

1 July 2019

Global Tax Alert

OECD releases updated framework and multiple technology resources in relation to technology-driven exchange of certain taxpayer information

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Executive summary

On 27 June 2019, the Organisation for Economic Co-operation and Development (OECD) released the international administrative and operational framework (the framework) for the exchange of information collected under the Common Reporting Standard (CRS)-related Mandatory Disclosure Rules (MDRs).

The framework, says the OECD, delivers the legal element of the automatic exchange of information collected under the OECD's Model MDRs on CRS Avoidance Arrangements and Opaque Offshore Structures (the [Model](#)). The framework, they note, will enable a jurisdiction that has received information regarding a CRS Avoidance Arrangement or Opaque Offshore Structure under the MDRs to exchange such information with all jurisdictions of tax residence of the taxpayer concerned. The Framework includes the MDR extensible mark-up language (XML) Schema and User Guide to support the operational and technical side of the MDR exchanges. The MDR XML Schema is a type of data reference document, designed to ensure that all jurisdictions follow common data categorization and naming conventions that will facilitate the structured collection and exchange of information on CRS Avoidance Arrangements and Opaque Offshore Structures by tax administrations.

On the same day, the OECD also released the updated XML schemas and guidance to support the exchange of tax information under the CRS, on Country-by-Country (CbC) Reporting (CbCR) and in relation to the exchange of tax rulings (EOTR). The CRS and CbCR schemas will become effective for all exchanges on or after 1 January 2021, whereas the EOTR-related schemas will take effect as from 1 April 2020.

The framework represents a further milestone in defining how tax administrations structure and then share specific types of taxpayer data, including data provided by an intermediary such as a bank, lawyer or tax advisor. It is important to note that the part of the framework in relation to CRS focuses exclusively on MDRs in relation to individual taxpayers and not corporate entities, although the data may be prepared and provided by a corporate entity (i.e., an intermediary) in the format recommended by the OECD.

Detailed discussion

International exchange framework for MDRs on CRS avoidance arrangements and opaque offshore structures

On 5 October 2015, the OECD released its final report on mandatory disclosure rules (Action 12) under its Action Plan on Base Erosion and Profit Shifting (BEPS).¹ The Action 12 Report made a series of recommendations regarding the design of mandatory disclosure regimes, intended to allow maximum consistency between countries while also being sensitive to local needs and to taxpayers' compliance costs.

The mandatory disclosure recommendations contained in Action 12 are not a BEPS minimum standard, and countries are therefore free to choose whether to introduce such a regime. Many countries had already introduced such regimes in advance of the BEPS project (such as the US' Uncertain Tax Positions regime), and many have continued to do so since. Additionally, in June 2018, the mandatory automatic exchange of information in relation to reportable cross-border arrangements (the so-called Mandatory Disclosure Regime or MDR) entered into force in the European Union, representing a very similar set of activities to that set out in the OECD framework and potentially leveraging the same methods of data transfer as recommended by the OECD.

On 9 March 2018, the OECD issued² new model MDRs for addressing CRS Avoidance Arrangements and Opaque Offshore Structures, consistent with the concepts on mandatory disclosure articulated in the best practice recommendations contained in BEPS Action 12 final report on MDRs. The new model rules would require lawyers, accountants, financial advisors, banks and other service providers to inform tax authorities in certain circumstances when, for example, there is a CRS Avoidance Arrangement or Opaque Offshore Structure being used by an individual taxpayer.

The model rules highlight that in order for them to meet their objective, a reliable exchange of information relationship must be in place between the jurisdiction where the intermediary makes the disclosure and the jurisdiction in which the taxpayer is resident. The OECD was working on an exchange of information framework to be developed under the Multilateral Convention on Mutual Administrative Assistance, which would ensure that the relevant information reaches the jurisdiction of tax residence of the relevant taxpayer in a timely and structured manner. Based on this, the OECD released the said framework for the exchange of information collected under the CRS-related MDRs on 27 June 2019. According to the OECD document, the MDR exchanges will be based on an MDR Multilateral Competent Authority Agreement (MDR MCAA) which will enable a jurisdiction that has received information regarding a CRS Avoidance Arrangement or Opaque Offshore Structure under the MDRs to exchange that information with all jurisdictions with which the taxpayer concerned has tax residence. That, the OECD says, will allow the tax authorities of such jurisdictions to use the information to carry out compliance activities with respect to both the taxpayers and intermediaries involved in the disclosed arrangements.

According to the framework, a jurisdiction receiving information regarding a CRS Avoidance Arrangement or Opaque Offshore Structure under the MDRs would exchange such information with all jurisdictions of tax residence of the Reportable Taxpayer(s), which are: (i) other MDR implementing jurisdictions and (ii) signatories to the MDR MCAA. Thus, the information will only be required to be exchanged as from the date on which the MDR MCAA is in effect for both the Competent Authorities and the respective jurisdictions which have MDRs in effect.

