



Inland Revenue Department

The Government of the Hong Kong Special Administrative Region
of the People's Republic of China

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

NO. 58

**TRANSFER PRICING DOCUMENTATION AND
COUNTRY-BY-COUNTRY REPORTS**

These notes are issued for the information of taxpayers and their tax representatives. They contain the Department's interpretation and practices in relation to the law as it stood at the date of publication. Taxpayers are reminded that their right of objection against the assessment and their right of appeal to the Commissioner, the Board of Review or the Court are not affected by the application of these notes.

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Commissioner of Inland Revenue

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THE OECD'S STANDARDIZED THREE-TIERED APPROACH

Overview

The consolidated report published by the Organisation for Economic Co-operation and Development (OECD) and endorsed by the Group of Twenty (G20) in 2015, entitled *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report* (Action 13 Report), promulgates a standardized three-tiered approach for transfer pricing documentation. This standardized approach was incorporated into the *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* published by the OECD on 10 July 2017. The approach provides a clear, comprehensive and consistent transfer pricing documentation, which facilitates both compliance and transfer pricing risk assessment.

2. The three-tiered structure of transfer pricing documentation includes:
 - (a) country-by-country (CbC) report containing information relating to the global allocation of income and taxes paid together with certain indicators of the location of economic activities of a multinational enterprise (MNE) group;
 - (b) master file containing standardized information relevant for all constituent entities of the group; and
 - (c) local file referring to material transactions of a specific constituent entity of the group.

CbC report

3. The CbC report requires aggregate tax jurisdiction-wide information relating to the global allocation of the income, the taxes paid, and certain indicators of economic activities such as number of employees, stated capital, retained earnings and tangible assets for each jurisdiction in which the MNE group operates. It also requires a listing of all the constituent entities for which financial information is reported, including the jurisdiction of incorporation, where different from the jurisdiction of tax residence, and the

nature of the main business activities carried out by each constituent entity. The standard template of CbC report is specified in the Action 13 Report.

Master file

4. The master file provides a high-level overview of the group's global operations and policies, including the global business operations, transfer pricing policies and global allocation of income and economic activities. The information required in the master file provides a blueprint of the group. The information in the master file is organized into five categories:

- (a) the group's organizational structure;
- (b) description of the group's business or businesses;
- (c) the group's intangibles;
- (d) the group's intercompany financial activities; and
- (e) the group's financial and tax positions.

5. The master file is generally prepared by the ultimate parent entity of the group and then shared with the constituent entities of the group worldwide. From an efficiency standpoint, the ultimate parent entity is better suited to prepare the master file as it should be the entity with a panoramic view of the overall blueprint of the various business lines of the group.

Local file

6. The local file provides detailed transactional transfer pricing information specific to a constituent entity in each jurisdiction. The information required in the local file supplements the master file and helps to meet the objective of assuring that the entity has complied with the arm's length principle in its material transfer pricing positions affecting the jurisdiction.

7. The focus of local file is on information relevant to the transfer pricing analysis of the transactions between the constituent entity and its associated entities in different jurisdictions which are material in the context of the local jurisdiction's tax system. The information in the local file includes the relevant financial information regarding those specific transactions, a comparability analysis as well as the selection and application of the most appropriate transfer pricing method.

8. The CbC report, master file and local file complement each other and provide relevant and reliable information to perform an efficient and robust transfer pricing risk assessment analysis. For example, a CbC report would assist in interpreting the transfer pricing policy of an MNE group, namely how the different profit level indicators align with the transfer pricing policy stated in the master file. If a particular type of transfer pricing risk has been identified, the tax administration may make cross-reference to the specific documents contained in the master file and local file.

HONG KONG'S TRANSFER PRICING DOCUMENTATION RULES

Consistency with the OECD's three-tiered standardized approach

9. The domestic requirements on transfer pricing documentation are provided in Part 9A of the Inland Revenue (Amendment) (No. 6) Ordinance 2018 (the 2018 Amendment (No. 6) Ordinance). The requirements are consistent with the OECD's three-tiered standardized approach. This approach provides more certainty about the expected content of the transfer pricing documentation, reduces compliance cost and provides a greater level of cooperation in terms of more straightforward and consistent documentation. The Commissioner also expects a better compliance with the local transfer pricing documentation requirements as a result of greater standardization.

10. This Departmental Interpretation and Practice Note sets out the Department's views and practice on the transfer pricing documentation that a Hong Kong entity should keep to meet the requirements in Part 9A.

The 2018 Amendment (No. 6) Ordinance

Division 2 of Part 9A

11. Division 2 of Part 9A requires a Hong Kong entity of a group in the extended sense to prepare, for each accounting period, a master file and a local file in accordance with Schedule 17I and to retain the files for a period of 7 years. More specifically,

- (a) the term “group in the extended sense” essentially means a collection of enterprises, whether all or any of them are local enterprises, that is required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange (i.e. a group in the usual sense), and it is also taken to cover a single enterprise in a jurisdiction if the enterprise carries on business through a permanent establishment in another jurisdiction;
- (b) Part 2 of Schedule 17I specifies the thresholds for exemption from the requirement to keep the files based on the size of business of the entity, as measured by the amount of revenue, the value of assets and the number of employees, or the amounts of controlled transactions undertaken by the entity; and
- (c) Part 3 of Schedule 17I specifies the information about the group and the entity that must be contained in the master file and local file.

Division 3 of Part 9A

12. Division 3 of Part 9A gives effect to the OECD’s CbC reporting requirements as follows:

- (a) section 58D provides that the requirements for filing a CbC return apply to an MNE group that is a reportable group;

- (b) sections 58E and 58F set out the requirements for Hong Kong entities of a reportable group to file a CbC return for each accounting period beginning on or after 1 January 2018;
- (c) section 58G empowers the Assessor to give a notice requiring an entity to file a CbC return (CbC return notice); and
- (d) section 58H sets out the requirements for a Hong Kong entity of a reportable group to file a notice containing information relevant for determining the group's obligation for CbC reporting (CbC reporting notification).

Proof of the arm's length amount

13. While not all Hong Kong entities are required to prepare the transfer pricing documentation prescribed in Division 2 of Part 9A and Schedule 17I, sections 50AAF(3) and 50AAK(7) require a Hong Kong entity upon the Assessor's request to prove that:

- (a) the amount of the income or loss as stated in the Hong Kong entity's tax return is the arm's length amount; and
- (b) the amount of income or loss attributed to the permanent establishment as stated in the Hong Kong entity's tax return is the arm's length amount.

14. The Hong Kong entity would find it difficult to prove that the amount stated in the tax return is the arm's length amount if:

- (a) it does not comply with the requirements for transfer pricing documentation in Part 9A though it has obligations under Part 9A; or
- (b) it does not prepare any transfer pricing documentation though it has no or full obligations under Part 9A.

Evidence of making reasonable efforts

15. Proper documentation is the most effective way that a Hong Kong entity can demonstrate that its transfer pricing treatment complies with the arm's length principle and it has made reasonable efforts to determine the arm's length amount. The efficient administration of the transfer pricing rules in Hong Kong requires the cooperation of the Hong Kong entity in resolving transfer pricing issues. The Hong Kong entity is in the best position to understand its business and to explain its approach to transfer pricing. Transfer pricing documentation is a major factor which the Commissioner will consider in determining whether the Hong Kong entity's transfer pricing treatment needs to be reviewed in more detail and whether penalty has to be imposed in respect of any incorrect treatment found.

16. Meeting the documentation requirements in Division 2 of Part 9A or preparing proper transfer pricing documentation will facilitate a Hong Kong entity to establish that its transfer pricing treatment is reasonably arguable notwithstanding that the treatment is ultimately found not at arm's length. In such case, the Hong Kong entity will have a better proof that it has made reasonable efforts to determine the arm's length amount under section 50AAF(1) or 50AAK(2) so that it will not be liable to penalty by way of additional tax under section 82A(1D) or (1F). It is thus a good practice for a Hong Kong entity, not falling within the provisions in Division 2 of Part 9A, to keep proper transfer pricing documentation to explain the commercial and financial relations in connection with which the actual provisions operate, and how the actual provisions are consistent with the arm's length provisions.

17. Though not required to prepare a comprehensive master file and local file, a Hong Kong entity not subject to the transfer pricing documentation rules in Division 2 of Part 9A is encouraged to keep documentation which can achieve the objectives of the relevant files. The Commissioner expects such documentation to include in particular:

- (a) the general organization and description of the business;
- (b) the selection of a particular transfer pricing methodology, including an explanation of why the selected method is more

appropriate than any higher-ranking methods;

- (c) the projection of the expected benefits as they relate to the valuation of an intangible;
- (d) the scope of the search and criteria used to select comparables;
- (e) an analysis of the factors determining comparability, including a review of the differences and attempts made to make adjustments; and
- (f) the assumptions, strategies and policies as they relate to the tangible property, intangible property and services being transferred.

18. It may be difficult to set out precisely what would amount to reasonable efforts to determine the arm's length amount. A good starting point would be to consider what a reasonable business person in the same circumstances would do, having regard to the complexity and importance of the particular transfer pricing issue.

TRANSFER PRICING EXAMINATION

Transfer pricing documentation and examination

19. Transfer pricing examination cases tend to be fact intensive. They often involve difficult evaluations of the comparability of several transactions and markets. They can require detailed consideration of financial, factual and other industry information. The availability of adequate information from a variety of sources during the examination is critical to facilitating an orderly examination of the controlled transactions and enforcement of the applicable transfer pricing rules.

