

OECD releases further guidance on Country-by-Country Reporting

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Executive summary

On 6 September 2017, the Organisation for Economic Co-operation and Development's (OECD's) Inclusive Framework on Base Erosion and Profit Shifting (BEPS) released two sets of guidance to give greater certainty to tax administrations and multinational enterprise (MNE) groups on the implementation and operation of Country-by-Country (CbC) Reporting (BEPS Action 13).

The existing Guidance on the implementation of CbC Reporting (the Guidance) has been updated to address three new issues: (i) the definition of revenues (adding to the definition already provided in the April 2017 updated version of the Guidance); (ii) the treatment of MNE groups with a short accounting period; and (iii) the treatment of the amount of income tax accrued and income tax paid.

In addition to the Guidance, the OECD released guidance for tax administrations on the appropriate use of the information contained in CbC reports (the Appropriate Use Guidance). This includes guidance on the meaning of "appropriate use," the consequences of non-compliance with the appropriate use condition and approaches that may be used by tax administrations to ensure the appropriate use of CbC Reporting (CbCR or CbC reporting) information.

Both documents are available in English and French.

Detailed discussion

In June 2016, the OECD released additional guidance related to CbC reporting under Action 13 of the BEPS project.¹ The OECD updated the guidance in December 2016,² April 2017³ and July 2017.⁴

On 6 September 2017, one topic was further clarified and two additional topics were added to the Guidance. They include: (i) the definition of revenues; (ii) the treatment of MNE groups with a short accounting period; and (iii) the treatment of the amount of income tax accrued and income tax paid.

Definition of revenues

The Guidance clarifies that when financial statements are used as the source of the data to complete the CbCR template, all revenue gains, income, or other inflows shown in the financial statement prepared in accordance with the applicable accounting rules, should be reported as Revenues in Table 1 of the CbC report. For example, if the income statement prepared in accordance with the applicable accounting rules shows sales revenue, net capital gains from sales of assets, unrealized gains, interest received, and extraordinary income, the amount of those items reported in the income statement should be aggregated and reported as Revenues in Table 1.

However, comprehensive income and earnings, revaluations, and/or unrealized gains reflected in net assets and the equity section of the balance sheet should not be reported as Revenues in Table 1. Finally, the OECD clarified that the amount of any income items shown on the income statement need not be adjusted from a net amount.

MNE groups with a short accounting period

Where CbC reporting applies, the ultimate parent entity (UPE) of a group is required to file a CbC report on behalf of the group with its local tax authority. The deadline for filing the CbC report is by no later than 12 months after the last day of the group's reporting fiscal year.

On the question of whether transitional relief is available for MNE groups with a short accounting period that starts on or after 1 January 2016 and that ends before 31 December 2016, the Guidance provides that jurisdictions may allow the Reporting Entity of an MNE group with a short accounting period to file the required CbC report in accordance with the same timelines as for MNE groups with a fiscal year ending on 31 December 2016. The date by which the CbC report is to be exchanged would also be extended.

Treatment of the amount of income tax accrued and income tax paid

In terms of tax-related information to be included in the CbC report, Table 1 of the CbC report requires MNE groups to include per jurisdiction the aggregated amount of: (i) income tax paid (on cash basis) and (ii) income tax accrued - current year. The Guidance provides clarifications in regards to these terms and also reiterates that the amount of "Income Tax Accrued-Current Year" and "Income Tax Paid (on Cash Basis)" should be reported independently.

With respect to "Income Tax Accrued-Current Year," the OECD reiterates that this relates to the amount of accrued current tax expense recorded on taxable profits or losses for the reporting fiscal year of all Constituent Entities resident for tax purposes in the relevant tax jurisdiction irrespective of whether or not the tax has been paid (e.g., based on a preliminary tax assessment).

"Income Tax Paid (on Cash Basis)" is defined as the amount of the taxes actually paid during the reporting fiscal year, which should thus include not only advanced payments fulfilling the relevant fiscal year's tax obligation but also payments fulfilling the previous year(s)' tax obligation (e.g., payment of the unpaid balance of corporate income tax accrued in relation to the previous year(s), including payments related to reassessments of previous years), regardless of whether those taxes have been paid under protest.

