



## Country-by-Country-Reporting Benefits & Risks

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# Agenda

1. Action Plan No. 13, Chapter V
2. The Aim of Chapter V
3. Three tiered approach
  - 3.1. Master File
  - 3.2. Local File
  - 3.3. Country-by-Country-Report (CbCR)
4. Risks
5. Conclusion

# Action Plan on BEPS

## Action Plan No. 13 on Base Erosion and Profit Shifting (BEPS), Chapter V

### Guidance on Transfer Pricing Documentation and Country-by-Country – Reporting

## Action Plan No. 13, Chapter V

“Develop rules regarding transfer pricing documentation to enhance transparency for tax administrations, taking into consideration the compliance costs for business. The rules to be developed will include a requirement that MNE`s (Multi national enterprises) provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template.”

**Nice ideas, aren't they ?**

# The aim of Chapter V is

## Transparency & Compliance

Reasons for Transfer Pricing Documentation:

### ➤ **Transfer Pricing Risk Assessment**

Local tax authorities require information in order to

- obtain an initial assessment of a possible TP risk (in particular: international profit shifting)
- determine the scope of a tax audit
- staff planning

# The aim of Chapter V is

## ➤ Taxpayers assessment of compliance with arm's length principles

An up to date TP Documentation should ensure compliance with arm's length principles:

- Not any longer: ex post analysis
- Hence: ex ante considerations

# The aim of Chapter V is

## ➤ Transfer Pricing audit

The tax authorities must be put in a position to carry out a

- detailed and
- complete

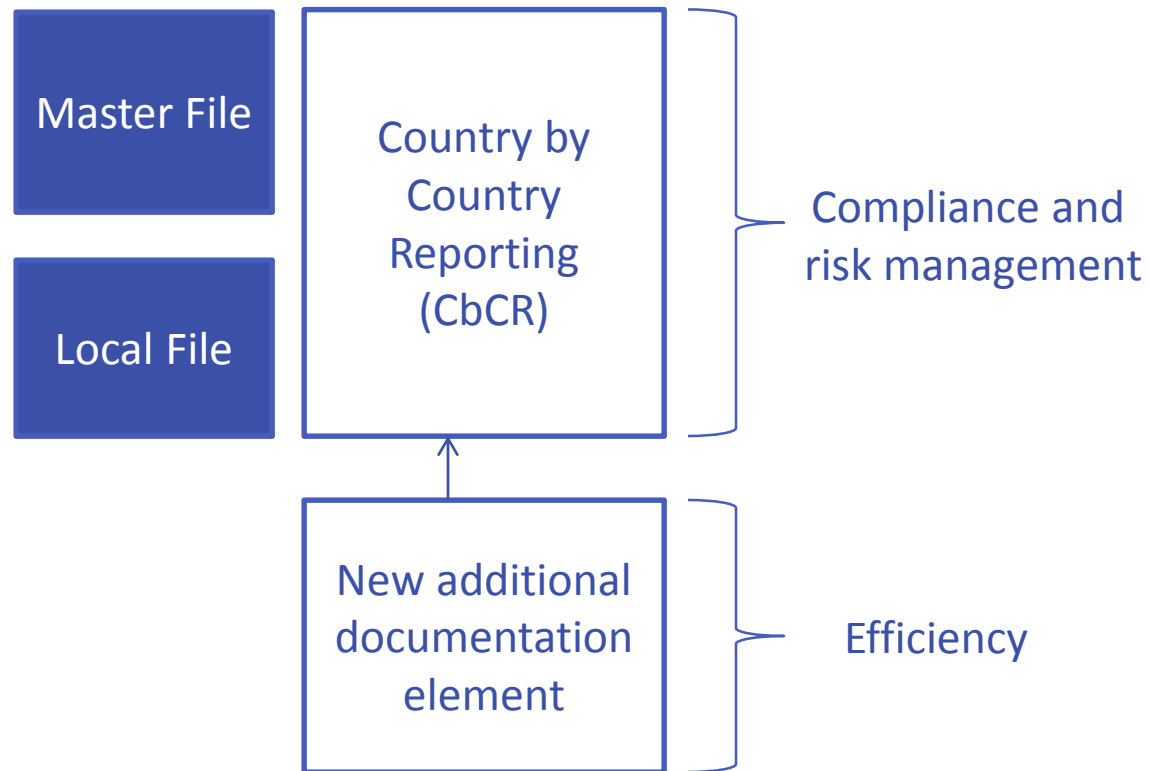
review of the chosen transfer price



**Cross border exchange of information is required**

# „Three-tiered-approach“

The result is a new “three-tiered-approach”