20. Where a proper transfer pricing risk assessment suggests that a thorough transfer pricing examination is warranted with regard to one or more issues, it is clearly the case that all of the relevant documents and information

must be provided. This includes information regarding the Hong Kong entity's operations and functions, relevant information on the operations, functions and financial results of associated persons with which the Hong Kong entity has entered into controlled transactions, information regarding potential comparables, including internal comparables, and documents regarding the operations and financial results of potentially comparable uncontrolled transactions and unrelated parties. To the extent such information is included in the transfer pricing documentation, special information and document production procedures can potentially be avoided.

Mitigation of audit and penalty exposure

21. Due to the comprehensiveness of the master file and local file to be kept by a Hong Kong entity under Division 2 of Part 9A, the Hong Kong entity may lessen the likelihood of audit activity and minimize additional compliance costs by meeting these requirements. Even when a transfer pricing adjustment is made, holding contemporaneous records will mean that the Hong Kong entity is well placed, in the event of disputed transfer pricing benefit, to mitigate penalty exposure.

MASTER FILE AND LOCAL FILE

Objectives of preparing master file and local file

22. The income or loss from a transaction or a series of transactions made between two associated persons, subject to section 50AAJ, must be computed on an arm's length basis. The income or loss of a non-Hong Kong resident person that is attributable to its permanent establishment in Hong Kong must also be computed as if the permanent establishment were a distinct and separate enterprise dealing with the person on an arm's length basis. Well-prepared master file and local file can assist the Hong Kong entity to articulate convincing, consistent and cogent transfer pricing positions. Three objectives of preparing master file and local files are:

- (a) to ensure that appropriate consideration is given to transfer pricing requirements in establishing prices and other

provisions for transactions between associated persons and in reporting the income or loss from such transactions;

- (b) to provide the Assessor with the information necessary to conduct an informed transfer price risk assessment of the Hong Kong entity; and
- (c) to provide the Assessor with useful information to employ in conducting an appropriately thorough examination of the transfer pricing practices of the Hong Kong entity, although it may be necessary to supplement the documentation with additional information as the examination progresses.

23. The Hong Kong entity should explain its transfer pricing treatment. The entity does it by documenting all material facts and circumstances, and making it clear how the Hong Kong entity understands the law that applies to those facts and circumstances, and why and on what basis adjustments are made for any material differences. Generally speaking, properly documented master file and local file should allow each of the following to be readily ascertained:

- (a) the arm's length provisions relevant to the matter;
- (b) the particulars of the method used and comparable circumstances relevant to identifying those arm's length provisions;
- (c) where the records explain the application of Rule 1 in section 50AAF or Rule 2 in section 50AAK, the result that the application in that particular way has as compared to the non-application;
- (d) for Rule 1 in section 50AAF, the actual provision and the arm's length provision relevant to the matter; and
- (e) for Rule 2 in section 50AAK, the actual amount of income or loss attributed to the permanent establishment, the arm's

length amount of income or loss that should be so attributed, and the particulars of the activities and circumstances to the extent they are relevant to the matter.

24. A high level overview of the transfer pricing documentation requirements in Division 2 of Part 9A concerning the preparation of master file and local file is at Appendix 1.

Exemption from preparing master file and local file

25. To balance the need to meet the international tax standards and to reduce the compliance burden on the business sector as far as practicable, exemptions are provided for preparing master file and local file, based on the size of business and the amount of transactions.

Exemption based on size of business

26. A Hong Kong entity of a group in the extended sense will not be required to prepare both master file and local file if they meet any two of the following exemption thresholds:

- (a) the total amount of the entity's revenue for the accounting period, as reflected in the entity's financial statements for the accounting period, does not exceed \$400 million;
- (b) the total value of the entity's assets at the end of the accounting period, as reflected in the entity's financial statements for the accounting period, does not exceed \$300 million;
- (c) the average number of the entity's employees during the accounting period does not exceed 100.

27. Regarding the business-sized thresholds,

- (a) the “total amount of revenue” of the entity for the accounting period” refers to the aggregated amount of all types of revenue

and income disclosed in the entity's financial statements, including revenue and income measured through other comprehensive income;

- (b) the "total value of assets" of the entity refers to the aggregated amount of all types of assets, after amortization and depreciation, disclosed in the entity's financial statements and should not be taken as net of any liabilities;
- (c) the "average number of employees" of the entity during the accounting period shall be calculated as: the aggregate of the number of employees as at the end of each calendar month in the accounting period as divided by the number of calendar months in the accounting period;
- (d) the number of employees would include the number of part-time staff and secondees who have worked for the entity and are considered to have an employer-employee relationship with the entity during the accounting period.

Thresholds based on revenue and assets

28. Total amount of the entity's revenue and total value of the entity's assets refer to the figures reflected in the entity's financial statements for the relevant accounting period. If an income or asset has been recognized in the entity's financial statements, the amount of such income or the value of such asset will be taken into account in deciding whether the threshold has been exceeded or not.

Example 1

In its financial statements for the year ended 31 March 2019, Insurance Corporation-HK disclosed total revenue of \$450 million, including premium income of \$300 million, investment income of \$90 million and unrealized gains on assets supporting insurance contract liabilities and hedge program of \$60 million.

Per the financial statements, the total amount of revenue for the accounting period concerned was \$450 million. The total amount exceeded the threshold of \$400 million specified in section 4(a) of Schedule 17I.

29. Where a Hong Kong entity commences or ceases business during the year, the thresholds for total amount of revenue (i.e. \$400 million) and total amount of assets (i.e. \$300 million) are not required to be calculated on a pro-rata basis.

Example 2

Corporation-HK commenced business on 1 April 2018. Its financial statements would be made up to 31 December every year. In its financial statement for the period from 1 April 2018 to 31 December 2018, the total amount of revenue for the period was \$340 million while the total value of assets was \$250 million as at 31 December 2018.

Corporation-HK was not required to prepare its master file and local file for the accounting period concerned because its total amount of revenue and total value of assets as reflected in the relevant financial statements were both below the thresholds of \$400 million and \$300 million respectively. Corporation-HK was not required to compute the thresholds on a pro-rata basis.

Threshold based on number of employees

30. The threshold of 100 employees is drawn up with reference to the reporting exemption provided for a “small private company” under the Companies Ordinance (Cap. 622). In the Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standard issued by the Hong Kong Institute of Certified Public Accountants, a small enterprise is defined by the same criteria as provided in the Companies Ordinance. For the purpose of determining whether the exemption in section 4(c) of Schedule 17I should apply, the Commissioner will follow the method adopted by the Hong Kong Institute of Certified Public Accountants.

31. In the Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standard, the number of employees is the average number of persons employed by the entity during the reporting period, irrespective of whether the persons are in full-time or part-time employment, ascertained as follows:

- (a) determine the number of employees as at the end of each calendar month in the reporting period;
- (b) add together all the monthly numbers in subparagraph (a);
- (c) divide the number in subparagraph (b) by the number of months in the reporting period.

Entity's figures versus group's figures

32. In determining whether the threshold of revenue, assets or employees is exceeded, only the revenue, assets or employees of the entity itself, rather than the total revenue, assets or employees of the group to which the entity belongs, will be considered. If a Hong Kong entity's total revenue for an accounting period is \$300 million, it will not be regarded as exceeding the threshold even though the consolidated revenue of the group, which includes the Hong Kong entity and its associated entities, for the accounting period is far higher, say \$800 million.

Exemption based on amount of controlled transactions

33. A Hong Kong entity will not be required to prepare a local file for a particular type of controlled transactions if the amount of that type of controlled transactions does not exceed the following threshold:

- | | | |
|-----|---|---------------|
| (a) | transfers of properties (whether moveable or immoveable but excluding financial assets and intangibles) | \$220 million |
| (b) | transactions in respect of financial assets | \$110 million |
| (c) | transfers of intangibles | \$110 million |
| (d) | other transactions | \$44 million |

34. Regarding the transaction-amount based thresholds,
- (a) “other transactions” include all other types of transactions (dividends excluded), between the entity and its associated entities, other than those regarded as transfers of properties, transactions in respect of financial assets or transfers of intangibles. If the aggregated amount does not exceed \$44 million, a local file for “other transactions” is not required;
 - (b) the making of a loan gives rise to a loan transaction (i.e. drawdown of the loan) and an incidental transaction (i.e. payment of interest), both are “transactions in respect of financial assets”. The loan transaction should be included in the relevant local file for the accounting period in which the loan is drawn down, whereas the interest payments should also be included thereunder for each accounting period in which interest is paid or received.
35. The local file of a Hong Kong entity in respect of an accounting period is not required to cover specified domestic transactions and grandfathered transactions (i.e. transactions which were entered into or effected before the 2018 Amendment (No. 6) Ordinance came into operation on 13 July 2018). Such transactions should be disregarded in determining whether the threshold of a type of controlled transactions is exceeded.
36. The local file of a Hong Kong entity in respect of an accounting period is required to cover a transaction even if the income or profits from the transaction are or claimed to be sourced outside Hong Kong.
37. If all types of controlled transactions are not required to be covered in the local file, preparation of the master file is also not required.
38. While section 58C provides certain exemption in preparing master file and local file, section 51C obliges a Hong Kong entity to keep sufficient records of income and expenditure to enable the assessable profits of its trade, profession or business to be readily ascertained. Hence, the Hong Kong entity is obliged to provide information and documents about its controlled

transactions upon the Assessor's request in the course of examination of a tax return or a transfer pricing examination.

