



Transfer pricing alert

Canada's country-by-country legislation comes into force, CRA releases Form RC4649

February 8, 2017

On February 3, 2017, the Canada Revenue Agency (CRA) released the prescribed form for reporting country-by-country (CbC) information, [Form RC4649, Country-by-Country Report](#). Form RC4649 is consistent with the model CbC report templates included in the Organisation for Economic Co-operation and Development's (OECD) October 5, 2015 final report, and requires the following information to be provided for each tax jurisdiction: revenues (unrelated and related), income, taxes paid and accrued, stated capital, accumulated earnings, number of employees, tangible assets and certain information about each of the so-called "constituent entities", including their primary activities.

The Form RC4649 instructions provide useful guidance to assist Canadian taxpayers to understand the CRA's expectations in respect of the CbC information to be reported, including definitions and detailed filing instructions.

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The form was released shortly after the passage of final legislation to implement CbC reporting requirements for Canadian multinational enterprises (MNEs) in Canada's House of Commons on December 15, 2016. These requirements are in line with the recommendations of the OECD, as outlined in the October 5, 2015 final report in respect of Action 13 of the Base Erosion and Profit Shifting Action Plan, *Transfer Pricing Documentation and Country-by-Country Reporting*.

The key aspects of the Canadian CbC reporting regime are summarized below.

CbC reporting threshold

Taxpayers with total annual consolidated group revenues of more than EUR 750 million for the preceding year must file a CbC report. This threshold is consistent with the OECD recommendation.

While the OECD's December 5, 2016 *Guidance on the Implementation of Country-by-Country Reporting* recommends that a MNE group that complies with the parent country threshold (such as the USD 850 million threshold in the United States) should not be subject to a local filing obligation in any other jurisdiction, the Canadian legislation does not exempt a Canadian entity from the reporting obligation that would arise based on the Canadian threshold of EUR 750 million. Thus, it is possible that a Canadian corporation that is owned by a foreign parent could have a CbC reporting obligation in Canada, even though the parent company falls below the reporting threshold established in its home jurisdiction.

First year of CbC reporting

The legislation provides that the CbC reporting rules will apply to fiscal years of MNE groups that begin after 2015.

Because some countries have a later implementation date for CbC reporting, the Canadian CbC filing requirement could result in a Canadian subsidiary having a reporting obligation for a taxation year for which the ultimate parent company does not have a similar reporting obligation in its home country. MNEs are cautioned to consider the Canadian filing requirements, because Canada will require CbC reporting for subsidiaries (with the potential for penalties in the event of noncompliance) even if the ultimate parent entity is in a jurisdiction that does not require a CbC report.

Deadline to file CbC reports

The legislation provides that entities required to file a CbC report in Canada will be required to do so within 12 months after the end of the fiscal year. Thus, the first possible reporting deadline is December 31, 2017. For this purpose, the fiscal year refers to the financial reporting year of the ultimate parent, which may differ from the taxation year of the Canadian entity that is obligated to file the CbC report.

Parent and subsidiary filing requirement

A Canadian entity that is the MNE group's parent is obligated to file a CbC report on behalf of the group.

If the ultimate parent of the MNE group is not a resident of Canada, Canadian subsidiaries are relieved of the filing obligation provided that the ultimate

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parent (or an entity that is designated as a “surrogate parent entity”) files a CbC report in a jurisdiction that will provide a copy of the CbC report to Canada.

Per the instructions to Form RC4649, a Canadian entity is required to file a CbC report where no surrogate parent entity has been appointed by the MNE group in instances where the ultimate parent entity of the MNE group is not obligated to file a CbC report.

Penalty for noncompliance with CbC reporting obligations

The penalty for failure to file a CbC report on time will be \$500 per month for up to 24 months, or \$1,000 per month for up to 24 months if a demand is served and not complied with. The penalty could be applied to every Canadian resident entity of the MNE group that knowingly or under circumstances amounting to gross negligence, fails to file the CbC report on behalf of the MNE group.

Next steps and issues to consider

The new CbC reporting requirements will involve an increased compliance effort to gather and prepare the required information. Certain data may not be readily available to MNEs on a global level, and some taxpayers will find it necessary to upgrade their existing information systems or introduce new internal processes to be able to retrieve and gather the required information. While the earliest filing deadline is December 31, 2017, Canadian taxpayers should be proactive in assessing their ability to comply with the requirements.

The new CbC reports are meant to provide tax authorities around the world with high-level overviews of the global operations of large MNEs to enhance transparency. While the information is intended to assist tax administrations in performing effective “risk assessments” and not as a means of identifying potential transfer pricing adjustments, tax administrations could use this information to initiate tax audits.

Neither the legislation nor RC4649 addresses certain practical considerations, such as the procedure for notifying the CRA of the designated “surrogate parent entity” or the in-depth definitions of the reporting items.

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