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Submission File

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Organisation for Economic Co-operation and Development (OECD)
Tax Policy and Statistics Division,
Centre for Tax Policy and Administration
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BY E-MAIL: taxpublicconsultation@oecd.org

Dear Sir/Madam

COMMENTS ON THE PUBLIC CONSULTATION DOCUMENT: REVIEW OF COUNTRY-BY-COUNTRY REPORTING (BEPS Action 13)

1. We present our comments and submissions on behalf of the South African Institute of Chartered Accounts' (SAICA) Transfer Pricing Committee on the public consultation document 'Review of Country-by-Country Reporting (BEPS Action 13) released by the OECD on 6 February 2020.
2. We thank the OECD for the opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges.

BACKGROUND

3. Action 13 of the OECD/G20 Base Erosion and Profit Shifting Project (BEPS Action 13) established a three-tiered standardised approach to transfer pricing documentation, comprising:
 - a master file with high level information regarding a multinational enterprise's (MNE) global business operations and transfer pricing policies;
 - a local file with detailed transactional transfer pricing documentation specific to each jurisdiction; and
 - a Country-by-Country (CbC) Report (CbCR) that provides annually and for each tax jurisdiction in which an MNE group does business the amount of revenue, profit before income tax and income tax paid and accrued, together with other information relevant to a high level risk assessment.
4. The specific content of these three documents reflects an effort to balance the needs of tax administrations to have access to robust, relevant information for use in risk

assessment and enforcing transfer pricing rules, against concerns from business surrounding the burden placed on MNE groups and the potential use of the information provided. Of these documents only the CbCR is covered by the BEPS Action 13 minimum standard, which all members of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) are committed to implement.

5. The public consultation document issued by the Inclusive Framework comprises three chapters. Chapter 1 contains general topics concerning the implementation and operation of BEPS Action 13, including the MNE group experience of CbC reporting implementation by jurisdictions, the use of CbCRs by tax administrations and other aspects of BEPS Action 13, being the master file and local file. Chapter 2 contains topics concerning the scope of CbC reporting, including the definition of an MNE group, and the level and operation of the consolidated group revenue threshold. Chapter 3 contains topics concerning the content of a CbCR, including whether aggregate or consolidated information should be provided in Table 1, whether information in Table 1 should be presented by entity rather than by tax jurisdiction, and whether additional or different information is needed.
6. The topics discussed throughout the public consultation document reflect issues that are specifically included in the mandate for a 2020 review set out in the BEPS Action 13 report, issues where interpretative guidance issued since 2016 has been unable to result in a consistent approach to be applied by all jurisdictions, and issues that have been raised by jurisdictions or stakeholders and that can only be addressed through a change to the minimum standard, which must be agreed by the Inclusive Framework.
7. The Inclusive Framework welcomes comments on all aspects of the BEPS Action 13 report, but specifically invites comments on the questions raised throughout the public consultation document.
8. SAICA's Transfer Pricing Committee's comments on some of these proposals will be discussed next.

COMMENTS ON THE PROPOSALS

Question 3:

What comments do you have regarding cases where jurisdictions have implemented master file requirements that differ from or go further than the documents listed in Annex I to Chapter V of the OECD Transfer Pricing Guidelines?

9. In Russia additional information is required (compared to OECD Guidance) in order to meet the requirements for domestic master file purposes. This places an additional administrative burden on entities to ensure all local requirements are met in each country they have an obligation to submit a master file. This additional information will also form part of the master file submitted in other countries, on the assumption that a multi-national enterprise (MNE) has only one master file at any given time. Certain countries (e.g. Mongolia and Russia) also require transfer pricing documentation to be translated from English to for instance Russian. These translation fees can be significant taking into account the size and complexity of the master file.

10. Submission: It is submitted that English does not ‘compromise the usefulness of the documents’ (BEPS Action Step 13, page 18, para 39) but rather reduces any risks associated with translation errors.

Question 29

Are there any benefits from requiring the use of consolidated data in Table 1, in addition to those in this document?

11. If consolidated data will be required going forward, it will result in past CbCRs submitted becoming irrelevant for comparative purposes.

12. Submission: Any decision to change the method should be taken after careful consideration of all the consequences. Some companies have already submitted their third CbCR.

13. Any indication that CbCR detail and methodology will be subject to change on a regular basis will result in taxpayers being hesitant to implement systems to assist in the completion of a CbCR. This could ultimately impact the quality of the information submitted for CbCR purposes.

Question 32

For each of the possible new items of information considered in this section, are there any practical challenges or other concerns to MNE groups from including an additional column in Table 1 of the CbC report template, in addition to those in this document?

14. As already set out in the discussion document, the majority of the additional information will already be reflected in the respective local files. We believe it is important to revert to the purpose of the CbCR, i.e. to assist tax authorities with high level transfer pricing risk assessments.

15. Submission: The CbCR should also not be relied upon in isolation, hence the reference to a three tiered approach to transfer pricing documentation. The respective local file, together with the master file should provide tax authorities with the additional information required.

16. In addition to the above, in South African taxpayers are required to manually complete the CbCR which can take a significant amount of time, not to mention the human error risks associated with such a manual completion. Adding additional information, which can be sourced elsewhere, would add significantly to the existing compliance burden.

General comments

17. Where proposals are put forward to, for instance, re-base a non-EUR denominated threshold, the various notification requirements applicable in each country relating to the country of submission and the identity of the reporting entity will have to be taken into account. Some countries (e.g. the UK) require notification before the end of the year of



assessment that will be reported on for CbCR purposes, with non-compliance resulting in penalties.

18. Submission: Consideration should be given to standardise the due date of these notifications in all participating CbCR countries.

19. Scenarios are provided for entities not resident anywhere. No guidance is provided for entities that are resident in more than one country as a result of, for example, the country of incorporation and the place of effective management being located in different jurisdictions and the tax authorities being unable or unwilling to agree on a single country of residence through the Mutual Agreement Procedure.

20. Submission: Guidance should be provided for entities that are resident in more than one country.

Yours sincerely

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