

## OECD publishes two handbooks on Country-by-Country reporting

---

### 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](http://www.ey.com/taxalerts)

---

### Executive summary

On 29 September 2017, at the conclusion of the plenary meeting in Norway of the Organisation for Economic Cooperation Development's (OECD) Forum on Tax Administration, a series of new tax reports were published. Titles include:

- ▶ [Tax Administration 2017](#)
- ▶ [The Changing Tax Compliance Environment and the Role of Audit](#)
- ▶ [Shining Light on the Shadow Economy: Opportunities and threats](#)
- ▶ [Country-by-Country Reporting: Handbook on Effective Implementation \(BEPS Action 13\)](#)
- ▶ [Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment \(BEPS Action 13\)](#)

The *Country-by-Country Reporting: Handbook on Effective Implementation* (the Handbook on implementation) is a practical guide to the key elements that countries need to keep in mind when introducing Country-by-Country (CbC) reporting in line with the Action 13 minimum standard. The report includes guidance on technical issues related to the filing, exchange and use of CbC reports, as well as on practical matters that tax authorities will need to address.

In the *Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment* (the Handbook on tax risk assessment) the OECD sets out guidance on how each tax authority receiving CbC reports and transfer pricing master and local file documentation under Action 13 of the Base Erosion and Profit Shifting (BEPS) Action Plan may wish to consider using this information within their tax risk assessment programs, the types of risk assessment tests they may wish to consider utilizing, the challenges of effective use of CbC reports for tax risk management, and how to use CbC report alongside data from other sources.

The Handbook on tax risk assessment, and in particular Chapter 4 which sets out a number of ways in which tax authorities may wish to consider testing for tax risks using the Action 13 data, will be of particular interest to multinational enterprises, who may wish to consider how the identification of such risk indicators may be embedded into their own pre-submission risk assurance processes.

Both handbooks are available in English and French.

## Detailed Discussion

### Background

On 5 October 2015, the OECD released its final report on Action 13, *Transfer Pricing Documentation and Country-by-Country Reporting*, under its BEPS Action Plan.<sup>1</sup> The report introduced a standardized three-tiered approach to transfer pricing documentation for multinational enterprises (MNEs) consisting of a master file, a local file, and an obligation on certain MNE groups to annually file a CbC report. CbC reporting is one of the four minimum standards of the BEPS Project to which all 102 members of the BEPS inclusive framework have committed to consistently implement.

Since the release of the final report on Action 13, there has been ongoing and increasing activity around CbC reporting. To assist and support the consistent and swift implementation of CbC reporting, the OECD continues to release additional guidance and materials.

Specifically, the OECD released the XML Schema and its User Guide in March 2016 aiming to facilitate a swift and uniform implementation of CbC reports<sup>2</sup> and also released additional guidance addressing key questions of interpretation on CbC reporting in June 2016.<sup>3</sup> This latter guidance has been periodically updated in December 2016,<sup>4</sup> April 2017,<sup>5</sup> July 2017,<sup>6</sup> and September 2017.<sup>7</sup>

In February 2017, the OECD released the terms of reference and methodology for the peer review of the Action 13 minimum standard.<sup>8</sup> The peer review documents reflect the agreed approach to review compliance with the minimum standards and ensure the consistent and effective implementation of those standards.

To support jurisdictions in establishing the necessary framework and infrastructure to ensure the appropriate use of CbC reporting information, in September 2017, the OECD published the *Guidance on the appropriate use of information contained in CbC Reports*.<sup>9</sup>

On 29 September 2017, at the conclusion of the OECD Forum on Tax Administration's eleventh plenary meeting in Norway, the OECD released two handbooks, discussed below, as part of the suite of guidance prepared by the OECD and the BEPS inclusive framework to assist in the implementation and operation of CbC reporting.

### Handbook on effective implementation

The Handbook on effective implementation, consisting of five Chapters, assists jurisdictions in implementing the Action 13 minimum standard.