Types of controlled transactions

39. "Properties" generally refer to a thing or things belonging to a person or persons. In the category of "transfers of properties", both tangible movable and immovable properties should be counted. Generally, it includes commodities, products, buildings and structures, vehicles, machinery and equipment, tools and instruments and other tangible assets. Transfers of financial assets or intangibles should be excluded from this category.

40. "Transaction" is widely-defined in section 50AAI to include any operation, scheme, arrangement, understanding and mutual practice. "Financial asset" is defined in section 2 of Schedule 17I to have the same meaning given by section 50A(1), which includes the following:

- (a) any security (including share units of a stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness);
- (b) partnership interest;
- (c) commodity;
- (d) swap (including interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements);
- (e) insurance contract or annuity contract; and
- (f) any interest (including a futures or forward contract or option) in any of the assets mentioned in subparagraphs (a), (b), (c), (d) and (e),

but does not include a non-debt direct interest in real property.

41. For the purposes of transfer pricing documentation, the above definition is not an exhaustive list. Financial assets include accounts receivables, notes receivable, other receivables, equity investments, debt investments, assets formed by derivative financial instruments and other financial assets. In practice, issue of equity securities, recognition of account receivable solely arising from the sale of goods to associated person and sale or purchase of commodity as a physical good will not be counted as transactions in respect of financial assets.

42. In respect of the category of “transactions in respect of financial assets”, the threshold of \$110 million applies to the value of the transactions instead of the principal amounts of the financial assets.

Example 3

Corporation-HK held a bond note with a face value of \$1,000,000. The coupon rate of the note is 6% per annum and the maturity date is on 30 September 2020. Corporation-HK sold the note to Associated Corporation-F, an associated corporation in Jurisdiction-F, on 31 March 2019. The price of the note on 31 March 2019 was 102%. Corporation-HK received a pro-rata interest payment of \$15,000 plus the sale price of \$1,020,000 ($102/100 \times \1 million) from Associated Corporation-F.

Both the receipt of interest income and the sale of note are transactions in respect of financial assets undertaken by Corporation-HK. Though the face value of the note was \$1,000,000, the value of the transaction for the sale of the note should be counted as \$1,020,000.

43. “Intangible” is defined in section 2 of Schedule 17I to mean something:

- (a) that is not a physical asset or a financial asset;
- (b) that is capable of being owned or controlled for use in commercial activities; and

- (c) whose use or transfer would have been compensated had it occurred in a transaction between independent persons in comparable circumstances.
44. Broadly speaking, intangible assets include patents, non-patented technologies, commercial secrets, trademark rights, brands, client lists, sales channels, franchises, government concessions, copyrights and other intangible assets. Royalties payable for the use of intangibles do not fall within the category of “transfers of intangibles”.
45. The category of other transactions is a residual category. Any cross-border controlled transactions not falling within the first three categories should be regarded as other transactions and counted in the category of other transactions.

Aggregation of the same category of transactions

46. The threshold for each category of controlled transactions applies to the aggregate amount of transactions of the same category. A controlled transaction can be a revenue item or an expense item. Each transaction should be considered separately without setting off each other. Furthermore, it is the arm's length amount of the transaction which should be aggregated for determining whether the threshold is exceeded.

Example 4

During the accounting period ended 31 March 2019, Corporation-HK entered into controlled transactions with various associated corporations that were resident for tax purposes in jurisdictions other than Hong Kong. The transactions included: payment of fees of \$30 million for management services provided by the immediate parent; grant of license to an associated entity for use of a trademark free of charge; and payment of rent of \$10 million for use of an office unit owned by the ultimate parent. The relevant service fee and rent were comparable with the market prices, whilst the royalty payable by unrelated party for use of the relevant trademark should be \$10 million.

The provision of services, the grant of license for use of trademark and the leasing of office unit all fell within the category of “other transactions”, and the arm’s length amounts of the relevant service fees, royalty and rent should be aggregated for the purpose of determining whether the threshold of this category was exceeded. Since the aggregate amount (i.e. \$30 million + \$10 million + \$10 million = \$50 million) exceeded the threshold of \$44 million, Corporation-HK was required to prepare a local file. The local file of Corporation-HK was required to cover all the aforesaid other transactions.

Specified domestic transactions

47. Specified domestic transaction is defined under section 2 of Schedule 17I to mean a controlled transaction between a Hong Kong entity (including a permanent establishment in Hong Kong) of a group in the extended sense and an associated entity of that Hong Kong entity if:

- (a) either of the following conditions is met:
 - (i) the transaction is undertaken in connection with each entity’s trade, profession or business carried on in Hong Kong; or
 - (ii) both:
 - (A) the transaction is undertaken in connection with either entity’s trade, profession or business carried on in Hong Kong; and
 - (B) the other entity is resident for tax purposes in Hong Kong and the transaction is not undertaken in connection with that other entity’s trade, profession or business; and

- (b) either of the following conditions is also met:
- (i) each entity's income arising from the transaction is chargeable to Hong Kong tax or each entity's loss so arising is allowable for the purposes of Hong Kong tax; or
 - (ii) the transaction relates to lending money otherwise than in the ordinary course of a business of lending money or an intra-group financing business as defined in section 16(3).

The expressions “income arising from the transaction is chargeable to Hong Kong tax”, “loss so arising is allowable for the purposes of Hong Kong tax” and “transaction relates to lending money otherwise than in the ordinary course of a business of lending money or an intra-group financing business” should be interpreted no differently from similar expressions used in section 50AAJ.

Example 5

Corporation-HK carried on a business of property development in Hong Kong. In its financial statements for the year ended 31 March 2019, Corporation-HK recorded controlled transactions of \$230 million which involved several transfers of properties (which were trading stock). Out of these transactions, \$12 million related to the transfer of properties to Associated Corporation-HK, an associated corporation which carried on a business of property letting in Hong Kong.

Corporation-HK and Associated Corporation-HK were carrying on business in Hong Kong. The profits or loss arising from the transaction were chargeable to or allowable for the purposes of Hong Kong tax. Therefore, the transfer of properties from Corporation-HK to Associated Corporation-HK was a specified domestic transaction.

For the accounting period ended 31 March 2019, Corporation-HK was not required to prepare a local file which covered such transfers of properties because disregarding the specified domestic transactions of \$12 million with Associated Corporation-HK, the aggregate amount of controlled transactions involving transfers of properties (i.e. \$230 million – \$12 million = \$218 million) was below the threshold of \$220 million.

Entities obligated to prepare master file and local file

48. Unless exempted on the basis of the size of business or the amounts of controlled transactions, a Hong Kong entity of a group in the extended sense is required to prepare a master file and a local file.

49. A Hong Kong entity can be a corporation, a partnership, a trust or a permanent establishment (such as a branch, a joint venture or a representative office) that is resident for tax purposes in Hong Kong. Hence, the requirements for master file and local file may also apply to a permanent establishment.

50. Where a Hong Kong entity is a permanent establishment, its master file and local file must be able to explain the process used for determining the arm's length profits that the entity might be expected to make as if it were a distinct and separate entity engaged in the same or similar activities under the same or similar conditions.

Example 6

Bank-F which was resident for tax purposes in Jurisdiction-F was carrying on a banking business in Hong Kong through a branch. In Bank-F's financial statements for the year ended 31 March 2019, the total amount of revenue was US\$1,000 million and the total value of assets was US\$2,000 million. In the accounts of the Hong Kong branch for the same accounting period, the total amount of revenue was \$100 million and the total value of the assets was \$150 million.

In determining whether the thresholds for exemption from preparing

master file and local file were exceeded, only the total amounts of revenue and value of assets attributable to the Hong Kong branch should be taken into account. The Hong Kong branch of Bank-F was not required to prepare its master file and local file because its total amounts of revenue and total value of assets did not exceed the thresholds.

Timing for preparing master file and local file

51. Having regard to the best practice that the master file and local file should be prepared no later than the time for the submission of the tax return for the year of assessment in which the controlled transactions take place, and the diverging tax return due dates to suit different accounting dates in Hong Kong, section 58C(2) states that the master file and local file must be prepared within 9 months after the end of each accounting period of the Hong Kong entity.

Example 7

Corporation-HK's financial statements were made up to 31 March 2019 (i.e. M code accounting date). Under the block extension scheme, the deadline for filing the tax return with audited financial statements would be a date falling within November of 2019.

Whilst Corporation-HK should submit the tax return by the extended deadline in November 2019, it would be required to prepare the master file and local file no later than 31 December 2019. In the return, the arm's length amounts of income or loss from its controlled transactions should be reported as required under section 50AAF.

52. “Accounting period” is defined in section 58C(6) which refers to section 2 of Schedule 17I. In relation to a Hong Kong entity that is an enterprise, it means the period with respect to which the enterprise’s financial statements are prepared. In relation to a Hong Kong entity that is a permanent establishment, it means the period with respect to which the permanent establishment’s financial statements are prepared.

53. There may be cases where the accounting periods of the Hong Kong entity and the ultimate parent entity of the group are different. In such case, the Hong Kong entity should prepare its local file in respect of its own accounting period and its master file in respect of the corresponding accounting period. For a group in the usual sense, the corresponding accounting period means the period in respect of which the consolidated financial statements of the group are prepared and the period ends within the accounting period of the entity. For a single enterprise that is resident for tax purposes in a jurisdiction and carries on business through a permanent establishment in another jurisdiction, the corresponding accounting period means the period in respect of which the financial statements of the single enterprise are prepared and the period ends within the accounting period of the entity (i.e. the permanent establishment).

