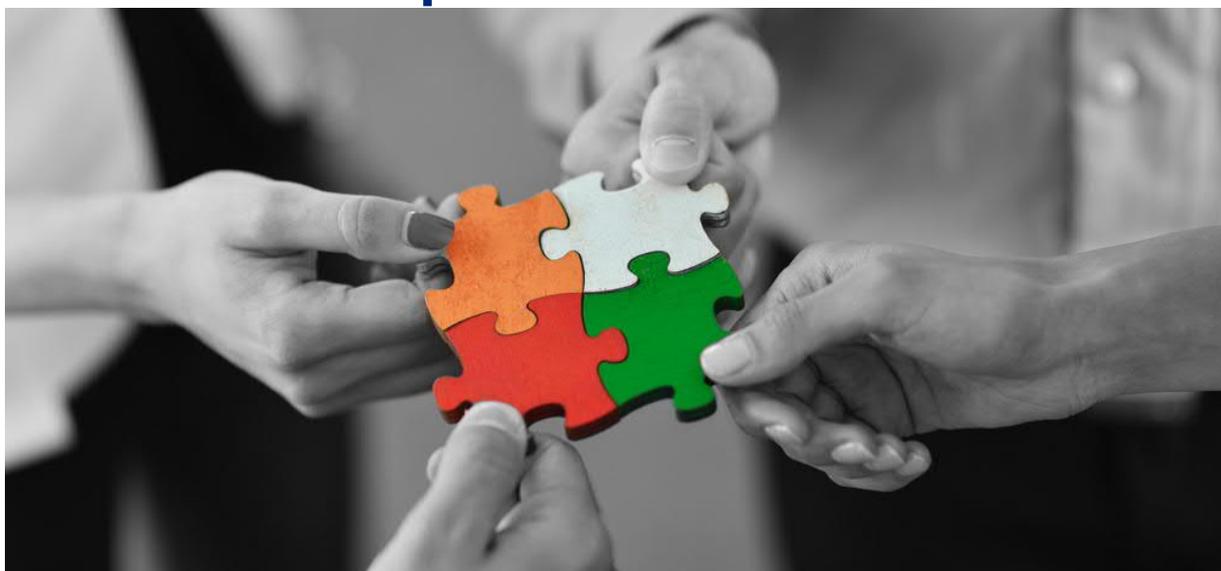


Tax insights

BEPS – focus shifts toward implementation



Snapshot

The OECD BEPS train continues to roll on, most recently with the meeting of the G20 Finance Ministers and Central Bank Governors held on 9-10 February 2015 in Istanbul.

As the BEPS project progresses into 2015 and beyond, **the focus is moving towards identifying practical and efficient implementation strategies.**

Several countries have adopted measures consistent with, or as a result of, BEPS recommendations. Some of the more recent examples include France and Japan moving to prevent certain hybrid financing arrangements. Meanwhile in the UK, draft legislation has been introduced to facilitate Country-by-Country reporting.

The Communiqué from the meeting reiterated the G20's support for the BEPS project and **key actions** which were released prior to the meeting on 6 February 2015, and relate to:

- Country-by-Country ("CbC") reporting implementation guidance;
- Master and Local file reporting arrangements;
- Creation of a multilateral instrument; and
- Harmful tax practices and IP regimes.

This increased emphasis on the implementation of BEPS recommendations is particularly evident in the very specific guidance provided on CbC reporting, discussed below.

Country-by-Country reporting

On 6 February 2015, the OECD released guidance on the implementation of transfer pricing documentation and CbC reporting. The eagerly awaited guidance provided answers to taxpayers' questions regarding:

- which groups will be subject to the reporting requirements;
- the use of the CbC report by jurisdictions;
- the mechanisms for government-to-government exchange of CbC reports; and
- the timing of preparation and filing of the CbC report.

The [CbC reporting template](#) requires multinational groups to report the amount of revenue (related party and unrelated party), profits, income tax paid and taxes accrued, employees, stated capital and retained earnings, and tangible assets annually for each tax jurisdiction in which they do business. In addition, multinational groups are also required to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity conducts.

By providing such specific guidance on the CbC measure and its implementation, the OECD is seeking to facilitate a swift implementation of the measure by governments and tax authorities globally.

The ATO has previously expressed its support for the CbC initiative.

Country-by-Country reporting

Multinational groups **with turnover in excess of EUR750mn** (approximately AUD 1bn) in the previous financial year **will be required to file CbC reports with the tax authority in the parent entity's location.**

According to the OECD, **this threshold will exclude approximately 85% to 90% of all multinational groups from the requirement to file the CbC report**, but would still subject multinational groups that control approximately 90% of all corporate revenue to the requirement. The OECD believes the proposed reporting threshold should strike the right balance between the imposition of a reporting burden and benefits to tax authorities. Moreover, the appropriateness of the threshold will be subject to review as part of

the 2020 review of implementation of the new reporting standard.

