BUREAU VAN DIJK

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BEPS Action 13: navigating the new environment

Welcome to the business of certainty

About Bureau van Dijk

At Bureau van Dijk, we're in the business of certainty.

Leaders in informing business decisions, we are committed to capturing and treating the right data to deliver the richest, most reliable private company information on the market.

Our solutions add value and make a tangible impact on your business. We provide you with access to precise, standardized information on private companies and corporate structures, so you can confidently and quickly make the most informed decisions possible.

We give you more than mere "data". We offer you a greater level of certainty.

Luis Carrillo, global director for tax and transfer pricing solutions at Bureau van Dijk, has more than 16 years of experience in the transfer pricing consulting and software industries, having started his career with KPMG, Arthur Andersen and EY in Silicon Valley.

Any multinational enterprise that engages in crossborder transactions with entities in the same corporate group must comply with the transfer pricing requirements of the tax administrations of the countries in which it operates.

The last few years have seen rapid change in this field. Although transfer pricing is essentially an accounting topic, it has transformed into a critical tax issue due to its potential to be used as a mechanism for tax avoidance.

Luis Carrillo, global director for tax and transfer pricing solutions at Bureau van Dijk, describes the OECD's base erosion and profit shifting (BEPS) project as *the* issue in transfer pricing in 2018 and beyond.

Since the transfer price in an intra-group transaction can be artificially set in a manner that produces more profits in one tax jurisdiction versus another, tax administrations across the globe have introduced legislation for companies belonging to the same corporate group.

Multinational companies are required to establish their transfer pricing policies at 'arm's length', as if they were transacting with independent third parties.

Here, Luis answers key questions relating to BEPS, referencing the data and solutions that can help you overcome recent challenges. He also shares useful charts on different countries' filing requirements.

Could you give a brief overview on the OECD's BEPS project, particularly Action 13, and how it came about?

The OECD's BEPS project is a 15-action project that aims to reduce the risk of erosion of countries' taxable base by artificial profit shifting by multinational enterprises.

BEPS arose from tax administrations' concern that multinational groups actively engage in profit shifting to minimize their tax obligations, by taking advantage of disparate documentation requirements across the globe.

Action 13 is one of BEPS' key items. It focuses on increasing the transparency of multinational enterprises' operating structures and transfer pricing policies to tax administrations.

Action 13 focuses on three types of documentation:

- Master File
- Local Files
- Country-By-Country Reports (CBCRs)

Together, these documents provide tax administrations with the visibility to assess whether there is risk that a multinational group may be shifting profits to erode its taxable base.

With tax administrations adopting BEPS and its robust documentation requirements, multinational enterprises have a much harder time artificially shifting their profits.

How is Action 13 driving and changing the discipline of transfer pricing?

The ultimate aim of BEPS is to minimize the erosion of the taxable base of a country from profit shifting, and transfer pricing is one of the ways profit shifting is achieved.

Action 13 has succeeded in changing transfer pricing as a discipline, in that it now forces transfer pricing to be viewed in the full context of international tax and the attribution of profits.

A multinational enterprise is now required to provide a full overview of its:

- value chain
- intangibles
- financing arrangements
- rulings
- advance pricing agreements (APAs)

Whilst the concept of Local Files is not very different from traditional transfer pricing documentation, the Master File and CBCRs require a much wider scope of disclosure of information.

Multinationals are being forced to have more consistency between their value chain and their intra-group pricing structures.

Multinationals are reorganizing the way they manage transfer pricing documentation by adopting a more centralized approach. There is also more emphasis on technology solutions to help to manage the volume and complexity.

One thing is clear: BEPS hasn't simplified documentation or reduced the burden of compliance on multinationals.

What effect is this having on risk areas like information disclosure, intangible property and tax?

Financials and information disclosure

The disclosure of information, financial and otherwise, increases the volume of audits by tax authorities. This then increases the volume of disputes and competent authority proceedings.

One area of risk for taxpayers is that countries are adopting elements of BEPS on a piecemeal basis. There hasn't been much uniformity in the way BEPS is being implemented, nor in what taxpayers are being required to disclose.

In many countries, the focus has been on the CBCRs. Without the context of the Master File, this information can easily be misinterpreted and misused by tax authorities to open enquiries on multinational groups.

Information leakage is another key risk, as the type of information disclosed in a multinational's Master File is extremely sensitive. It includes confidential information about the group's intangible property, operating structure, value chain and competitive advantages.

If this information got into the public domain, it could cause severe negative consequences for the multinational. And automatic-exchange-of-information protocols between tax authorities exacerbate this risk.

When tax authorities without proper safeguards request the Master File or CBCRs from the local entities' global headquarters, there is concern this information will be used simply to find areas for audit, or that the information will end up in the public domain.

Intangible property

Intangibles are a significant area of focus of BEPS.

In the Industrial Age, the allocation of profits was based on the location of physical assets, such as manufacturing plants, buildings, facilities, etc.

Today, the allocation of profits is based on where intangibles lie and who the economic owner of these is.

So, it's no surprise that intangibles are becoming the central focus for tax authorities.

