



## Transfer pricing alert

### Additional guidance on Canada's country-by-country reporting requirement

April 4, 2017

On March 2, 2017, shortly after releasing prescribed [form RC4649](#) for reporting country-by-country (CbC) information, the Canada Revenue Agency (CRA) released [RC4651](#), *Guidance on Country-By-Country Reporting in Canada*, to provide greater detail for taxpayers affected by the new CbC filing obligation.

RC4651 provides information on a broad range of matters relating to the CbC reporting obligation: the effective date of the reporting requirement and the filing deadline; the threshold for exclusion from the requirement; notification requirements; the multinational enterprise (MNE) entities required to file a

#### Contacts:

**Markus Navikenas**  
National Transfer Pricing Leader  
Tel: 403 267 1859

**Quebec**  
**Hernan Allik**  
Tel: 514 393 3643

**Eastern Region**  
**Tony Anderson**  
Tel: 905 315 6731

**Toronto**  
**Muris Dujsic**  
Tel: 416 601 6006

CbC report; special situations, such as surrogate parent entity designation and voluntary filing; specific instructions regarding the information to be included in form RC4649 and the filing of RC4649 with the CRA; penalties; automatic exchange of information conditions; the use of CbC reporting information; and CRA contact information for queries.

The guidance emphasizes that while the Canadian CbC reporting legislation is generally consistent with that of the Organisation for Economic Co-operation and Development (OECD) as included in the final BEPS Action 13 report, the Canadian version will take precedence where there are differences from the OECD model legislation.

The key aspects of the CRA's guidance are summarized below.

### **CbC reporting threshold and currency considerations**

The legislation requires MNEs with total annual consolidated group revenues of more than EUR 750 million for the preceding year (prorated for a fiscal year that is less than 12 months) to file a CbC report. This threshold is consistent with the OECD recommendation.

The CRA has provided guidance on foreign currency conversion and the impact that currency fluctuations could have on the threshold. Specifically, the consolidated group revenues must be converted to Euros if the reporting currency is different. The conversion may be undertaken using an average exchange rate for the period (as published by the Bank of Canada), as transaction-by-transaction conversion may not be practical.

If a parent jurisdiction sets its threshold using its domestic currency, (such as the USD 850 million threshold in the United States), and currency fluctuations result in meeting the threshold in Canada but not in the parent entity's jurisdiction, the CRA has provided an exemption from the Canadian reporting requirement consistent with the OECD's August 2016 *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13*: the MNE group that complies with the parent country threshold will not be subject to a local filing requirement in Canada, provided that the parent's jurisdiction has a reporting threshold that is a near equivalent of EUR 750 in its domestic currency as it was at January 2015.

### **Parent and subsidiary filing requirements**

A Canadian constituent entity (CE) that is the MNE group's parent is obligated to file a CbC report on behalf of the group. If the ultimate parent entity of the MNE group is not a resident of Canada, Canadian CEs are relieved of the filing obligation provided that the ultimate 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. The Canadian CE has no obligation to notify the CRA of the name and tax residence of the reporting entity.

For clarity, as noted in the Instructions to form RC4649, a Canadian CE 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, or the ultimate parent entity's jurisdiction does not have a mechanism for the automatic exchange of CbC reports, or there is a systemic failure of the jurisdiction where the parent entity resides and the CRA notifies the Canadian CE of this failure.

**Prairies Region**  
**Andreas Ottosson**  
Tel: 403 267 0665

**Kevin Gale**  
Tel: 204 944 3589

**British Columbia**  
**Rob Stewart**  
Tel: 604 640 3325

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A Canadian CE appointed as a surrogate parent entity is subject to the same filing requirement as imposed on an ultimate parent in Canada and must notify the CRA on form RC4649 that it is filing as the surrogate parent entity on behalf of the ultimate parent at the time of the filing. There is no obligation in Canada to notify in advance of filing.

### **Effective date**

The legislation provides that the CbC reporting rules will apply to fiscal years of MNE groups that begin on or after January 1, 2016.

Because some countries have a later implementation date for CbC reporting, a Canadian CE could have a reporting obligation for a taxation year for which the ultimate parent entity 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 Canadian CEs (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.

