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In this issue:

OECD releases additional implementation guidance on CbC reporting and appropriate use of information in CbC reports

The OECD on 6 September released additional guidance on the implementation of the country-by-country (CbC) reporting requirement introduced in the BEPS Action 13 final report. In addition, the OECD released guidance on the appropriate use of information contained in CbC reports (CbCRs).
URL: https://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf
URL: http://www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf

The new guidance consolidates and expands on all of the implementation guidance issued by the OECD since the release of the Action 13 final report. Also included in the text of the new guidance, therefore, is the additional implementation guidance issued on:

- 29 June 2016;
- 5 December 2016;
- 6 April 2017; and
- 18 July 2017.[1]

Because the 6 September release includes all the information found in the prior four releases, when consulting OECD additional guidance on the Action 13 final report, it will only be necessary to refer to the 6 September guidance going forward.

New implementation guidance

The new implementation guidance addresses four specific issues:

- Items reported as revenues in Table 1 of the CbCR, when financial statements are used as the source of the data to complete the CbC template;
- Income taxes paid in advance in Table 1 of the CbCR;
- Treatment of tax refunds in Table 1 of the CbCR; and
- Transitional relief for multinational enterprise groups (MNE groups) with a short accounting period that starts on or after 1 January 2016 and ends before 31 December 2016.

Definition of revenues for Table 1 of the CbCR (new): The 6 September guidance addresses which items should be reported as revenues in Table 1 of the CbCR. The guidance explains that, when financial statements are used as the source of the data to complete the CbC template, all revenue, gains, income, or other inflows shown in the financial statement prepared in accordance with the applicable accounting rules relating to profit and loss (such as the income statement or profit and loss statement) should be reported as "Revenues" in Table 1.

For example, if the income statement prepared in accordance with the applicable accounting rules shows:

- Sales revenue;
- Net capital gains from sales of assets;
- Unrealized gains;
- Interest received; and
- Extraordinary income.

Then the amount of those items reported in the income statement should be aggregated and reported as revenues in Table 1.

The 6 September guidance further explains that comprehensive income/earnings, revaluations, and/or unrealized gains reflected in net assets and the equity section of the balance sheet should not be reported as Revenues in Table 1. Finally, the guidance states that the amount of any income items shown on the income statement need not be adjusted from a net amount.

Members of the Inclusive Framework on BEPS – over 100 countries and jurisdictions that collaborate on the implementation of the BEPS project – are expected to implement this guidance as soon as possible, taking into

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[1] For prior coverage, see Global TP Alerts 2016-023, 2016-038, and 2017-030 and *Arm's Length Standard*, June 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-023-1-july-2016.pdf
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-038-6-december-2016.pdf
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-030-20-july-2017.pdf
URL: http://newsletters.usdbriefs.com/2017/Tax/ALS/170612_3.html

account their specific domestic circumstances. The OECD recognizes that some MNE groups may need time. As a result, the 6 September guidance states that jurisdictions may allow some flexibility during a short transitional period. For US MNEs, the guidance appears to be consistent (or at least not in conflict) with the CbC regulations in Treas. Reg. §1.6038-4, so no change may be needed for implementation in the United States.

How to treat taxes paid in advance in Table 1 of the CbCR (new): The new implementation guidance also addresses how to report the income tax for a fiscal year that has been paid in advance. Specifically, it addresses whether the amount reported in the "Income Tax Accrued-Current Year" column should be linked to the amount reported in the "Income Tax Paid (on Cash Basis)" column of Table 1.

According to the new implementation guidance, the amount listed in the column "Income Tax Accrued-Current Year" is the amount of accrued current tax expense recorded on taxable profits or losses for the reporting fiscal year of all constituent entities resident for tax purposes in the relevant tax jurisdiction, irrespective of whether or not the tax has been paid (for example, based on a preliminary tax assessment).

The guidance further explains that the amount listed in the column "Income Tax Paid (on Cash Basis)" is the amount of taxes actually paid during the reporting fiscal year, which should include not only advance payments fulfilling the relevant fiscal year's tax obligation but also payments fulfilling the previous year(s)' tax obligation (for instance, payment of the unpaid balance of corporate income tax accrued in relation to the previous year(s), including payments related to reassessments of previous years), regardless of whether those taxes have been paid under protest. The new implementation guidance concludes by saying that the amount of "Income Tax Accrued-Current Year" and "Income Tax Paid (on Cash Basis)" should be reported independently.

For example, assume that an MNE group accrues $100 of taxes in year 1 and $150 of taxes in year 2, but pays $75 of taxes in year 1 and $175 of taxes in year 2 (that is, $25 for the year 1 obligation and all $150 of the year 2 obligation). The relevant columns of the MNE group's CbCR would read as follows:

Example 1	Year 1	Year 2
Income Tax Accrued-Current Year	$100	$150
Income Tax Paid (on Cash Basis)	$75	$175

In the alternative, assume instead that the MNE group accrued $100 in taxes in year 1 and $150 in year 2, but then paid $125 in year 1 and $125 in year 2 (that is, all $100 of its obligation in year 1 and $25 in advance for year 2 and then the remaining $125 in year 2). The relevant columns of the group's CbCR would read as follows:

Example 2	Year 1	Year 2
Income Tax Accrued-Current Year	$100	$150
Income Tax Paid (on Cash Basis)	$125	$125

The amounts of "Income Tax Accrued-Current Year" and "Income Tax Paid (on Cash Basis)" would thus be reported independently.

As with the first issue discussed above, Inclusive Framework members are expected to implement this new guidance as soon as possible, taking into account their specific domestic circumstances. The OECD recognizes that MNE groups may need some time to take the guidance into account. As a result, the new guidance states that jurisdictions may allow some flexibility during a short transitional period. For US MNEs, the guidance appears to be consistent with the CbC regulations in Treas. Reg. §1.6038-4, so no change may be needed for implementation in the United States.

How to treat refunds in Table 1 of the CbCR (new): The 6 September guidance addresses how tax refunds should be reported. In general, an income tax refund should be reported in the column entitled "Income Tax Paid (on Cash Basis)" in the reporting fiscal year in which the refund is received. The new implementation guidance states that an exception to this may be permitted when the refund is treated as revenue of the MNE group under the applicable accounting standard or in the source of data used to complete Table 1.