# 1. Master File

Overview relating to the group business operations and the economic value added chain of the MNE, e.g.:

- Organisational structures
- Description of the business model
- Intangible assets
- Financing activities within the group
- Considerable service transactions
- Consolidated financial statements

## 2. Local File

Transfer Pricing analysis and information of considerable transactions with other Group entities:

e.g. description of

- the local organisation structure and local business
- TP method
- local statutory financial statements
- essential transactions with affiliated entities

**NEW:**

- who receives the reports of the local management  
(presentation of reporting lines)
- Copies of any APA or ruling to which the local jurisdiction is not party to but the local entity is related to

# The CbC-Report consists of three parts:

1. **List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction**
2. **Overview of allocation of income, taxes and business activities per tax jurisdiction**
3. **For the sake of completeness: additional optional information:**  
Whatever this means .... no official interpretation is available at present

# 1<sup>st</sup> Part: List of all the Constituent Entities of the MNE group included in each aggregation per Tax Jurisdiction

## Information of MNE and description of main business activities

Where are the following business activities located?

- Research & Development
- Holding or Managing
- Intellectual property
- Purchasing or Procurement
- Manufacturing or Production
- Sales, Marketing or Distribution
- Provision of Services to unrelated parties
- Internal Group Finance

## 2<sup>nd</sup> Part: Essential part of the Country-by-Country-Report:

### Overview of allocation of income, taxes and business activities per tax jurisdiction:

- Revenues (unrelated/related party/total)
- Profit (Loss) before income tax
- Income tax paid (on cash basis)
- Income tax accrued-current year
- Accumulated earnings
- Number of employees
- Tangible assets without cash and cash equivalents



Overview of material financial key figures



Check: Place of value added = place of taxation

# Risks and disadvantages for our clients:

- **Worst-case:**

Tax officer with little or no experience or training concerning this issue draws conclusions from incomparable data

Incomparable data:

Which accounting regulations will be relevant? E.g. US tax officer receives figures based on the regulations of German Commercial Code

Necessary: Regulations in order to reconcile different accounting regulations?

- **Local tax authorities start a tax audit**

- with prejudice or incorrect knowledge
- audit findings in advance

- **“Increased willingness of compromise”**

Just in order avoid pending proceedings even though a double taxation is the result

# Risks and disadvantages for our clients:

## Organisational efforts for our clients:

- ERP systems have to be adjusted
- Set up of a work flow process:
  - a. Who is responsible on local level for the TP and CbC-R?
  - b. Who will coordinate data flow within the MNE?



Human resources are requested  
Group tax planning and reporting department  
“Top-down approach”



