



OECD releases additional implementation guidance on CbC reporting

Global Transfer Pricing Alert 2019-035

The OECD on 5 November released [additional guidance on the implementation of the country-by-country \(CbC\) reporting requirement](#), which was first introduced in the BEPS Action 13 final report. The new guidance expands on the implementation guidance already issued by the OECD, most recently in September 2018.

The November 2019 guidance addresses the following issues:

- Whether profit (loss) before income tax in Table 1 should include payments received from other constituent entities that are treated as dividends in the payer's tax jurisdiction;

- The use of rounded amounts in preparing Table 1;
- Application of the deemed listing provision when the parent entity of an MNE group is tax resident in a jurisdiction that does not have a securities exchange;
- Whether a reporting period can be for a period of other than 12 months;
- Information with respect to the sources of data in Table 3;
- [Common errors](#) made by MNE groups in preparing CbC reports;
- Local filing; and
- Lodging a unilateral declaration under the multilateral convention on mutual administrative assistance in tax matters for purposes of exchanging CbC reports.

The key points of the new OECD guidance are summarized below.

Whether profit (loss) before income tax in Table 1 should include payments received from other constituent entities that are treated as dividends in the payer's tax jurisdiction

The guidance clarifies that, consistent with the definition of revenue, profit (loss) before income tax (PBT) excludes payments received from other constituent entities (CEs) that are treated as dividends in the payer's tax jurisdiction. The effective date of this new guidance is 1 January 2020. Inclusive Framework members are expected to implement this new guidance as soon as possible, taking into account their specific domestic circumstances.

When the applicable accounting rules require or permit a CE to include profit of another CE in its PBT, this amount should be classified as intercompany dividends and therefore excluded from PBT.

For reporting periods commencing before 1 January 2020, Inclusive Framework members are encouraged to require MNEs to provide, or MNE groups are encouraged to state voluntarily, in Table 3, whether intercompany dividends or profits from another CE are included in PBT, and if so, the specific amounts included in each jurisdiction.

The use of rounded amounts in preparing Table 1

The guidance states that jurisdictions, though not required to accept any rounding of financial amounts in Table 1, may accept a reasonable level of rounding. The guidance further states that reasonable rounding cannot include an approach that could materially distort the data. According to the guidance, examples of reasonable rounding practices would be rounding to the nearest thousandth of euros or US dollars, or the nearest millionth of Japanese yen.

Application of the deemed listing provision when the parent entity of an MNE group is tax resident in a jurisdiction that does not have a securities exchange

The deemed listing provision is relevant when an enterprise would otherwise be the ultimate parent entity (UPE) but is not required to prepare consolidated financial statements in the jurisdiction where it is a resident for tax purposes. In such a case, the MNE group includes all entities that would be included in the consolidated financial statements that the relevant enterprise would be required to prepare if it were listed on a public securities exchange.

In cases in which the parent entity is resident in a tax jurisdiction that does not have a securities exchange, the guidance states that an entity will be classified as a UPE if the entity would be required to prepare consolidated financial statements as a result of its equity instruments being traded on a securities exchange on which entities in that jurisdiction were commonly traded. The guidance encourages jurisdictions that do not have a securities exchange to specify one or more jurisdictions with a securities exchange that could be used to apply the above test.

Whether a reporting period can be for a period of other than 12 months

The guidance rejects a view held by some jurisdictions and MNE groups that a CbC report is not required when an MNE group prepares consolidated financial statements for a period other than 12 months. It clarifies that a CbC report can be required for a fiscal year of less than 12 months. When an MNE group meets the CbC reporting requirements and has prepared consolidated financial statements for a

period that is shorter or longer than 12 months, the MNE group should prepare a CbC report for the period covered by the consolidated financial statements prepared by the UPE.

Information with respect to the sources of data in Table 3

The guidance clarifies that MNEs are required to provide a description of the sources of data used for each item of information. MNEs should describe their general data sources together with any exceptions that are used. MNEs also must explain when information relevant to a particular jurisdiction is taken from different data sources, or when the sources of data used change over time. The guidance provides the following disclosure example:

Table 3 could include a statement that information has been obtained from the MNE Group's consolidation package with the exception of the following.