Inclusive Framework members again are expected to implement this guidance as soon as possible. The OECD recognizes that MNE groups may need time to take the guidance into account. As a result, the 6 September guidance says that jurisdictions may allow some flexibility during a short transitional period, during which the OECD encourages taxpayers to provide the following statement voluntarily in Table 3, if relevant: "Tax refunds are reported in Revenues and not in Income Tax Paid (on Cash Basis)."

Short accounting periods (new): Finally, as a transitional measure, the 6 September guidance states that jurisdictions may allow the reporting entity of an MNE group with a short accounting period beginning on or after 1 January 2016 and ending before 31 December 2016 to file the CbCR in accordance with the same timelines as for MNE groups with a fiscal year ending on 31 December 2016. The date by which the CbC report is to be exchanged would be similarly extended. The guidance concludes by stating this transitional relief would not frustrate the policy intention of the Action 13 minimum standard.

Guidance on appropriate use of information in CbC reports

According to the BEPS Action 13 final report, a jurisdiction's ability to obtain and use CbCRs is conditional on it using CbCR information appropriately. For these purposes, appropriate use is restricted to:

- High-level transfer pricing risk assessment;
- Assessment of other base erosion and profit shifting related risks; and
- Economic and statistical analysis, when appropriate.

The BEPS Action 13 final report makes clear that information contained in CbCRs should not be used by itself as a basis for proposing changes to transfer prices or adjusting a taxpayer's income using global formulary apportionment.

The appropriate use guidance clarifies how tax authorities may use CbC information by defining the term "BEPS-related risk." In addition, the guidance expands on the consequences of noncompliance with the appropriate use condition and sets out steps a jurisdiction may take to ensure the appropriate use of CbCR information.

The meaning of "BEPS-related risk": The guidance explains that the term "assessment of other BEPS-related risks" should be understood to refer to the high-level assessment of tax risks that may result in the erosion of a country's tax base. The guidance notes that, in practice, it will usually be possible to understand a tax arrangement giving rise to that risk only when further inquiries have been made. Nevertheless, the guidance reiterates that CbCR information should be limited to use in risk assessment, and only as a basis for making those further inquiries (and economical and statistical analysis, when appropriate).

Consequences of noncompliance with the appropriate use condition: The Action 13 final report includes a number of consequences for a jurisdiction resulting from noncompliance, or possible noncompliance, with the appropriate use condition. These consequences are given effect through the model competent authority arrangements (CAAs) that are used in implementing CbC reporting.

The consequences are as follows:

- Appropriate use as a condition for receiving and using CbCRs.
- A commitment by competent authorities to disclose breaches of appropriate use to the Coordinating Body Secretariat (for exchanges pursuant to the multilateral CAA) or other competent authority (for exchanges pursuant to the model bilateral CAAs, such as the exchanges the United States will engage in).
- A commitment by competent authorities promptly to concede inappropriate adjustments in competent authority proceedings.
- The ability of competent authorities to suspend the exchange of CbCRs temporarily following consultation in cases of noncompliance.

With respect to the first consequence, the appropriate use guidance explains that a jurisdiction may not require local filing, unless:

1. That jurisdiction satisfies the appropriate use condition; and
2. The other conditions of local filing in the BEPS Action 13 final report are met.

When a jurisdiction imposes local filing in circumstances that are not permitted under the BEPS Action 13 final report, this will be identified during the jurisdiction's peer review evaluation.

With respect to the second consequence, when the notification is made to the Coordinating Body Secretariat (that is, in the case of an exchange pursuant to the multilateral CAA), the secretariat will notify all competent authorities that have an exchange relationship under the multilateral CAA with the competent authority that provided notice of the noncompliance.

The appropriate use guidance also explains that any noncompliance with the appropriate use condition will be considered "significant non-compliance." When a competent authority determines that there is or has been significant noncompliance in another jurisdiction, that competent authority may temporarily suspend the exchange of CbCRs by giving notice in writing. Nevertheless, the guidance further states that the competent authority should, before suspending the exchange of CbCRs, consult with the competent authority in the other jurisdiction on whether significant noncompliance has occurred.

Approaches to determine appropriate use of CbCR information: The appropriate use guidance lists steps that jurisdictions may take, if necessary, to implement the appropriate use restriction into their domestic rules and processes. The guidance states that a jurisdiction should be able to answer in the affirmative six basic questions, which are provided in a checklist, that assess the robustness of its processes to ensure compliance with the appropriate use condition, or should expect to be able to do so before the first exchange of CbCRs takes place.

The appropriate use guidance recognizes that, in practice, jurisdictions may be able to rely on existing policies and procedures. In such a case, the initial step will likely entail confirming that CbCR information is covered by these policies and procedures. As a result, additional steps to ensure compliance with the appropriate use condition may be reasonably modest.

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Argentina issues rules on exchange of country-by-country information

The Argentine Revenue Administration (AFIP from its Spanish acronym) on September 20 published a general ruling that implements a country-by-country (CbC) reporting regime for constituent entities of multinational entity (MNE) groups and the tax jurisdictions where they operate, which applies to fiscal years beginning on or after January 1, 2017.

The new ruling – General Ruling No. 4130/E – was issued as part of the commitments assumed by Argentina as signatory to the Convention for Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports, which define international standards for the development of research and control actions in the international taxation area.

The ruling excludes from the CbC regime all MNE groups whose total annual consolidated turnover does not exceed EUR 750 million or its equivalent in the local currency of the parent company's tax jurisdiction, at the exchange rate prevailing on January 31, 2015.

CbC report

The CbC report must be prepared by any of the following entities:

- The ultimate parent entity (UPE) residing in Argentina for tax purposes;
- A surrogate entity[2] resident in the country, appointed by the parent entity to file the report on its behalf;
- A constituent entity, resident in the country, that is part of the MNE group (other than entities listed above), provided at least one of the following assumptions holds true:
    - The ultimate parent entity is not required to file a CbC report in its tax jurisdiction;
    - On the deadline[3] for filing the CbC report, the tax jurisdiction of the ultimate controlling entity has not signed a qualified competent authority agreement (QCAA)[4] with Argentina, even if both jurisdictions may be signatories to an international agreement[5] in force; and
    - In the event of a systemic failure to exchange by the tax jurisdiction of the ultimate parent entity.

