



Ireland issues country-by-country reporting regulations

Global Transfer Pricing Alert 2016-003

The Irish Revenue on 23 December published regulations relating to the implementation of country-by-country (CbC) reporting in Ireland that apply effective January 1, 2016.

Ireland's Finance Act 2015, released on October 23, 2015 (and later enacted into law on December 22, 2015), contains provisions that give effect to CbC reporting in accordance with action 13 of the OECD base erosion and profit shifting (BEPS) project. The OECD's final report on action 13, *Transfer Pricing Documentation and Country-by-Country Reporting*, contains revised standards for transfer pricing documentation that consist of the following:

A CbC reporting template that includes information such as revenue, profits, income tax paid, and taxes accrued;

A master file that provides tax authorities with high-level information about a group's global business operations and transfer pricing policies; and

A specific local file for each jurisdiction that provides the local tax authorities with information on material related-party transactions, as well as the basis for a company's transfer pricing policies relating to such transactions.

For accounting periods commencing on or after January 1, 2016, the CbC reporting template applies to Irish-parented multinational groups with annual consolidated group revenue in excess of EUR 750 million. The deadline to file the CbC reporting template is 12 months from the end of the accounting period to which the report relates (for example, December 31, 2017, for the December 31, 2016 financial year).

Summary of regulations

The regulations outline the approach for CbC reporting for Irish companies when the primary reporting mechanism by the ultimate parent company is not in place.

Under the action 13 primary filing mechanism, a CbC report should be filed in the jurisdiction where the ultimate parent entity of a multinational group is resident and the information is shared with other tax authorities through automatic exchange protocols, such as those contained in tax treaties and tax information exchange agreements. When the law of the ultimate parent entity's country does not require that entity to file a CbC report, action 13 provides for a secondary filing mechanism, under which the multinational group can designate a group company to act as a "surrogate parent" entity and file on behalf of the entire group. Further, if it is not possible for the ultimate parent entity or a surrogate parent entity to file a CbC report, action 13 includes guidance on local country filing as a backup mechanism. The new Irish regulations provide additional information on surrogate parent entity filing and the local filing of a CbC report.

Local filing

Section 4 of the regulations outlines provisions for the local filing of a CbC report.

A local entity that is tax resident in Ireland and not the ultimate parent company or a surrogate parent company of the multinational group is defined as a "domestic constituent entity" for purposes of the regulations. This entity will be required to file an "equivalent CbC report" with the Irish Revenue if:

The ultimate parent company of a multinational group is not required to file a CbC report in its home country;

The home country of the ultimate parent company has not concluded an agreement for the automatic exchange of such reports;

The home country has such an agreement, but has suspended the automatic exchange of reports or otherwise failed to exchange the reports automatically; or

The nominated surrogate parent in the multinational group does not file a CbC report with similar conditions attached.

An equivalent CbC report will be considered a CbC report only to the extent the information required to be included in the report is within the custody or possession of the Irish domestic entity or that entity has the power to obtain such information.

The equivalent CbC report must be submitted to the Irish Revenue no later than 12 months from the end of the accounting period to which the report relates (for example, December 31, 2017, for the December 31, 2016 financial year).

Surrogate parent filing

Section 5 of the regulations outlines provisions for a nominated surrogate parent entity of a multinational group to file a CbC report. A local country filing, as detailed in section 4 of the regulations, is not required to be filed when this approach is adopted. The CbC report must be provided to the Irish Revenue no later than 12 months after the end of the accounting period to which the report relates (for instance, December 31, 2017, for the December 31, 2016, financial year).

Comments

Although the regulations' overall approach is in line with action 13 of the BEPS initiative, there is a key difference regarding the filing requirements of a local constituent entity; specifically, the regulations introduce the term "equivalent CbC report," which is not included in action 13. This report requires only information that the Irish constituent entity has within its possession or has the power to obtain to be included, and thus may not include relevant information for other group companies that are subsidiaries of the Irish constituent entity. To the extent the local filing takes place in Ireland, consideration should be given to the information that the Irish entity has access to, as well as the legal and confidentiality issues involved in using this information. Further, it is unclear which entities in the multinational group may be included in the equivalent CbC report, and guidance on how this approach will operate in practice currently is lacking.

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