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Committee on Fiscal Affairs
The Organisation for Economic Co-operation and Development

International Tax Committee
Japan Machinery Center for Trade and Investment

Comments on Action 13 of the Action Plan on Base Erosion and Profit Shifting,
"Discussion Draft on Transfer Pricing Documentation and CbC Reporting"

Japan Machinery Center for Trade and Investment ("JMC") is a non-profit organisation that was established in 1952 to promote sound development of foreign trade relating to machinery in Japan by multi-national entities ("MNE"), and includes the major machinery manufacturers, trading companies, and engineering companies. To enhance the international competitive strength of the machinery industry in Japan, an international tax committee was established in beginning of 1990 to study and encourage the developments of domestic and foreign international taxation systems.
URL：http://www.jmcti.org/jmchomepage/english/index.htm

JMC has decided to submit an opinion on Action 13 of the Action Plan on BEPS as it has a significant impact on JMC members, composed of companies engaging in extensive export of machineries and exporting vendors making investments.　Our opinion is based on the "Comments on Discussion Draft on Transfer Pricing Documentation and Country by Country Reporting" submitted by KEIDANREN to the OECD with full agreement and support, along with JMC specific issues.

I. Comments from JMC

<General Comment>

1. JMC is expecting an enhancement of transparency with reduction in the compliance cost for businesses through a standardized template, and more clarity regarding standards with the framework of the two-tiered approach of master file and local file as proposed by the OECD in “Public Consultation DISCUSSION DRAFT ON TRANSFER PRICING DOCUMENTATION AND CbC REPORTING” issued on January 30, 2014.

   However, JMC would like to make following comments based on the fact that the current proposal includes an approach, which is doubtful in its applicability from practical perspective, and the content required resulting in excessive administrative burden on the taxpayers.

2. JMC is composed of over 250 Japanese exporting vendors of machinery representing leading manufacturers, trade companies, and engineering companies. Each member company manages its operation with “appropriate tax payment” as one of the key social responsibility, placing serious weight on tax compliance. Under the CFC (tax haven) rules in Japan, tax avoidance schemes conducted by some Western MNE, indicated in the BEPS report as examples, cannot be accepted; and no actual example of practice of aggressive tax planning with intentional transfer of intangibles and profits to low tax jurisdiction, as raised as part of the BEPS discussions, has been observed.

   Rather, although double non-taxation arrangements are focused on and are discussed as a core issue of the BEPS project, we would request the OECD to remember the fact that many companies have suffered from double taxation issues in practice and that, even if the tax treaty exists, the mutual agreement procedures for relief from double taxation do not work in some cases. We would insist that, in considering the BEPS issues, the OECD should also discuss the above problematic issues on the relief measures of double taxation.

＜Specific Comments＞

3. Regarding the master file

① Definition/standard of the master file

JMC requests the following points to be clearly stated for the preparation of master file. In case the definition/standard applied (i.e. applied accounting standard, scope of related party, principle of materiality) is not clearly stipulated by the OECD, the taxpayer may apply the standard in the jurisdiction of the parent entity. In addition, in the case both parent and the subsidiary are publicly listed companies, both companies should be liable to prepare the master file for their own business, and it is inappropriate for the parent company to be solely responsible for the preparation of the master file.

② Content of the master file

Information regarding the APAs and Rulings as well as MAP is listed as part of the information to be included in the master file. However APAs and Advance rulings as well as MAP with certain tax authorities are conducted with a high degree of confidentiality. As such, without a rational reason for unrelated tax authorities to obtain such information, we request the requirement to be deleted from the information to be included in the master file.

Other than the information above, the following information should be deleted from the list of information to be included in the master file given the highly confidential nature of the information, and the applicability of such information is questionable.

- Chart showing supply chain for material products and services
- A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year
- A list of important related party agreements related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements
- A description of the group's transfer pricing policies related to R&D and intangibles
- A description of any material transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved
- A description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises

(The information above can be noted in the local file as necessary)

- Countries that are located in the main office and title of each of the 25 most highly compensated employees in each business field

It is to be noted that the functional analysis written business overview of MNE should be sufficient to be described by reference to the range of information that has been disclosed in the annual securities reports, annual reports, and other financial reports.

4. Regarding CbC report

① Implementation

The following comments are requested in the box under “E. Implementation” of Chapter V

> Comments are requested regarding the most appropriate mechanism for making the master file and country-by-country reporting template available to relevant tax administrations. Possibilities include:
> ・The direct local filing of the information by MNE group members subject to tax in the jurisdiction;
> ・Filing of information in the parent company’s jurisdiction and sharing it under treaty information exchange provisions；
> ・Some combination of the above.

This point is highly critical and from our perspective, even if country-by-country reporting is unavoidable, it should be sufficient that the parent company submit this report to the authorities of the country where the parent company is. In addition, if the country-by-country report information of a company is required by the authorities of the country where the subsidiary company is located, this information should be shared in accordance with the exchange of information provisions in the tax treaty or other agreement with the authority of the country where the parent company is located. In this case, it may be pointed out that it is difficult to exchange the information with countries and regions without any valid information exchange provisions. Rather from our perspective the role of the OECD is *per se* to encourage prevention of double taxation by proactive conclusion of tax treaties and information exchange agreements. It must clear that the local file must not be shared.

