BDB Law

DU-BALADAD AND ASSOCIATES

TAX • LEGAL • CONSULTING

Filling-out the Transfer Pricing Disclosure Form (A Walkthrough)

August 2020

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Risks, Pitfalls and Lessons

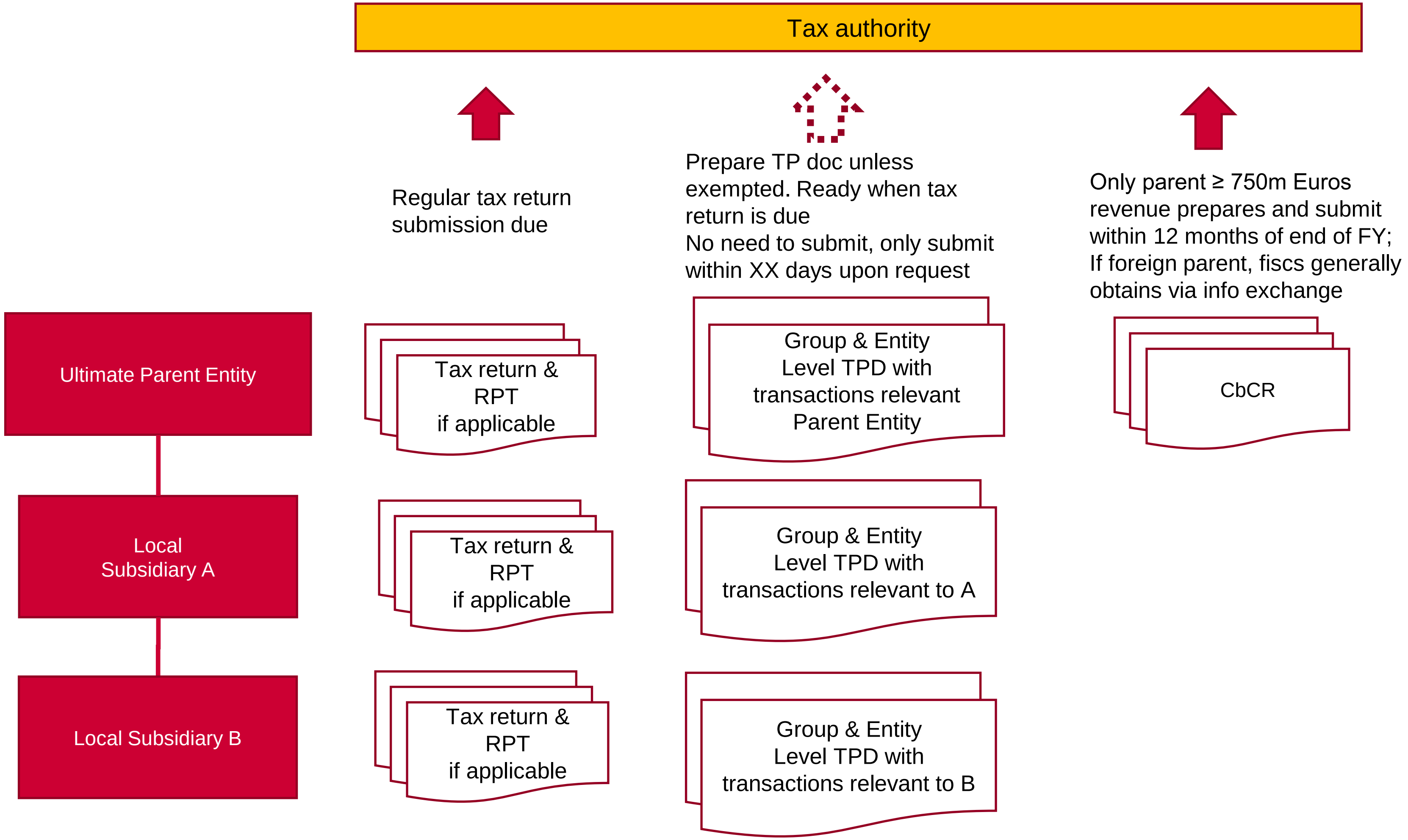
1. Group level, Entity level, Transactional level

2. TP Analysis, Documentation, Contracts comes to the fore

3. Audit target selection vs TP adjustment

4. Risk Areas – Cross border, Counterparties with low risks, Cost Sharing Agreements can be base eroding

OECD/Global Trend: Country by Country Report, Group Master & Local File, Related Party Form