The resident constituent entities that are part of the MNE group included under 3 will be exempted from filing the CbC report if the report has already been filed by a surrogate entity not residing in Argentina with the tax authority of its local tax jurisdiction, provided the following conditions are met:

- The tax jurisdiction has a CbC report filing scheme in place;
- The tax jurisdiction is signatory to a qualified competent authority agreement to which Argentina is a party;
- No systemic failure to exchange has been reported to or verified by AFIP; and
- The constituent entity resident in that jurisdiction has notified the tax authorities of its appointment as surrogate parent entity.

Furthermore, the constituent entities of the MNE group resident in the country should inform the tax authorities that the report has been filed with the corresponding tax jurisdiction by the last business day of the second month following the deadline for filing the CbC report.

Content of the CbC report

The CbC report must include the following information for each jurisdiction where the MNE group operates:

- The group's total turnover;
- Pretax income;
- Income tax paid and accrued for the current fiscal year, including any withholdings applied;
- Capital stock;
- Retained earnings;
- Number of employees; and
- Tangible assets, cash, and cash equivalents.

For each constituent entity of the MNE group within each jurisdiction, the following information must be included:

- Argentine Tax Identification Number (CUIT) or tax identification number (TIN) in the country of residence if the entity is a foreign person;
- Corporate name;
- Tax jurisdiction and country of organization; and
- Main business activity and description of the same.

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[2] Only entities with shareholders' equity equal to or higher than ARS 50 million or that comply with other operational and/or functional structure requirements may be appointed as surrogate entities for purposes of filing the CbC report.
[3] The last business day on the 12th month after the last day of the reporting fiscal year of the ultimate controlling entity of the MNE group.
[4]An agreement entered into between authorized representatives of the jurisdictions that are signatories to an international convention, for the automatic exchange of CbC reports between such jurisdictions.
[5] This list may be checked in the AFIP web page.

The report must be filed no later than the last business day of the 12th month following the end of the reporting fiscal year of the ultimate parent entity of the MNE group. Filing must be done through the AFIP's web page, in the section "Country-by-Country Reporting Scheme," under the option "File Report," on information return form F. 8097.

MNE group constituent entities resident in Argentina

The constituent entities of the MNE group that reside in Argentina are required to provide the following information:

- Regarding the Ultimate Parent Entity:
  - Corporate name;
  - Argentine Tax Identification Number (CUIT), Foreign Investor Identification (CIE) or tax identification number (TIN) in the residence country, as applicable;
  - Type of entity;
  - Tax domicile;
  - Date and place of organization;
  - Tax jurisdiction;
  - Fiscal year closing date;
  - Total consolidated turnover for the fiscal year immediately prior to the reporting year;
  - Whether the MNE group is subject to the CbC reporting requirement because it exceeds the EUR 750 million threshold; and
  - Whether it is required to act as reporting entity under the CbC reporting scheme.
- Regarding the reporting entity, other than the ultimate parent company:
  - Corporate name, Argentine tax identification number (CUIT), foreign investor identification (CIE), or tax identification number (TIN) in the residence country, as applicable;
  - Type of entity;
  - Tax domicile;
  - Date and place of organization;
  - Tax jurisdiction;
  - Fiscal year closing date;
  - Total consolidated turnover for the fiscal year immediately prior to the reporting yea; and
  - Whether the entity files a CbC report as surrogate parent entity nominated by the ultimate parent entity, or as a constituent entity.

The information listed above must be filed no later than the last business day of the third month following the end of the reporting fiscal year of the ultimate parent entity. Filing must be through AFIP's web page, in the section "Country-by-Country Reporting Scheme" under the option "Registration process," on the information return form F. 8096.

Record-keeping requirements

Records and documentation supporting the CbC report must be kept for a term of five years after the statute of limitations for the reporting fiscal year has run out.

Penalties

Failure to comply with this filing obligation will be considered a key indicator of the need for assessment and verification of risks associated with transfer prices, base erosion, and profit shifting in relation to the MNE's constituent entities.

Furthermore, failure to comply with the obligations set forth by the new ruling will be subject to the penalties provided by Act 11683. Specifically, failure to comply may result in any of the following actions:

- Rating under a higher risk category, under the provisions set forth in General Ruling No. 3985 – Risk Assessment System (SIPER);
- Suspension or exclusion, as applicable, from any special tax registries where the entity may be registered; and
- Suspension of any application for an exclusion or nonwithholding certificate.

Other considerations

The information included in the CbC Report may be used by AFIP for several purposes, including the assessment of risks associated with transfer prices, base erosion and profit shifting, and the development of economic and statistical analysis, when applicable.

Notwithstanding the above, this reporting scheme does not repeal the transfer pricing regime established by General Ruling 1122/2001.

Effective date

The CbC reporting obligation applies for the fiscal years of each ultimate parent entity in the MNE group beginning on or after January 1, 2017.

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Taiwan to amend transfer pricing rules to adopt Action 13 concepts

Taiwan's Ministry of Finance (MOF) on July 27 announced a draft amendment of the transfer pricing guidelines that would adopt the OECD's BEPS Action 13 guidance into domestic legislation. The MOF will collect public comments on the proposed amendment during August and September. The amendment is expected to be approved before the end of 2017.

The revised guidelines would introduce a three-tiered transfer pricing documentation regime that would be applicable to fiscal years beginning on or after January 1, 2017 (FY2017). Taxpayers that meet certain criteria would have to provide a country-by-country report (CbCR), a master file, and a local file. This documentation regime will provide the tax authority with a higher degree of transparency to review a taxpayer's transfer pricing documents and to evaluate whether any intercompany transactions have been arranged to avoid tax liability.

The timeline to prepare/submit the three-tiered transfer pricing documentation is illustrated below:

For calendar-year taxpayers, the FY2017 master file and local file should be ready by the income tax return filing deadline of May 31, 2018, and the FY2017 master file and CbCR should be filed before December 31, 2018.

Action required

CbCR: Although the CbCR is prepared by the ultimate parent entity of the MNE group, the local entity in Taiwan should be prepared for the parent entity's request to provide the local entity's financial information. In addition, the local entity in Taiwan should monitor the list to be released by the MOF of countries that have not entered into a competent authority agreement (CAA) with Taiwan, because the existence of a CAA between Taiwan and the ultimate parent entity's country of residence will determine whether or not the local entity in Taiwan is required to submit the CbCR to the Taiwan tax authorities.

