

OECD releases update of *Guidance on the Implementation of Country-by-Country Reporting*

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Executive summary

On 18 July 2017, the Organisation for Economic Co-operation and Development (OECD) released an updated version of its *Guidance on the Implementation of Country-by-Country Reporting* (the Guidance). This update addresses two new questions: first, the Guidance addresses whether aggregated or consolidated data should be reported where there is more than one constituent entity in a jurisdiction; and, second, the treatment of an entity owned and/or operated by more than one unrelated MNE Groups, such as joint ventures.

The Guidance is available in English and French, and soon will be available in German.

Detailed discussion

In June 2016, the OECD released additional guidance related to the Country-by-Country Reporting (CbCR or CbC reporting) under Action 13 of the Base Erosion and Profit Shifting (BEPS) project. The guidance addressed four topics, namely transitional filing options for multinational enterprises (MNEs) that voluntarily file in the parent company jurisdiction, application of CbCR to investment funds and also to partnerships, and the impact of exchange rate fluctuations on the agreed filing threshold for MNE groups.¹ The OECD updated

the guidance in December 2016 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.²

In April 2017, the OECD added additional questions and reorganized the guidance into four areas or topics, namely (i) The definition of items reported in the template for the CbC report; (ii) The entities to be reported in the CbC report; (iii) The filing obligation for the CbC report; and (iv) The sharing mechanism for the CbC report.

On 18 July 2017, the OECD updated the Guidance to include two new issues. First, the updated Guidance addresses whether aggregated or consolidated data should be reported where there is more than one constituent entity in a jurisdiction; and second, the treatment of an entity owned and/or operated by more than one unrelated MNE Groups, such as joint ventures.

Aggregated or consolidated data

The Guidance reiterates the Action 13 Report and the model legislation, which states that reporting will occur on an aggregate basis at a jurisdictional level regardless of whether the transactions occurred cross-border or within the jurisdiction, or between related or unrelated parties.

However, the Guidance provides that jurisdictions may allow taxpayers to report on a consolidated basis if that jurisdiction uses consolidated reporting for tax purposes and that consolidation eliminates intra-group transactions at the individual line item level. Thus, a jurisdiction with such a tax consolidation regime could take specific action to permit reporting on a consolidated rather than on an aggregate basis.

Assuming this option could be made available in a particular jurisdiction, taxpayers choosing to report using consolidated data must use consolidated data for each jurisdiction in Table 1 and must use consolidated data consistently from year to year. The Guidance indicates that taxpayers should also include the following wording in Table 3: "This report uses consolidated data at the jurisdictional level for reporting the data in Table 1" and should specify, in Table 3, the columns in Table 1 where the consolidated data is different from the aggregate data, had the taxpayer reported on an aggregate basis.

The Guidance provides that the BEPS Inclusive Framework members are expected to implement the guidance on reporting on an aggregated basis as soon as possible, accounting for each member's specific domestic circumstances. The Guidance acknowledges that MNE Groups may need time to make the necessary adjustments, for example in situations where guidance permitting the reporting of consolidated data for intra-jurisdiction transactions has already been issued. Therefore, the Guidance states that jurisdictions may allow some flexibility during a short transitional period (i.e., for fiscal years starting in 2016). Taxpayers reporting consolidated data under this transitional mechanism should provide the same information in Table 3 as described above.

Treatment of an entity owned and/or operated by more than one unrelated MNE Groups

The Guidance reiterates that the governing principle to determine the treatment of an entity for CbC reporting purposes should be the accounting treatment. If an entity were owned and/or operated by more than one unrelated MNE Group, the treatment of the entity for CbC reporting purposes should be determined under the accounting rules applicable to each of the unrelated MNE Groups separately. Thus, if the applicable accounting rules require an entity to be consolidated into the consolidated financial statements of an MNE Group, the entity would be considered as a constituent entity of the group. However, if an entity is not required to be consolidated under applicable accounting rules or if the entity is included in the financial statements under equity accounting rules, then the entity would not be considered a constituent entity and, accordingly, the financial data of such an entity would not be reported in the CbC report. The Guidance provides that the approach applies whether using full or pro rata consolidation.

Where pro rata consolidation applies, the Guidance provides that jurisdictions may allow a pro rata share of the entity's total revenue to be taken into account for the purpose of applying the €750 million threshold. Also, jurisdictions may allow an MNE Group to include a pro rata share of the entity's financial data in its CbC report, in line with the information included in the MNE Group's consolidated financial statements.

Implications

This is the fourth release by the OECD regarding practical questions that have arisen with respect to the implementation of CbCR. Although the Guidance would permit jurisdictions to allow taxpayers to report on a consolidated rather than aggregate basis if that jurisdiction uses consolidated reporting for tax purposes and that consolidation eliminates intra-group transactions at the individual line item level, it remains to be seen which jurisdictions will take such steps to permit such reporting.

The Guidance also provides greater clarity on the treatment of entities owned and/or operated by multiple MNE Groups. Since the OECD released the final report on Action 13, there has been ongoing and increasing activity around CbCR in general, and in particular on notification requirements. It is expected that this guidance will continue to be updated in the future. Taxpayers 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, [OECD updates Guidance on Country-by-Country Reporting and launches new site on country-specific implementation](#), dated 5 December 2016.
3. See EY Global Tax Alert, [OECD updates its Guidance on Country-by-Country Reporting](#), dated 7 April 2017.

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