Operational TP Implementation is Key

TP Only as Good as What Finally Hits the Books…

1. Problem Areas:

- **Policy design without regard to implementation**
  - Coordinating global team of individuals in multiple departments Differing priorities of each stakeholder in the process
  - Need Country-specific transfer pricing knowledge
- **Company systems not designed to produce reports for efficient transfer pricing analysis**
- **ERP complications, multiple systems globally**
- **Accountability**
- **Manual processes & true-ups**
- **Interaction with Accounting, Customs, Regulations and other rules**

Consequences…

2. Result:

- **Materially misstated financial statements** - entity level reporting
- **Regulatory or uncertain tax position reporting/provisioning**
- **Lack of sufficient controls around critical process** – out of period adjustments/true-ups
- **Increased tax liabilities or audits**
- **TP tax penalties**

3. Investment in Systems: Ford

Organizational Design
and
Governance & Controls

Organizational Design

1. TP infrastructure and team structure

- Reporting line and incentive alignment/risk appetite
- Finance, Tax, Legal, regional CFO?
- Objective Setting: Tax saves upfront vs Consistency vs Defence. eg Supply Chain optimization
- Alignment to KPI, Global vs regional vs business/product line

2. Governance & Control

- Steering/Governance Committee
- Risk Management or Control Framework
- Across tax, legal and finance functions (info exchange, min disruption)
- Process checks & self-audits
- Clear R&Rs in implementation (Finance v Tax, Group v Country v biz line)

Organizational Design

3. Building a TP Function that is Fit for Purpose

- Team with a variety of skill-sets (ability to influence)
- Optimal mix of house vs external advice (4Cs – Competency, Capacity, Consistency, Convincing)
- Business model and stage of internationalization

4. Training, Communication & Influence

- Continual investment to embed in Business & Finance – identify ‘change events’, Chapter IX
- Trend towards centralization post-BEPS

Operational TP

Source:https://www.at-mia.my/2019/06/18/emerging-need-to-effectively-operationalise-transfer-pricing/

TP Life Cycle

Detection, Analysis, Design and Implement

TP LIFE CYCLE

Process	TP trigger event (new/change in product,	Functional and factual analysis	Assessment and selection of TP approach	Feasibility assessment	Effective Implementation of TP policies	Robust Documentation
Objectives	Accurate identification and speedy response to mitigate TP risk	Accurate functional, factual analysis and economic characterisation	Select optimal TP method & approach with impact assessment & PnL analysis	Practical TP that is supportable by finance infrastructure and acceptable to entities & stakeholders	Accurate, timely TP allocations in GL with audit trail , controls & test procedures	Document & archive info and supporting docs to support audits in future
Enablers	Effective linkage of TP team with business, finance, PC, compliance and data sources					
		Budget from biz/countries for advisors				
				TP team work with business & finance		
						TP Centre
Critical Success Factors	High level of TP awareness so that TP team can be alerted to trigger	Good business or product knowledge and links to	Reconcile TP theory of best method with practical limitations of data/process Buy-in from stakeholders that TP changes 1		Co-operation from finance	Invest resources to do good documentation

Handbook on Effective Tax Risk Management

Issued 29 Sept 2017 OECD Forum on Tax Administration

OECD provides a 19-item list of "potential tax risk indicators that could be derived from the information contained in an MNE group's CbC Report," including when:

1. There is a high value or high proportion of related party revenues in a particular jurisdiction;
2. The results in a jurisdiction deviate from potential comparables;
3. The results in a jurisdiction don't reflect market trends;
4. There are jurisdictions with significant activities but low levels of profit (or losses);
5. A group has activities in jurisdictions that pose a BEPS risk;
6. A group has mobile activities located in jurisdictions where the group pays a lower rate or level of tax;
7. There have been changes in a group's structure, including the location of assets;
8. Intellectual property (IP) is separated from related activities within a group;
9. A group has marketing entities located in jurisdictions outside its key markets;
10. A group has procurement entities located in jurisdictions outside its key manufacturing locations;
11. Income tax paid is consistently lower than income tax accrued;
12. A group includes dual resident entities;
13. A group includes entities with no tax residence;
14. A group discloses stateless revenues; and
15. Information in a group's country-by-country report doesn't correspond with information previously provided by a constituent entity.

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None of the potential risk indicators "should be taken by themselves to suggest that a group poses an increased tax risk in a jurisdiction, but they may be combined in different ways to build an overall picture of the level of tax risk posed by a group,"

The OECD methods for interpreting combinations of indicators, including the weight that should be given to each indicator within a particular combination, will vary depending on the approach to risk assessment used by a country's tax administration "and is something which may change over time."

Where ratios are referred to as "high" or "low," this means that the relevant ratio is materially higher or lower than that of the chosen potential comparable—for example other jurisdictions in the group, the group as a whole, sector averages, or earlier periods.

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