Significant costs

# Risks and disadvantages for our clients:

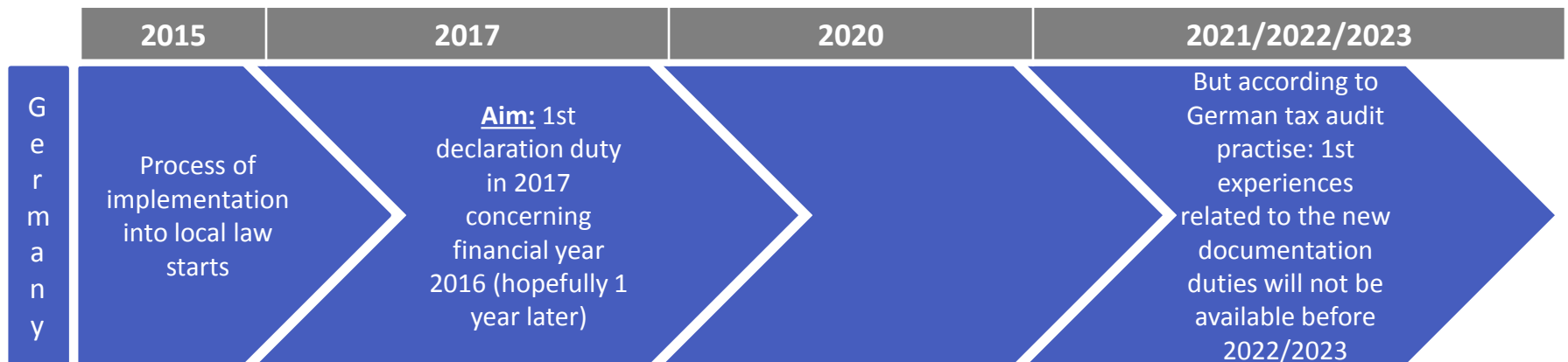
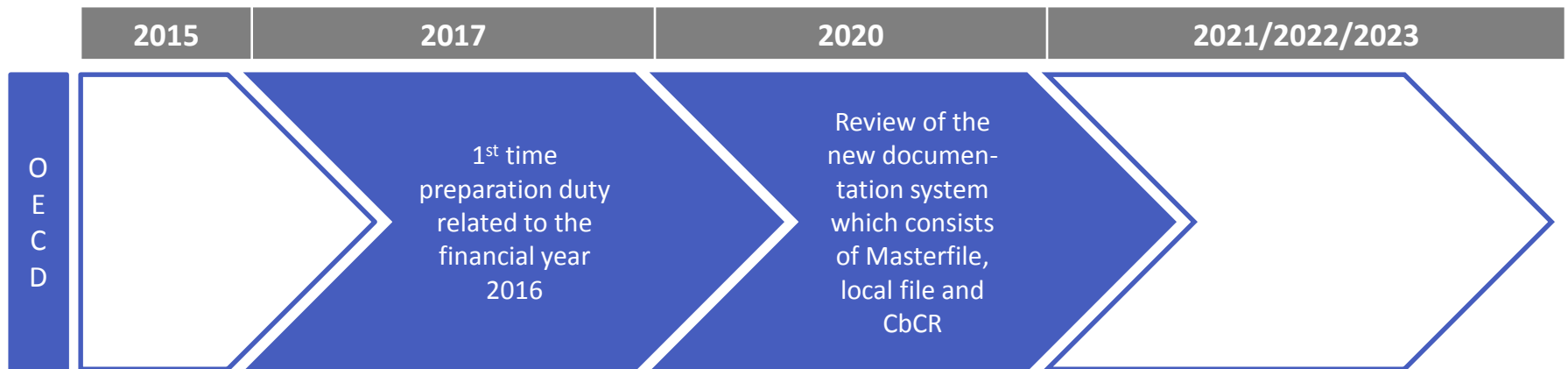
## So far not decided:

- **Who has to file the Masterfile and CbCR?**  
Group parent company to its tax jurisdiction or every affiliated entity to its local tax authority?
- **Legal basis to exchange Masterfile and CbCR?**  
Double tax treaty (article 25 “OECD Model Tax Convention”) or additional Tax information exchange agreements (TIEA)
- **How to ensure:**
  - a. Protection against data abuse
  - b. Observing local regulations concerning tax secrecy
- **What about countries which are not a member of OECD (e.g. China)?**
- **Forms of possible relief depending on the group size?**



# Risks and disadvantages for our clients:

## Intended schedule



# Conclusion

**The big picture overview = uncontrolled transparency**

<b>Global Tax authorities:</b>	<b>Benefits</b>
<b>Clients:</b>	<b>Risks</b>

# Conclusion

**“Viel Wissen bedeutet noch nicht Verstand”**

**“Much knowledge still does not mean understanding”**

**“Multa scire, nondum intellegit”**

*(Heraklit von Ephesos; 520 v. Chr.)*