Action 13 elements, like the Master File and CBCRs, are providing tax authorities with more visibility of multinational groups' intangibles structure.

Before BEPS, transfer pricing analysis of intangibles focused only on the economic ownership of the arm's-length valuation of intra-group transfers of intangible property.

Following BEPS, the Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE) functions are the determining factors for finding out who owns what proportion of the intangibles and the corresponding attribution of profits.

The result of this is that many tax authorities in developing countries are placing greater focus on where the functions are performed (particularly if these occur within their jurisdiction), and using this to claim non-routine profits above and beyond the normal profits attributed to the routine activities often performed within their borders.

This explains the recent debate on whether to move away from more commonly used transfer pricing methodologies, like the Transactional Net Margin Method, to Profit Split method approaches.

Increase in tax controversy

As mentioned, BEPS is already increasing the volume of tax controversy. Much of this is because tax authorities aren't implementing BEPS in a uniform way across countries.

For a multinational group operating in a variety of tax jurisdictions, BEPS brings a new set of challenges around managing the tax controversy that will arise from the disclosure of information and the focus on intangibles.

What can multinationals and their tax advisors do to help navigate this new environment?

The need for centralized management of transfer pricing risk and compliance, and the need for consistency in a multinational's global documentation, is greater than ever.

The Arm's-Length Principle (ALP) is also more important than ever before, given the degree of uncertainty and inconsistency in the application of the various BEPS actions.

Let's look at these in turn.

Centralization

Before BEPS, most multinationals managed transfer pricing in a decentralized manner, leaving the responsibility for local compliance with the local business units.

Today, with automatic-exchange-of-information protocols, greater transparency and disparate requirements across jurisdictions, it is essential that multinationals centralize the management of transfer pricing risk, not just the documentation.

Tax advisors who offer a global, holistic solution for transfer pricing will be best placed to help multinationals minimize the risks arising from the new tax environment under BEPS.

Consistency

A key benefit of centralizing the management of transfer pricing risk and documentation is the degree of consistency around the information being provided to tax authorities globally.

A local business unit that lacks the global visibility of the group's overall activities and value-chain, can no longer work with a local tax advisor to produce documentation, as it will not be in line with the overall understanding of the multinational's transfer pricing structure.

The need for consistency is now paramount, given the degree to which tax authorities now share information via automatic exchange of information protocols and tax treaties.

> "Discrepancies and inconsistencies in a multinational's documentation can have serious detrimental effects. It can undermine global documentation, create greater scrutiny, and allow tax authorities to present their views more successfully."

The Arm's-Length Principle

The ALP is the best way to make sure profits are properly allocated across the value chain of a multinational group.

Arm's-length analysis, based on a thorough functional analysis and the most reliable comparable data, makes sure the pricing of intra-group transactions is adequate and the corresponding allocation of profits (or losses) is not the result of base erosion profit shifting.

> "The reliability of the arm's-length analysis fundamentally wins the day in tax controversy situations."

Documentation filing requirements across the globe

Tables 1-3 show a breakdown of the filing requirements for:

- G20 countries
- EU countries
- emerging markets

Table 1: G20 country filing requirements

G20 countries	Master File	Local Files	Country-By-Country Reports	Ultimate owners with revenues > €750m and ≥ 1 foreign subsidiary[1]
Argentina			✓	3
Australia	✓	✓	✓	122
Brazil			✓	37
Canada			✓	153
China	✓	✓	✓	392
France	✓	✓	✓	141
Germany	✓	✓	✓	230
India	✓		✓	131
Indonesia	✓	✓	✓	10
Italy			✓	101
Japan	✓	✓	✓	834
Mexico	✓	✓	✓	18
Russia	✓	✓	✓	15
Saudi Arabia				23
South Africa	✓	✓	✓	55
South Korea	✓	✓	✓	173
Turkey	✓	✓	✓	18
UK	✓	✓	✓	248
USA			✓	1285
EU	*See EU breakdown for BEPS requirements*			

Reports typically need to be filed by 31 December each year. For each country we have also shared the number of companies that have ultimate owners with more than €750m revenue and at least one foreign subsidiary.

Table 2: EU country filing requirements

EU countries[2]	Master File	Local Files	Country-By-Country Reports	Ultimate owners with revenues > €750m and ≥ 1 foreign subsidiary[1]
Austria	✓	✓	✓	31
Belgium	✓	✓	✓	39
Bulgaria			✓	0
Croatia			✓	1
Cyprus			✓	3
Czech Republic			✓	1
Denmark	✓	✓	✓	48
Estonia			✓	1
Finland	✓	✓	✓	40
Greece	✓	✓	✓	17
Hungary	✓	✓	✓	4
Ireland			✓	39
Latvia	✓	✓	✓	1
Lithuania			✓	0
Luxembourg			✓	26
Malta			✓	2
Netherlands	✓	✓	✓	93
Poland	✓	✓	✓	17
Portugal			✓	8
Romania			✓	0
Slovakia	✓	✓	✓	0
Spain	✓	✓	✓	83
Sweden	✓	✓	✓	83

[1] Data provided by Orbis, 16 May 2018.
[2] EU countries within G20 have not been repeated within this table.

