

Input to the Platform for Collaboration on Tax Consultation Concerning the Draft Transfer Pricing Toolkit for Developing Countries

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CFE Tax Advisers Europe together with the Asia-Oceania Tax Consultants' Association ("AOTCA") and the West African Union of Tax Institutes ("WAUTI"), established the Global Tax Advisers Platform ("GTAP") in 2013. GTAP is an international platform, representing more than 600,000 tax advisers in Europe, Asia and Africa, that seeks to bring together national and international organizations of tax professionals from all around the world. The principal aim of GTAP is to promote taxpayer and tax advisers' interests by ensuring the fair and efficient operation of the global tax framework, including recognition of the rights and interests of taxpayers, and the role of tax professionals. For further information, please contact Piergiorgio Valente, Chairman of GTAP or Aleksandar Ivanovski, Secretary General of GTAP, at gtagp@taxadviserseurope.org. For further information regarding CFE GTAP please visit our web page http://www.taxadviserseurope.org/about-us_gtagp/

Statement

The Global Tax Advisers Platform (“GTAP”)¹ is pleased to submit a response to the Platform for Collaboration on Tax concerning the public consultation on the draft toolkit designed to help developing countries with the implementation of transfer pricing documentation requirements.

GTAP welcomes the draft toolkit, and considers the incentive to be highly rewarding in terms of its potential for developing uniformity in practice across jurisdictions. Please find below GTAP’s adopted responses to the consultation questions, based on responses compiled by founding GTAP member, the West African Union of Tax Institutes and the Committee on Transfer Pricing of their Member Organisation, the Chartered Institute of Taxation of Nigeria (CITN).

Question 1: Does this draft toolkit effectively address all the relevant considerations for the design of an effective transfer pricing documentation regulatory system?

We agree with the content of the Toolkit as effectively addressing all relevant considerations for an effective transfer pricing documentation regulatory system. The additional requirements for this are as contained in the questions below.

Question 2: In terms of enforcement of transfer pricing documentation, are particular approaches (e.g. penalties or compliance incentives) especially beneficial for limited capacity developing countries?

Penalties typically drive compliance by taxpayers. Where there are no specific penalties for non-compliance, there is no incentive for taxpayers to comply with the transfer pricing legislation. The effectiveness of penalties in enforcing transfer pricing documentation requirements is diminished by the potential evaluation by taxpayers

¹ The founding members of GTAP are:

- CFE Tax Advisers Europe,
- Asia-Oceania Tax Consultants’ Association (AOTCA), and
- West Africa Union of Tax Institutes (WAUTI).

Observers to GTAP are:

- International Association of Financial Executives Institutes (IAFEI),
- Society of Trust and Estate Practitioners (STEP), and
- Arc Méditerranéen des Auditeurs (AMA).

of the risk of detection by tax authorities due to the limited capacity. Enforcement level may also be subject to a cost-benefit analysis by the taxpayer of the penalties in relation to the regulatory and financial impact of compliance. However, penalty regime for transfer pricing should be such that it would encourage voluntary compliance and not put taxpayers in a dilemma. Penalty regimes that do not put into consideration the cost of compliance, financial capacity of taxpayers, the peculiarity of the taxpayer circumstance, etc may be considered highly punitive and harmful.

Similarly, compliance incentives (especially those that shift the burden of proof) could encourage taxpayers to comply with transfer pricing documentation requirements, even where detection risk or implementation is low due to limited capacity. There must be evidence in the structure of the incentive in the legislation and practice that show an actual shift in the burden. A largely compliant taxpayer should enjoy some form of protection from additional penalties arising from TP adjustment in the event of a tax audit.

Overall, a combination of variable based penalties and “a shift in the burden of proof” compliance incentive may be a viable option to enforce transfer pricing documentation requirements in limited capacity developing countries.

Question 3: Are there other transfer pricing documentation requirements not covered in this toolkit that should be considered?

Taxpayers with no related party transactions should be considered. The toolkit does not provide guidance in respect of documentation requirements (for each document – master file, local file, returns, etc.) for taxpayers with no related party transaction in any particular year. Similarly, the Toolkit should provide guidance on treatment of taxpayers whose status change year on year.

Question 4: What additional considerations and/or tools can be included in this toolkit to assist developing countries to implement effective transfer pricing documentation?

Additional considerations and tools to be included in the toolkit could include:

- a. Detailed exposition on the use of safe harbours;
- b. Impact of Customs, Central Banks and governmental regulatory agencies on transfer pricing documentation and compliance;
- c. Transfer Pricing analysis of financial transactions.

GTAP hope you will give due consideration to our comments and look forward future opportunities to contribute to the Platform for Collaboration on Tax's work on taxation and transfer pricing.