Building a better working world

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International Co-operation and Tax Administration Division, OECD/CTPA
Organisation for Economic Co-operation and Development
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Country-by-Country reporting notifications

Dear Pascal,

We are writing to inform you about some practical difficulties we have detected on the Country-by-Country Reporting (CbCR) notification requirements. Notification requirements were put forward in the Model Legislation related to CbCR in the June 2015 implementation package and were later included as Annex IV to the Action 13 final report.

Article 3 of the CbCR Model Legislation provides that a constituent entity shall notify the tax authority of the identity and tax residence of the Reporting Entity. The notification date is left at the discretion of each jurisdiction, however, the notification date that is included in the Model Legislation - and which is followed the most by countries when implementing CbCR - is the last day of the Reporting Fiscal Year of the Multinational Enterprise (MNE) Group. This in many cases means that the first obligation for MNE groups to notify the respective tax authorities is by 31 December 2016.

At this stage where the BEPS implementation phase is commencing, it is likely that MNE groups with Ultimate Parent Entities (UPEs) in jurisdictions that have not implemented CbCR or that do not have a Qualified Competent Authority Agreement (QCAA) in place, may consider whether to use a surrogate filing to reduce the number of local filings. For this option, it is generally required to notify the tax authorities in the local jurisdictions that have implemented CbCR about the identity and residence of the Surrogate Parent Entity (SPE).

The election of an SPE is likely to be made based on whether there are CbCR rules in place, but most importantly based on whether the jurisdiction of the SPE has a considerable number of exchange relationships in place. The issue is however that the exchange relationships are not publicly known yet. This gets exacerbated by the fact that the date on which two jurisdictions should have a QCAA in place to prevent the local filing obligation, is after the notification date.

In light of the above, MNE groups may be forced to comply with the notification requirements based on expectations. However, expectations can turn out contrarily, in which case the information notified to tax authorities may not be correct, resulting in consequences for providing erroneous information.

We would therefore request - at this stage where things are just starting - to encourage jurisdictions to adopt a “soft landing” approach. In other words, *bona fide* notifications that are erroneous should not carry any consequence and amendments to the notifications should also be permitted until the exchange relationships are disclosed or the first exchange of CbC reports occur.

If you have questions or would like further information on any of the points discussed above, please contact Gerrit Groen (gerrit.groen@ey.com), Arlene Fitzpatrick (arlene.fitzpatrick@ey.com), Ronald van den Brekel (ronald.van.den.brekel@nl.ey.com), Jose Bustos (joseantonio.bustos@ey.com), or me, Alex Postma (alex.postma@jp.ey.com).

Yours sincerely
On Behalf of EY,

Alex Postma