

Transfer Pricing Alert

OECD issues Country-by-Country Reporting Implementation Package

On 8 June 2015, the Organization for Economic Cooperation and Development (“OECD”) released *Action 13: Country-by-Country Reporting Implementation Package (“CbC”)*, by which additional assistance is offered with respect to the implementation of CbC reporting, following the two previously issued reports: (i) the agreement of a three-tier global standard for transfer pricing documentation issued in September 2014; and (ii) implementation guidance in relation to the CbC report issued in February 2015.

The CbC implementation package outlines model legislation that governments can use to adopt the new rules, as well as competent authority agreements to implement the sharing mechanisms for the CbC report. Below are presented in more detail each provision introduced by OECD through this action regarding the implementation of the CbC reporting.

Model legislation related to CbC reporting

The implementation package includes model legislation for countries to adopt CbC reporting in their domestic legislation. The model legislation includes, among others, some key definitions:

- **Group:** A collection of enterprises related through ownership or control that is either required to prepare consolidated financial reporting statements, or would be so required if “equity interests in any of the enterprises” were publically traded on a stock exchange.
- **Excluded multinational enterprise group:** A group with consolidated group revenue of less than EUR 750 million on 1 January 2015 at local currency rates. Such a group will be exempt from filing the CbC report.
- **Constituent entity:** Any separate business unit of the group, including companies together with permanent establishments that prepare separate financial statements.

The model legislation sets out how to determine which constituent entity is required to file the CbC report (i.e. the “reporting entity”). This usually will be the “ultimate parent entity,” as the company that prepares consolidated financial statements for the group. When the ultimate parent entity (a) is not required to file a CbC report in its jurisdiction; (b) that jurisdiction has not signed on to the relevant information exchange agreements, or; (c) the jurisdiction has systematically failed or suspended its agreement to exchange information, the group can appoint a “surrogate parent entity.” This is a constituent entity within the group, in an appropriate jurisdiction, with the ability to exchange information, that is nominated to file the CbC report in its jurisdiction on behalf of the group.

If, under certain circumstances, the CbC report is not filed with and shared by the tax jurisdiction of either the actual parent company or a surrogate, then companies may be required to file the CbC report locally. The model legislation allows a nominated constituent entity within a jurisdiction to file the report on behalf of all constituent entities in that jurisdiction.

Notification

Each constituent entity will need to notify their local tax authority by the last day of the financial reporting year either (i) that it will be filing the CbC report for the group for the year, or (ii) the name and tax residence of the company that will file the report for that fiscal year.

Timing for preparation and filing of CbC reports

G20/OECD proposes that CbC information should be required for years beginning on or after 1 January 2016 and be filed annually within 12 months of the end of the financial reporting year to which it relates. The model legislation does not include specific penalty provisions for noncompliance. Rather, it leaves this for individual jurisdictions to determine in line with existing transfer pricing documentation penalties.

Competent authority agreements

The implementation package includes three model competent authority agreements that could be used by tax authorities to facilitate implementation of the exchange of CbC reports:

- Multilateral competent authority agreement that allows jurisdictions to sign up and exchange information with all other appropriate jurisdictions signed up to the same agreement;
- Tax treaty competent authority agreement: to be agreed on a bilateral basis;
- Tax information exchange agreement competent authority agreement: to be agreed on a bilateral basis.



Timing of exchange of information

Tax authorities will be required to share the CbC information with other relevant tax authorities within 18 months of the end of the financial reporting year for the first year, then within 15 months of the end of the financial reporting year for subsequent periods.

Confidentiality and safeguarding information

The exchange agreements make clear that information shared as a result of these agreements must be kept confidential and used appropriately. In particular, the agreements reiterate that the information should not be used as a substitute for detailed transfer pricing analysis of individual transactions based on full functional and comparability analysis, and that transfer pricing adjustments should not be made on the basis of the CbC reporting alone. In addition, there are proposals to deal with tax authorities that breach confidentiality, or otherwise fail to comply with the terms, by excluding them from future information exchanges.

The impact of new provisions on companies

While it is clear that the implementation package regarding the CbC reporting is intended primarily for governments, there are a number of provisions and clarifications relevant to businesses. In this respect, a relevant example would be the proposal regarding the requirement that all resident companies must notify the tax authorities in their country of the identity and residence of their reporting entity (the group parent or its elected surrogate).

The group will be required to prepare and file the CbC report only once (rather than locally in each country where it has operations) and will enjoy confidentiality protection for its information.

The provision of the model legislation (a first for the OECD in the area of international corporate taxation) is in clear support of the G20/OECD objective stating that the CbC report is to be a single international standard. As such, it is to be implemented consistently by all participating countries. In this context, business will welcome such uniformity, which will be helpful in mitigating unnecessary compliance costs.



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