For example, the US CbC reporting requirement is effective for years beginning on or after July 1, 2016. If the MNE's parent is a tax resident in the United States with a fiscal year begins between January 1, 2016 and June 30, 2016, the parent will not have a US CbC filing requirement for its fiscal year starting during that period, but the Canadian CE will have a filing obligation if the MNE meets the threshold. In such a case, either the Canadian CE can file, or rely on the reporting of another surrogate parent entity of the MNE if that information can be automatically exchanged and meet the filing deadline in Canada. Alternatively, the US parent can voluntarily file early and provide the information to the CRA.

### **Voluntary filing**

If the ultimate parent entity is resident in a country that has a later effective date for a CbC reporting regime but files a CbC report voluntarily to cover any gaps between the implementation date in Canada and that of the tax jurisdiction of the parent, then the Canadian CE is relieved of its filing obligation, assuming that the report is shared with the CRA.

In the case of the United States, which has a later effective date than Canada, the Internal Revenue Service (IRS) has released guidance on early filing, in Revenue Procedure 2017-23, so that the CEs are able to meet the filing requirement in their local jurisdictions.

### **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, assuming that a taxpayer does not have a short fiscal year, the first possible reporting deadline is December 31, 2017. For the purposes of CbC reporting, 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.

Under voluntary early filing, as discussed above, the parent entity's deadline may be different from that in Canada. In the United States, for example, the CbC report would be due at the time of filing of the tax return, which would be earlier than the 12 months deadline in Canada. While this poses no deadline

conflict for Canada, the taxpayer should be aware of the earlier deadline for furnishing information to its parent.

If there is a systemic failure in respect of notification between countries, the Canadian CE may be required to file a CbC report even though the rules would not otherwise require such filing. In this case, the filing deadline would be 30 days from the receipt of a request by the CRA.

### **Change of parent during a fiscal year**

For the purposes of CbC reporting, the parent entity is identified as of the last day of the fiscal year. If the parent entity changes during the fiscal year due to restructuring, the parent entity of the acquired MNE group will be required to file a CbC report with data for the MNE up to the date of takeover; the parent entity of the post-acquisition MNE will be required to file a CbC report for its fiscal year (including data for the CEs from the date of the acquisition to the end of the fiscal year).

### **Penalty for non-compliance with CbC reporting obligations**

The penalty for failure to file a CbC report on time, knowingly or under circumstances amounting to gross negligence, 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 for not providing information required on the prescribed form is \$100 per failure. The penalty for failure to file an information return is \$25 per day of default, subject to a \$100 minimum and a \$2,500 maximum.

### **Conditions for exchange of CbC reports**

The CRA will automatically exchange CbC reports with another jurisdiction in which the MNE group operates if:

- the other jurisdiction has implemented CbC reporting;
- the two jurisdictions have a legal framework in place for automatic exchange of information (e.g., the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (MAC) or a bilateral tax treaty); and
- the jurisdictions have entered into a competent authority agreement related to CbC reporting.

If the CRA is unable to receive CbC reports from the jurisdiction in which the parent resides, then the Canadian CE must file the CbC report.

The exchange of CbC reports is expected to take place mostly under the MAC, as amended by *2010 Protocol and the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports* (CbC-MCAA). In addition to Canada, 56 countries have signed the CbC-MCAA and more are expected to sign.

The United States intends to enter into bilateral competent authority arrangements for automatic exchange with countries with which it has income tax treaty or tax information exchange agreements.

## **Next steps and issues to consider**

The CRA has provided some specific guidance on the information and data required and the filing procedures and requirements for form RC4649. The CRA has also underlined that the reporting entity should adopt a reasonable, consistent and practical approach.

While RC4651 notes that the CRA intends to provide a reasonable degree of flexibility for an initial CbC report, this flexibility is anticipated to arise where guidance or an interpretation may not be available, or where jurisdictions may vary in their approaches. Where the CRA feels that guidance is clear and available, a taxpayer would be wise to be as prepared and compliant as possible.

As has been evident since their announcement, the new CbC reporting requirements will involve increased efforts to gather the requisite information. It may be necessary to upgrade existing information systems or to introduce new internal processes. Given that the first filing deadline could arise in 2017, Canadian taxpayers should now undertake to understand their obligations and to have in place a plan to comply with the requirements.

Deloitte LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West, Suite 200  
Toronto ON M5H 0A9  
Canada

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