Master file: The master file is also prepared by the MNE group's ultimate parent entity. However, it is recommended that the local entity in Taiwan take the initiative to follow up with the ultimate parent entity regarding the status of the master file, and to review whether the information in the master file is consistent with the Taiwan local entity's understanding. In addition, if the master file is prepared in a foreign language, the local Taiwan entity should arrange to have a Chinese translation prepared.

Local file: The draft amendment lists additional required content for the local file, including a description of the taxpayer's business strategy, business restructurings, transfers of intangible assets (if any), the management organization chart (or reporting line), the list of intercompany transactions by transaction type, and most importantly, disclosure of important intercompany agreements. The local Taiwan entity should examine and prepare these documents in advance.

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Irish report on corporation tax code includes transfer pricing recommendations

The Irish government on 12 September published a report on its corporation tax code prepared by an independent academic that had been appointed to perform the review in October 2016.

The review's terms of reference encompassed the following matters:

- Ensuring that Ireland's corporation tax regime does not provide preferential treatment to some taxpayers;
- Further implementing Ireland's commitments under the OECD's base erosion and profit shifting (BEPS) project, which includes the transfer pricing guidance in actions 8-10 and 13;
- Achieving the highest international standards in tax transparency; and
- Delivering tax certainty for businesses and maintaining the competitiveness of Ireland's corporation tax offering including maintaining the 12.5 percent rate of corporation tax.

This alert details the key transfer pricing-related proposals arising from the review, including potential changes to Ireland's transfer pricing laws:

- Updating Ireland's domestic transfer pricing laws to align them with the 2017 version of the OECD transfer pricing guidelines, including action 8-10 and 13;
- Removal of the grandfathering exemption, whereby arrangements that were in place and the terms agreed before 1 July 2010 are outside Ireland's domestic transfer pricing rules;
- Expansion of domestic transfer pricing rules to non-trading transactions and capital transactions;
- Imposition of an obligation on Irish taxpayers subject to transfer pricing laws in Ireland to have transfer pricing documentation in place in accordance with Action 13 and the new Chapter V of the OECD *Transfer Pricing Guidelines for Multinational Enterprises and Tax Authorities*, that is, the master file and local file approach; and
- Consideration to extending domestic transfer pricing rules to small and medium-sized enterprise (SME) groups that are currently outside the scope of Ireland's documentation regime.

Transfer pricing proposals

The key transfer pricing-related proposals are outlined below in more detail.

Further Implementation of Ireland's commitments under BEPS actions 8-10 and 13: At present, Ireland's domestic transfer pricing law is aligned with the 2010 version of the OECD transfer pricing guidelines. The report recommends that Ireland should update its domestic law to align with the current version of the OECD transfer pricing guidelines, which were published in July 2017. The new guidelines include the changes arising from the OECD BEPS project, including the principles contained in actions 8-10 ("Aligning Transfer Pricing Outcomes with Value Creation") and action 13 ("Transfer Pricing Documentation and Country-by-Country Reporting").

In relation to Actions 8-10, one of the main effects for companies operating in Ireland will relate to how entitlement to intangible-related returns are allocated among group members. The amendments in the 2017 OECD transfer pricing guidelines contain critical changes in relation to the allocation of risk and allocation of intangible-related profits. Legal allocation of risk under contract between related parties will be disregarded to the extent the allocation is not consistent with the actual conduct of the parties. The key factors are who controls risk and who has the financial capacity to bear risk. In relation to the allocation of intangible-related returns, the guidelines differentiate between economic ownership and legal ownership of intangibles, the execution of value-creating development, enhancement, maintenance, protection, and exploitation (the "DEMPE" functions) and the allocation of arm's length remuneration thereto.

In relation to action 13, the main impact for companies operating in Ireland will be the introduction of a two-tier transfer pricing documentation requirement, which calls for filing a master file and a local file. Companies operating in Ireland will already be familiar with the other key pillar of action 13 – country-by-country reporting requirements that are already included in Ireland's domestic tax law. The significant difference between current documentation requirements and action 13 documentation requirements is that groups will be required to provide the tax authorities with substantially more information on their global operations than in the past, including specific information on intangibles, financing activities, the supply chain of key products/services, and details of relevant tax rulings and advance pricing agreements.

Application of transfer pricing law to arrangements whose terms were agreed before 1 July 2010 ("grandfathered" arrangements): When Ireland's transfer pricing law was introduced in Finance Act 2010, Irish Revenue included provisions to ensure certain trading transactions would fall outside the transfer pricing documentation requirement. Such arrangements are termed "grandfathered arrangements." To the extent the terms of a grandfathered arrangement were not subsequently amended, then it was possible that the transaction in question did not fall within the ambit of transfer pricing laws in Ireland. The report indicates that if Ireland's domestic transfer pricing law is not extended to grandfathered arrangements, there will be no specific transfer pricing provisions – whether including or excluding the 2017 OECD transfer pricing guidelines – applying to such arrangements. The report also states that if legislative changes are introduced to remove this exemption, consideration would need to be given to the announcement and commencement date of any such changes.

Expanding domestic transfer pricing rules to non-trading and capital transactions: At present, Ireland's transfer pricing regime is relevant only for related-party transactions that are taxed at the 12.5 percent rate of corporation tax in Ireland. This means that certain transactions are not within the remit of transfer pricing in Ireland, including non-trading interest income, certain interest expenses treated as a charge on income, rental income, non-trading royalty income, foreign income, acquisitions/disposals of tangible and intangible assets, and assets subject to capital allowance claims. Also excluded currently are interest-free loan arrangements, which are considered non-trading in nature. The report recommends that consideration be given to extending domestic transfer pricing rules to non-trading transactions and capital transactions. The report also recognizes that certain of the above transaction classes, including capital transactions and capital allowances, have equivalent concepts in other parts of Ireland's tax laws to the arm's length principle that allow for the adjustment of capital values to reflect market value.

The report outlines a number of policy options available regarding the extension of transfer pricing rules to capital transactions, including:

- Continue to keep such transactions outside the scope of transfer pricing rules on the basis that existing rules have comparable concepts to the arm's length principle;
- Bring all capital transactions within the scope of transfer pricing rules; and

- Continue to keep such transactions outside the scope of transfer pricing rules but supplement existing market value rule contained in domestic law with the application of the OECD transfer pricing guidelines when appropriate.

