

Mr. Martin O'Rourke
Business Assets and International, HMRC

Sent via email: transferpricingdocumentationconsultations@hmrc.gov.uk

1 June 2021

Dear Mr O'Rourke

Transfer Pricing Documentation Consultation – Draft Response

The companies of the 100 Group welcome the opportunity to comment on HMRC's "Transfer Pricing Documentation Consultation" released 23 March 2021, (the "Consultation").

This letter has been prepared by the 100 Group Tax Committee and is intended to speak on behalf of the Group as a whole. The 100 Group membership represents around 87% of the FTSE100 market capitalisation as well as a number of equally significant sized unlisted businesses. We note that whilst this letter expresses the views of the 100 Group as a whole, these views are not necessarily those of individual members nor their respective employers.

HMRC are proposing two key changes:

1. The introduction of a mandatory requirement for MNEs within CbC reporting groups to provide HMRC with a copy of the master file upon request and to keep (and produce on request) a local file, ("Master File and Local File").
2. The introduction of an international dealing schedule reporting data about cross border transactions, ("IDS").

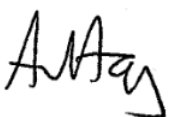
HMRC's wish to "provide certainty, clarity, proportionality and speed of resolution with the development of an efficient risk-based approach to co-operative compliance" is welcome. In particular, their aim to enable faster resolution of enquiries by reducing long periods of fact finding would be helpful.

Therefore, from an MNE's point of view, especially the 100 Group, it will be very important that UK TP documentation requirements introduced are aligned with OECD BEPS Action 13 requirements to maintain documentation consistency across the group.

Moreover, all tax departments, including those of FTSE100 Groups, are currently gearing up to focus on the outcome of BEPS 2.0 and the impact it will have on their accounting systems and other resources. They are concerned that any major new requirements imposed on them, will be extremely challenging to manage. They kindly request that any potential decisions to implement further TP documentation requirements, in particular pertaining to the evidence log and the IDS, are not implemented before BEPS 2.0 is finalised.

We thank you for the opportunity engage on this matter and hope you find our comments helpful as you move forwards with the proposal. Please do contact our secretariat Hannah Maughan at secretariat@the100group.co.uk should you wish to discuss any of our comments in further detail and she will be very happy to put you in touch with us.

Yours sincerely

A handwritten signature in black ink, appearing to read "Andy Agg".

Andy Agg

Chair of the 100 Group Taxation Committee

Appendix 1 – Responses to questions posed in the consultation

Question 1: Do you agree that most MNE groups within the CbC reporting regime will already routinely be preparing master files to comply with the OECD's standardised approach and to comply with transfer pricing documentation requirements in other countries?

It is considered a fair assumption that all MNE groups in the 100 Group will be within the CbC reporting regime and most, if not all, would already be preparing master files annually which comply with the OECD's Action 13 and with local transfer pricing documentation requirements, as necessary.

Question 2: In the event that a MNE reports that the group does not maintain a master file or that the master file is not within the power or possession of the MNE, what steps could be taken to ensure equality of treatment?

From a 100 Group perspective, it is expected that all 100 Group MNEs within the CbC reporting regime will maintain a master file.

If the master file is not within the power or possession of the MNE but exists within the wider MNE Group, HMRC should request it through Exchange of Information with other tax authorities, e.g. where the Headquarters of the group are located. If the group does not maintain a global master file, but instead maintains a regional master file, or, a subset of the master file (e.g. by divisions), this should be acceptable to the extent that it covers the UK operations.

Question 3: Do you agree that any new master file requirement should apply only to MNEs within CbC reporting groups?

The 100 Group agrees that this is appropriate given the aims of the requirement.

Question 4: The government would welcome observations on the extent to which local file requirements align with transfer pricing documentation which MNEs already routinely maintain.

It is expected that all 100 Groups prepare UK local files in accordance with Action 13. In some countries, it is accepted practice to ensure a local file is 80 - 90% complete by the time the corporate tax return is filed and finalised when requested by the Tax Authorities. It is likely that some members of the 100 Group adopt this approach in the UK. Therefore, providing a reasonable timeframe to submit the TP documentation in the UK would be in line with other OECD countries' practices.

Question 5: The government invites comments on the possibility of issuing further practical guidance about local file documentation, including the possible requirement to maintain an evidence log or similar appendix.

The guidance already provided by the OECD Transfer Pricing Guidelines should be sufficient in terms of content of the local file as it will ensure consistency of information across jurisdictions. The requirement to maintain an evidence log is not an Action 13 requirement and, therefore, is not considered to be OECD compliant; it should not be necessary to have further potentially more prescriptive guidance.

In addition to this, not enough information has been given on the scope of the evidence log requirements and further details, for example, primary focus, type of transactions to be included, materiality level, are needed to provide a complete response.

