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Transfer pricing alert

Transfer pricing documentation changes are inevitable

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After multiple rounds of discussion drafts and public consultations, the Organisation for Economic Co-operation and Development (OECD) released revised guidelines that will result in sweeping changes to the way multinational entities (MNEs) document transfer prices. Specifically, the September 2014 *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting* and the subsequent February 2015 related *Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting* lay the foundation for a new transfer pricing documentation regime.

Given the significant new or expanded information requirements, the ambitious timeline proposed by the OECD and public commitment from major countries – including Canada – there is little doubt that MNEs will soon face the biggest change to transfer pricing documentation requirements since the rules were first introduced. The 2015 fiscal year is likely to be the last year for which the new transfer pricing information will not be required, so it would be prudent for MNEs to start preparing for the additional compliance requirements.

Changes require significant resources

The new documentation requirements will result in significantly increased compliance requirements, particularly in respect of gathering or preparing master file and country-by-country (CbC) information on a global basis. While the OECD's implementation guidance has proposed setting a threshold of 750 million Euros for CbC reporting, with entities having annual consolidated group revenues below this amount not required to prepare the CbC report, there is no relief for MNEs above the threshold.

Although the CbC template was simplified in September 2014 compared to the first draft in January 2014, retrieving the data will still pose a major challenge for many MNEs. Certain data may not be readily available on a global level within MNEs, and many will have to upgrade their existing information systems or introduce new measures to be able to retrieve and gather the required data. Some proactive MNEs have attempted to determine the upcoming compliance burden in respect of CbC reporting by preparing CbC information on a sample basis. Aside from potential monetary outlays for information system upgrades, the experience of such proactive entities is that CbC implementation will require a very significant commitment in terms of staff hours. This could be problematic for some organizations that simply do not have adequate staff resources to dedicate to CbC implementation.

Further, there is no threshold in the revised guidelines for preparing a master file, which will require MNEs to disclose more information than ever in the past, especially in respect of an organization's supply chain, its intangibles assets and intercompany financing. Considering the highly complex nature of these transaction elements, the investment in preparing the level of detail required in the master file should not be underestimated. Furthermore, such information is expected to be made available to every tax administration in whose jurisdiction the MNE group operates.

In addition to smoothing out the timing of the significant use on finite resources, preparing the master file and CbC report up-front provides MNEs time to assess the information produced and to consider how it may be interpreted by a tax authority. This will be a significant benefit as it allows MNEs insight into potential or perceived risk areas that can be addressed before the new transfer pricing documentation requirements take effect.

Senior global officials are ready to implement changes

Comments from senior global officials confirm that preparation for CbC reporting is underway, with little doubt as to forthcoming implementation throughout the world. For example, at a recent roundtable on the OECD's BEPS project at the 66th Annual Conference of the Canadian Tax Foundation, government officials including Brian Ernewein, General Director of Canada's Department of Finance Tax Policy Branch, shared the view that despite the somewhat uneven movement on other BEPS action items, implementation of the CbC reporting template is virtually inevitable. Specifically, Ernewein confirmed the Canadian government's commitment to introducing any necessary additional legislative measures for the implementation of CbC reporting.¹

Momentum for transfer pricing documentation change is just as strong south of the border. Brian Jenn, an attorney-advisor in the US Treasury's Office of International Tax Counsel speaking at the annual conference of the International Fiscal Association's US Branch, noted that the US government will develop a "form for taxpayers to file that looks like the country-by-country reporting template".² Jenn went on to note "I feel very comfortable at this point that the authority we have been granted in [Internal Revenue Code sections] 6001 and 6038(a), in particular, is more than enough for the purposes of soliciting this kind of information from the companies that we would be asking it".³

Other countries are pursuing the changes even more aggressively, with UK legislation already drafted in Finance Bill 2015 to enable regulations requiring MNEs to provide a CbC report to HM Revenue & Customs. Spain is similarly ambitious, with Secretary of State for Finance Miguel Ferre announcing that corporate income tax regulations will include CbC reporting obligations for multinational enterprises. Draft legislation is expected to be published in the first half of 2015 with CbC reporting requirements applicable to fiscal 2016.

¹ Ajay Gupta, *Country-by-Country Reporting Inevitable, Global Leaders Say*, TaxAnalysts, Tax Notes Int'l, Dec. 8, 2014, p. 866.

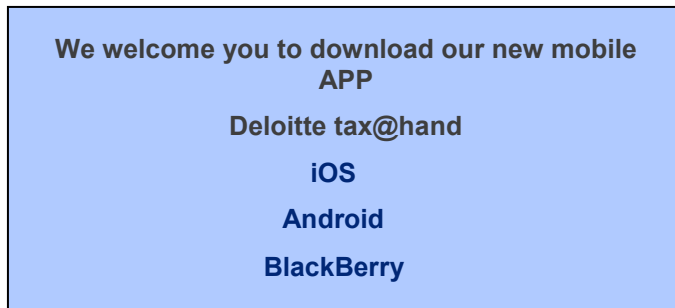
² Kevin A. Bell, *U.S. Will Adopt CBC Reporting Template, With First Forms Likely Due Close of 2017*, Bloomberg BNA Transfer Pricing Report, March 5, 2015.

³ Ibid.

Transfer pricing changes are inevitable

Significant global support for the OECD's changes to transfer pricing documentation requirements is evident. Considering the amount of additional information that will be required, and since it takes only the implementation of CbC reporting requirements in one country in which an MNE operates for the extra reporting burden to apply, there is little support left for a "wait and see" approach when it comes to preparing for the changes.

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