Finally, the Guidance clarifies how a refund of income tax paid should be reported in Table 1 of the CbC report: in general, this should be reported under "Income Tax Paid (on Cash Basis)" in the reporting fiscal year in which the refund is received. However, an exception to this may be permitted where the refund is treated as revenue of the MNE group under the applicable accounting standard or in the source of data used to complete Table 1. If such is the case, during the transitional period, taxpayers are encouraged to voluntarily provide the following statement in Table 3: "Tax refunds are reported in Revenues and not in Income Tax Paid (on Cash Basis)."

Appropriate Use Guidance

The ability of a jurisdiction to obtain and use CbC reports is conditional upon it using CbCR information appropriately. In this respect, appropriate use is restricted to:

- ▶ High level transfer pricing risk assessment
- ▶ Assessment of other BEPS related risks
- ▶ Economic and statistical analysis, where appropriate

The Appropriate Use Guidance provides for a definition and further clarification on: (i) the meaning of appropriate use; (ii) the meaning of BEPS-related risk; (iii) consequences of non-compliance with the appropriate use condition; and (iv) approaches to ensure the appropriate use of CbCR information. Although the guidance is directed at tax administrations, it provides insights for MNEs how tax administrations currently have organized and are expected to organize their processes around CbCR, for which purposes the reports will be used, and what the consequences are of inappropriate use.

Meaning of appropriate use

In the Appropriate Use Guidance, the OECD emphasizes that information contained in CbC reports may be used for high level transfer pricing risk assessment, but should not be used by itself as a basis for proposing changes to transfer prices or adjusting a taxpayer's income using global formulary apportionment. However, as the OECD explains, there is nothing to prevent a tax authority from using CbCR information in planning a tax audit or as the basis for making further inquiries, into the group's transfer pricing arrangements or other tax matters, in the course of an audit. In fact, such inquiries need not relate specifically to potential risks identified through the use of CbCR information.

Furthermore, although Action 13 report does not contain guidance on this, CbCR information may also be used for economic and statistical analyses, where appropriate (e.g., such use is not appropriate where it is not permitted under the relevant tax convention or Tax Information Exchange Agreement).

Meaning of BEPS-related risk

The Action 13 report does not define the term BEPS-related risks. Nevertheless, consistent with the February 2013 report *Addressing Base Erosion and Profit Shifting*,⁵ the term "assessment of other BEPS-related risks," should be understood to refer to the high level assessment of tax risks that may result in the erosion of a country's tax base. In practice, while CbC reports may be used to identify indicators of possible tax risk, it will usually only be possible to understand the arrangements giving rise to that risk once further inquiries have been conducted. In the same way that CbCR information on its own does not constitute conclusive evidence that transfer prices are not appropriate, it also does not constitute conclusive evidence that a group is engaged in other forms of BEPS.

The Appropriate Use Guidance also elaborates on the consequences for a jurisdiction resulting from non-compliance, or possible non-compliance with the appropriate use condition, which are given effect through the Competent Authority Agreements where these are used in implementing CbC reporting.

The final section of the Appropriate Use Guidance contains guidance on the steps jurisdictions may take, if necessary, in order to effectively implement the appropriate use restriction into their domestic rules and processes.

Implications

The Guidance marks the fifth release by the OECD regarding practical questions that have arisen with respect to the implementation of CbCR. The Guidance provides greater clarity on the term revenues as well as income tax paid and income tax accrued while also providing more guidance on MNE groups with a short accounting period. The OECD expects Inclusive Framework members⁶ to implement the above guidance as soon as possible, taking into account their specific domestic circumstances. Furthermore, during the transitional period the OECD allows jurisdictions some flexibility with respect to implementing the guidance as detailed above.

Since the OECD released the final report on Action 13, there has been ongoing and increasing activity around CbCR requirements. 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.

The Appropriate Use Guidance is directed at tax administrations, but it provides insights for MNEs how tax administrations currently have organized and are expected to organize their processes around CbCR, for which purposes the reports will be used, and what the consequences are of inappropriate use.

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.
4. See EY Global Tax Alert, [OECD releases update of Guidance on the Implementation of Country-by-Country Reporting](#), dated 19 July 2017.
5. See EY Global Tax Alert, [OECD releases report on base erosion and profit shifting](#), dated 15 February 2013.
6. The group of over 100 countries and jurisdictions that has agreed to collaborate on the implementation of the BEPS Package. See EY Global Tax Alert, [OECD releases plan to establish inclusive framework for BEPS implementation](#), dated 24 February 2016.

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