This, the OECD says, provides an advantage in that only jurisdictions which are familiar with the MDR and thus have a better understanding of the information will be receiving the information from exchanging partners. It also provides a further incentive for jurisdictions to adopt MDR, they say, in order to benefit from the automatic exchange network.

The OECD will maintain a public listing of the Competent Authorities that have signed the MDR MCAA.

Alongside the framework, the OECD also released the CRS-related MDR XML Schema and User Guide which are, together, designed to technically support MDR exchanges between Competent Authorities and to facilitate the use of the information by tax administrations by ensuring a standardized format. As noted, the XML Schema is a type of electronic data reference document, which ensures that all jurisdictions follow common data categorization and naming conventions when exchanging taxpayer data. The User Guide, in turn, explains the information required to be included in the XML Schema.

The information reflected in the MDR XML Schema has four key elements:

1. A description of the arrangements that are required to be disclosed (i.e., the hallmarks of a disclosable MDR scheme)
2. A description of the persons required to disclose such arrangements (i.e. either the taxpayer or the intermediary that is subject to reporting obligations under the MDR rules)
3. The triggering event
4. The substantive information required to be reported

Updated XML schemas for the exchange of CRS, CbCR and tax ruling information

As part of the follow-up work on BEPS Actions 5 and 13, the OECD set out in the final reports on these actions that the next step in relation to CbCR and EOTR was to develop XML Schemas and related User Guides to facilitate the electronic exchange of CbC reports and EOTR.

On 22 March 2016, the OECD released the CbCR XML Schema and a User Guide for the exchange of CbC reports, stating that these materials would facilitate a swift and uniform implementation of CbCR. While the CbCR XML Schema has been primarily designed for use by tax

authorities, it may also be utilized by taxpayers for the transmission of a CbC report to their tax authority(s), provided the use of the Schema is mandated domestically. A few months after the initial release of these materials, the OECD also released the EOTR XML Schema and its accompanying User Guide. The EOTR XML Schema also provides a common format for implementing the EOTR between Competent Authorities, and its related User Guide similarly explains the information required to be included and each data element to be reported. The User Guide also contains guidance on how to make corrections to data elements within a file.

The OECD updated these schemas in September 2017, adding certain clarifications with respect to the correction mechanisms under both the CbCR and EOTR XML Schemas and User Guides. Additionally, the CbCR XML Schema and User Guide was updated to allow multinational enterprise (MNE) groups to indicate instances of stateless entities and stateless income, as well as to specify the commercial name of their MNE group.

In September 2017, the OECD released further updated and new IT tools and guidance to support the exchange of CbC reports and EOTR. The new IT tools were developed to provide structured feedback on previously received CbCR and EOTR information. As the information may have contained errors, due to either incorrect file preparation and/or by incomplete or inaccurate record information, the OECD developed the CbCR and EOTR Status Message XML Schema which allows Competent Authorities that have received CbC reports or tax rulings through the OECD XML Schemas, but which contain errors, to report back to the sending Competent Authority. Additionally, Competent Authorities can use the CbCR and EOTR Status Message XML Schemas to provide structured feedback to the sender on any frequent (i.e., systematic) errors encountered.

On 27 June 2019, the OECD provided further updates to the XML schemas and guidance to support the exchange of tax information under the [CRS](#), on [CbCR](#) and in relation to [EOTR](#). The updates to the series of User Guides and XML schemas reflect experiences gained from the first series of exchanges, and aim to increase the user-friendliness of the systems. They represent what the OECD says are the latest technical developments in this specialized technology field. Among other things, the updated user guides include additional examples to illustrate how the schemas apply.

The updated CRS and CbCR-related schemas will become effective for all exchanges on or after 1 January 2021, whereas the EOTR-related schemas will take effect as from 1 April 2020.

Implications

While the OECD's update of a broad series of XML Schemas and associated User Guides related to the exchange of various types of taxpayer information have been designed and deployed with use by tax administrations in mind as a primary driver, many multinational enterprises may leverage them, either as methods of submitting CbC reports or, in the future, as a way to report required information under the CRS MDRs. As such, multinational groups should now study the information provided by the OECD assessing what systems changes it may drive at the operational level.

On a wider basis, the continued development of XML-based information exchange represents the further digitalization of tax administration. This continuing trend has and will continue to have significant impacts on both the tax strategy and policy and day-to-day operations of a tax department. With that in mind, groups are advised to review the OECD XML Schemas and associated User Guides with both the immediate and long term, strategic pictures in mind.

Endnotes

1. See EY Global Tax Alert, [OECD releases final report on mandatory disclosure rules under Action 12](#), dated 15 October 2015.
2. <http://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.pdf>.

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EYG no. 003145-19Gbl

1508-1600216 NY
ED None

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