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Global Tax Alert

OECD releases additional guidance on Country-by-Country Reporting and a summary of common errors made by MNE Groups in preparing these reports

Executive summary

On 5 November 2019, the Organisation for Economic Co-operation and Development (OECD) released additional guidance to give greater certainty to tax administrations and multinational enterprise (MNE) groups on the implementation and operation of Base Erosion and Profit Shifting (BEPS) Action 13 Country-by-Country (CbC) Reporting (CbCR). Accordingly, the existing guidance on the implementation of CbCR (the Guidance) has been updated to include questions and answers on, among other topics, treatment of dividends, the deemed listing provision, accounting periods other than 12 months, the requirements for and operation of local filing, the use of rounded amounts and the information that must be provided with respect to the sources of data used.

The OECD also published a summary of common errors made by MNE groups in preparing CbC reports (the Summary). The release of this Summary aims at helping MNE groups in avoiding these errors and tax administrations in detecting them when they occur.

Detailed discussion

Background

On 5 October 2015, the OECD released its final report on Action 13 (the final report), *Transfer Pricing Documentation and Country-by-Country Reporting*, under its BEPS Action Plan. The report introduced a standardized three-tiered approach to transfer pricing documentation for MNEs consisting of a master file, a local file, and a CbC report.

To give greater certainty to tax administrations and MNE groups on the implementation and operation of CbCR rules, the OECD has been issuing additional guidance since June 2016. The OECD updated the Guidance in December 2016, April 2017, July 2017, September 2017, November 2017, February 2018 and September 2018.

The OECD has also released other materials to support countries introducing CbCR. For example, in September 2017 the OECD issued two handbooks (one on the effective implementation of CbCR and another on effective tax risk assessment), and a report on the appropriate use of information contained in CbC reports.

On 5 November 2019, the OECD released a new update to the Guidance, and published a Summary of common errors made by MNE groups in preparing CbC reports.

Updated Guidance on the Implementation of CbCR

The new Guidance updated the content of one existing section of the existing guidance, i.e., Treatment of dividends for purposes of "profit (loss) before income tax," "income tax accrued (current year)" and "income tax paid (on cash basis)" in Table 1, and it added additional questions to three existing sections of the Guidance, namely:

- The use of shortened or rounded amounts in preparing Table 1
- Deemed listing provision
- Short accounting periods/long accounting periods

The new Guidance also added four new sections that were not included in the existing guidance:

- Information with respect to the sources of data in Table 3
- Common errors made by MNE groups in preparing CbC reports
- Local filing
- Lodging a unilateral declaration for the purposes of exchanging CbC reports

Treatment of dividends for purposes of "profit (loss) before income tax"

The BEPS Action 13 final report explains that the column of Revenues in Table 1 of the CbC report should exclude payments received from other Constituent Entities (CEs) that are treated as dividends in the payer's tax jurisdiction. However, the final report did not address whether the same approach should apply to the column on Profit (loss) before Income Tax.

As the Action 13 final report did not provide specific instructions on this issue, jurisdictions may have taken different approaches on the treatment of dividends in this respect. The September 2018 Guidance took a flexible approach allowing jurisdictions to maintain their own approach and encouraged Inclusive Framework members to require their taxpayers to indicate in Table 3 whether dividends received from other CEs were included in "Profit (loss) before income tax" in Table 1 and, if so, for which jurisdictions. The November 2019 Guidance updates the OECD's position as the lack of consistency presents a challenge to tax administrations in using CbCR information by excluding payments received from other CEs that are treated as dividends in the payer's tax jurisdiction from Profit (Loss) before Income Tax. This Guidance applies to all reporting fiscal years of MNE groups commencing on or after 1 January 2020. Inclusive Framework members are encouraged to apply this Guidance to earlier reporting fiscal years if possible and taking into account specific domestic circumstances. Where an inclusive Framework member does not apply this Guidance to earlier reporting fiscal years it should, to the extent possible, allow resident entities preparing CbC reports to apply this Guidance on a voluntary basis.

For reporting fiscal years commencing before this Guidance takes effect, Inclusive Framework members are encouraged to require indication in Table 3 if payments received from other CEs that are treated as dividends in the payer's jurisdiction and/or amounts representing all or part of the profit of another CE are included in Profit (Loss) before Income Tax and, if so, the amounts included and in which jurisdictions. Where such information is not required, MNE groups are encouraged to provide this information on a voluntary basis.