Example 8

Corporation-HK was a constituent entity of MNE Group-F. The master file of MNE Group-F was prepared centrally by the ultimate parent entity and shared with the rest of the group. The accounting period of Corporation-HK started from 1 April of a year to 31 March of the next year, while the accounting period of the ultimate parent entity of MNE Group-F ran from 1 October of a year to 30 September of the next year.

For the year of assessment 2019/20, Corporation-HK would be required to prepare a local file covering its own accounting period from 1 April 2019 to 31 March 2020 and submit the master file prepared by the ultimate parent entity in respect of the corresponding accounting period from 1 October 2018 to 30 September 2019.

54. A Hong Kong entity is required to prepare and retain a master file and a local file within the timeframe and for the period prescribed under section 58C(2). While the Assessor will not require the Hong Kong entity to submit its master file and local file when filing its profits tax return, the entity has to declare in the return whether it is required to prepare the master file and local file. In a compliance check, the Assessor will review whether the Hong Kong entity has prepared the master file and local file within the timeframe and

whether the information is complete and accurate. A Hong Kong entity which fails to prepare a master file and local file in accordance with section 58C commits an offence under section 80(2Q) and is liable to a penalty under section 80(2R).

55. A Hong Kong entity must keep its master file and local file and submit them upon request within the time specified in the Assessor's notice.

Preparation of master file and local file

Format

56. The terminology, order of presentation and format of the master file and the local file are not to be applied too onerously and rigidly. A Hong Kong entity may prepare the prescribed information in accordance with its own circumstance, as long as the quality of the information is not compromised.

57. A Hong Kong entity can retain the transfer pricing documentation in paper or electronic form. The entity must also be able to provide promptly the relevant information to the Assessor in hardcopy or softcopy upon request.

Materiality

58. The documentation requirements should be approached with a practical and commercially realistic sense of what entities can reasonably be expected to include in their records. The degree of detail and comprehensiveness required is a function of complexity of the transfer pricing problem involved and the materiality of the risk as measured against the entity's overall tax position.

59. If a Hong Kong entity has a controlled buying and selling transaction that is mirrored closely by an uncontrolled transaction without any material variation, then the documentation to be kept may be relatively short and simple, reflecting the relatively straightforward nature of the transfer pricing analysis involved. In contrast, if a Hong Kong entity engages in a controlled transaction that produces a very material transfer pricing benefit making the identification of the arm's length conditions challenging and controversial, then

the records would need to give considerable attention to the problem. In gist, the Hong Kong entity should focus on whether there is a sufficiency of information to enable the Assessor to reach a conclusion as to whether the transfer pricing treatment taken by the entity is in accordance with the arm's length principle.

60. Not all cross-border controlled transactions are sufficiently material to require documentation in the local file. A Hong Kong entity should use prudent judgment in determining the appropriate level of details for the information to be incorporated in the master file and local file. Generally speaking, information is considered important if its omission would affect the reliability of the transfer pricing outcomes.

Frequency of documentation updates

61. The international standard is to review and update the master file and local file annually. However, it is recognized that some business descriptions, functional analyses and descriptions of comparables may not change significantly from year to year. In order not to impose undue compliance burden on a Hong Kong entity, the Commissioner will allow certain information (e.g. benchmarking study and the descriptions of comparables of the relevant transactions) in the local file to be rolled forward for a maximum of 3 years if the relevant conditions of the controlled transactions or operations of the entity remain consistent across the years.

62. Where arrangements continue in force for more than one accounting period (e.g. a distribution agreement lasting for several years), there is no need to prepare new documentation for a subsequent accounting period, provided that the original documentation is sufficient to demonstrate that the Hong Kong entity has made a complete and correct return for the later period. Any significant changes in the nature or terms of the transaction or transactions in question should be recorded.

Retention period

63. In line with the prevailing retention requirement for business records under section 51C, a Hong Kong entity must retain the files for a period of not

less than 7 years after the end of the accounting period concerned. In the case where the Hong Kong entity is involved in a tax audit or negotiation under the mutual agreement procedure, it is advised that the transfer pricing documentation should be retained for a longer period.

Languages

64. The master file and the local file must be prepared in the English or Chinese language. Files prepared in simplified Chinese characters would be equally acceptable.

Penalties relating to master file and local file

65. To ensure the efficient and effective operation of the transfer pricing documentation requirements, penalties for non-compliance are provided under section 80(2Q), (2R) and (2S). A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement of section 58C and is liable on conviction to a fine at level 5. The court may order the person to do, within a time specified in the court order, the act that the person has failed to do so.

66. Each offence will be considered separately. A penalty under section 80(2Q) applies to each non-compliance of a requirement of section 58C. The penalty is designed to encourage compliance and make non-compliance more costly than compliance.

67. While the penalty is designed to encourage compliance, the following factors will be taken into account in considering the penalty:

- (a) whether the entity has genuinely made a reasonable attempt in good faith to comply with the statutory requirements in preparing the master file and local file, having regard to what a reasonable business person in the same circumstances would do;
- (b) whether the entity has used its best endeavours to document the process of selecting and applying an arm's length method at the time the transaction was negotiated, or at the time the relevant

tax return was prepared, on the basis of the information in the entity's possession and any other information that was reasonably available to the entity at that time;

- (c) whether the entity can satisfy the Commissioner that there was no tax avoidance intention or purpose in adopting the transfer pricing outcomes arrived at from performing the process mentioned in subparagraph (b) above;
- (d) where the transfer pricing adjustment is made as a result of examination, audit or investigation, whether the entity has fully co-operated with the Assessor, including providing all relevant information in the entity's possession or reasonably available to the entity so as to achieve an expeditious conclusion of the examination, audit or investigation;
- (e) the quality of the entity's process and the adequacy and relevancy of the documentation that the entity has prepared and maintained in applying the arm's length principle.

First accounting period for master file and local file

68. The requirements relating to master file and local file apply in relation to an accounting period of a constituent entity of a group in the extended sense that begins on or after 1 April 2018. Subject to the specific exemptions, the first accounting period in respect of which a Hong Kong entity is required to prepare its master file and local file can be summarized as follows:

	<u>End-date of annual accounts</u>	<u>End-date of first accounting period for master file and local file</u>
(a)	Between 1 January and 30 March (i.e. M code)	Between 1 January 2020 and 30 March 2020 (i.e. year of assessment 2019/20)
(b)	31 March (i.e. M code)	31 March 2019 (i.e. year of assessment 2018/19)

	<u>End-date of annual accounts</u>	<u>End-date of first accounting period for master file and local file</u>
(c)	Between 1 April and 30 November (i.e. N code)	Between 1 April 2019 and 30 November 2019 (i.e. year of assessment 2019/20)
(d)	Between 1 December and 31 December (i.e. D code)	Between 1 December 2019 and 31 December 2019 (i.e. year of assessment 2019/20)

GROUP TRANSFER PRICING DOCUMENTATION

Acceptance subject to provision of supplementary information

69. Group transfer pricing documentation (TPD), such as the master file prepared by the ultimate parent entity, can generally be considered appropriate and accepted for the purposes of section 58C and Schedule 17I. However, the Assessor reserves the right to request the Hong Kong entity of the group to provide supplementary or additional information if the Assessor considers that the group TPD does not contain the information required under Schedule 17I.

DOCUMENTATION OF PERMANENT ESTABLISHMENT

Dealings of a permanent establishment

70. Dealings between the permanent establishment and other parts of the enterprise of which it is a part have no legal consequences for the enterprise as a whole. This implies a need for greater scrutiny of these dealings than of transactions between two associated enterprises. This also implies a greater scrutiny of documentation that might exist. However, it is not intended that such dealings should be subject to more burdensome documentation requirements than those applicable to transactions between associated enterprises.

Contemporaneous documentation

71. An accounting record and contemporaneous documentation showing a transaction that transfers economically significant risks, responsibilities and benefits would be a useful starting point for the purpose of attributing profits to a permanent establishment. Such documentation requires preparation as it may reduce substantially the potential for controversies regarding the application of transfer pricing approach. The Commissioner will consider such documentation to the extent that:

- (a) the documentation is consistent with the economic substance of the activities taking place within the enterprise as revealed by the functional and factual analysis;
- (b) the arrangements documented in relation to the dealing, viewed in their entirety, do not differ from those which would have been adopted by comparable independent enterprises behaving in a commercially rational manner, or if they do, the structure as presented in the Hong Kong entity's documentation does not practically impede the Commissioner from determining an appropriate transfer pricing; and
- (c) the dealing presented in the documentation of the Hong Kong permanent establishment does not violate the principles of the approach stipulated in Rule 2 in section 50AAK (e.g. purporting to transfer risks in a way that segregates them from functions).

COUNTRY-BY-COUNTRY REPORTING

Informed assessment of transfer pricing risk

72. CbC reporting is designed to provide tax authorities with the global position of profit and tax for an MNE group operating in various jurisdictions. This will enable tax authorities to make a more informed assessment of where risks lie.

73. Hong Kong has adopted the OECD model for CbC reporting under Division 3 of Part 9A. The legal framework came into operation on 13 July 2018.

Consistency with CbCR documents

74. CbC reporting is implemented across the world. To ensure consistency, the first place to seek guidance is the CbCR documents published by the OECD. Section 58D(1) provides that Division 3 of Part 9A is to be read in the way that best secures its consistency with the requirements and guidance in the CbCR documents. CbCR documents refer to the following documents published by the OECD:

- (a) the Action 13 Report published in 2015;
- (b) the document entitled *Guidance on the Implementation of Country-by-Country Reporting – BEPS Action 13* published in 2018 (the Guidance); and
- (c) the document entitled *Country-by-Country Reporting: Handbook on Effective Implementation* published in 2017.