Strengthening domestic transfer pricing documentation requirements: Irish Revenue issued guidance in 2010 (Tax Briefing Issue 7) that outlined good practices for Irish transfer pricing documentation. The guidance was subsequently reissued in August 2017. The existing guidance refers to Chapter V of the 2010 OECD transfer pricing guidelines and EU transfer pricing documentation as representing good practices for the format of documentation. Action 13 now provides for more detailed transfer pricing documentation in the format of a master file and a local file. The report suggests that there is a strong case for updating Ireland's domestic transfer pricing documentation law to align with the new Chapter V of the 2017 OECD transfer pricing guidelines.

Extending transfer pricing rules to small and medium-sized enterprises (SMEs): Ireland's transfer pricing regime currently does not apply to some SMEs, as defined by an EU recommendation of 6 May 2003. An SME is defined as an enterprise with less than 250 employees and either turnover of EUR 50 million or less or total assets (before deduction of liabilities) of less than EUR 43 million. This exemption is applied on the basis that such small groups would incur an undue administrative burden if they were required to prepare transfer pricing documentation. The report states that the OECD transfer pricing guidelines already include provisions that allow for a pragmatic solution for smaller enterprises when considering the level of transfer pricing support that needs to be in place to demonstrate the arm's length nature of intercompany dealings. On that basis, the report outlines a number of policy options that could be considered:

- Retain the current SME exemption in Irish transfer pricing law;
- Remove the SME exemption completely;
- Reduce the size threshold to bring more companies within the scope of domestic transfer pricing law;
- Remove the SME exemption completely and also reduce transfer pricing documentation requirements for small entities to reduce compliance burden; and
- Align with the approach taken in the United Kingdom, whereby certain transactions considered to be high risk are brought within the scope of transfer pricing.

Comments

Given the significant changes contained in the new 2017 OECD transfer pricing guidelines, it is likely that many of this report's recommendations will be formally adopted. The report indicates that the recommendations, if implemented, should be in place no later than the end of 2020. We would expect that the recommendations pertaining to alignment of Ireland's domestic transfer pricing law to the 2017 version of the OECD transfer pricing guidelines will be adopted in the short term. Other recommendations, such as removal of grandfathering status, expansion of transfer pricing law to non-trading and capital transactions, and potential removal of the SME exemption may be subject to additional consultation and analysis before any formal decision is taken.

Because these changes are likely to have a material impact for companies in Ireland, consultation and a period of advance notice of such changes would be welcome. Irrespective of the implementation date of any of the report's recommendations, companies should review their operations to determine the potential impact of these changes on their business and assess readiness to deal with any changes in a timely manner.

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Malaysia issues sample notification letters for country-by-country reporting

Malaysia's Internal Revenue Board (IRB) has issued sample notification letters for entities subject to the country-by-country (CbC) reporting notification requirement.

Two different sample notification letters have been provided, one for reporting entities (ultimate holding companies or surrogate holding companies that are tax resident in Malaysia) and the other for non-reporting entities.
URL:
http://lampiran1.hasil.gov.my/pdf/pdfam/CbCR_Notification_Letter_Reporting_Entity.pdf?CSRF_TOKEN=1c1845423608ee7732884469f294571485527629
URL:
http://lampiran2.hasil.gov.my/pdf/pdfam/CbCR_Notification_Letter_Non_Reporting_Entity.pdf?CSRF_TOKEN=1c1845423608ee7732884469f294571485527629

To avoid duplication, notification may be provided by one Malaysian constituent entity on behalf of other Malaysian constituent entities of the same multinational enterprise (MNE) group.

Malaysia's CbC rules

Under Malaysia's Income Tax (Country-by-Country Reporting) Rules 2016, the CbC reporting requirement is effective for financial years commencing on or after 1 January 2017 for MNE) groups with annual consolidated revenue equal to or exceeding MYR 3 billion in the financial year preceding the reporting financial year.

Under the CbC reporting rules, a Malaysian ultimate parent company or surrogate parent company (referred to as ultimate holding company and surrogate holding company in the CbC reporting rules) of an MNE group must file a CbC report. A surrogate holding company is defined as one of the constituent entities that is tax resident in Malaysia and is appointed by the MNE group as the sole substitute for the ultimate holding company to file the CbC report ("surrogate parent filing").

Surrogate parent filing is required in the following scenarios:

- The ultimate holding company is not resident in Malaysia and is not obligated to file a CbC report in its jurisdiction of tax residence;
- The jurisdiction in which the ultimate holding company is tax resident does not have a qualifying competent authority agreement in effect for the automatic exchange of CbC reports to which Malaysia is a party at the time the CbC report is required to be filed; or
- There is a systematic failure of the jurisdiction of tax residence of the ultimate holding company regarding the automatic exchange of that has been notified by the director general to the constituent entity that is tax resident in Malaysia.

Notification requirement and formats

If an MNE group meets the CbC reporting threshold in Malaysia or in the ultimate holding company's jurisdiction of tax residence (the local currency threshold would apply when CbC reporting regulations have been enacted in that jurisdiction), written notification must be provided to the director general of the IRB by a constituent entity on or before the last day of the reporting financial year. For example:

- If the reporting financial year is 1 January 2017 to 31 December 2017, the director general must be notified by 31 December 2017; and
- If the reporting financial year is 1 September 2017 to 31 August 2018, the director general must be notified by 31 August 2018.

Action required by MNE groups

As an immediate next step, a written notification listing the reporting entity for the MNE group (the ultimate holding company or surrogate holding company) must be provided to the director general on or before the last day of the reporting financial year.

Failure to notify the director general within the required time frame may incur a penalty for noncompliance with the CbC reporting rules.

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IRS APMA Program issues draft APA template for comment

The IRS Advance Pricing and Mutual Agreement (APMA) Program on September 19 issued a revised draft advance pricing agreement (APA) template for public comment.[6]

The APA template is for use with unilateral or bilateral/multilateral APAs requested under Rev. Proc. 2015-41.[7] US taxpayers are required to submit a proposed APA as Exhibit 15 to its complete APA request, in a form substantially similar to APMA's current model APA. When finalized, the revised draft APA template would replace APMA's current model APA, which has not been substantially updated since 2004. As noted above, the APA template has been issued in draft, and may be changed based on comments received.

An APA is a signed contract that sets out the terms agreed to between the IRS and the US taxpayer – in a unilateral APA – or between the IRS and foreign tax authorities – in a bilateral/multilateral APA – including the best method for determining arm's length prices of the "covered issues"[8] under IRS section 482 and any other Code sections identified in the APA, the Treasury regulations thereunder, and any applicable tax treaties.

