Transfer pricing documentation – a consultation: CIOT response

International Tax | Large Corporate

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In our response, we note that the current requirements around transfer pricing documentation are being looked at due to the passage of time since the government adopted the minimum standard relating to the Country by Country (CbC) reporting regime, which came out of the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan and, specifically, Action 13.

The consultation document explains that the government is considering whether to introduce a requirement for multinational enterprises (MNEs) to keep documents in a standardised form as encouraged by the Action 13 Final Report and later incorporated into Chapter 5 of the OECD's Transfer Pricing Guidelines (2017), and also to file an annual return summarising their cross border transfer pricing transactions with associated businesses. The government considers that this will ensure that the UK is more in line with the requirements of comparable jurisdictions. Our response said that we understood that the measures proposed are intended to serve different policy aims. The first, around the retention and production (if required) of specific documentation (the master file and local file, including an evidence log) is intended primarily to have a behavioural impact, perhaps increasing the focus of transfer pricing throughout the year within the business, which will feed into the tax return. The second measure around keeping, and including with their annual return, details about material cross border transactions with associated enterprises (the international dealings schedule (IDS)) is intended to provide HMRC with better data to inform its risk assessment and profiling.

CIOT's response said that we support the policy aims of increasing certainty for businesses around transfer pricing documentation, and can see a potential benefit to both HMRC and taxpayers from improved risk assessment by HMRC and, therefore, better focused enquiries. However, we also noted that the proposed measures would inevitably be burdensome and costly for businesses. Thus, we said, it is important

that each of the measures is justified on the basis of the expected costs and benefits. It is also important to maintain an overview of the whole picture: we asked whether all the measures are required.

Each of the measures considered in the consultation document will present different compliance burdens for MNEs that may be more or less significant depending on the business. However, we agreed that it is probably correct that most groups that are in CbC reporting already will have master files, so a requirement to produce a copy of this would not be onerous. We said that preparing local files may be helpful from a perspective of consistency, but that it is harder to justify the additional compliance burden on the basis that HMRC can already obtain the relevant information, and, in our view, a requirement to produce an evidence log in support of a local file could be disproportionate. We said that we thought that an IDS could improve HMRC's ability to spot and evaluate risks, which in turn could be of benefit to taxpayers by leading to more efficiency in enquiries, provided this is carefully designed and implemented alongside clear commitments from HMRC on how the data will be used.

We welcomed the early stage of this consultation and that there will be further consultations around the detail. We emphasised that time should be taken in the development and design of the IDS measure, in particular to ensure that it does its job from the outset, as the implementation for MNEs would be very expensive, even for relatively simple businesses.

Our response highlighted that each of these measures would produce a large amount of additional information for HMRC, and said that we would like to be convinced of HMRC's capacity to process the additional information they would receive to good effect, in order to justify the additional compliance burden for businesses. We said that these measures will be judged by whether and how useful the information received by HMRC actually is (and is seen to be by MNEs), particularly the extent to which it reduces the burden of enquiries.

Our full response can be read at: www.tax.org.uk/ref771.