In particular, the Guidance and Annex III of the Action 13 Report contain a lot of practical guidance for preparing a CbC report. The Guidance will be updated regularly and the latest guidance is available at the OECD's website.

75. Division 3 of Part 9A uses many terms and definitions that are taken from or explained by the CbCR documents. The relevant documents should therefore be consulted when preparing a CbC report.

Obligations for filing CbC returns

Reportable group

76. For an entity to be in scope for CbC reporting for an accounting period, it must be part of an MNE group that is a reportable group. An MNE group is a group in the usual sense that meets either of the following conditions:

- (a) it must include 2 or more enterprises the tax residence of which is in different jurisdictions; or
- (b) it must be resident for tax purposes in one jurisdiction and is subject to tax in another jurisdiction with respect to the business carried out through a permanent establishment in that other jurisdiction.

An MNE group is a reportable group for an accounting period if it has a total consolidated group revenue, as shown in its consolidated financial statements, of at least the specified threshold amount under section 58D(5), for the immediately preceding accounting period.

77. Depending on the jurisdiction of tax residence of the ultimate parent entity, the specified threshold amount is as follows:

- (a) if the ultimate parent entity is resident for tax purposes in Hong Kong, the specified threshold amount is \$6.8 billion;
- (b) if the ultimate parent entity is resident for tax purposes in a jurisdiction other than Hong Kong and that jurisdiction requires the filing of a CbC report in respect of an accounting period by an MNE group that has a total consolidated group revenue for the immediately preceding accounting period of at least an amount stipulated under the laws or regulations of that jurisdiction, the specified threshold amount is the amount so stipulated;
- (c) if the ultimate parent entity is resident for tax purposes in a jurisdiction other than Hong Kong which does not require the filing of a CbC report as mentioned in subparagraph (b), the specified threshold amount is an amount in the currency of that jurisdiction equivalent to EUR750 million as at January 2015.

Example 9

The ultimate parent entity of MNE Group-F was resident for tax purposes in Jurisdiction-F. The threshold for filing of CbC report in Jurisdiction-F was F\$10 billion. For the accounting period from 1 January 2017 to 31 December 2017, the total consolidated group revenue of MNE Group-F was F\$8 billion. The average exchange rate of F\$/HK\$ in 2017 was 0.875.

MNE Group-F would not be a reportable group for the accounting period from 1 January 2018 to 31 December 2018 since its total consolidated group revenue for the immediately preceding accounting period (i.e. F\$8 billion) was below the threshold for filing of CbC report in Jurisdiction F (i.e. F\$10 billion). The fact that the Hong Kong dollar equivalent of the relevant total consolidated group revenue (i.e. $F\$8 \text{ billion} \times 0.875 = HK\7 billion) exceeded HK\$6.8 billion would not be relevant.

Example 10

The ultimate parent entity of MNE Group-F was resident for tax purposes in Jurisdiction-F. In Jurisdiction-F, filing of CbC reports was not required. For the accounting period from 1 January 2017 to 31 December 2017, the total consolidated group revenue of MNE Group-F was F\$7 billion. The exchange rate of F\$/EUR in January 2015 was 0.1. The average exchange rate of F\$/HK\$ in 2017 was 0.975.

MNE Group-F would not be a reportable group for the accounting period from 1 January 2018 to 31 December 2018 since its total consolidated group revenue for the immediately preceding accounting period (i.e. F\$7 billion) fell below the Jurisdiction-F currency equivalent of EUR750 million as at January 2015 (i.e. $\text{EUR}750 \text{ million} \div 0.1 = F\7.5 billion). The fact that the Hong Kong dollar equivalent of the relevant total consolidated group revenue (i.e. $F\$7 \text{ billion} \times 0.975 = HK\6.825 billion) was above HK\$6.8 billion would not be relevant.

Entities obligated to file CbC returns

78. Section 58E(1) requires the HK ultimate parent entity of a reportable group to file a CbC return which includes a CbC report in respect of an accounting period. Section 58B(2) has adopted the OECD's model legislation for CbC reporting which defines the "ultimate parent entity" to mean a constituent entity of an MNE group that meets the following conditions:

- (a) it owns directly or indirectly a sufficient interest in one or more other constituent entities of such MNE group such that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
- (b) there is no other constituent entity of such MNE group that owns directly or indirectly an interest described in subparagraph (a) above in the first mentioned constituent entity.

79. Section 58F(1) requires a Hong Kong entity of a reportable group whose ultimate parent entity is resident for tax purposes in a jurisdiction other than Hong Kong to file a CbC return in respect of an accounting period (i.e. local filing) if the condition precedent for Hong Kong to require local filing is met in relation to the group within the meaning of section 58I(1), viz:

- (a) the ultimate parent entity is not required to file a CbC report in respect of the accounting period in its jurisdiction of tax residence;
- (b) the jurisdiction of tax residence of the ultimate parent entity has entered into an international agreement which allows automatic exchange of information, but has no exchange arrangement in effect with Hong Kong by the time by which the CbC return is due to be filed in Hong Kong (i.e. filing deadline); or

- (c) the jurisdiction of tax residence of the ultimate parent entity has suspended or persistently failed to undertake the exchange of CbC reports with Hong Kong.

80. Where a condition precedent for Hong Kong to require local filing is met in relation to a reportable group, the group may appoint a constituent entity as the sole substitute for the ultimate parent entity to file the CbC report on behalf of the group. Such a substitute is referred to as the “surrogate parent entity”. If a Hong Kong entity is appointed as the group’s surrogate parent entity in accordance with section 58I(4), it will be required to file a CbC return in Hong Kong.

Dual residence of constituent entity

81. It is not uncommon that a constituent entity of a reportable group is regarded as resident for tax purposes in both Hong Kong and another jurisdiction. For example, the group’s ultimate parent entity, though incorporated in a jurisdiction other than Hong Kong, is effectively managed or even listed in Hong Kong. The ultimate parent entity falls within the definition of resident under the tax laws of Hong Kong and the jurisdiction of incorporation. If Hong Kong and the jurisdiction of incorporation have a double taxation agreement or arrangement (DTA), the dual residence issue should be dealt with pursuant to the tie-breaker rules under the DTA. Otherwise, the ultimate parent entity will have to comply with its CbC reporting obligation in both jurisdictions.

Exceptions to local filing requirement

82. Section 58F(2) provides that a Hong Kong entity is not required to file a CbC return in respect of an accounting period if:

- (a) the SPE-filing-elsewhere exception or SPE-filing-in-HK exception applies within the meaning of section 58I(2); or
- (b) another Hong Kong entity of the group has filed the CbC return by the filing deadline.

83. The SPE-filing-elsewhere exception applies if:

- (a) a constituent entity that is resident for tax purposes in a jurisdiction other than Hong Kong is appointed by the reportable group as its surrogate parent entity in accordance with section 58I(3);
- (b) the details of the surrogate parent entity are notified to the tax authority of that jurisdiction (if required in that jurisdiction) and the Commissioner in accordance with section 58H; and
- (c) by the filing deadline of the CbC return in respect of the accounting period,
 - (i) the surrogate parent entity has filed the CbC report in respect of the period in that jurisdiction; and
 - (ii) exchange mechanisms are in place between Hong Kong and that jurisdiction.

84. The SPE-filing-in-HK exception applies if:

- (a) a Hong Kong entity is appointed by the reportable group as its surrogate parent entity in accordance with section 58I(4);
- (b) the details of the surrogate parent entity are notified to the Commissioner in accordance with section 58H; and
- (c) the surrogate parent entity has filed the CbC return in respect of the accounting period by the filing deadline.

85. If a Hong Kong entity intends to rely on an exception provided under section 58F(2), it should timely engage the constituent entity that is to file the relevant CbC return or CbC report so as to ensure that the exception will be applicable.

International agreement and local filing

86. One of the conditions precedent for Hong Kong to require local filing is that the ultimate parent entity is resident for tax purposes in another jurisdiction which has an international agreement with Hong Kong but does not have any exchange arrangement in effect with Hong Kong. The term “international agreement” refers not only to the Convention on Mutual Administrative Assistance in Tax Matters (the Convention), but also to a DTA or a tax information exchange agreement (TIEA) which provides a legal basis for exchange of tax information including automatic exchange of such information. In other words, local filing will not be required in the following situations:

- (a) the jurisdiction has neither participated in the Convention nor entered into a DTA/ TIEA with Hong Kong; or
- (b) the DTA/ TIEA between the jurisdiction and Hong Kong does not allow automatic exchange of information.

Filing of CbC returns

87. A CbC return filed for a reportable group must contain a CbC report for the group and any other information specified by the Board of Inland Revenue. It must be filed in the form of an electronic record that is sent by using a designated system (i.e. the CbC Reporting Portal) and contains the required information arranged in a form specified by the Commissioner.

Deadline for filing

88. Section 58B(3) provides that the filing deadline for a CbC return required under section 58E or 58F is generally 12 months after the end of the accounting period. However, the Assessor may specify an earlier filing deadline for warranted cases (e.g. liquidation).

89. Where a Hong Kong entity notifies the Commissioner that the SPE-filing-elsewhere exception is to apply and the date by which a CbC report for the accounting period is required to be filed in a jurisdiction other than

Hong Kong (i.e. foreign filing date) is later than the 12 months after the end of the accounting period, the filing deadline is the foreign filing date.

