

Tax Analysis

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BEPS Action 13: OECD Issues Guidance on CbC Reporting Implementation

The Organization for Economic Cooperation and Development (OECD) on 6 February released guidance on the implementation of transfer pricing documentation and country-by-country (CbC) reporting.¹ The eagerly awaited guidance provided answers to taxpayers' questions regarding the timing of preparation and filing of the CbC report, which companies will be subject to the reporting requirements, the use of the CbC report by jurisdictions, and the mechanisms for government-to-government exchange of CbC reports.

The guidance requires CbC reporting by multinational enterprises (MNEs) with annual consolidated group revenues above EUR 750 million. According to the OECD, this threshold will exclude approximately 85 to 90 percent of all MNE groups from the requirement to file the CbC report, but would still subject MNE groups that control approximately 90 percent of all corporate revenue to the requirement.

The OECD states that the EUR 750 million reporting threshold should strike the right balance between the imposition of a reporting burden and benefits to tax administrations. 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 first CbC reports will be required to be filed for MNE fiscal years beginning on or after 1 January 2016. Given the recommendation in the September 2014 report "Guidance on Transfer Pricing Documentation and Country-by-Country Reporting" that MNEs be allowed one year from the close of the fiscal year to which the CbC report relates to prepare and file the CbC report, the first CbC reports would be filed by 31 December 2017. For MNEs with fiscal years that end on a date other than 31 December, the first CbC report would be filed later in 2018, 12 months after the close of the relevant MNE fiscal year, and would report on the MNE group's first fiscal year beginning after 1 January 2016.

It should be noted that the MNE fiscal year relates to the consolidated reporting period for financial statement purposes, not to taxable years or the financial reporting periods of individual group entities.

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.

¹ <http://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf>

In terms of the appropriate use of the information in the CbC report, the guidance states that jurisdictions will commit to use the CbC report for assessing high-level transfer pricing and other BEPS risks, but should not propose adjustments to income on the basis of an income allocation formula based on CbC report data. However, jurisdictions would not be prevented from using the CbC report information as the basis for making additional inquiries into the MNE's transfer pricing arrangements, which arguably is the goal of the OCED's current CbC initiative.

Comments

The State Administration of Taxation (SAT) has not yet provided any further comments regarding its view on CbC reporting since the OECD released the guidance report in September 2014. It is expected that in the revised Circular 2 to be issued in early 2015, further implementation details would be incorporated by the SAT in view of the recent OECD action plans regarding CbC reporting requirement.

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