

OECD releases additional guidance on Country-by-Country Reporting and a summary of related notification requirements

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Executive summary

The Organisation for Economic Co-operation and Development (OECD) has released additional guidance¹ which is designed to give greater certainty to tax administrations and multinational enterprise (MNE) groups regarding the implementation and operation of Base Erosion and Profit Shifting (BEPS) Action 13 Country-by-Country (CbC) Reporting (CbCR). The new CbCR guidance (the [Guidance](#)) makes it clear that, under the BEPS Action 13 minimum standard, the automatic exchange of CbC reports filed under local filing rules is not intended.

The OECD also posted on its website a summary of CbCR notification requirements (the [Summary](#)) in Inclusive Framework member jurisdictions, to help MNE groups comply with the notification requirements in those jurisdictions where the MNE has constituent entities.

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*,² 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 2016.³ The OECD updated the Guidance in December 2016,⁴ April 2017,⁵ July 2017,⁶ September 2017,⁷ November 2017,⁸ February 2018,⁹ September 2018¹⁰ and November 2019.¹¹

The OECD has also released various other materials to support jurisdictions introducing CbCR. In September 2017, for example, the OECD issued two handbooks (one on the effective implementation of CbCR and another on effective tax risk assessment for tax administrations),¹² and a report on the appropriate use of information contained in CbC reports.¹³ In November 2019, the OECD published a summary of common errors made by MNE groups in preparing CbC reports, and in December 2019, a summary of CbCR notification requirements.

Updated guidance on the implementation of CbCR

The Action 13 Report provides that a constituent entity of the MNE group other than the ultimate parent entity (UPE) or a surrogate entity may be required to file a CbC report directly with the tax authority in its residence jurisdiction (local filing) but only where one or more of the following applies:

- ▶ The UPE of the group is not obligated to file a CbC report in its residence jurisdiction.
- ▶ The residence jurisdiction of the UPE has an international agreement which permits automatic exchange of information with the local jurisdiction, but there is no competent authority agreement (CAA) in effect between these jurisdictions by the time for filing the CbC report.
- ▶ There is an international agreement and a CAA in effect between the jurisdiction of the UPE and the local jurisdiction, but the jurisdiction of the UPE has suspended automatic exchange (for reasons other than those permitted under that agreement) or has otherwise persistently failed to automatically provide CbC reports to the local jurisdiction in accordance with the minimum standard (i.e., a systemic failure) that has been notified to the constituent entity by its tax authority.

The new Guidance addresses whether the automatic exchange of CbC reports filed under local filing rules is intended under the BEPS Action 13 minimum standard. To this end, question 4.4 has been added to section V of the Guidance (issues relating to the sharing mechanism of the CbC report (Exchange of Information, surrogate filing and local filing)).

According to the Guidance, the minimum standard under Action 13 does not anticipate the automatic exchange of CbC reports filed in accordance with local filing rules. The automatic exchange of locally filed CbC reports could, the Guidance says, result in the exchange of multiple CbC reports of the same MNE group, which the report further notes “could potentially overwhelm and confuse tax administrations.”

It is noted, however, that this guidance does not prevent the automatic exchange of locally filed CbC reports within the European Union (EU) under Directive 2016/881/EU. Also, this guidance does not concern the spontaneous exchange of CbC reports or the exchange of CbC reports on request.

Notification requirements

The OECD in December 2019 also posted a summary of CbCR notification requirements in Inclusive Framework member jurisdictions, with the objective of helping MNE groups to comply with notification requirements in the jurisdictions where they have constituent entities.

The summary includes information on 89 jurisdictions,¹⁴ of which 69 have a notification requirement in place, and includes the following information for each jurisdiction:

- ▶ Whether there is a notification requirement
- ▶ The entities required to file a notification
- ▶ The notification deadline
- ▶ The notification submission method
- ▶ The format permitted for the notification
- ▶ The frequency of the notification
- ▶ Whether the notification requirement is per entity or by group
- ▶ Whether third-party notifications are permitted
- ▶ The language of the notification
- ▶ Websites and additional information

Implications

Since the OECD released the Action 13 final report, there has been ongoing and increasing activity around CbCR requirements. The Guidance marks the OECD’s 10th release of practical questions and responses that have arisen concerning the implementation and operation of CbCR.

The Guidance will continue to be updated with any further output that may be agreed by the inclusive Framework on BEPS. Additionally, the release of the Summary of CbCR notification requirements is a positive development and will help MNE groups to comply with these requirements.

Taxpayers should embed this new information into their existing compliance and reporting processes, and well as continue to closely monitor the OECD Guidance, including how jurisdictions implement or react to it.

Endnotes

1. The guidance was released on 23 December 2019.
2. 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.
3. See EY Global Tax alert, [OECD releases additional Guidance on implementation of Country-by-Country reporting](#), dated 29 June 2016.
4. 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.
5. See EY Global Tax alert, [OECD updates its Guidance on Country-by-Country Reporting](#), dated 7 April 2017.
6. See EY Global Tax alert, [OECD releases update of Guidance on the Implementation of Country-by-Country Reporting](#), dated 19 July 2017.
7. See EY Global Tax alert, [OECD releases further guidance on Country-by-Country Reporting](#), dated 7 September 2017.
8. See EY Global Tax alert, [OECD releases additional guidance on Country-by-Country Reporting](#), dated 4 December 2017.
9. See EY Global Tax alert, [OECD releases country approaches to Country-by-Country Reporting Guidance and adds additional questions](#), dated 9 February 2018.
10. See EY Global Tax alert, [OECD releases additional guidance on Country-by-Country Reporting and updated exchange relationships](#), dated 14 September 2018.
11. See EY 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](#), dated 7 November 2019.
12. See EY Global Tax alert, [OECD publishes two handbooks on Country-by-Country reporting](#), dated 3 October 2017.
13. See EY Global Tax alert, [OECD releases further guidance on Country-by-Country Reporting](#), dated 7 September 2017.
14. Andorra, Angola, Anguilla, Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda, Bosnia and Herzegovina, Brazil, British Virgin Islands, Bulgaria, Canada, Cayman Islands, Chile, China, Colombia, Cook Islands, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Estonia, Faroe Islands, Finland, Georgia, Germany, Gibraltar, Greece, Greenland, Guernsey, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macau, Malaysia, Maldives, Malta, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Panama, Papua New Guinea, Poland, Portugal, Qatar, Romania, Saint Lucia, San Marino, Saudi Arabia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tunisia, Turks and Caicos Islands, United Arab Emirates, United Kingdom, United States, and Uruguay.

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