Contents of CbC report

90. A CbC report must be made in Extensible Markup Language (XML) format in accordance with the Country-by-Country Return XML Schema issued by the IRD, which is based on the Country-by-Country Reporting XML Schema issued by the OECD. The report will show for each tax jurisdiction in which the reportable group carries on business:

- (a) the amount of revenue, profit before income tax and income tax paid and accrued; and
- (b) their total employment, capital, retained earnings and tangible assets.

91. The contents of the CbC report required to be filed by a Hong Kong entity (whether it is a HK ultimate parent entity, a surrogate parent entity or a Hong Kong entity that is to file a CbC return in compliance with the local filing requirement) are the same. To prepare a CbC report, a Hong Kong entity will have to identify each constituent entity of the group carrying on business in a particular jurisdiction and what sort of business activity the entity is engaged in.

Notification requirements

92. Unless otherwise exempted, each Hong Kong entity of a reportable group is required under section 58H(1) to file a CbC reporting notification to the Commissioner. The notification must include the following information:

- (a) the name, address and business registration number of each of the group's Hong Kong entities, identifying among them the ultimate parent entity, the surrogate parent entity or the entity that is to file the CbC return in compliance with the local filing requirement under section 58F(1);

- (b) if the group's ultimate parent entity is resident for tax purposes in a jurisdiction other than Hong Kong,
 - (i) the name, address, business registration number (or equivalent particulars) and jurisdiction of tax residence of the ultimate parent entity;
 - (ii) whether a condition precedent for Hong Kong to require local filing is met in relation to the group; and
 - (iii) whether the ultimate parent entity has notified the tax authority of its jurisdiction of tax residence that it is the ultimate parent entity (if the laws or regulations of the jurisdiction concerned require such notification);
- (c) if the SPE-filing-elsewhere exception is to apply,
 - (i) the name, address, business registration number (or equivalent particulars) and jurisdiction of tax residence of the surrogate parent entity; and
 - (ii) whether the surrogate parent entity has notified the tax authority of its jurisdiction of tax residence that it is the surrogate parent entity (if the laws or regulations of the jurisdiction concerned require such notification); and
- (d) any other information relevant determining a Hong Kong entity's obligation to file a CbC return.

93. To avoid duplication of efforts, section 58H(3) provides that a Hong Kong entity is not required to file a CbC reporting notification if the relevant Hong Kong entity is not the entity that is to file a CbC return, and another Hong Kong entity of the same group has filed the notification containing all the required information. The mechanics of this exemption are that:

- (a) if the group has an ultimate parent entity that is resident for tax purposes in Hong Kong, the ultimate parent entity must file a

CbC reporting notification;

- (b) if the group has a surrogate parent entity that is resident for tax purposes in Hong Kong, the surrogate parent entity must file a CbC reporting notification;
- (c) if the group does not have an ultimate parent entity or surrogate parent that is resident for tax purposes in Hong Kong, and the group's Hong Kong entity is required to file a CbC return in compliance with the local filing requirement, the Hong Kong entity that is to file such return must file a CbC reporting notification;
- (d) if the group does not have an ultimate parent entity or surrogate parent that is resident for tax purposes in Hong Kong, and the group's Hong Kong entity is not required to file a CbC return in compliance with the local filing requirement (i.e. either no condition precedent for Hong Kong to require local filing is met or the SPE-filing-elsewhere exception applies), at least one of the Hong Kong entities of the group must file the notification;
- (e) in each of the situations referred to in subparagraph (a) to (d), provided that a CbC reporting notification has been filed as aforesaid, all other Hong Kong entities of the group are not required to file the same notification.

Notwithstanding the above, a Hong Kong entity that is not required to file a CbC reporting notification under section 58H(3) may still file the notification if it so wishes.

94. Under section 58H(2), a CbC reporting notification required by section 58H(1) must be filed within 3 months after the end of the relevant accounting period. The notification must be filed to the Commissioner in electronic form via the CbC Reporting Portal.

Examples illustrating the filing and notification requirements

95. The examples below are to illustrate how the provisions relating to the filing of CbC return and CbC reporting notification should operate:

Example 11

Corporation-HK was the HK ultimate parent entity of MNE Group-HK. MNE Group-HK's consolidated financial statements showed that the total consolidated group revenue for the accounting period from 1 January 2017 to 31 December 2017 was \$8.5 billion.

Corporation-HK as the HK ultimate parent entity should file a CbC return for the accounting period from 1 January 2018 to 31 December 2018. The CbC return should be filed by 31 December 2019.

Corporation-HK as the HK ultimate parent entity should file a CbC reporting notification to the Commissioner by 31 March 2019.

Example 12

Corporation-HK was the only constituent entity of MNE Group-F in Hong Kong. The group's ultimate parent entity was Corporation-F which was resident for tax purposes in Jurisdiction-F. Jurisdiction-F required the filing of CbC report from the ultimate parent entity of a MNE group that was resident for tax purposes there if the group's total consolidated group revenue for the immediately preceding accounting period reached EUR 750 million. Hong Kong and Jurisdiction-F had an international agreement and an arrangement for exchange of CbC reports. Jurisdiction-F had neither suspended nor persistently failed in exchanging CbC reports. MNE Group-F's consolidated financial statements showed that the total consolidated group revenue for the accounting period from 1 January 2017 to 31 December 2017 was EUR 900 million.

Corporation-HK would not be required to file a CbC return for the accounting period from 1 January 2018 to 31 December 2018 as no condition precedent for Hong Kong to require local filing was met in relation to MNE Group-F. The CbC report for the accounting period should be filed by Corporation-F in Jurisdiction-F and exchanged to Hong Kong under the relevant exchange arrangement.

Corporation-HK should file a CbC reporting notification to the Commissioner by 31 March 2019.

Example 13

Corporation-HK was the only constituent entity of MNE Group-F1 in Hong Kong. The group's ultimate parent entity was Corporation-F1 which was resident for tax purposes in Jurisdiction-F1. Jurisdiction-F1 did not require the filing of CbC reports, but MNE Group-F1 had appointed Corporation-F2, which was resident for tax purposes in Jurisdiction-F2, as the group's surrogate parent entity. Hong Kong and Jurisdiction-F2 had an international agreement and an arrangement for exchange of CbC reports. Jurisdiction-F2 had neither suspended nor persistently failed in exchanging CbC reports. MNE Group-F1's consolidated financial statements showed that the total consolidated group revenue for the accounting period from 1 January 2017 to 31 December 2017 was EUR 2.5 billion.

Corporation-HK would not be required to file a CbC return for the accounting period from 1 January 2018 to 31 December 2018 as the SPE-filing-elsewhere exception applied. The CbC report for the accounting period should be filed by Corporation-F2 in Jurisdiction-F2 and exchanged to Hong Kong under the relevant exchange arrangement.

Corporation-HK should file a CbC reporting notification to the Commissioner by 31 March 2019.

Example 14

MNE Group-F had two constituent entities, namely Corporation-HK1 and Corporation-HK2, in Hong Kong. The group's ultimate parent entity is Corporation-F which was resident for tax purposes in Jurisdiction-F. As Jurisdiction-F did not require the filing of CbC reports, MNE Group-F had appointed Corporation-HK1 as the group's surrogate parent entity. MNE Group-F's consolidated financial statements showed that the total consolidated group revenue for the accounting period from 1 January 2017 to 31 December 2017 was EUR 5 billion.

Corporation-HK1 as the surrogate parent entity should file a CbC return for the accounting period from 1 January 2018 to 31 December 2018. The CbC return should be filed by 31 December 2019. Corporation-HK2 would not be required to file a CbC return for the accounting period from 1 January 2018 to 31 December 2018 as the SPE-filing-in-HK exception applied.

Corporation-HK1 as the surrogate parent entity should file a CbC reporting notification to the Commissioner by 31 March 2019. Provided that the notification had been filed by Corporation-HK1, the obligation for Corporation-HK2 to file the same notification would be waived.

Example 15

MNE Group-F had two constituent entities, namely Corporation-HK1 and Corporation-HK2, in Hong Kong. The group's ultimate parent entity is Corporation-F which was resident for tax purposes in Jurisdiction-F. Jurisdiction-F did not require the filing of CbC reports. MNE Group-F's consolidated financial statements showed that the total consolidated group revenue for the accounting period from 1 January 2017 to 31 December 2017 was EUR 10 billion.

Both Corporation-HK1 and Corporation-HK2 would be required to file a CbC return for the accounting period from 1 January 2018 to 31 December 2018 as a condition precedent for Hong Kong to require local filing was met in relation to MNE Group-F. However, if either corporation, say Corporation-HK1, had filed the CbC return, the obligation for Corporation-HK2 to file the same return would be waived. The CbC return should be filed by 31 December 2019.

If Corporation-HK1 was to file the CbC return, it should file a CbC reporting notification to the Commissioner by 31 March 2019. Provided that the notification had been filed by Corporation-HK1, the obligation for Corporation-HK2 to file the same notification would be waived.

CbC return notice to entity

96. As a rule of practice, a CbC return notice will be given to a Hong Kong entity that has filed a CbC reporting notification. The Hong Kong entity will be required to file a CbC return by the filing deadline specified in the notice under section 58G(1). Strictly, a CbC return notice can be sent to any entity that is considered to have an obligation to file a CbC return under section 58E(1) or 58F(1). This will ensure that CbC reports can be received from ultimate parent entities, surrogate parent entities or entities subject to local filing obligation, whether or not a CbC reporting notification has been filed.

