

- before the transaction takes place (typically for ex-ante transfer pricing systems where parameters are set prior to the start of a year);
- at the time the transaction takes place (*e.g.*, CUP information for commodities), or
- after the end of the financial year in which the transaction takes place (*e.g.*, comparable searches to test the outcome for ex-post transfer pricing systems).

Information gathered at any of these moments can result in appropriate documentation provided the timing can reasonably be supported.

D.6. Language

Comments are requested regarding the most appropriate approach to translation requirements, considering the need of both taxpayers and governments.

The master file should be prepared in the language of the parent company. However, using a common language, such as English or another commonly used language, for the master file will simplify the compliance work for many taxpayers. We strongly support the suggested approach of having this document translated only if necessary into local language and upon providing sufficient time for the translation to be completed.

D.8 Confidentiality

Comments are requested as to measures that can be taken to safeguard the confidentiality of sensitive information without limiting tax administration access to relevant information.

Measures to safeguard confidentiality could be the following:

- Specific anti-infringement procedures could be made available to taxpayers in order to protect them from unauthorized information disclosure by tax administrations if real damage is substantiated;
- Specific channels/technological means for information exchange between taxpayers and tax administrations in order to prevent information leakages;
- Consultation (not filing) of sensitive information at taxpayer premises.

A provision might be set forth so that any information received by tax administrations is to be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the other tax administration concerned with the

assessment or collection of (the enforcement or prosecution in respect of, or the determination of appeals in relation to) the taxes concerned.

A provision might also be laid down in order that such persons or authorities use such information only for risk assessment/further audit. They may disclose the information in public court proceedings or in judicial decisions.

Finally, a provision might be set forth to establish that the information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the taxpayers.

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.

For business/strategic/confidentiality purposes, a parent company might prefer not to disclose information pertaining to the whole group with each subsidiary in every jurisdiction.

While local files should be filed by each local company subject to tax in the jurisdiction, treaty exchange of information mechanisms should be promptly exploited in order to obtain the most sensitive (foreign) information by local tax administrations.

When applying information exchange mechanisms, reference should be made to Article 26 of the OECD Model Tax Convention. In particular:

1. Tax administrations should exchange such information as is foreseeably relevant for carrying out the provisions of the applicable convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the States concerned, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the applicable tax convention.
2. Any information received should be treated as strictly secret and confidential in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of (the enforcement or prosecution in respect of, the determination of appeals in relation to) the taxes concerned. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. A tax administration should not impose on the other the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of the other tax administration;
 - b) to supply information which is not obtainable under the laws or in the normal course of the administration of the other tax administration;
 - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.
4. If information is requested by a tax administration, the other tax administration shall use its information gathering measures to obtain the requested information, even though that other tax administration may not need such information for its own tax purposes and has no domestic interest in such information.

Annex I to Chapter V: transfer pricing documentation - master file

Comments are specifically requested as to whether reporting of APAs, other rulings and MAP cases should be required as part of the master file.

An APA is an agreement between tax administrations pertaining to the way in which certain transfer pricing transactions between taxpayers will be taxed in the future. Hence an APA often prevents the need for a dispute between tax administrations over the transactions included in the APA. APAs are an exemplary method of dispute avoidance.

There are significant advantages for taxpayers and tax administrations that can arise from APAs. In particular:

- *certainty over the taxation treatment of the transactions in the APA*: a certainty enjoyed by both the tax administrations (which no longer have to conduct an audit to establish the correct transfer pricing) and the taxpayers (who know how to establish the correct transfer pricing since this has been agreed between the tax administrations involved).

The MAP provisions allow designated representatives from the governments of the States concerned to interact with the intent to resolve international tax disputes involving cases of double taxation (juridical and economic) as well as inconsistencies in the interpretation and application of the applicable convention.

Since most probable occurrences of double taxation are dealt with automatically in tax conventions through tax credits, exemptions, or the determination of taxing rights of the States concerned, the majority of MAP cases are situations where the taxation of an individual or entity is unclear.

A noteworthy point is that the MAP article in most tax conventions does not compel competent authorities to actually reach an agreement and resolve their tax disputes. They are obliged only to use their best endeavors to reach an agreement. Unfortunately, on occasion competent authorities are unable to come to an agreement. Reasons for unresolved double taxation range from restrictions imposed by domestic law on the tax administration's ability to reach a compromise and even down to a stalemate on economic issues such as valuations.

Some tax conventions currently include arbitration clauses in their MAP articles, in compliance with Article 25 of the OECD Model Tax Convention.

Together with Article 25, also the EU Arbitration Convention establishes a procedure to resolve disputes where double taxation occurs between enterprises of different Member States as a result of an upward adjustment of profits of an enterprise of one Member State. Whilst most bilateral double taxation treaties include a provision for a corresponding downward adjustment of profits of the associated enterprise concerned, they do not generally impose a binding obligation on the States concerned to eliminate double taxation.

The EU Convention provides for the elimination of double taxation by agreement between the Contracting States including, if necessary, by referring to the opinion of an independent advisory body. The EU Convention thus improves the conditions for cross-border activities in the Internal Market.

Both mechanisms have proven to be useful in preventing (in case of APAs) or defining (in case of MAPs) transfer pricing disputes.

Including specific information on the above in the Master file will allow tax administrations to effectively assess the risk of transfer pricing policies of the MNEs.