We oppose the concept that the subsidiaries of multinational companies are required to submit this report to the authorities in the countries where multinational companies have business, for the following reasons:

(1) Security/confidentiality concerns

Country-by-country reporting is likely to require highly-confidential information including sales, pretax income, taxes paid, number of employees, payroll, total assets, etc. Usually, since only the parent company is possibly able to keep all of this information, the subsidiary only obtains the information relating to itself and subsidiaries under this subsidiary, except for public information like the annual report which the parent company discloses. If subsidiaries are required to submit the country-by-country report to the authorities where these subsidiaries are located, it will have a material influence on the corporate governance of multinational companies since the subsidiaries will know and hold the above highly-confidential information. We also believe that the information relating to MAP and APA that are discussed with the tax authorities in a specific country is extremely confidential information.

(2) Administrative burden

An affiliated group of companies can include several purely domestic companies which do not or rarely have transactions with an overseas affiliated company and several companies which are not subject to documentation obligations under the transfer pricing system. If information relating to all of the affiliated companies globally is required to be submitted under county-by-country reporting, the administrative burden for this report will be unimaginably enormous. We think that it is impossible to collect and record this information completely.

For example, in the case MNE has various business operations within the group, though a significant portion of master file may be irrelevant to many parts of the CbC report of each entity of this group, the entity will be requested to explain the detail of information submitted to the tax authority with the responsibility of the each entity. Thus, the required administrative burden is far beyond expected and enormous.

In addition, the definition of a foreign affiliated person under the transfer pricing provisions is different in each country. Therefore, it is essential for multinational companies which have operations in each country and region to clarify the definition of a “subsidiary” that is subject to country-by-country reporting. If country-by-country reporting is required in compliance with the transfer pricing provisions of each country, it is impossible to maintain consistency with the purpose of the action plan of reporting uniform and standardized information by using a template. It should be clarified as to what should be the uniform reporting standard and the reasons for such standard.

② CbC report: Concerns regarding the necessity and unintended use of the report

As mentioned above, we have strong doubt about the approach. We believe that the approach of requiring all companies to submit additional information that places excessive burden on them, without it being clear as to the usefulness of information provided, is wrong.

Many of our member companies are actively engaged with business in Asian emerging countries, establishing manufacturing and distribution subsidiaries in these emerging countries. In the recent years, these emerging countries have trended towards the implementation of transfer pricing system allocating more profit to MNE affiliates operating in these emerging countries on the basis of market specific features such as location savings and market premium. Under such conditions, we are afraid that the required provision of information related to global allocation of income as well as taxes paid among countries/jurisdiction of MNE may generate inaccurate risk assessments and result in arguments between tax authorities and taxpayers in certain emerging countries. Annex III provides “A Model Template of Country-by-Country (“CbC”) reporting (Overview of allocation of income, taxes and business activities on a country-by-country basis)”and we are concerned that the risk of double taxation may rise as the information may simply be used as a split factor in applying profit split method. Thus, for the reasons above, we are against the concept of including CbC report as part of the master file.

We are concerned that BEPS issues, which were initially discussed as tax avoidance problems by some MNE in Europe, might turn to be discussed in different contexts, such as tax conflicts between emerging countries and industrial countries.

II. Synopses strongly agreed by JMC regarding the issues addressed in the “Comment on Discussion Draft on Transfer Pricing Documentation and Country by Country Reporting” submitted by KEIDANREN.

1. We believe that the best way for tax administrations to gain a comprehensive “big picture” understanding of a taxpayer’s global value chain is through direct, open and transparent dialogue with the taxpayer. After such direct dialogue, rather than relying on the country-by-country reporting information which may only provide confusion, the tax authority would be able to request information on specific transactions where they consider that there may be a transfer pricing risk.

2. An approach is far more preferable than moving directly to country-by-country reporting for all taxpayers, regardless of their compliance history or risk, which would result in a reduced compliance burden and more appropriate risk assessment. Therefore, it would be a reasonable approach to do a Gateway Test that a tax administration would determine whether they would request additional information to a company in its jurisdiction depending on the result of the risk assessment through cooperative relationship with the company.

3. Since country-by-country income and taxes of multinational companies and other data relating to the measurement of economic activities are not available immediately and there are questions about the usefulness of such information, we oppose the introduction of a new system for obtaining such information. Even if it is inevitable to introduce this system, for example, it should be permitted to use public accounting information in order to minimize the increased additional administrative burden to multinational companies. Further, this new system must not create a requirement for the collection of new data which companies do not currently gather.

JMC is submitting the above comments to the OECD Public Consultation for the first time because the topic is of significant importance for many exporting companies of Japan. We highly appreciate the opportunity to provide these comments.

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