97. An entity to which a CbC return notice has been given is not required to comply with the notice if the entity can show that for the relevant accounting period:

- (a) the entity is not a Hong Kong entity of a reportable group; or
- (b) the entity is a Hong Kong entity of a reportable group, but:
 - (i) the entity is not the group's HK ultimate parent entity, and no condition precedent for Hong Kong to require local filing is met in relation to the group;

- (ii) by the filing deadline, another Hong Kong entity has filed the CbC return under section 58E(1) or 58F(1); or
- (iii) the SPE-filing-elsewhere exception or SPE-filing-in-HK exception applies within the meaning of section 58I(2).

Other obligations relating to CbC reporting

Notification for change of address

98. A Hong Kong entity that files or is required to file a CbC return is obliged to inform the Commissioner of its latest address. If a reporting entity has changed its address, the entity must give a notice of the change to the Commissioner under section 58L(1) within 1 month after change of the address.

Record keeping

99. It is of paramount importance that the CbC reports exchanged by Hong Kong with other jurisdictions are accurate and complete. To this end, section 58L(2) requires a reporting entity to keep sufficient records for ascertainment of the accuracy and completeness of the CbC returns filed and retain the records for a period of 6 years from the date of filing of the return. The Commissioner may also give a notice to a reporting entity under section 58L(3) requiring the entity to provide information for the purpose of verifying the contents of the CbC report filed by the entity. Under section 58L(4), the reporting entity must provide the information so required at a time, by a means and in a form (if any) specified in the notice.

Engagement of service provider

100. A reporting entity is allowed under section 58M(1) to engage a service provider to:

- (a) file a CbC return under section 58E(1), 58E(2) or 58F;
- (b) file a CbC reporting notification under section 58H; or

- (c) give a notice to the Commissioner informing the change of the entity's address under section 58L(1).

101. Engaging a service provider is not compulsory. A reporting entity is free to file the return/ notification or give the notice by itself. Section 58M(2) provides that a reporting entity is not relieved from the relevant obligations even if a service provider has been engaged.

Exchange of CbC reports

102. A CbC report filed by an ultimate parent entity or a surrogate parent entity in Hong Kong has to be exchanged automatically with the jurisdictions in which the constituent entities of the reportable group concerned are resident for tax purposes and with which Hong Kong has entered into international agreements and has an exchange arrangement in effect. In this regard, Hong Kong will ride on the Convention and the multilateral exchange arrangement, namely the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA), as the main platform for exchange of CbC reports in respect of the accounting periods beginning on or after 1 January 2019. As for the accounting periods beginning between 1 January 2016 and 31 December 2018 and jurisdictions which have not participated in the Convention and/ or the CbC MCAA, Hong Kong needs to conduct the exchanges pursuant to the bilateral competent authority agreements (CbC BCAAs) effected under the DTAs or TIEAs. The details of the jurisdictions with which Hong Kong will exchange CbC reports can be found on the websites of the OECD (<http://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm>) and the Department (https://www.ird.gov.hk/eng/tax/dta_cbc.htm).

103. Under the CbC MCAA and CbC BCAAs, Hong Kong is required to exchange a CbC report within 18 months (for the accounting period beginning on or after 1 January 2016) or 15 months (for the subsequent accounting periods) after the end of the accounting period. This means that a CbC report in respect of the accounting period from 1 January 2016 to 31 December 2016 has to be exchanged with relevant jurisdictions by 30 June 2018. For a CbC report in respect of the accounting period from 1 January 2017 to 31 December 2017, the exchange will take place by 31 March 2019.

Use of information in CbC report

104. In accordance with the Action 13 Report, the Commissioner will only use the information in a CbC report for the following purposes:

- (a) high level transfer pricing risk assessment;
- (b) assessment of other BEPS-related risks; and
- (c) economic and statistical analysis where appropriate.

105. In addition, the Commissioner has agreed not to use the information in a CbC report, by itself, to assess or reassess income for the purposes of the Inland Revenue Ordinance. The information will not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. The information in a CbC report on its own will not constitute conclusive evidence that transfer prices are or are not appropriate, and will not be used to propose transfer pricing adjustments based on a global formulary apportionment of income. Any inappropriate tax adjustment based on the information has to be conceded in any relevant competent authority proceeding.

106. However, the Commissioner may use the information in a CbC report in planning a tax audit or investigation, or as the basis for making further enquiries into the MNE group's transfer pricing arrangements or other tax matters, in the course of an audit. There is also no requirement that these enquiries must relate specifically to potential risks identified through the use of the information. For example, the information in a CbC report (such as the details of constituent entities) may be used as the basis for making enquiries into tax matters identified using other data sources or arising during the course of a tax audit or investigation.

107. The term "assessment of other risks related to BEPS" refers to the high level assessment of tax risks that may result in the erosion of a jurisdiction's tax base. In practice, while the information in a CbC report may be used to identify indicators of possible tax risk, it will usually be possible to understand the arrangements giving rise to that risk after further enquiries have been conducted. In this regard, the Commissioner will limit the use of the

information in a CbC report to risk assessment and making of enquiries in the course of a tax audit or investigation. The information will not be taken as conclusive evidence that an MNE Group is engaged in other forms of BEPS.

Penalties relating to CbC reporting

108. The CbC reporting and notification requirements are supported by a penalty regime in the event that a reporting entity (i.e. an entity that is required to file a CbC return or CbC reporting notification as defined under section 58J) or its service provider does not file a CbC report or CbC reporting notification on time without a reasonable excuse for the failure, or knowingly supplies incorrect information.

109. The penalties for non-compliance with the CbC reporting requirements are provided under sections 80G and 80H. Section 80G(1) provides that a reporting entity commits an offence if it, without a reasonable excuse, fails to:

- (a) file a CbC return under section 58E(1) or 58F;
- (b) file a CbC reporting notification under section 58H;
- (c) give a notice to the Commissioner informing the change of the entity's address under section 58L(1);
- (d) keep and retain sufficient records relating to a CbC return under section 58L(2); or
- (e) provide information in compliance with a requirement of a notice given by the Commissioner relating to a CbC return under section 58L(3).

110. Under section 80G(6), a reporting entity commits an offence if:

- (a) the entity files, or causes or allows to be filed on its behalf, a CbC return or CbC reporting notification under section 58E, 58F or 58H, or provides any information in purported

compliance with a requirement of a notice given by the Commissioner under section 58L(3) (specified document or information), and the specified document or information is misleading, false or inaccurate in a material particular; and

- (b) the entity –
 - (i) knows the specified document or information is misleading, false or inaccurate in a material particular;
 - (ii) is reckless as to whether the specified document or information is misleading, false or inaccurate in a material particular; or
 - (iii) has no reasonable ground to believe that the specified document or information is true or accurate.

111. In respect of any specified document or information filed or provided, a reporting entity commits an offence under section 80G(7) if the entity discovers that the document or information is misleading, false or inaccurate in a material particular but, without reasonable excuse, fails to notify the Commissioner of the discovery within a reasonable time.

112. A reporting entity that commits an offence under section 80G(1), (6) or (7) is liable on conviction to a fine at level 5. Where the wrongdoing involves an intent to defraud by the reporting entity, the entity commits an offence under section 80G(9) and is liable to a fine up to level 5 and an imprisonment up to 3 years.

113. The court may order a reporting entity that commits an offence under section 80G(1) to do, within the time specified in the order, the act that the entity has failed to do. If the reporting entity fails to comply with the order, the entity commits an offence under section 80G(5) and is liable on conviction to a fine at level 6. In the case of a continuing failure to file a CbC report or CbC reporting notification after conviction, the reporting entity is liable under section 80G(4) to a further fine of \$500 for every day or part thereof during which the offence continues.

114. Engaging a service provider does not in itself constitute a reasonable excuse for a reporting entity to fail to comply with any CbC reporting requirement. A service provider that does, or causes or allows the entity to do, any wrongful act also commits an offence under section 80H and is liable to the same penalties.

115. If a reporting entity is not a corporation, the penalty provisions in section 80G will apply to a person who acts for the entity or is responsible for the management of the entity. In relation to a reporting entity that is a permanent establishment of an enterprise (e.g. the Hong Kong branch of a bank), the provisions will apply to the enterprise (i.e. the bank concerned) .

116. A director or an officer concerned in the management of a corporation, or any person purporting to act as such director or officer (specified person), also commits an offence and is liable on conviction to the penalty provided for the offence under section 80G or 80GH if:

- (a) the corporation is a reporting entity or a person that commits the offence under section 80G, or a service provider that commits the offence under section 80H; and
- (b) the offence was committed with the consent or connivance of the director, officer or specified person.

First accounting period for CbC report

117. Save for the extent to which the voluntary filing arrangement relates, the CbC reporting requirements apply in relation to an accounting period beginning on or after 1 January 2018.

Voluntary filing of CbC returns

118. Some jurisdictions have introduced CbC reporting requirements for accounting periods beginning from 1 January 2016. Like the local filing requirement in Hong Kong, such a jurisdiction may require a constituent entity of a reportable group that is resident for tax purposes there to file a CbC report for an accounting period if the ultimate parent entity of the group is resident for

tax purposes in a jurisdiction that does not require the filing of CbC reports for the accounting period.

