

OECD updates guidance on Country-by-Country Reporting and launches new site on country-specific implementation

EY Global Tax Alert Library

Access both online and pdf versions of all EY Global Tax Alerts.

Copy into your web browser:

www.ey.com/taxalerts

Executive summary

On 5 December 2016, the Organisation for Economic Co-operation and Development (OECD) released an updated version of the *Guidance on the Implementation of Country-by-Country Reporting* (CbCR). This update was agreed by all members of the Base Erosion and Profit Shifting (BEPS) inclusive framework and contains a clarification according to which adopting a flexible approach on CbCR notifications is in line with the minimum standard contained in BEPS Action 13. Thus, a country requiring notifications could either delay the notification date or adopt a soft landing approach in which notifications could be amended or updated without carrying penalties.

Additionally, new jurisdictions were added to the list of jurisdictions accepting voluntary filing from multinational enterprise (MNE) groups with reporting fiscal years commencing during the gap period (i.e., when CbCR reporting starts on a date different than 1 January 2016), namely Nigeria and Hong Kong.

Lastly, the OECD also launched a new site on country-specific information on CbCR implementation.

Detailed discussion

Guidance on implementation of CbCR

In June 2016, the OECD released additional guidance aimed at the consistent implementation of CbCR under Action 13 of the BEPS project (the Guidance).

The Guidance addressed four topics, namely: (i) transitional filing options for MNEs that voluntarily file in the parent company jurisdiction; (ii) and (iii) application of CbCR to investment funds and to partnerships; and (iv) the impact of exchange rate fluctuations on the agreed filing threshold for MNE groups.¹

On 5 December, the OECD updated the Guidance to include a new question on CbCR notifications wherein the OECD addressed whether a flexible approach on notifications would be consistent with the Action 13 minimum standard. In the answer, the OECD acknowledges that a practical issue may arise for MNE groups which are in the process of complying with the notification requirements in the countries where they operate. MNE groups may be subject to domestic law in the countries where they operate, requiring them to inform their tax administration about the identity of the Reporting Entity that will be filing the CbC report. In a number of countries (e.g., Austria, Bulgaria, Denmark, Ireland, Jersey, Luxembourg, Papua New Guinea, Portugal and Spain), calendar year end groups will need to submit notifications by 31 December 2016 with respect to the 2016 fiscal year. The difficulty arises because in order to identify the Reporting Entity, the MNE needs to know the CbCR legal frameworks and the international exchange of information relationships that are formed through Qualifying Competent Authority Agreements (QCAAs). This information is not available yet.

In light of the above, the OECD explains that jurisdictions may provide flexibility regarding the date by which notifications need to be made as neither Action 13 nor the model legislation requires the notification to be at the end of the reporting fiscal year. To date, a number of countries have started to delay or postpone their initial notifications date (e.g., Belgium, Czech Republic, Finland, the Netherlands² and Sweden).

Moreover, jurisdictions may provide for a soft landing approach or transitional relief from penalties according to which MNE groups could notify based on a preliminary assessment and, if necessary, submit an updated notification based on new information without triggering penalties. EY submitted a letter to the OECD in September addressing the above difficulty and suggested a soft landing approach that matches with the latter solution to the difficulties around notifications.³

The consolidated version of the Guidance (i.e., the June guidance and the new question on notifications) were agreed by all members of the BEPS inclusive framework.⁴

Country-specific information on CbCR implementation

The OECD also launched a site on country-specific information on CbCR implementation (the site) wherein information received by members of the BEPS inclusive framework on their CbCR frameworks will be posted.

The site provides the following information:

- ▶ Whether primary law is in place
- ▶ Whether secondary law is in place
- ▶ The fiscal year from which the CbCR requirements apply
- ▶ Whether there is local filing and the year from which local filing would apply
- ▶ Whether countries with a gap period (i.e., when CbCR reporting starts in a date different than 1 January 2016) accept voluntary filing

At the moment, the site contains information on 48 countries.⁵

Implications

The new consolidated Guidance provides greater clarity regarding the treatment of the issues addressed therein. There is more certainty around the application of the Guidance due to all members of the BEPS inclusive framework agreeing on it. Agreement of the answers to these pivotal questions is a milestone to ensuring that CbCR is implemented consistently across the globe.

In the past weeks there has been ongoing and increasing activity around CbCR and in particular on notifications requirements. Business should continue to closely monitor new or amended reporting requirements and how countries implement or react to the new guidance.

Endnotes

1. See EY Global Tax Alert, *OECD releases additional Guidance on implementation of Country-by-Country reporting*, dated 29 June 2016.
2. See EY Global Tax Alert, *Dutch Government publishes Decree extending deadline for filing first notifications under Country-by-Country reporting rules*, dated 21 November 2016.
3. See EY letter to the OECD on [Country-by-Country reporting notifications](#), dated 28 September 2016.
4. The BEPS membership has been expanding since the launched of the inclusive framework, bringing today 90 members and 15 invitees. The full list of members and invites can be accessed [here](#).
5. Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Chile, Czech Republic, Denmark, France, Gabon, Germany, Guernsey, Hong Kong, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Netherlands, New Zealand, Nigeria, People's Republic of China, Poland, Portugal, Russian Federation, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States and Uruguay.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Belastingadviseurs LLP, Rotterdam

- | | | |
|-------------------------|-----------------|---------------------------------|
| ▶ Marlies de Ruiten | +31 88 407 7887 | marlies.de.ruiter@nl.ey.com |
| ▶ Ronald van den Brekel | +31 88 407 9016 | ronald.van.den.brekel@nl.ey.com |

Ernst & Young LLP, Global Tax Desk Network, New York

- | | | |
|----------------------------|-----------------|--------------------------------|
| ▶ Jose A. (Jano) Bustos | +1 212 773 9584 | joseantonio.bustos@ey.com |
| ▶ David Corredor-Velásquez | +1 212 773 6259 | david.corredorvelasquez@ey.com |

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2016 EYGM Limited.
All Rights Reserved.

EYG no. 04187-161Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com