

# Tax Analysis

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## BEPS Action 13: Country-by-country Reporting Implementation Package

On 8 June 2015, the OECD, as part of the G20/OECD work on the action plan to address base erosion and profit shifting (BEPS), released *Action 13: Country-by-Country Reporting Implementation Package*. This follows the two reports previously issued by the OECD: (i) the agreement of a three-tier global standard for transfer pricing documentation, including a common template for country-by-country (CbC) information to be reported to the tax authorities (released in September 2014); and (ii) implementation guidance in relation to the CbC report, including the timing of introduction, application to “large” businesses and filing mechanisms (released in February 2015). The implementation package outlines model legislation that governments can use to adopt the new rules, as well as competent authority agreements to implement the sharing mechanisms for the CbC report.

### Model legislation

The implementation package includes model legislation for countries to adopt CbC reporting in their domestic legislation.

Definitions: The model legislation includes some key definitions:

- **Group:** A collection of enterprises related through ownership or control that either is required to prepare consolidated financial reporting statements or would be so required if “equity interests in any of the enterprises” were publically traded on a stock exchange.
- **Excluded multinational enterprise group:** A group with consolidated group revenue of less than EUR 750 million at 1 January 2015 (or an equivalent in local currency). This will be tested against the results of the previous fiscal year. Such a group will be exempt from filing the CbC report.
- **Constituent entity:** Any separate business unit of the group, including companies together with permanent establishments that prepare separate financial statements for any purpose (including management control).

The model legislation sets out how to determine which constituent entity is required to file the CbC report (i.e. the “reporting entity”). This usually will be the “ultimate parent entity,” as the company that prepares consolidated financial statements for the group. Where the ultimate parent entity either (i) is not required to file a CbC report in its jurisdiction; or (ii) has not signed up to the relevant information exchange agreements; or (iii) systematically has failed or suspended its agreement to exchange information, the group can appoint a

“surrogate parent entity.” This is a constituent entity within the group, in an appropriate jurisdiction with the ability to exchange information that is nominated to file the CbC report in its jurisdiction on behalf of the group.

If the CbC report is not, in certain circumstances, filed with and shared by the tax jurisdiction of either the actual parent company or a surrogate, companies may be required to file the CbC report locally. The model legislation allows a nominated constituent entity within a jurisdiction to file the report on behalf of all constituent entities in that jurisdiction.

Notification: Each constituent entity will need to notify its local tax authorities by the last day of the financial reporting year either (i) that it will be filing the CbC report for the group for the year, or (ii) the name and tax residence of the company that will file the report for that fiscal year.

Timing for preparation and filing of CbC reports: As previously announced, the G20/OECD proposes that CbC information should be required for years beginning on or after 1 January 2016 and should be filed annually within 12 months of the end of the financial reporting year to which it relates. Groups with a year ending 31 December 2016 will be the first to file, with a deadline of 31 December 2017. The contents of the CbC report will be as set out in the template issued in the OECD report from September 2014.

The model legislation does not include any specific penalty provisions for noncompliance. It leaves this for individual jurisdictions to determine in line with existing transfer pricing documentation penalties.

### Competent authority agreements

The implementation package includes three model competent authority agreements that could be used by tax authorities to facilitate implementation of the exchange of CbC reports:

- Multilateral competent authority agreement: A multilateral agreement that allows jurisdictions to sign up and exchange information with all other appropriate jurisdictions signed up to the same agreement (based on the model used for the common reporting standard).
- Tax treaty competent authority agreement: To be agreed on a bilateral basis.
- Tax information exchange agreement (TIEA) competent authority agreement: To be agreed on a bilateral basis.

The three model agreements are worded similarly, including definitions that are consistent with the model legislation and include the scope, timing, procedures and safeguards applying to the automatic exchange.

Timing of exchange of information: Tax authorities will be required to share the CbC information with other relevant tax authorities within 18 months of the end of the financial reporting year for the first year, and within 15 months of the end of the financial reporting year for subsequent periods. For example, a group with a year ended 31 December 2016 will file its first CbC report by 31 December 2017, which then would be shared with other relevant tax authorities by 30 June 2018 (and then, for the year ended 31 December 2017, by 31 March 2019).