The revised draft APA template incorporates new changes in the APA process and conforms to language contained in the 2015 revenue procedure. The draft APA template presents a menu of options for selection by US taxpayers, covering a wide range of situations, intended to minimize the need for custom drafting and negotiation over the text of the APA. The explanation to the draft APA template notes that the revision is intended to:

- Facilitate quicker and more accurate drafting of APAs;
- Provide more guidance to taxpayers in preparing the proposed draft APA that is required as part of an APA request;
- Facilitate APMA's review of draft APAs; and
- Facilitate the mutual agreement process for bilateral and multilateral APAs.

The IRS also issued detailed instructions on the template APA, and provided a sample APA, supplemented by explanatory comments.

A summary of the key changes in the draft APA template from APMA's current model APA is provided below.

Key changes

Limitation on assistance: Consistent with language contained in section 2.02(4) of Rev. Proc. 2015-41 and section 7.02 of Rev. Proc. 2015-40,[9] the draft APA template specifically includes an acknowledgment by the US taxpayer that if the covered issue(s) relate to one or more countries that have a tax treaty with the IRS but are not a party to the mutual agreement implemented by the APA, the IRS may decline to provide competent authority assistance if the foreign tax authority proposes an adjustment relating to the covered issue(s). For example, in the event of a foreign-initiated adjustment covered by a unilateral APA, the IRS may not provide competent authority assistance. Although

[6] The draft template is not posted on irs.gov, but interested parties can request a copy by emailing lbi.ttpo.apma.feedback@irs.gov with the subject line "request."
[7] Rev. Proc. 2015-41 was released on August 12, 2015, and updated and superseded Rev. Proc. 2006-9, as modified by Rev. Proc. 2008-31.
[8] "Covered issues" is the new term contained in Rev. Proc. 2015-41 for what was commonly known as "Covered Transactions" previously.
[9] Rev. Proc. 2015-40 provides guidance on the process of requesting and obtaining competent authority assistance under the mutual agreement procedure article of US tax treaties. Rev. Proc. 2015-40 updates and supersedes Rev. Proc. 2006-54, and was issued concurrently with Rev. Proc. 2015-41.

consistent with the 2015 APA and MAP revenue procedures, this practice was a departure from the prior revenue procedures and highlights that US taxpayers may need to exercise caution about entering into unilateral APAs with the IRS when the covered issue(s) could have been covered by a bilateral APA. In such cases, US taxpayers should consider trying to obtain an explicit assurance from the IRS APMA team in the unilateral APA that in the event of a foreign-initiated adjustment covered by the unilateral APA, the IRS would agree not to reject its competent authority request. Based on the wording in the draft APA template, it is unclear how willing APMA may be now to agree to such a request.

Conforming adjustments and repatriation of funds: If a primary transfer pricing adjustment arises as a result of an APA, Rev. Proc. 99-32 governs the repatriation of funds to conform the accounts,[10] unless competent authority repatriation is requested and agreed to pursuant to Rev. Proc. 2015-41. The executed APA sets out the terms of any repatriation of funds required as a result of an APA primary adjustment. Typically, in a bilateral APA context, the US taxpayer is permitted to establish an account receivable or payable to its related foreign entity in the amount of the APA primary adjustment. That account typically will not bear interest and must be paid[11] within 90 days of the later of the date for timely filing the federal income tax return (including extensions) for the taxable year to which the APA primary adjustment relates to or the APA's effective date. If any amount of the accounts payable is not paid within the 90-day period, the US taxpayer would face the federal income tax consequences of the secondary adjustments (deemed distribution or capital contribution).

In describing the accounts payable to be established, the draft APA template states in Appendix A: Section 6 (Conforming Adjustments and Repatriation of Funds): "This payable will be treated as indebtedness for all US federal tax purposes, including, but not limited to, Code section 956." This proposed policy seems inconsistent with the Tax Court's decision in *Analog Devices*,[12] where the court held that an accounts receivable established to repatriate a transfer pricing adjustment under a Rev. Proc. 99-32 closing agreement does not constitute related-party indebtedness between the corporation and its controlled foreign corporation under section 965(b)(3).[13] Because requesting an APA is a voluntary process, this specific language may cause concern to US taxpayers that may otherwise consider requesting an APA. We anticipate that APMA will receive numerous comments on this proposed language.

Format of draft APA: As noted previously, the draft APA template presents a menu of options for selection by US taxpayers, covering a wide range of situations, with the intention of minimizing the need for custom drafting and negotiation over the text of the APA. While the intention behind such options is appreciated, this format appears to provide less flexibility for US taxpayers than APMA's current model to the extent that the APMA team is reluctant to deviate from the proposed language. For example, Section 6.f. provides a list of options for complying with the financial statements requirement for the APA annual report. APMA's current model APA is less prescriptive regarding how this requirement may be satisfied.

The general instructions to the draft APA template note that options are indicated by square brackets and that an "x" should be inserted between the brackets to indicate the selected option. It is uncertain whether APMA will be unwilling to add bespoke terms to the APA. Options that are not selected should not be deleted but instead should be left in the text of the draft APA. Although the instructions state that "The term associated with the "x" will be given operative effect in the executed APA," it is unclear if the executed APA between the IRS and the US taxpayer will still include the extraneous language.

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[10] US Treasury Reg. §1.482-1(g)(3) states that adjustments are required to conform a taxpayer's accounts to reflect allocations made under section 482 allocations. This regulation provides in part: "(i) In general. – Appropriate adjustments must be made to conform a taxpayer's accounts to reflect allocations made under section 482. Such adjustments may include the treatment of an allocated amount as a dividend or a capital contribution (as appropriate), or, in appropriate cases, pursuant to such applicable revenue procedures as may be provided by the Commissioner (see § 601.601(d)(2) of this chapter), repayment of the allocated amount without further income tax consequences."
[11] Payment must be in the form of money, a written debt obligation payable at a fixed date and bearing interest at an arm's length rate as provided in §1.482-2(a)(2), or through an accounting entry offsetting such account against an existing bona fide debt between the US taxpayer and the related foreign entity.
[12] *Analog Devices, Inc. v. Commissioner*, 147 T.C. No. 15 (November 22, 2016).
[13] This decision is a reversal of the court's position in *BMC Software, Inc. v. Commissioner* (BMC Software I), 141 T.C. 224 (2013), which itself was reversed by the Fifth Circuit, 780 F.3d 669 (2015).