Chapter 1 provides readers with a high-level overview of CbC reporting and its timeline.

Chapter 2 contains the necessary and optional elements for the filing and use of CbC reports by jurisdictions and describes the framework that a tax authority should have in place to guard against the inappropriate use of the information in CbC reports.

Chapter 3, with reference to the *Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports* which is one of the three model Competent Authority Agreements and part of the CbC reporting implementation package, describes the elements of the legal framework for the exchange of CbC reports. In this Chapter reference is also made to the notifications of non-compliance by a reporting entity. The Handbook on implementation mentions that a jurisdiction receiving a CbC report should notify the other jurisdiction if it has reason to believe the information in the report is incorrect or incomplete. A jurisdiction should also notify the other jurisdiction if it has reason to believe there is non-compliance by a reporting entity with an obligation to file a CbC report. Chapter 3 highlights the importance of having international agreements and a competent authority agreement in place, as the exchange of CbC reports is only

possible where the applicable international agreement for automatic exchange of information, as well as the applicable competent authority agreement, are in effect for the relevant reporting fiscal year.

Chapter 4 focuses on the technical issues with respect to the filing and exchange of CbC reports and it provides an effective operational framework. It notes that, in implementing CbC reporting, a jurisdiction must ensure it has processes in place for the following stages relevant to the filing of CbC reports: (i) identifying entities required to file CbC reports; (ii) receiving CbC reports filed by resident entities; (iii) checking the completeness of CbC reports and preparing them for exchange; and (iv) imposing sanctions for non-compliance. Moreover, the Handbook on implementation notes that a number of jurisdictions emphasize the importance of electronic filing of CbC reports in the XML schema as this facilitates the handling and transmission of this information as well as its use in automated risk assessment processes. Thus, a number of jurisdictions – including Australia, Hungary, Ireland, Japan and Switzerland – require the electronic filing of CbC reports in their countries using the OECD XML schema.

Chapter 5 points out the benefits of providing guidance on CbC reporting and the importance of training of the staff, tax compliance and competent authority personnel.

The handbook contains an annex with a copy of the *Country-by-Country Reporting: Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports*,<sup>10</sup> as well as practical materials on CbC reporting held on an OECD *Clearspace* site and accessible by relevant government officials.

## Handbook on effective tax risk assessment

The *Handbook on Effective Tax Risk Assessment* provides tax authorities with guidance on ways to incorporate information obtained under CbC reporting into their tax risk assessment processes, the types of tax risk indicators that may be identified using CbC reports, and the challenges that may arise in the process. It contains seven Chapters.

Chapter 1 provides a high-level introduction to CbC reporting and risk assessment.

Chapter 2 describes the role of tax risk assessment in tax administration by giving examples from different countries. While the frameworks used by tax authorities may vary, the handbook notes that in order for risk assessment to operate effectively, certain core characteristics should be present.

These include:

- ▶ Officials involved in risk assessment should be adequately trained and experienced in key areas.
- ▶ Risk assessment tools (i.e., CbC reports) should be used to select and to de-select taxpayers for further investigation, possibly including tax audit or other compliance activity. They should not be used as a substitute for such activity, for the purposes of making tax adjustments or for directly assessing taxes.
- ▶ Risk assessment processes should be dynamic and responsive to feedback from within the tax authority, to ensure continuous improvement.
- ▶ A risk assessment strategy should combine different tools and take into account different elements of a group's risk profile, to minimize the risk that a higher risk taxpayer is able to avoid detection by putting in place elements to disguise a particular risk flag.
- ▶ Governance processes should be in place to ensure adequate monitoring of the risk assessment function within the tax authority.
- ▶ Tax risk assessment processes should form part of a tax authority's overall risk management framework.

Many jurisdictions, the report says, are in the process of implementing changes to their tax risk assessment processes, and provides short case studies on the risk assessment approaches utilized in seven jurisdictions (Australia, Brazil, Canada, Chile, India, The Netherlands and Spain).