Some jurisdictions (*e.g.*, Italy) already provide in their documentation requirements the need to disclose any APAs, rulings or MAPs. A summary of such information will certainly be useful if included in the Master file as it could streamline the work on risk assessment performed by tax administrations.

Further comments to other paragraphs of the discussion draft

A. Introduction

“1. This chapter provides guidance for tax administrations to take into account in developing rules and/or procedures on documentation to be obtained from taxpayers in connection with a transfer pricing inquiry or risk assessment. It also provides guidance to assist taxpayers in identifying documentation that would be most helpful in showing that their transactions satisfy the arm’s length principle and hence in resolving transfer pricing issues and facilitating tax examinations”.

A balance is needed between the usefulness of the data to the tax administrations for risk assessment purposes and compliance burdens on taxpayers. It is important to take a measured approach towards materiality and proportionality in identifying contents and the timing of information that is to be provided by taxpayers to tax authorities, clearly identifying what is intended by *“documentation that would be most helpful in showing that (taxpayers’) transactions satisfy the arm’s length principle”*.

B. Objectives of transfer pricing documentation requirements

“5. Three objectives for requiring transfer pricing documentation are:

- 1. to provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment;*
- 2. to ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated enterprises and in reporting the income derived from such transactions in their tax returns; and*
- 3. to provide tax administrations with the information that they require in order to conduct an appropriately thorough audit of the transfer pricing practices of entities subject to tax in their jurisdiction”.*

Applying the arm’s length principle can be a fact-intensive process and can require proper judgment. It may present uncertainty and may impose a heavy administrative burden on taxpayers and tax administrations that can be exacerbated by both legislative and compliance complexity. Therefore, a safe harbor concept could be introduced for small and medium sized enterprises (“SMEs”).

The obligation of mandatorily preparing a Transfer Pricing Documentation should not be imposed on SMEs with relatively simple ownership structures and operations envisaging, instead, a risk-differentiated approach whereby smaller taxpayers, or taxpayers with relatively small or low risk transactions can align the effort required to prepare documentation with their risk.

B.2. Taxpayer’s assessment of its compliance with the Arm’s Length Principle

“10. By requiring taxpayers to articulate solid, consistent and cogent transfer pricing positions, transfer pricing documentation can help to ensure that a culture of compliance is created. Well-prepared documentation will give tax administrations some assurance that the taxpayer has analyzed the positions it reports on tax returns, has considered the available comparable data, and has reached consistent transfer pricing positions. Moreover, contemporaneous documentation requirements can restrain taxpayers from developing justifications for their positions after the fact”.

The requirement to contemporaneously document transfer pricing positions will certainly prove to be a useful instrument in order to create a “*compliance culture*”. Nonetheless, it should be borne in mind that, according to local transfer pricing laws and regulations, some countries require contemporaneous documentation while others allow MNEs to submit transfer pricing documentation only upon request. Guidance should be provided on the most straightforward approach in order not to impose an excessive burden on taxpayers that may find themselves in the position of preparing/amending/updating the documentation several times during the year.

D.7. Penalties

“36. Many countries have adopted documentation-related penalties to ensure efficient operation of transfer pricing documentation requirements. They are designed to make non-compliance more costly than compliance”.

Applicability of transfer pricing-specific penalties is still (and should continue) to be a feature of local law. As such, MNEs face different penalty environments in different countries, which often leads to increased burdens and uncertainties. A clear guidance should be given by the OECD in terms of (non) applicability of specific/administrative penalties. Transfer pricing documentation, if seen as a risk assessment tool, where well prepared, should give taxpayers the benefit of penalty protection (as it already is in some countries, i.e., Italy) without this decision being too discretionary for tax administrations.

D.9. Other issues

“42. The requirement to use the most reliable information will usually require the use of local comparables over the use of regional comparables where such local comparables are reasonably available. The use of regional comparables in transfer pricing documentation prepared for countries in the same geographic region in situations where appropriate local comparables are available will not, in some cases, comport with the obligation to rely on the most reliable information. While the simplification benefits of limiting the number of comparable searches a company is required to undertake are obvious, and materiality and compliance costs are relevant factors to consider, a desire for simplifying compliance processes should not go so far as to undermine compliance with the requirement to use the most reliable available information. See paragraphs 1.57-1.58 on market differences and multi-country analyses for further detail of when local comparables are to be preferred”.

The paragraph provides a rather general guidance when referring to “most reliable information”. The OECD should shed some light on the use of pan-European, Asian/American benchmarks vs. local comparables, especially if we think of cases such as transactions with African countries, where local comparables (nor databases) do not yet exist.

Annex III to Chapter V: A Model Template of Country-by-Country Reporting

The country-by-country template included in the Discussion Draft is rather concise and the risk is seen in the potential use of (financial) information by tax administrations to apply some form of global apportionment of an MNE’s profit rather than applying the OECD’s long-standing arm’s length principle on profits accrued in various jurisdictions, as a result of intercompany trading. For example, no regard is given to intangibles and their value nor to a common definition of royalty (which can differ substantially at local level).

Therefore, it might be useful to include further guidance on this and, most importantly, link the definition of intangibles to the yet-to-be published new Chapter VI of the Guidelines on intangibles, which will have to take into consideration the comments and perplexities expressed by practitioners.