Further, some options are flagged with an asterisk after the square brackets. Taxpayers that select flagged options are required to provide a justification for the selection in the APA request. For example, if a US taxpayer proposes that if an adjustment is required, such adjustment would be made to the nearest edge of the arm's length range and not the median, the US taxpayer would now be required to include a justification for this proposal in the APA request.

Finally, the draft APA template also contains placeholder phrases consisting of a hashtag followed by one or more words in block capital letters. Generally, the US taxpayer should replace a placeholder phase with appropriate text; however, if it is not an option chosen by the US taxpayer, then the hashtag should be changed to a caret (^).

While such standardization may be useful to the APMA team, it may result in a longer, more confusing, and potentially more prescriptive APA for US taxpayers. It may also require US taxpayers to include justification for certain proposals that are relatively standard in an APA context.

Critical assumptions

Appendix B of the draft APA template revises the standard critical assumptions contained in the current model APA. The draft APA template splits out the existing critical assumptions into two separate sets of critical assumptions, and expands the current wording to state that "the Covered Entities'…contractual terms, markets, and economic conditions faced in relation to the Covered Issue(s) will remain materially the same as described in the APA Request." [Emphasis added]

Appendix B also provides that the covered entities will not cause a critical assumption to fail for the purpose of rendering the APA ineffective, unless they have an independent business justification for the action that causes the critical assumption to fail. If one or more of the covered entities do cause a critical assumption to fail for the purpose of rendering the APA ineffective, then the covered entities will not withhold consent to an amendment to this APA to the effect that the APA will continue in force without regard to such failure. In that case, if a covered entity refuses to sign such an amendment, an amendment may be executed without signature and will then have the same force and effect as if the amendment had the signature. It is unclear why APMA believes this explicit provision is necessary.

APA annual report: Section 6.e. of the draft APA template provides clarification that US taxpayers can combine annual reports for multiple APA tax years, provided that all required information for each APA tax year is clearly presented. This is consistent with common practice now for US taxpayers, and the specific acknowledgement in the draft APA template is appreciated.

Appendix C of the draft APA template sets out the information required to be contained in the APA annual report, which, in general, includes more specific requirements for US taxpayers than the current model APA. For example, US taxpayers would be required to provide more specific information in relation to APA primary adjustments, and detailed numerical explanations of how the results of the application of the covered methods is reflected on the US return, with reference to particular line items on the US return. The draft APA template provides that US taxpayers cannot simply attach a copy of the Schedule M-1 or M-3 and must include the amounts, description, reason for, and financial analysis of any relevant book-tax differences, as reflected on Schedule M-1 or M-3 of the US return. The draft APA template also sets out more specific requirements for the financial analysis that US taxpayers must provide to show their calculations to apply the covered method(s) to the covered issue(s) for that APA covered year. In addition, the draft APA template includes the additional critical assumption language noted above, and would require the US taxpayer to also identify any material differences between the covered entities' contractual terms, markets, and economic conditions.

Effect of certain adjustments by tax authorities and resulting competent authority proceedings: The draft APA template includes provisions relating to situations in which financial data used in one or more covered methods may be affected by adjustments by a tax authority, and provides that the effect of any such adjustments on the financial data would be ignored. It is unclear, based on the proposed wording, what actual impact this would have.

Other provisions:

- The draft APA template explicitly notes that the APA does not limit the IRS's authority to audit issues other than the covered issue(s), including issues that arise under Code section 482 and any other Code sections identified in Appendix A to the APA. In addition, the draft APA template provides that the IRS and US taxpayer agree that factual representations made in conjunction with the APA request may be used in judicial and

administrative proceedings. While these are not changes in policy, the current model APA is not explicit in this regard.
- Unlike the current model APA, the draft APA template includes specific provisions to address what would occur if an APA is terminated early.
- In the event of a dispute concerning the interpretation or application of the APA, the draft APA template notes that the parties will seek a resolution by the director of Treaty and Transfer Pricing Operations. Under APMA's current model APA, this person is the director of APMA. In practice, it is expected that US taxpayers would continue to approach the APMA director in the first instance to discuss any issues.

The IRS has requested comments on the draft APA template by October 31, 2017. Comments should be in narrative form rather than as a markup of the template APA.

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Kosovo issues guidance on transfer pricing procedures and documentation requirements

Kosovo's Ministry of Finance released guidance on 20 July that sets out the procedures for the administration of related-party transactions.

The final guidance – Administrative Instruction MoF-No.02/2017 – which applies from 28 July 2017, makes some changes to a draft instruction issued in September 2016. The final guidance includes a definition of intragroup services and distinguishes between low- and high-value-adding services. For example, under the new guidance, no intragroup services will be considered to have been provided when the activities duplicate a service that another group member performs for itself or is provided to that group member by a third party. To be considered low-value-adding services, the services rendered must be supportive in nature, must not be part of the multinational company's core business, must not require the use of or lead to the creation of special and valuable intangible assets, or involve the assumption of significant risk for the service provider.

When calculating the market value of low-value-adding services, as per the new guidance, the service provider must apply a 7 percent profit margin to all accumulated costs (with some exclusions).

The guidance also contains a new definition of "related party" and introduces transfer pricing documentation requirements.

Parties will be deemed to be related when there is a special relationship that could have a material effect on the economic results of the transactions between the parties. A related party relationship exists in the following cases:

- One person holds or controls 50 percent or more of the shares or voting rights in another person;
- One person directly or indirectly controls the other person;
- Both persons are directly or indirectly controlled by a third person; and
- Relatives of the first, second, and third degree.

The burden of proof is on the taxpayer to demonstrate that its related-party transactions are concluded on arm's length terms.

From fiscal year 2017 (the calendar year in Kosovo), taxpayers engaged in related-party transactions must prepare transfer pricing documentation that contains at least the following information:

- A summary of the taxpayer's activities and organizational structure;
- A description of the organizational and operational structure of the group of which the taxpayer is a member;
- A description of the controlled transactions and applicable transfer pricing policies;
- An explanation of why a particular transfer pricing method and financial indicator were selected;
- A comparability analysis of controlled and uncontrolled transactions, along with:
    - A description of the process used to identify comparable transactions;
    - An explanation of the reason any potential internal comparable transactions were rejected, and a description of comparable transactions;
    - Details and an explanation of each adjustment made to the comparability analysis; and
    - An explanation of the analysis;
- Details on any preliminary agreement regarding the pricing arrangement; and
- Conclusions regarding compliance with the arm's length principle.