Chapter 3 provides an overview of the mechanics of CbC reporting. The report further notes that, for the purposes of effective tax risk assessment, CbC reports can offer some advantages over and above other tax data sources. Among them, important is the fact that CbC reports are typically prepared and filed by the ultimate parent entity in an MNE group. According to the report, this means that CbC reporting information has been compiled by the entity which is usually in the best position to understand the global structure, activities and footprint of that group. Also, CbC reports provide an overview of what is happening throughout the whole of an MNE group that may not be available, or not easily available, from existing data sources, including tax information. CbC reports should also help to improve the quality of conversations between tax authorities and MNE groups and where the same risk is identified across different MNE groups, CbC reporting information may make it easier for a tax authority to determine the materiality of that risk

posed by each group, and direct further compliance actions towards those groups where the tax at risk is higher. Finally, the existence of CbC reports may facilitate the development of multilateral components to the risk assessment of certain MNE groups, involving the tax authority from more than one jurisdiction.

Chapter 4 considers the ways in which CbC reports can be incorporated into a tax authority's risk assessment framework and describes some of the main potential tax risk indicators. By outlining several examples, the report notes that there are a number of different ways in which CbC reports may be incorporated into a tax authority's risk assessment process.

The handbook states that transfer pricing risk in particular arises in three broad scenarios; first, where entities engage in recurring transactions with related parties which have the potential to erode a jurisdiction's tax base over time; second, transfer pricing risk can arise from large or complex one-off transactions, including business restructurings and transfers of key income-producing assets, and third, transfer pricing risk may be greater where a group does not have effective tax governance processes in place to control, document and review the pricing of related party transactions on an ongoing basis. Out of these three scenarios, the handbook says that CbC reports may assist tax authorities in detecting risk indicators arising from recurring transactions and one-off transactions.

The report goes on to set out a series of 19 specific risk indicators that could potentially (among others) be employed by a tax administration. For each risk indicator, a summary overview is provided in Chapter 4, and Annex 2 to the report sets out what potential results could mean, and also explores other potential circumstances that could explain the results. The 19 risk indicators are as follows:

1. The footprint of a group in a particular jurisdiction
2. A group's activities in a jurisdiction are limited to those that pose less risk
3. There is a high value or high proportion of related party revenues in a particular jurisdiction
4. Results in a jurisdiction deviate from potential comparables
5. Results in a jurisdiction do not reflect market trends
6. There are jurisdictions with significant profits but little substantial activity
7. There are jurisdictions with significant profits but low levels of tax accrued
8. There are jurisdictions with significant activities but low levels of profit (or losses)
9. A group has activities in jurisdictions posing a BEPS risk
10. A group has mobile activities located in jurisdictions where the group pays a lower rate or level of tax
11. There have been changes in a group's structure, including the location of assets
12. Intellectual property (IP) is separated from related activities within a group
13. A group has marketing entities located in jurisdictions outside its key markets
14. A group has procurement entities located in jurisdictions outside its key manufacturing locations
15. Income tax paid is consistently lower than income tax accrued
16. A group includes dual resident entities
17. A group includes entities with no tax residence
18. A group discloses stateless revenues in Table 1
19. Information in a group's CbC report does not correspond with information previously provided by a constituent entity

Taxpayers are advised to thoroughly review the 19 risk indicators and to assess how they may apply such tests to their own pre-submission data.

Chapter 5 of the report outlines challenges that may be faced by a tax authority in using CbC reports for tax risk assessment, which among other things concern the quantity of information that some tax authorities will need to deal with, the comparability of data provided by different MNE groups, and transitional issues following the introduction of CbC reporting. Seventeen key challenges are identified and described, and each tax authority, the report says, will need to consider ways to minimize these challenges or take them into account when interpreting the outcomes of risk assessment processes. Future versions of this handbook will include approaches that may be adopted to address these challenges, based on the experience of tax authorities.