A unilateral evidence log that does not provide certainty for the counterparty to the transaction seems an excessive burden for taxpayers and could result in double taxation.

There is an assumption that the requirement for an evidence log will cover **all** related party transactions, and the 100 Group are deeply concerned that this would

- put a lot of additional pressure on TP documentation preparation - an evidence log is likely to be duplicative of information already included within the transfer pricing local file;

- be inconsistent with all other countries, as no other country, that we are aware of in the OECD community, has this requirement;
- create an immense administrative and time-consuming burden.

Question 6: Do you think that requiring MNEs within the scope of the CbC reporting regime to maintain local file is proportionate?

The 100 Group feel that it is highly likely that MNEs within the scope of CbC reporting already prepare a local file in line with Action 13.

Question 7: Do you agree that 30 days is an appropriate timescale for production of the master file and local file?

The 100 Group agree to the proposal of the local file and master file being submitted within 30 working days of a request.

Question 8: What metrics would be appropriate to determine de minimis thresholds?

The 100 Group agree that it would be helpful to follow Chapter V of the OECD Transfer Pricing Guidelines which states that it is important to keep documentation requirements reasonable and focused on material transactions. It would be helpful if HMRC would set an appropriate threshold under which no further analysis would be required, for example, for transactions of the same type and with the same party (e.g. sales of products) a threshold of £5M could be considered. It would also be useful to have materiality limits set for non-recurrent transactions.

The 100 Group request that thresholds for local files and any IDS-style return introduced are aligned and set at the same level. This would avoid the need to maintain two different detailed analyses of transactions for different submissions, the majority of which would be duplicated.

Question 9: If a MNE considers all its transactions to be not material, should that mean the MNE is

- (i) required to submit an annual declaration to that effect or
- (ii) obliged to provide a short form local file upon request?

For the sake of simplicity, it would be preferable for the MNE to be able to provide an annual declaration within the corporate tax return, where it considers all its transactions to be not material, based on the threshold determined.

There is no need for a short form local file. This is an additional filing and administrative burden and would contain insufficient information to draw any meaningful conclusion as to the arm's length nature of related party transactions.

Question 10: With regard to the proposals in this chapter the government would welcome any other observations, comments, or suggestions.

The 100 Group would like to understand how HMRC has used the CbC as a tool in its risk assessment for Transfer Pricing purposes. It is currently not clear why the CbC is not used as a primary risk assessment tool.

IDS:

Question 11: The government welcomes comments about the extent to which your accounting/reporting system(s) can, or cannot, provide relevant to transfer pricing data and information.

The assumption made by HMRC that the information asked for within an IDS would be available through business as usual record keeping and existing business compliance systems is completely incorrect and unfounded.

Whilst the taxpayer should be able, in most cases, to gather the data, it would be by no means an easy exercise as typically data is stored in different sources/ systems and the gathering of the information would require a significant amount of manual work.

Specific changes to accounting systems were needed to accommodate the introduction of the CbC and it is equally likely that additional costly changes would be needed to meet the requirements of the proposed IDS as any automation to make the extraction of the information less manual comes at a cost.

It is the view of the 100 Group that there would be sufficient information provided by the master file and the local file to render the IDS unnecessary.

Question 12: The government welcomes comments on ideas for appropriate types of data and information which could be requested through an IDS filing requirement.

It is the view of the 100 Group that there would be sufficient information provided by the CbC report, master file and the local file to enable HMRC to take a risk based assessment for transfer pricing

Whilst the 100 Group consider an Australian-style IDS unnecessary, it would be considered appropriate if the information requested was limited to the controlled transactions only. The suggested content would be:

- Identification of the Related Party to the transaction (legal name and country);
- Type of transaction (tangible, services, royalty, etc.);
- Amount;
- Income/expense.

Also, setting a threshold for the transactions that have to be disclosed in the IDS is highly recommended, e.g., cross border transactions with related parties over £5M per type of transaction (£10M for loan interest/receipts).

Likewise, it would be reasonable to expect that all transactions with tax havens should be disclosed.

The use of an excel format is preferred.

Question 13: Please provide details of any impacts on administrative burdens which you could anticipate resulting from the introduction of an IDS requirement.

The introduction of an Australian-style IDS is likely to be duplicative of the information already provided within the local file and master file and require adjustments to accounting systems to format data in a standardised way which will put unnecessary pressure on the resources of the multinational.

The Australian-style IDS type of filing is time consuming and takes many days' work to complete compared to other Information Returns required by other Tax Administrations, given the experience of the 100 Groups' subsidiaries in Australia. Some of the Western European Information Returns, such as those adopted in France, Slovakia, and Spain, provide a better balance, both in terms of time to complete and complexity of information requested.

As this group represents UK headquartered entities, it is felt that the number of transactions to be reported would be huge and that this would create an administrative burden. In order to alleviate this, they request a minimum transaction threshold of £5M be set.