119. As Hong Kong has only implemented CbC reporting for accounting periods beginning on or after 1 January 2018, a reportable group with a HK ultimate parent entity may be subject to local filing outside Hong Kong for an accounting period beginning between 1 January 2016 and 31 December 2017 (early reporting period). To mitigate such filing exposure, the HK ultimate parent entity is allowed, as a transitional measure, to voluntarily file a CbC return for an early reporting period under section 58E(2) such that the CbC report included therein can be exchanged with the jurisdictions of tax residence of the group's constituent entities. If a HK ultimate parent entity chooses to make a voluntary filing, it must comply with all the requirements for CbC reporting under Part 9A except that the HK ultimate parent entity is not required to file a CbC reporting notification under section 58H.

Appendix 1

Overview of Requirements for Master File and Local File

Effective period	An accounting period beginning on or after 1 April 2018
Person obligated	A Hong Kong entity with two or more of the thresholds provided in Part 2 of Schedule 17I exceeded
Documentation required	A master file and a local file prescribed in Part 3 of Schedule 17I
Exemption provided	<p>Based on the size of business:</p> <ul style="list-style-type: none">- the total amount of annual revenue for the accounting period does not exceed \$400 million- the total value of assets at the end of the accounting period does not exceed \$300 million- the average number of the entity's employees during the accounting period does not exceed 100 <p>Based on the amounts of controlled transactions:</p> <ul style="list-style-type: none">- transfers of properties (whether movable or immovable but excluding financial assets and intangibles) do not exceed \$220 million- transactions in respect of financial assets do not exceed \$110 million- transfers of intangibles do not exceed \$110 million- Other transactions do not exceed \$44 million <p>A Hong Kong entity that is fully exempted from preparing a local file is not required to prepare a master file</p>
Language used	English or Chinese
Timing	Within 9 months after the end of the accounting period

Submission	Upon request by assessor
Updating	Annually; roll-forward of 3 years will be allowed for certain documents if there is no substantial changes in the documents
Retention period	Not less than 7 years after the end of the accounting period
Penalty for non-compliance	A fine at level 5 and court order for compliance; a further fine at level 6 for non-compliance with the court order

Appendix 2

Master File and Local File: Prescribed Information

1. Part 3 of Schedule 17I prescribes the information for the master file and local file. The requirements follow the guidance on transfer pricing documentation published by the OECD in the Action 13 Report.

Master file

2. The master file must include the following five categories of information:

- (a) organizational structure;
- (b) description of group's business;
- (c) group's intangibles;
- (d) financial activities between constituent entities of the group; and
- (e) group's financial and tax position.

Organizational structure

3. Chart illustrating:

- (a) the group's legal and ownership structure; and
- (b) if the group is a multinational enterprise group, geographical location of constituent entities of the group. Constituent entity of the group includes incorporated enterprise, partnership and permanent establishment.

Group's business

4. General written description of the group's business including:
 - (a) important drivers of business profits, for example, what propels the premium returns of the business, which could be unique intangibles, marketing strategies, etc.
 - (b) a description of the supply chain for the group's 5 largest products or service offerings by turnover and for any other products or services amounting to more than 5% of group turnover;
 - (c) a list and brief description of important service arrangements (other than those relating to research and development services) between constituent entities of the group, including a description of the capabilities of the principal locations providing the services and transfer pricing policies for allocating services costs and determining prices to be paid for the services;
 - (d) a description of the main geographic markets for the group's products and services that are referred to in subparagraph (b);
 - (e) a brief written functional analysis describing the principal contributions to value creation (including key functions performed, important risks assumed, and important assets used) by individual constituent entities within the group;
 - (f) a description of important business restructuring transactions, acquisitions and divestitures occurring during the corresponding accounting period of the group.

Group's intangibles

5. Information including:

- (a) a general description of the group's overall strategy for the development, ownership and exploitation of intangibles, including location of principal research and development facilities and location of research and development management;
- (b) a list of intangibles or categories of intangibles of the group that are important for transfer pricing purposes, identifying which constituent entities of the group legally own or effectively control the intangibles;
- (c) a list of important agreements among the group's constituent entities related to intangibles, including cost contribution arrangements, principal research service agreements and licence agreements;
- (d) a general description of the group's transfer pricing policies related to research and development and intangibles; and
- (e) a general description of any important transfers of interests in or control of intangibles among the group's constituent entities during the group's corresponding accounting period, including the constituent entities, territories, and compensation involved.

Financial activities

6. Information including:

- (a) a general description of how the group is financed, including important financing arrangements with unrelated lenders;
- (b) the identification of any constituent entity (financing entity) of the group that provides a central financing function for the group, including the territory under whose laws the financing

entity is organized and the place of effective management of the financing entity; and

- (c) a general description of the group's general transfer pricing policies related to financing arrangements among the group's constituent entities. The group's strategy around intercompany loans and guarantees etc. should be included.

Group's financial and tax positions

7. Information including:

- (a) the group's consolidated financial statements for the corresponding accounting period; and
- (b) a list and brief description of the group's existing unilateral advance pricing agreements and arrangements and other tax rulings relating to the allocation of income among territories.

Additional information

8. Information which is appropriate in its particular circumstances may be included in addition to the information prescribed in Schedule 17I. The master file is not intended to require exhaustive listings of minutiae (e.g. listing of every patent owned by members) as this will be burdensome for a Hong Kong entity. Prudent judgment should be used in determining the appropriate level of details for the information to be incorporated in the master file. Information is considered important if its omission would affect the reliability of the transfer pricing outcomes.

9. Typically, the information in the master file should be presented for the group as a whole. Presentation of information segmented by line of business is permitted such as when different business lines operate independently or has been recently acquired. In case where the line of business presentation is adopted, care should be taken to assure that centralized group functions and transactions between business lines are properly described in master file. To ensure that the appropriate overview of the group's global

business is provided, all information for all business segments should be contained in one master file.

Local file

10. The local file must include the following three categories information:

- (a) description of local entity;
- (b) details of controlled transactions; and
- (c) the entity's own financial information.

Subject entity

11. Information including:

- (a) a description of the management structure of the subject entity, an organization chart of the subject entity, and a description of the individuals to whom the subject entity's management reports and the territory or territories in which the individuals maintain their principal offices–
 - (i) the job title and responsibilities of the most senior Hong Kong or foreign based individuals to whom the local staff reported for each reporting business line or function at the end of the reporting year;
 - (ii) information about multiple reporting lines where the most senior Hong Kong based individuals formally or effectively report to more than one overseas based individuals;
 - (iii) if there was any change during the reporting year in the most senior Hong Kong based individuals to whom the local staff reported to, the date on which the change

occurred and the information mentioned in (i) and (ii) above should be included.

- (b) a detailed description of the business and business strategy pursued by the subject entity including an indication whether the subject entity has been involved in or affected by business restructurings or intangibles transfers in the subject accounting period of the subject entity or the subject entity's accounting period immediately before it and an explanation of those aspects of such transactions affecting the subject entity—
 - (i) for business and business strategy, the identification of the main business lines and functions, strategies deployed in each business line or function and the extent each business line or function overlaps or complements each other; there should be consistency with the other disclosures such as those made in the directors report section of the annual report or those made in other management or reporting document;
 - (ii) for business restructures, a description of any business restructures affecting the business in the current or previous year of assessment and an explanation of its significance: significant changes in the ownership, equity or related party debt funding; significant disposal or acquisition of the assets including interest in foreign entities; commencement or cessation of significant operations and operations carried on at or through an overseas permanent establishment; and any resulting cross tax hybrid arrangements; commercial context and explanation for the changes, or disposals or acquisitions and a description of transactions or dealings connected with the changes, disposals or acquisitions.
- (c) a list of key competitors for all of the main business lines and functions identified in disclosures relating to the business and strategy.

Controlled transactions

12. Information, for each material category of controlled transactions, including:

- (a) a description of the material controlled transactions (e.g. manufacture and distribution of goods) and the context in which the transactions took place (e.g. financial activities, cost contribution arrangement);
- (b) the amount of payments and receipts among the subject entity and its associated entities for each category of controlled transactions (e.g. products, services, royalties, interest) broken down by tax jurisdictions of the payers or recipients;
- (c) an identification of the subject entity's associated entities involved in each category of controlled transactions, and the relationship among them;
- (d) copies of all material agreements concluded by the subject entity with any of its associated entities;
- (e) a detailed comparability and functional analysis of the subject entity and the relevant associated entities with respect to each documented category of controlled transactions, including any changes compared to the accounting periods before the subject accounting period;
- (f) an indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method;
- (g) an indication of which associated entity is selected as the tested party, if applicable, and an explanation of the reasons for this selection;
- (h) a summary of the important assumptions made in applying the transfer pricing methodology;

- (i) if applicable, an explanation of the reasons for performing a multi-year analysis;
- (j) a list and description of the selected comparable uncontrolled transactions (internal or external), if any, and information on the financial indicators that are relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information;
- (k) a description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both;
- (l) a description of the reasons for concluding that the controlled transactions were priced on an arm's length basis based on the application of the selected transfer pricing method;
- (m) a summary of financial information used in applying the transfer pricing methodology;
- (n) a copy of existing unilateral, bilateral and multilateral advance pricing agreements and arrangements and other tax rulings that are related to the controlled transactions.

Financial information

13. Information including:

- (a) the subject entity's audited financial statements for the subject accounting period or, if no audited financial statements exist, the subject entity's existing unaudited statements for the subject accounting period;
- (b) information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the financial statements; and

- (c) summary schedules of the financial data relating to the comparables used in the analysis and the sources from which that data was obtained.