



UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

Good afternoon, my name is Carol Doran Klein. I am Vice President and International Tax Counsel at the United States Council for International Business. USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing leading international business organizations, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

Today I intend to discuss two topics that are very important to improving customer services for international taxpayers and to creating an environment that supports compliant behavior while reducing opportunities for non-compliant behavior. The first topic concerns documentation of inter-company transactions and the second dispute resolution.

Turning first to documentation, the direct and indirect costs of transfer pricing compliance have increased substantially in recent years. Similar to the government, corporate taxpayers also have seen significant limits placed on all resources. Resource constraints include limits on staff, systems, travel, research tools, outside consultation

budgets, among others. Better practices in the area of documentation could both reduce compliance costs to taxpayers and improve the focus of the IRS.

In order to implement better documentation requirements, three key points should be kept in mind. First, balance is key – compliance requirements ought to be balanced against the burden to the taxpayer and benefits to the government. Second, best practices in this area look to companies to establish master files, supplemented by country files. Revenue authorities should recognize both the capabilities of enterprise reporting systems used by large corporations and the limitations of those systems. Because of the limitations of those systems, revenue authorities should limit the country-specific deviations from the master files to those that are truly necessary. Third, revenue authorities should focus on the transactions that matter. Under current administrative practices, routine transactions command a disproportionate share of the resources. Companies also need to comply with local rules on the format of materials, which can raise cost significantly without improving compliance.

Documentation ought to be both sufficient and timely. What information is sufficient? The master file ought to contain information including: a description of the business; the structure of the organization; any cost sharing arrangements, APAs or transfer pricing rulings; which entities own intangibles; which entities provide centralized services, e.g, financing, purchasing, research and development; and any world-wide transfer pricing policies.

The country file ought to contain information concerning the nature and terms of controlled transactions particular to that jurisdiction. Transactions ought to be described in terms of functions performed, assets used and risks assumed by the enterprise. Information on pricing including which world-wide transfer pricing policies are relevant to that country; internal CUPS, if available; and information on set-off arrangements ought to be provided.

What is timely? We should distinguish between when information needs to be gathered and prepared vs. when the information needs to be submitted to tax authorities. Does the documentation need to be contemporaneous? How often should updates be required and how detailed should they be? There should be a distinction between filing requirements for information that is needed to review the tax return, to alert the revenue authorities to the existence of a possible transfer pricing issue, and full-blown documentation that may be required to support the transfer price. Few things are more frustrating than producing full-blown transfer pricing studies that are unnecessary or worse ignored.

The OECD has been working on a white paper on documentation which should be out shortly. I expect that it will recommend a master file/country approach and streamlined documentation requirements. I think one of the lessons of the FATCA IGAs is that consistency is more important than a perfect fit. Governments have avoided tweaking the IGAs because of the difficulties that minor variations would create for implementation. Similarly, in the area of transfer pricing documentation, consistency in

the basic documents that are required to be maintained and provided with the tax return would be an enormous benefit. If supplemental information is needed, then that the government and the taxpayer can discuss what additional information is required and agree on a schedule to provide it.

This brings me to one final point on documentation, when government tax officers request information and taxpayers respond that it is not readily available or will take time to compile, taxpayers are responding honestly and not attempting to unreasonably delay an inquiry. If a taxpayer asks to discuss an information request or suggest alternate ways to provide information, that is driven by an attempt to achieve an efficient and productive outcome both for taxpayers and the government and the government should work with taxpayers to achieve that outcome.

Turning to the dispute resolution, the best way to resolve disputes is to reach advance agreement on fundamental principles so that disputes are avoided rather than resolved. One important step in this direction would be the expansion of the use of safe harbors in the area of transfer pricing. USCIB supports the OECD's efforts in this area. In particular, USCIB believes that bilateral Memoranda of Understanding approach holds much promise.

Even in the best of cases, disputes are inevitable, so faster resolution of disputes at all levels is important. Unfortunately, many tax treaties only require the Competent Authorities to endeavor to resolve disputes with no time limits. The recent move to

binding “baseball style” arbitration with real deadlines should be encouraged. The result of such clauses will usually be that the Competent Authorities will reach agreement before the deadline rather than letting the decision go to an arbitrator.

I understand there have been discussions within the OECD to establish a global forum of Competent Authorities along the lines of the Forum of Tax Administrators. In my view, such a forum deserves serious consideration. It could provide an opportunity to study the behavior of Competent Authorities, perhaps using compliance with the best practices identified in the OECD Manual on Effective Mutual Agreement Procedures (MEMAP). Peer reviews of Competent Authority practices based on the MEMAP could result in encouragement for jurisdictions to improve dispute resolution processes.

Thank you for your attention.

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