Figure 1 illustrates the countries where multinationals are heavily investing or expanding their operations.

Figure 1: foreign direct investment greenfield projects into non-G20 member states since 2013

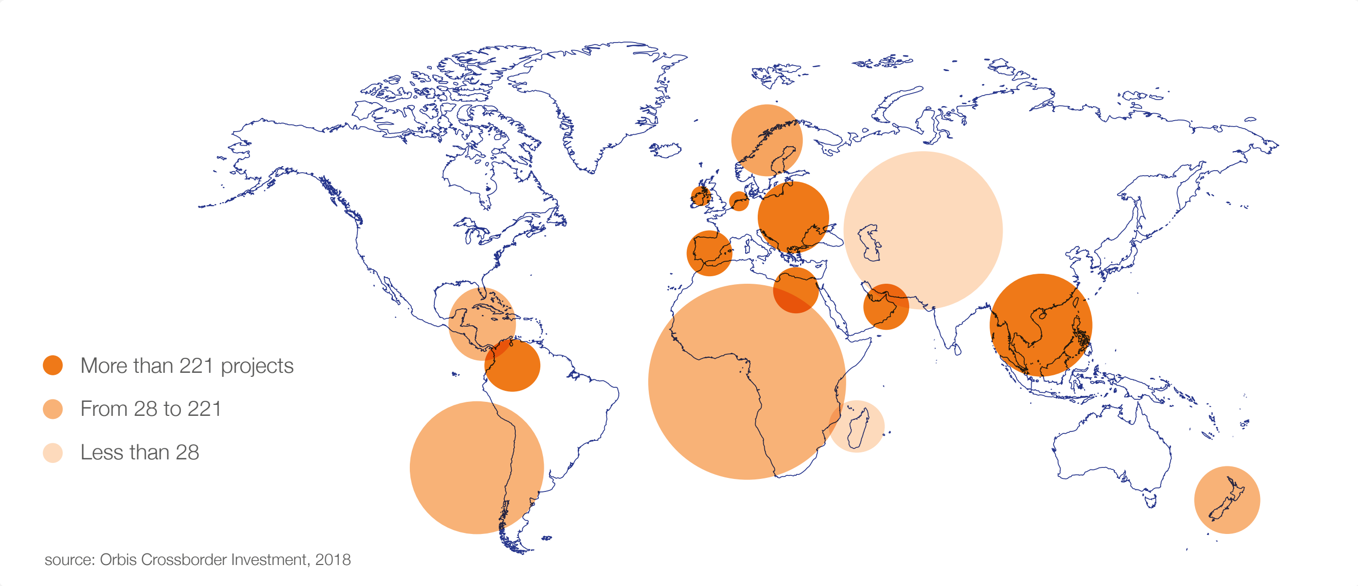

Table 3 shows the degree of adoption of BEPS Action 13 by the top countries for crossborder investment between 2013-18.[3]

Table 3: Emerging markets country filing requirements

Emerging markets	Master File	Local Files	Country-By-Country Reports	Ultimate owners with revenues > €750m and ≥ 1 foreign subsidiary[1]
Chile		✓	✓	17
Colombia	✓	✓	✓	9
Egypt				0
Hong Kong	✓	✓	✓	32
Malaysia	✓	✓	✓	38
Nigeria	✓	✓	✓	4
Philippines				16
Singapore			✓	35
Thailand				35
United Arab Emirates				13
Vietnam	✓	✓	✓	5

[3] 2018 data is not full year.

Solutions you might be interested in

orbis

Orbis

Orbis is the resource for company data. And we make it simple to compare companies internationally.

The financial reports in Orbis are provided in a standardized format, and comprise of:

- 26 balance sheet items
- 26 profit and loss account items
- 32 standard ratios

We also provide detailed corporate ownership structures that help you identify independent entities.

tp catalyst

TP Catalyst

A data and process-driven tax analysis tool that helps you with compliance risk management and planning.

It simplifies transfer pricing analyses, including profit and transaction-based analyses. Developed in conjunction with TP specialists, TP Catalyst streamlines processes, eliminates redundant steps and reduces data manipulation.

Using TP Catalyst, you can identify comparables, derive arm's-length benchmarks, apply adjustments and produce documentation.

You can also do arm's-length analyses for tangible and intangible intra-group transactions, intra-group services and intra-group financing.

tp catalyst document manager

TP Catalyst Document Manager

Streamlines the workflow associated with preparing global TP documentation, including your Master File, Local Files and Country-By-Country Reports (CBCRs), as per BEPS Action 13.

You can upload your functional analyses, legal entity overviews, industry analyses and benchmarks, then pick your countries and instantly create your choice of documents, including:

- Master File
- Local Files
- Country-By-Country Reports (CBCRs)

Document Manager centralizes all relevant information and streamlines your project management of the TP documentation process and output.

You can upload all relevant legal entities across a group, internal financial data for TP risk assessment and preparation for CBCR output and any other relevant documents.

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