Confidentiality and safeguarding information: The exchange agreements make clear that information shared as a result of these agreements must be kept confidential and used appropriately. In particular, the agreements reiterate previous requirements that the information should not be used as a substitute for detailed transfer pricing analysis of individual transactions based on full functional and comparability analysis, and that transfer pricing adjustments should not be made on the basis of the CbC reporting alone. In addition, there are proposals to deal with tax authorities that breach confidentiality, or otherwise fail to comply with the terms, by excluding them from future information exchanges.

The implementation package also includes a questionnaire which outlines requirements for data safety and security for tax authorities to adhere to under normal international standards.

### Comments

The implementation package is designed for governments to introduce the CbC report into their respective domestic legislation. In addition, it provides details of the exchange of information mechanisms by which tax authorities share the CbC report with their counterparts in countries where the multinational has a company or permanent establishment. The provision of model legislation (a first for the OECD in the area of international corporate taxation) is in clear support of the G20/OECD objective that the CbC report is to be a single international standard. As such, it is to be implemented consistently by all participating countries. Business will welcome such uniformity, which will be helpful in mitigating unnecessary compliance costs.

While the implementation package is clear that it is intended primarily for governments, there are a number of definitions that will be relevant to businesses. In particular, the model legislation sets out the meaning of group for the purposes of preparing the CbC report, basing the definition on groups required to prepare consolidated financial statements, or those that would have to if any of its enterprises were publically traded. There are no separate definitions in relation to the accounting rules for funds (that were specifically mentioned in the February 2015 implementation guidance as requiring further consideration).

Businesses that have a parent company in a country that does not adopt the CbC report, or does not share the report under the mechanisms proposed, will be helped by the option to elect a surrogate parent. Under this option, the group will have confidentiality protections for their information and will be required to prepare and file the CbC report only once, rather than locally in each country where they have operations.

The model legislation proposes an annual notification requirement such that all resident companies (including, presumably, dormant companies that are subject to the listing in the activities section on the second page of the report template) have to notify the tax authorities in their country of the identity and residence of their reporting entity, the group parent company or its elected surrogate.

The model legislation does not suggest a specific penalty regime in respect of the CbC report, but instead refers to extensions of existing country transfer pricing documentation penalty regimes to the requirements on the reporting entity to file the CbC report. This is appropriate in that the inference is that penalties for noncompliance should be restricted to the reporting entity rather than imposed on group companies with little or no control over the information provided.

As expected, the sharing of information will be by a suitable mechanism, either under existing tax treaties, TIEAs or under the OECD's mutual administrative assistance in tax matters convention (that has been signed by more than 80 countries to date). Businesses will be pleased to see specific safeguards relating to the confidentiality of data, and, as expected, restrictions on the use of the information to transfer pricing/BEPS risk assessment and economic analysis only.

The CbC report will need to be filed electronically in a tagged format. The OECD will release the xml tagging schema shortly and is currently looking at tax authority systems to enable the exchange of data in a secure, electronic, manner. The first exchanges are planned to take place six months after the due filing date for the first year (i.e. June 2018) and, in subsequent years, three months after the due filing date.

There is no further guidance on the master file and local file approach to transfer pricing documentation proposed alongside the CbC report. Businesses were disappointed in February that the master file was not to be subject to a parent-filing and government-sharing mechanism as for the CbC report, and therefore issues may remain in relation to enabling local filing of group information that is not in the possession of the local entity.

In China, although the State Administration of Taxation (SAT) has consistently been a strong public supporter of the BEPS action plans in general, it has not yet provided any further comments regarding its views on CbC reporting since the OECD released its first guidelines and subsequent implementation guidance in September 2014 and February 2015 respectively. It is expected that in the revised Circular 2 to be issued this year, further implementation details would be incorporated by the SAT regarding CbC reporting.

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