Alternatively, documentation may be prepared in accordance with the EU Code of Conduct and its annexes on transfer pricing documentation, or the three-tiered documentation approach under action 13 of the BEPS project (master file, local file, and country-by-country report).
URL: http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en#.WZwyW3OWy3A

Although the guidance does not include a specific deadline for submitting the documentation, it must be produced within 30 days of a request by the tax authorities, and must be in one of Kosovo's official languages (Albanian and Serbian), although the tax authorities may accept English in certain circumstances.

Additionally, taxpayers involved in controlled transactions valued at more than EUR 300,000 must submit a notice to the tax authorities on their annual controlled transactions. The notice is due by 31 March of the following year, along with the annual corporate income tax return and statutory financial statements; the first notice will be due on 31 March 2018.

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Deadline for French SMEs to file transfer pricing form approaching

The deadline for filing a French transfer pricing form that is newly applicable to small and medium-sized enterprises (SMEs) is fast approaching.

In late 2016, France lowered the threshold for requiring the filing of the transfer pricing form – Form 2257-SD – to EUR 50 million of annual pre-tax turnover or total gross assets on the balance sheet, effective for fiscal years that ended on December 31, 2016, and thereafter. The threshold had been previously set at EUR 400 million.

Under current law, French entities that meet the threshold must file annually with the French tax authorities Form 2257-SD, which provides both general information on the multinational group and specific information on the French entity subject to the filing requirement.

This requirement directly impacts SMEs and middle-market companies, because it affects French legal entities that meet the new threshold, as well as legal entities that have either a 50 percent or more direct or indirect shareholder or subsidiary that meet the new threshold. Similarly, this obligation applies to legal entities that are members of a tax group if one of the companies meets the above criteria.

According to this new requirement, which was introduced by the law of December 9, 2016, on transparency, fight against corruption, and modernization of economic life that modified Article 223 *quinquies* B of the French General Tax Code, the legal entities subject to the new threshold must submit electronically within six months of the filing of their tax return, Form 2257-SD detailing their main intragroup flows. For fiscal years ending December 31, 2016, the deadline for filing the form is November 3, 2017, which does not allow much time for preparation of the form.

The new legislation confirms that the transfer pricing policies of MNE groups, regardless of their size, are particularly scrutinized by the French tax authorities. Therefore, these groups need to strengthen their transfer pricing processes to be able to demonstrate the arm's length nature of their policies in the event of a tax audit.

In practice, the French tax authorities are likely to raise questions regarding a company's transfer pricing policies if international intragroup transactions exist, without any materiality threshold. A lack of structuring and documentation of intragroup transactions sometimes leads to easily avoidable adjustments.

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Italy's postponement of tax return filing deadline affects both transfer pricing documentation and CbC notification

Italy recently – and exceptionally – postponed its income tax return filing deadline from the end of September to October 31, 2017. Because the notification of which entity in a multinational entity (MNE) group will be filing the country-by-country (CBC) report is made in the annual income tax return, the deadline for that notification is therefore also postponed.

Background

Decree n. 78 of May 31, 2010, introduced the possibility that taxpayers may avoid administrative penalties in the event of a transfer pricing adjustment, provided the taxpayers had documented their intercompany transactions in compliance with the requirements set forth in regulations the Revenue Agency issued on September 29, 2010.

Documentation is not mandatory, and no specific penalties for lack of documentation have been introduced; rather, the decree introduced the concept of a "*premium*" for taxpayers who, through the preparation of proper transfer pricing documentation, demonstrate their willingness to cooperate with the tax authorities to facilitate the assessment of the arm's length nature of their intercompany transactions.

If prepared under the standards dictated by the regulations, the transfer pricing documentation would allow taxpayers to benefit from full protection from administrative penalties (ranging from 90 percent to 180 percent of the additional taxes deriving from the adjustments) applicable in case of transfer pricing adjustments.

Transfer pricing documentation for penalty protection purposes must be prepared on a yearly basis.

The taxpayer must communicate to the Italian Revenue Agency the availability of documentation prepared in compliance with the requirements set forth in the regulations by checking a box in the tax return (row RS106 of the tax return form – "*Redditi SC 2017*" – for fiscal year 2016). However, the transfer pricing documentation itself must be delivered to the tax auditors only upon request, and within 10 calendar days. In other words, the regulations do not impose a contemporaneous filing requirement.

Regardless of the availability of the penalty protection regime, taxpayers should disclose in the tax return the total amount of intercompany costs and revenues, as well as indicate if the entity filing the return:

- **Option A:** Is directly or indirectly controlled by a nonresident company;
- **Option B:** Directly or indirectly controls nonresident companies; or
- **Option C:** Has carried out intercompany transactions with foreign companies that are controlled by another group company.

According to Italian law, the ordinary statutory due date for filing a tax return is within nine months from the end of the fiscal year to which it is relevant (for example, for entities with calendar year reporting periods, the deadline for submission is the end of September).

The Italian Ministry of Economy and Finance issued a decree on July 26, 2017, to postpone the September tax return filing deadline to October 31, 2017. This postponement applies to taxpayers with ordinary filing deadlines for their tax returns between July 1, 2017, and September 30, 2017, that is, with fiscal years ending on December 31, 2016.

The decision to postpone the filing deadline of tax returns follows an urgent request made by the Italian National Council of Chartered Accountants claiming that the measure was necessary due to an extraordinary concentration of tax deadlines between June and July, which would've made it difficult for professionals to manage the related filings.

The postponement applies also to the communication of the option for the preparation of transfer pricing documentation for FY 2016 as well as, implicitly, to the first day from which such documentation could eventually be requested by tax auditors (10 calendar days after October 31).

Finally, the postponement of the tax return filing deadline applies also to the notification requirement regarding the country by country (CbC) reporting requirement introduced by paragraph 145, Article 1 of Budget Law 2016, approved on 28 December 2015. Indeed, entities that are part of multinational enterprise groups subject to the obligation to file the CbC report must notify in their tax return (at row RS 268) the details of the group entity in charge of the preparation of the CbC report, including its tax jurisdiction.

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