The 100 Group also request consideration of dispensations for entities from disclosing certain transactions: e.g., those entities performing one function only or where for those with transactions related to recharging all costs to one related party.

The 100 Group have also requested whether this information return filing could be submitted on a rolling basis, for example, a three year rolling basis.

For multinationals, in particular, the likely changes to international taxation resulting from the OECD / G20 Inclusive Framework's work (known as BEPS 2.0) are raising significant concerns over the additional administrative burden. Groups' internal accounting systems are often not as flexible as assumed, and tax functions are often quite small, even for larger groups.

Question 14: Businesses and advisers may have awareness or direct experience of reporting requirements for other tax authorities. The government welcomes comments or observations based on your experiences in other jurisdictions. If so, what processes work well to extract and report the relevant data?

The 100 Group's experience in relation to the IDS in Australia is that it is not only duplicative of the information already provided in the local file and the master file, but that the document to be completed is overly complex, taking many workdays to complete.

The information requested in the Danish IDS seems duplicative and excessive as well, in particular:

- points 1-7 is information that does not necessarily relate to the intercompany transactions and will not be readily available in our systems but will be subject to a manual input every year
- points 8-35 pertains to intercompany transactions but the format of the request for points 10-35 goes over and beyond the OECD Action 13 requirements as it requires an identification of where the transaction has been booked within the entity's P&L. This is a time consuming and manual exercise and it is not clear how the information would be used by tax authorities.

The information requested in the Belgium IDS is yet again not only focused on the controlled transactions entered into by the entity, but it also requires a significant amount of information that is duplicative as already included in the local file, e.g., shareholding structure, competitors, reporting structure, activities of the local company, restructurings, etc. Gathering and completing these fields would be a completely manual exercise when this information should be readily available in the TP local files. As regards the information required in relation to the controlled transactions, the granularity required is again excessive and there is a concern that tax authorities will use the information incorrectly and come to incorrect assumptions. To illustrate this point, the IDS requires information on the profile of the company (Full Fledged Distributor, Limited Risk Distributor, Contract Manufacturer, etc) per activity, the gross profit and the net profit obtained by the taxpayer on related party transactions but also from unrelated transactions. Accurate segmentation of results is not in line with Action 13 and requires judgement which is excessive for an IDS.

As mentioned in question 12, any information requested on an IDS should be limited to the controlled transactions and similar to those used by other Western European countries, such as Spain, France, Slovakia. The three examples included in the consultation will ultimately result in significant manual work for the taxpayer to put together information that is not even required for the local file.

Question 15: The government welcomes comments and suggestions on appropriate metrics to determine materiality limits and transactions which could be aggregated.

A materiality threshold for each transaction category would remove those entities with minimal related party cross-border transactions from the scope.

Transactions with overseas related parties below £5M and loan interest receipts/payments below £10M should be excluded.

Low value-adding services should be aggregated, if not excluded.

Question 16: Please comment on a possible option for one entity to file a version of the IDS on behalf of other UK group entities.

Whilst any simplification measures would be welcome, it is our view that the Australian-style IDS is unnecessary in light of the proposal to formalise the master file and local file.

Question 17: The government welcomes views on the format and structure of the IDS.

As previously mentioned in the response to question 12, whilst the 100 Group consider an Australian-style IDS unnecessary, the following types of data and information would be considered appropriate to be requested through an Information Return, similar to those used by other Western European countries, such as France, Slovakia, and Spain:

- Identification of the Related Party to the transaction (legal name and country);
- Type of transaction (tangible, services, royalty, etc.);
- Amount;
- Income/expense.

Also, setting a threshold for the transactions that have to be disclosed in the IDS is highly recommended, e.g., cross border transactions with related parties over £5M per type of transaction (£10M for loan interest/receipts). Likewise, it would be reasonable to expect that all transactions with tax havens should be disclosed.
Use of excel format preferred

Question 18: With regard to the proposals in this chapter the government would welcome any other observations, comments, or suggestions.

The 100 Group consider the IDS-type filing duplicative. They also are concerned that should any IDS- type filing be brought into force, the method of submission should differ to that in Australia, where only tax agents are able to submit a return. The taxpayers would prefer to have the option of submitting such a return themselves.

All tax departments, including those of the 100 Group, are currently gearing up to focus on the outcome of the BEPS 2.0 and the impact it will have on their accounting systems and other resources. They are concerned that any major new requirements imposed on them, will be extremely challenging to manage. They kindly request that any potential decisions to implement further TP documentation requirements, in particular as it pertains to the evidence log and the IDS are not implemented before BEPS 2.0 is finalised.

It is the view of the 100 Group that HMRC has not demonstrated how it has used CbC information and before implementing new requirements it would be appropriate for HMRC to communicate why they cannot obtain this information from the local files, instead of adding an additional burden to taxpayer.