Use of rounded amounts in Table 1

Under this section, a new question was added on whether it is permitted for an MNE to report rounded amounts in Table 1. According to the Guidance, the jurisdiction where the Ultimate Parent Entity (UPE) of an MNE group is resident may accept a reasonable level of rounding and a CbC report prepared on this basis will be considered to be in accordance with the minimum standard. Each jurisdiction may determine the level of rounding that is reasonable, taking into account factors including the relative nominal value of its currency unit, but reasonable rounding cannot include any rounding that could materially distort the data contained in Table 1. Rounding financial data to the nearest €1000, US$1000 or JPY1,000,000 is likely to be considered reasonable. In line with prior guidance, amounts should in all cases be reported in full numbers, including all zeroes with no shortening.

Deemed listing provision

An additional question has been added addressing how the "deemed listing provision" operates where the UPE of an MNE group is tax resident in a jurisdiction that does not have a securities exchange. In such a case, the Guidance mentions that an entity will be the UPE of an MNE group if it would be required to prepare consolidated financial statements if its equity instruments were traded on a securities exchange upon which equity instruments of entities tax resident in the same jurisdiction are commonly traded. To provide greater certainty for MNEs and for other jurisdictions, jurisdictions that do not have a securities exchange are encouraged to specify one or more jurisdictions with a securities exchange that would be considered acceptable for these purposes.

Short accounting periods

The new Guidance includes a new question to clarify that a reporting fiscal year can be for a period of other than 12 months. In these cases, a CbC report should be prepared by the MNE group for the period covered by the consolidated financial statements prepared by the UPE provided that the MNE group is not an excluded MNE group.

Information with respect to the sources of data in Table 3

The Guidance added a new section to address the information that an MNE group should include in Table 3 with respect to the sources of data used in preparing its CbC report. The Guidance clarifies that MNEs are required to provide a description of the sources of data used and, while this may be brief, it should be sufficient to enable an understanding of the source of each item of information in the CbC report. Where a general principle applies, this should be described together with any exceptions that exist. Further, the Guidance indicates that where information relevant to a particular jurisdiction is taken from different sources of data, or where the sources of data used change over time, this must be explained in Table 3.

According to the Guidance, Inclusive Framework members should implement this guidance as soon as possible, taking into account their specific domestic circumstances, but it recognizes that time may be needed to make any required changes to domestic law or administrative guidance. During this period, taxpayers are encouraged to voluntarily include in Table 3 information on the sources of data used as set out in the Guidance.

Local filing

According to the Guidance, where the tax residence jurisdiction of the UPE of an MNE group does not require a CbC report to be filed, and this is in accordance with the BEPS Action 13 minimum standard, local filing is not accepted and jurisdictions cannot require CEs to file a CbC report under local filing rules.

Furthermore, in applying local filing, the Guidance encourages jurisdictions to accept a CbC report containing information as prepared for filing in the UPE jurisdiction. The Guidance reminds MNEs that consistency with the minimum standard is monitored through the peer review process. Thus, in many cases, this would mean that the jurisdiction applying local filing would receive the same information as if it had obtained the CbC report under an exchange of information. In all cases, a CbC report filed in a jurisdiction should be in a format required or permitted in that jurisdiction.

Lastly, the Guidance notes that the Action 13 final report is silent on the deadline for filing CbC reports in the case of local filing and thus jurisdictions may take an approach different from the approach for UPE filing. To avoid practical risks and problems, the Guidance clarifies that jurisdictions with local filing requirements (or introducing such requirements) are encouraged to apply a filing deadline for the locally filed CbC reports no earlier than 12 months after the end of the reporting fiscal year, i.e., not earlier than what the requirement in the UPE country would be.

Lodging a unilateral declaration for the purposes of exchanging CbC reports

In order to improve transparency and promote greater co-operation and exchange of tax information, including CbC reports, a number of jurisdictions have ratified or are in the process of ratifying the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention). According to the Convention and the rules on its entry into effect, there can be a period of over three years between the Convention being ratified by a jurisdiction, and that jurisdiction beginning to receive and exchange CbC reports. The Guidance indicated this period can be significantly reduced with respect to the exchange of CbC reports between jurisdictions that have lodged a unilateral declaration stating that they intend the Convention to have effect for earlier periods with respect to the exchange of CbC reports.

The Guidance encourages all jurisdictions that have not yet ratified the Convention to consider lodging such unilateral declaration at the same time as they deposit the instrument of ratification. Jurisdictions that have already ratified the Convention, but for which the Convention is not yet in effect, are encouraged to lodge a unilateral declaration as soon as possible. Jurisdictions that already have the Convention in effect are also encouraged to lodge a unilateral declaration if they have not already done so, to facilitate the early exchange of CbC reports with other jurisdictions that meet the conditions set out in the BEPS Action 13 report.

