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OECD releases additional implementation guidance on CbC reporting

The OECD released recently additional guidance on the implementation of the country-by-country (CbC) reporting requirement introduced in the BEPS Action 13 final report.

This guidance consolidates and expands all of the additional implementation guidance issued by the OECD since the release of the Action 13 Report. Also included is the additional implementation guidance issued on: (i) 29 June 2016; (ii) 5 December 2016; and (iii) 6 April 2017.

Because the 18 July release includes all of the information found in the prior three releases, when consulting OECD additional guidance on the Action 13 Report, it will only be necessary to refer to the 18 July guidance going forward.

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To assist jurisdictions with the introduction of consistent domestic rules, the additional guidance addresses two specific issues:

- Whether aggregated data or consolidated data for each jurisdiction is to be reported in Table 1 of the CbC report; and

- How to treat an entity owned and/or operated by two or more unrelated multinational enterprise groups (MNE groups).

The 18 July implementation document also updates the list of countries that have indicated they will allow parent surrogate filing (i.e., voluntary filing in the parent jurisdiction) but provides no substantive changes to this area of guidance as compared to the 6 April implementation document.

Aggregate *versus* consolidated data (new)

The 18 July guidance addresses whether the CbC financial data should be presented on an aggregated or consolidated basis for different group entities in a single jurisdiction. This issue may be of particular importance in reporting related-party revenue and total revenue.

It arises, for example, under the following circumstances: Assume USP is the parent of a US consolidated group. Further assume that USP owns consolidated US subsidiaries A and B. Finally, assume that A takes out a loan of $100 from B and pays B $5 in interest on that loan. If data were reported on an aggregated basis, then the $5 of interest would have to be reported as related-party revenue on the CbC report. If, however, data were reported on a consolidated basis, then, because of intragroup eliminations, the $5 interest payment would not need to be reported as related-party revenues.

The 18 July implementation guidance states that reporting should be done on an aggregate basis. The guidance does provide, however, that jurisdictions may create an exception to this and allow reporting on a consolidated basis, just as long as: (i) consolidated data is reported for each jurisdiction on the CbC report; and (ii) consolidation must be used consistently across the years. Reporting entities are also required to provide an explanatory note on the CbC report if consolidated data is used. Importantly, however, this is applicable only to jurisdictions that have "a system of taxation for corporate groups which includes consolidated reporting for tax purposes, *and the consolidation eliminates intra-group transactions at the level of individual line items*." (Emphasis added.) Inclusive Framework members that plan to adopt this exception are expected to implement this guidance as soon as possible, taking into account their specific domestic circumstances.

It appears that the United States will not provide such an exception. The US CbC regulations clearly provide that jurisdictional-level financial data should be "aggregated." *See* Treas. Reg. §1.6038-4(d).

Entities owned and/or operated by more than one unrelated MNE group (new)

According to the 18 July implementation guidance, if an entity is owned and/or operated by more than one unrelated MNE group, the treatment of that entity for CbC reporting purposes

should be determined under the accounting rules applicable to each of the unrelated MNE groups separately.

If, therefore, the applicable accounting rules require an entity to be consolidated into the consolidated financial statements of an MNE group, then the entity would be considered a constituent entity of that group under Article 1.4 of the model legislation. In addition, when pro rata consolidation is applied to an entity in an MNE group in preparing the group's consolidated financial statements, jurisdictions may allow a pro rata share of the entity's total revenue to be taken into account for the purpose of applying the EUR 750 million threshold. Finally, jurisdictions may also allow an MNE group to include a pro rata share of the entity's financial data in its CbC report, in line with the information included in the MNE group's consolidated financial statements, instead of the full amount of this financial data.

These rules appear to be consistent with prior guidance regarding reporting of minority shares in accordance with certain local GAAP.

Parent surrogate filing (updated)

When surrogate filing (including parent surrogate filing) is available, it will mean that there are no local filing obligations for the particular MNE in any jurisdiction that otherwise would require local filing in which the MNE has a constituent entity (herein referred to as the local jurisdiction). This is subject to certain conditions, as listed in the OECD guidance.

The 18 July implementation document provides updates regarding some of the countries that have indicated they will allow parent surrogate filing (that is, voluntary filing in the parent jurisdiction). The original list of countries from the June 2016 guidance was supplemented in the December 2016 guidance and the April 2017 guidance, and our prior alerts noted those changes. This list of jurisdictions is dynamic and may continue to be updated periodically by the OECD.

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