



OECD updates guidance on local filing requirements of country-by-country reports

Global Transfer Pricing Alert 2017-016

The Organisation for Economic Co-operation and Development (OECD), as a continuation of its base erosion and profit shifting (BEPS) initiative, on May 4 updated its guidance for local filing requirements of country-by-country (CbC) reports.

Local (or secondary) filing refers to when a jurisdiction requires the filing of a CbC report by a resident constituent entity of a multinational enterprise (MNE) that is not the ultimate parent entity (UPE) of its group. For example, if an MNE is headquartered in Country X but has a subsidiary in Country Y, and Country Y has a local filing requirement, then the subsidiary in Country Y may have to file the CbC report itself.

The OECD's new guidance provides rules on when local filing should apply and what conditions must be satisfied when it is required. An overview of the new guidance is provided below. Overall, the new guidance should prove to be a welcome development, especially for MNEs with UPEs in the United States.

Local filing guidance in general

The OECD has made clear that local filing does not form part of the Action 13 minimum standard, and that it should be required only in "exceptional circumstances." There is no requirement for a jurisdiction to mandate local filing.

When local filing rules do apply, the OECD has now advised countries that such rules should be limited to three specific circumstances, as described in the OECD model legislation for the implementation of CbC:

- **No CbC obligation by residence jurisdiction:** The UPE of an MNE group is not obligated to file a CbC report in its residence jurisdiction;¹
- **Exchange available between the jurisdictions but no qualifying agreement in place yet:** The UPE's residence jurisdiction has a current international agreement (i.e., a multilateral or bilateral tax convention or a tax information exchange agreement providing for the automatic exchange of tax information) with the constituent entity's residence jurisdiction, but there is no qualifying competent authority agreement in place between the two jurisdictions **by the end of 12 months** following the end of the fiscal reporting year of the MNE group; or
- **Systematic failure:** There has been a systemic failure to exchange CbC reports by the UPE's residence jurisdiction, which has been notified to the constituent entity by the tax authority in its residence jurisdiction.

Even if one of these three conditions has been met, the OECD has recommended placing the following further limitations on local filing requirements, stating that local filing should still not be permitted when: (i) a CbC report will be filed by a surrogate parent entity (SPE) of the MNE group for the relevant reporting fiscal period (subject to conditions); or (ii) the residence jurisdiction of the constituent entity does not meet conditions in the minimum standard concerning consistency, confidentiality, and the appropriate use of CbC reports.

Clarification of the second of the three circumstances listed above is of particular relevance for US MNEs. In essence, it advises that local filing should not be required in a jurisdiction with which: (i) the United States does not have a bilateral tax treaty or tax information exchange agreement (TIEA) in place that provides for the automatic exchange of information; or (ii) for jurisdictions within the US tax treaty and TIEA network, the United States has not entered into a CbC competent authority agreement (CAA) between now and 12 months after the end of MNE group's fiscal year. For US MNE groups on a calendar year, that will give the United States until December 31, 2017, to enter into a CbC CAA before any local filing rules will be required. Further, under the second additional limitation, if the reason the US has not entered into a CAA with a jurisdiction is because that jurisdiction does not meet the minimum standard concerning consistency, confidentiality, and the appropriate use of CbC reports, then it should not impose local filing.

According to the OECD, the purpose of this new guidance is to provide additional flexibility for MNE groups to file their CbC reports and for governments to put CbC CAAs in place. The new OECD guidance is intended to ensure that resident

¹ The OECD previously issued guidance in June 2016 that interpreted this language as not applying to jurisdictions that provide for voluntary "parent surrogate" filings if certain conditions are satisfied. For prior coverage, see [Global Transfer Pricing Alert 16-023](#).

constituent entities in MNE groups where a UPE or SPE will file a CbC report by December 31, 2017, are not affected by local filing obligations.

Local filing in Brazil

In Brazil, the CbC reporting requirement applies starting in 2016, and resident UPEs are required to file a CbC report with their corporate income tax return for the year, which are generally due on July 31, 2017. This July 31 filing deadline applies not only to Brazil UPEs but also to Brazil constituent entities that potentially have to meet Brazil's local filing requirements, unless they provide notification that a UPE or SPE resident outside of Brazil will serve as the reporting entity. [For prior coverage, see [Global Transfer Pricing Alert 17-013](#)]

The OECD's new guidance recommends that added flexibility be provided for MNE groups with constituent entities in Brazil. Although not an OECD member, Brazil is a BEPS-participating country and therefore this guidance presumably was issued with the consent of Brazil. Pursuant to the new guidance, a Brazil constituent entity of a foreign MNE group that wishes to avoid local filing in Brazil must submit a CbC notification by July 31, 2017. That notification must inform the Brazilian tax authorities of the identity and tax residence of the group's reporting entity. The new guidance clarifies that such information is based on an initial assessment of whether the conditions for local filing are expected to be met as of December 31, 2017. Where this notification subsequently proves to be incorrect, however, a resident constituent entity in Brazil may submit an amended notification by December 31, 2017 (or comply with local filing).

This new guidance will help MNEs who comply with the notification requirements in good faith but who later discover that there was an error in their initial assessment as to which entity will be the reporting entity for the MNE group. If such an error does occur, then the MNE group would be permitted to file an amended notification by the end of the 2017 calendar year.

Local filing in China

CbC reporting requirements apply in China, which is also a BEPS-participating country, starting in 2016. China UPEs on a calendar fiscal year are required to file a CbC report with China by May 31, 2017. Chinese constituent entities that are not UPEs are not automatically required to file CbC reports in China, but may be required by local tax offices to provide the CbC report in the course of a transfer pricing audit, when the conditions for local filing under the minimum standard are met.

According to the OECD update, China has issued guidance to its local tax offices to clarify that an extension of the local filing deadline will be granted when a China constituent entity provides written evidence that a CbC report for such fiscal period will be filed by the group's UPE or SPE in another jurisdiction with a later filing deadline. Most jurisdictions require a resident UPE with a 2016 calendar fiscal year to file on or before December 31, 2017, for example. Local filing will not be required, however, when the UPE or SPE of a group is required to file a CbC report in accordance with the minimum

standard, and the conditions for local filing in the minimum standard are not met.

Again, the OECD's new guidance provides more flexibility for MNE groups that have constituent entities in China, either by extending the deadline for local filing (upon request) or by recommending situations in which local filing should not be required.

Conclusion

As noted above, the OECD's new guidance should prove to be a welcome development for US-parented MNEs. This guidance will provide more time for the IRS to enter into CbC CAAs, and it will ease the burden on MNEs with constituent entities in Brazil and China, and in jurisdictions that have not met the conditions in the minimum standard concerning consistency, confidentiality, and the appropriate use of CbC reports. All of this should provide more flexibility for countries and companies to comply with the Action 13 CbC reporting requirements, particularly for fiscal years beginning on or after January 1, 2016.

However, OECD guidance only indicates a consensus view, and is not actual law. Therefore, all OECD and BEPS-participating countries should abide by this new guidance, but actual adherence to it may vary.

For the full text of the new guidance, see ["Country-by-Country Reporting: Update on exchange relationships and implementation"](#)

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