

US IRS may not complete planned bilateral Competent Authority Agreements by year end

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Executive summary

A Treasury official has announced that the United States (US) Internal Revenue Service (IRS) may not be able to complete the bilateral Competent Authority Agreements (CAAs) on which it has been working by year end, which could result in local filing obligations for US multinationals in certain countries. The Treasury official's comments, which were made at an IRS/George Washington University Law School conference on 30 November, are the first time that the Treasury and IRS have stated that the CAAs that are currently in negotiations might not be completed before the end of the year.

Detailed discussion

Background

In general, under the final regulations implementing Country-by-Country (CbC) reporting ([T.D. 9773](#)) in the US, every ultimate parent entity of a US multinational enterprise (MNE) group with annual revenue of US\$850 million or more for the immediately preceding accounting period must file a CbC report.¹ A final form and instructions have also been released.² Revenue Procedure 2017-23 provides guidance for filing Form 8975 for reporting periods beginning on or after 1 January 2016, but before 30 June 2016, the applicability date in the final regulations.³

In certain circumstances, for countries that have adopted local filing obligations, US MNE groups may be required to file a CbC report in a local jurisdiction in which they have a constituent entity. Specifically, this may occur if, for the constituent entity's country of tax residence, the US has a current international agreement - such as a tax treaty or tax information exchange agreement (TIEA) - but does not have a CAA for the automatic exchange of CbC reporting information. Therefore, having CAAs in place in a timely manner is important so that local filing may be avoided.

The IRS maintains a website that includes an up-to-date [Jurisdiction Status Table](#) listing the jurisdictions with which the US Competent Authority has entered into CAAs, as well the jurisdictions with which the US is in the process of negotiating such agreements.

IRS announcement on pending CAAs

While stating that the IRS is still working on getting the CAAs in place, the Treasury official added that US MNE groups should evaluate options to manage the local filing requirements relating to the 2016 filing period that may exist in certain countries. The Treasury official specifically referenced preparing to file locally or via a surrogate filing.

The Treasury official did not provide any details on which CAAs may not be completed by year end. Countries with which the US has a treaty or TIEA but no CAA, and that have a 2016 local filing obligation under local law, include France, Indonesia, Jersey and Spain. Additionally, some countries are listed on the [OECD website](#) as having local filing requirements for 2016, though implementation has not been finalized (e.g., Turkey).

Implications

Although Treasury and the IRS are continuing to work on these CAAs, it is uncertain whether the CAAs necessary to avoid a local filing obligation for the 2016 reporting period will be in place by year end. US MNEs whose CbC reporting includes affected countries should begin evaluating their options to avoid having any issues relating to local filing obligations in those countries that would otherwise require local filing for the 2016 reporting period if CAAs are not concluded in time. For example, options may include filing a CbC report locally or, if possible, filing a surrogate CbC report.

Endnotes

1. See EY Global Tax Alert, [Final US country-by-country reporting regulations analyzed in-depth](#), dated 6 July 2016.
2. See EY Global Tax Alert, [New US IRS Country-by-Country Reporting site offers latest forms and guidance](#), dated 12 July 2017.
3. See EY Global Tax Alert, [US IRS issues guidance on Country-by-Country Reports for early reporting periods](#), dated 23 January 2017.

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

Ernst & Young LLP, International Tax Services

- ▶ Benjamin P Orenstein, *New York* benjamin.orenstein@ey.com
- ▶ Thomas Vidano, *Washington, DC* thomas.vidano@ey.com
- ▶ Arlene Fitzpatrick, *Washington, DC* arlene.fitzpatrick@ey.com

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

- ▶ Jose A. (Jano) Bustos joseantonio.bustos@ey.com
- ▶ David Corredor-Velásquez david.corredorvelasquez@ey.com

International Tax Services

Global ITS, **Alex Postma**, *Tokyo*

ITS Director, Americas, **Jeffrey Michalak**, *Detroit*

ITS Markets Leader, Americas, **Stephen O'Neil**, *New York*

Ernst & Young LLP, National Director of ITS Technical Services, **Jose Murillo**, *Washington*

ITS Regional Contacts, Ernst & Young LLP (US)

Northeast

Johnny Lindroos, *McLean, VA*

Financial Services

Chris J Housman, *New York*

Central

Mark Mukhtar, *Detroit*

Southeast

Scott Shell, *Charlotte, NC*

Southwest

Amy Ritchie, *Houston*

West

Sadler Nelson, *San Jose, CA*

Canada - Ernst & Young LLP (Canada)

Albert Anelli, *Montreal*

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