Common errors made by MNE groups in preparing CbC reports

Along with the Guidance, the OECD released a Summary of common errors made by MNE groups in preparing CbC reports. The Guidance states that MNEs should review these descriptions and ensure that these errors are not repeated in the CbC reports they are preparing. Where a tax administration identifies that a CbC report filed with it contains errors (including but not limited to those listed on the Summary), it should require these errors to be corrected by the MNE group.

Summary of Common errors made by MNEs in preparing Country-by-Country reports

The OECD issued for the first time a Summary of common errors made by MNEs in preparing CbC reports. The common errors relate to the following:

- Tax identification number (TIN) (e.g., using the same TIN for multiple CEs or not including a TIN). The correct treatment as per the Summary is to not leave the TIN field blank or with spaces, and to not use the same TIN for multiple CEs.
- The use of numbers (e.g., shortened numbers, excessive rounding, lengthened numbers, multiple currencies). The Summary indicates that shortened numbers are not permitted, and full numbers must be used in completing Table 1, without decimals. Also, reasonable rounding of amounts is permitted, so long as this is not distortive. Lastly, an MNE's CbC report should contain information only in one currency, i.e., in the functional currency of the UPE.
- Amounts appear to have been included in the wrong column.
- Total Revenues are either higher or lower than the total of Unrelated Party Revenues and Related Party Revenues. According to the Summary, total Revenues should always equal the sum of Unrelated Party Revenues and Related Party Revenues.
- Dividends from CEs are included in Profit (Loss) Before Tax in jurisdictions where this is not permitted. Until now there was flexibility on the approach to follow on this point but going forward dividends received from other CEs should not be included in Profit (Loss) Before Tax.
- Information on sources of data is not included, where this is required. Table 3 must include information with respect to the sources of data used for preparing a CbC report.
- Incorrect use of jurisdiction codes. Jurisdictions shall use the two-digit ISO 3166-1 Alpha 2 standard and should not use alternative ways of identifying the jurisdiction.
- Different jurisdictions are listed in Table 1 and Table 2. The Summary indicates that this is an error and the same tax residence jurisdictions should be included in Table 1 and in Table 2.
- Non-consolidated CEs left out of Table 1 and/or Table 2. According to the Guidance, CbC reports should also include an MNE's separate business units that are not included in its consolidated financial statements due to size or materiality grounds, as well as permanent establishments of CEs for which separate financial statements are prepared for financial reporting, regulatory, tax reporting, or internal management control purposes.

The Summary will be updated for further common errors, if any, as they are identified.

Implications

Since the OECD released the Action 13 final report, there has been ongoing and increasing activity around CbCR requirements. The Guidance marks the ninth release by the OECD regarding practical questions that have arisen concerning the implementation and operation of CbCR. The Guidance will continue to be updated with any further guidance that may be agreed by the inclusive Framework on BEPS. Also, the release of the Summary of common errors made by MNE groups in preparing CbC reports is a positive development as it will help MNE groups to avoid these errors and tax administrations in detecting them where they occur. Taxpayers should continue to closely monitor new or amended reporting requirements and new common errors that may be added in the Summary, and how countries implement or react to the new Guidance.

Endnotes

1. See EY Global Tax alert, *OECD releases final report on transfer pricing documentation and Country-by-Country reporting under Action 13*, dated 21 October 2015.
2. See EY Global Tax alert, *OECD releases additional Guidance on implementation of Country-by-Country reporting*, dated 29 June 2016.
3. See EY Global Tax alert, *OECD updates guidance on Country-by-Country Reporting and launches new site on country-specific implementation*, dated 5 December 2016.
4. See EY Global Tax alert, *OECD updates its Guidance on Country-by-Country Reporting*, dated 7 April 2017.
5. See EY Global Tax alert, *OECD releases update of Guidance on the Implementation of Country-by-Country Reporting*, dated 19 July 2017.
6. See EY Global Tax alert, *OECD releases further guidance on Country-by-Country Reporting*, dated 7 September 2017.
7. See EY Global Tax alert, *OECD releases additional guidance on Country-by-Country Reporting*, dated 4 December 2017.
8. See EY Global Tax alert, *OECD releases country approaches to Country-by-Country Reporting Guidance and adds additional questions*, dated 9 February 2018.
9. See EY Global Tax alert, *OECD releases additional guidance on Country-by-Country Reporting and updated exchange relationships*, dated 14 September 2018.
10. See EY Global Tax alert, *OECD publishes two handbooks on Country-by-Country reporting*, dated 3 October 2017.
11. See EY Global Tax alert, *OECD releases further guidance on Country-by-Country Reporting*, dated 7 September 2017.

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