Chapter 6 of the report sets out some of the other data sources that tax authorities should, according to the OECD, consider alongside CbC reports, including the master file and local file, other information held by the tax authority, information available from other government sources, publicly available information and commercial sources of data.

The report notes that tax authorities currently differ in the extent to which they are able to, or plan to, link the information in CbC reports to data from other sources, but by doing so, a more effective risk assessment may ultimately be achieved.

Chapter 7 describes how the results of a tax risk assessment using CbC reports should be used. CbC reporting information is a powerful tool for high level risk assessment, the report notes, but can never by itself represent conclusive proof that transfer prices are incorrect or that an MNE group is engaged in BEPS. Where a risk assessment using CbC reports identifies potential tax risks, this should trigger further reviews or requests for additional information and, if necessary, compliance action including, possibly, a tax audit.

## Implications

These two handbooks will provide support and clarity to countries introducing CbC reporting regarding the treatment of the issues addressed therein.

More specifically, the Handbook on effective risk assessment represents the first publically available information setting out exactly how tax authorities may use Action 13 information to supplement their existing tax risk assessment protocols. It should be expected that national tax administrations will, at a minimum, utilize the risk indicator tests as outlined in the report.

As noted in the report, there will be many lessons learned through the process. Both taxpayers and tax administrations will be dealing with new data, in new formats, and it is therefore positive that the report encourages flexibility and patience on the behalf of tax authorities.

The handbook also highlights a number of areas in which tax authorities may ask for further refinement and/or expansion of the CbC reporting format when it is reviewed by the OECD in 2020. In particular, comments relating to the current free-text format of Table 3 of the CbC report and the potential desire to further develop it into a more standardized format are noteworthy.

Comments in the report that the existence of CbC reports will “facilitate the development of multilateral components to the risk assessment of certain MNE groups, involving the tax authority from more than one jurisdiction” foreshadow the piloting of an International Compliance Assurance Programme (ICAP) by a number of jurisdictions under the guidance of the OECD. As more and more tax administration processes become multilateral in nature, this will be an important development for companies to be aware of, and to plan for.

In summary, the report includes useful data for those companies wishing to develop pre-submission tests to ensure their compliance risk assurance approaches are aligned with those likely to be adopted by national tax authorities. Additionally, the country risk assessment protocols provided for seven key countries provide useful insights for MNEs currently operating within such jurisdictions.

As there has been ongoing and increasing activity around CbC reporting, it is expected that the handbooks will not remain permanent and static tools, but they will be updated periodically to ensure that tax authorities in all countries can benefit from their content. Businesses should continue to closely monitor new or amended reporting requirements and how countries react to the new handbooks.

## Endnotes

1. 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.
2. See EY Global Tax Alert, [OECD releases Country-by-Country reporting XML Schema and related User Guide](#), dated 25 March 2016.
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 peer review documents on BEPS Action 5 on Harmful Tax Practices and on BEPS Action 13 on Country-by-Country Reporting](#), dated 6 February 2017.
9. See EY Global Tax Alert, [OECD releases further guidance on Country-by-Country Reporting](#), dated 7 September 2017.
10. See EY Global Tax Alert, [OECD releases further guidance on Country-by-Country Reporting](#), dated 7 September 2017.

---

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

### Ernst & Young LLP (United Kingdom), London

- |                |                  |                    |
|----------------|------------------|--------------------|
| ▶ Rob Thomas   | +44 20 7760 5538 | rthomas5@uk.ey.com |
| ▶ Chris Sanger | +44 20 7951 0150 | csanger@uk.ey.com  |

### Ernst & Young Belastingadviseurs LLP, Rotterdam

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

### Ernst & Young LLP, Global Tax Desk Network, BEPS Desk, 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](http://ey.com).

© 2017 EYGM Limited.  
All Rights Reserved.

EYG no. 05389-171Gbl

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](http://ey.com)**