- [Specified items for jurisdictions A, B and C] were obtained from entity financial statements prepared in accordance with local GAAP.*
- [Specified items for jurisdictions D, E and F] were obtained from regulatory financial statements prepared in accordance with local law.*
- [Specified items for jurisdictions B, D and F] were obtained from internal management accounts.*
- Since the CbC report for [previous reporting fiscal year], the source of data used for [specified items for jurisdiction D] has changed from [previous source] to [current source]. [Description of the reasons and consequences of this change].*

The guidance recommends that Inclusive Framework members implement this as soon as possible, taking into account their specific domestic circumstances. In the meantime, taxpayers are encouraged to include voluntarily in Table 3 the information on sources of data used, as provided in the guidance.

Common errors made by MNE groups in preparing CbC reports

The guidance identifies several common errors made by MNE groups when preparing CbC reports, their correct treatment, and the basis for correct treatment. These examples are listed on the [OECD website](#), and are as follows:

- NOTIN reported in Table 2 for CEs in jurisdictions where a taxpayer identification number (TIN) is required.
- The TIN field is blank or includes only spaces.
- The same TIN is repeated for multiple CEs.
- Multiple currencies are used in Table 1.
- Shortened numbers are included in Table 1.
- Excessive rounding of amounts in Table 1.
- Lengthened numbers in Table 1.
- Amounts appear to have been included in the wrong column.
- Total revenues is either higher or lower than the total of unrelated party revenues and related party revenues.
- Dividends from CEs are included in PBT in jurisdictions where this is not permitted.
- Information on sources of data is not included when this is required.
- Incorrect jurisdiction codes are used.
- Different jurisdictions are listed in Table 1 and Table 2.
- Non-consolidated CEs are left out of Table 1 and/or Table 2.

Local filing

Consistent with the local filing guidance released in May 2017, the new implementation guidance recommends that local filing should be accepted if the UPE's tax jurisdiction either failed to introduce a CbC filing requirement, or introduced a CbC requirement that does not comply with the BEPS Action 13 minimum standard.^[1] The guidance clarifies that jurisdictions cannot require, for purposes of applying such a minimum standard, constituent entities to submit a

^[1] For more information, see [Global Transfer Pricing Alert 2017-016](#), "OECD updates guidance on local filing requirements of country-by-country reports" (5 May 2017).

local filing when (i) the UPE is not required to file a CbC report in its home jurisdiction, and (ii) the home jurisdiction has CbC regulations that meet the BEPS Action 13 minimum standard.

When an MNE files a CbC report in its UPE's jurisdiction, and constituent entities of the MNE are also subject to local filing requirements, the guidance encourages local jurisdictions to allow the MNE to file a CbC report containing the same information that is included in the CbC report filed in the UPE's jurisdiction. Despite that, the guidance indicates that a local jurisdiction can still specify its own format for filing of the CbC report.

The guidance also encourages jurisdictions with local filing requirements (or jurisdictions that are introducing such requirements) to apply a filing deadline not less than 12 months after the end of the applicable reporting period (even though a resident UPE in that jurisdiction may be required to file earlier than that date). It also notes that, under the BEPS Action 13 minimum standard, the deadline for local filing may also be extended to a date more than 12 months after the end of the reporting fiscal year (e.g., to 15 months, which would correspond with the date on which competent authorities typically receive CbC reports under exchange of information provisions).

Lodging a unilateral declaration for the purposes of exchanging CbC reports

A number of jurisdictions, including the United States, have ratified the multilateral convention on mutual administrative assistance in tax matters. The convention can serve as a legal basis for signatories to exchange tax information, including CbC reports.^[1] Under the terms of the convention, however, more than three years can elapse between the date of ratification and the first exchange of CbC reports. This period can be significantly reduced (in some cases, by as much as three years) if a jurisdiction lodges a unilateral declaration stating that it intends the convention to have effect for earlier periods with respect to the exchange of CbC reports. According to the guidance, this approach would be

^[1] The convention was developed in 1988 (the "original convention") and amended by protocol in 2010. Some jurisdictions are not signatories to the original convention, but they are signatories to the 2010 protocol. Note that the original convention, but not the 2010 protocol, has been ratified by the United States. Therefore, the convention cannot currently serve as the legal basis for CbC competent authority agreements between the United States and jurisdictions that are signatories to the 2010 protocol but not to the original convention.

consistent with the timing of the first exchanges contemplated by the OECD CbC Multilateral Competent Authority Agreement (CbC MCAA).

Because of this, the guidance encourages jurisdictions to lodge a unilateral declaration with respect to the exchange of CbC reports.

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