The Australian perspective

Based on a high level review of the financial reports of the ASX 200, approximately half of these groups would be required to file CbC reports with the ATO.

Use of CbC reports and approach to exchange of information

The CbC report will be **required to be filed with the tax authority in the country of the ultimate parent company.**

Countries will need to develop an appropriate mechanism to incorporate the CbC requirements into their respective tax regimes. For example, the UK government has already published draft legislation to enable CbC reporting to be introduced into UK law once the CbC measures are finalised.

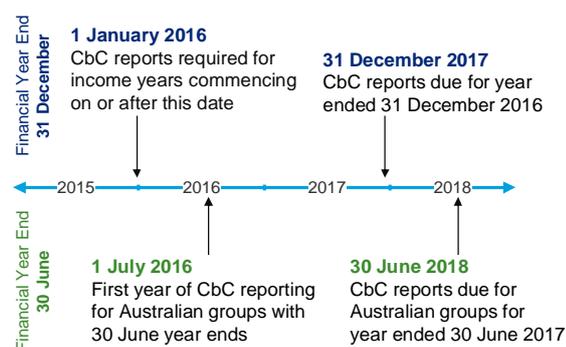
The countries participating in the BEPS project have agreed that they will have in place, and be prepared to enforce, legal protections of the confidentiality of the information in the CbC report equivalent to those under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a tax information exchange agreement (TIEA), or a tax treaty. **It is intended tax authorities would then automatically exchange this information with each of the jurisdictions in which the multinational group operates.**

The guidance also indicates that countries participating in the BEPS project **have agreed to develop an implementation package for government-to-government CbC reports by April 2015.** This is an extremely tight timeframe for the OECD to adhere to, once again illustrating the commitment of the OECD to the implementation phase of the project.

Timing of filing CbC reports

The OECD proposes that the CbC disclosure applies for financial years commencing on or after 1 January 2016, with CbC reports required to be filed within one year.

CbC filing timeline



The Australian perspective

Assuming the measures are adopted in Australia and that Australia is part of the first wave, for an entity with a 30 June year-end, the first reporting period would be for the year ended 30 June 2017.

The CbC report would be required to be filed with the ATO no later than 30 June 2018.

Anticipated impact of the CbC measure

The report will provide a comprehensive snapshot of a group's global operations, tax profile and key financial data. The OECD cautions against tax authorities attempting to use the information to adopt a "formulary approach" to profit allocation in lieu of the arm's length transfer pricing principle. Potential misuse of this data by tax authorities was a key concern raised in submissions from business.

In this regard, we note that some submissions to the Australian Senate Enquiry into corporate tax avoidance recommends a move towards such a formulary approach, notwithstanding the OECD's express warnings on this point.

Master and Local Files

The OECD also provided guidance on the **master and local file requirements** of the new transfer pricing standard.

Unlike the CbC report, **the guidance suggests the master and local files be lodged directly with the tax authorities in each relevant jurisdiction.**

The guidance recognises the need for confidentiality and consistent use of the information to be provided, which were some of the concerns raised by business during the consultation process.

Creation of a multilateral instrument

The proposal to develop a multilateral instrument is an innovative and ambitious **plan to introduce a multilateral tax treaty which would effectively over-ride existing double tax treaties.**

There are currently more than 3,000 double tax treaties worldwide, and many important BEPS measures require amendments to existing double tax treaties. It would be impractical to effect the changes recommended by each of the BEPS project action items, on a treaty-by-treaty basis.

Anticipated impact

The multilateral instrument would accelerate the introduction of the BEPS project recommendations into tax laws worldwide as compared to an approach requiring countries to amend all of their existing double tax treaties.

Once implemented, tax authorities worldwide would then be administering laws which have been amended in a coordinated way in accordance with the BEPS project recommendations.

Timing

A meeting will be held by July 2015 to discuss the drafting of the proposed multilateral instrument. Drafting of the multilateral instrument is to be completed by December 2016. Countries may begin to sign up to the multilateral instrument in (say) 2017 or 2018.

Harmful tax practices (eg. patent boxes)

OECD and G20 countries have previously agreed to identify criteria to assess whether preferential treatment regimes for intellectual property (patent

boxes) are harmful. At the G20 in Brisbane, leaders endorsed a solution proposed by Germany and the UK on how to assess whether there is substantial activity in an intellectual property regime.

Transitional provisions for existing regimes, including a limit on accepting new entrants after June 2016, have also been agreed to, and work on the implementation is ongoing.

The proposal is based around a “nexus approach,” which allows a taxpayer to receive benefits on Intellectual Property income in line with the expenditures linked to generating the income.

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