



马来西亚中国服务部刊物

转让定价：马来西亚实施国别报告规则

2016年12月23号，马来西亚内陆税收局根据税基侵蚀和利润转移（BEPS）第13项行动计划，发布了所得税2016<<国别报告>>规则，即“国别报告规则”。

此规则主要影响马来西亚总部公司，但中国总部跨国企业集团之马来西亚“组成实体”也将根据此规则承担相关义务。对于此规则，“组成实体”包括：

- 跨国企业集团的合并财务报表中任何独立商业实体；例如，中国总部跨国企业集团之马来西亚子公司。
- 准备单独财务报表的常设机构；例如，中国总部之马来西亚分公司

国别报告规则指南

1.	什么是国别报告?	国别报告要求跨国企业依照规定格式，列出集团中所有成员之所得，税负，股本，累积盈余，员工人数，有形资产，主要经营活动类型。	
2.	为什么需要填报国别报告?	国别报告是税务机关实施高级别转让定价风险评估，或者评价其他税基侵蚀和利润转移风险的一项工具，协助税务机关更容易地判断纳税人是否通过转移定价和其他操作，人为地将大量收入转移至税收优惠的环境中。	
3.	受影响实体	<ul style="list-style-type: none"> 跨国企业集团总部位于马来西亚，即在上一财政年度，与组成实体之间有跨境交易，并且合并集团总收入达到至少三十亿令吉。 外国总部跨国企业集团之马来西亚组成实体须符合最终控股公司税务管辖区规定的国别报告要求；例如，中国总部跨国企业集团之马来西亚子公司，符合中国国家税务总局规定的合并集团收入五十五亿人民币。 	
4.	时间线	<ul style="list-style-type: none"> 此规则于财政年度 2017 年 1 月 1 日起生效；例如，公司财政年度于 12 月 31 日结束，其第一个报告财政年度为 2017 年 1 月 1 日至 2017 年 12 月 31 日。 注：在报告财政年度的最后一天或之前，须以书面形式通知内陆税收局有关跨国企业集团准备国别报告公司的身份和税务居所。 提交：马来西亚总部跨国企业集团之最终控股公司必须在报告财政年度结束后 12 个月内向内陆税收局提交国别报告。 中国总部跨国企业集团之马来西亚组成实体，在本地没有义务提交-马来西亚内陆税收局可从中国国家税务总局获取国别报告信息。 	
5.	自动交换国别报告信息	中国和马来西亚签署了国别报告多边主管当局协议（MCAA），马来西亚内陆税收局可与中国国家税务总局自动交换国别报告信息。	
6.	刑罚后果	未履行	刑罚/ 起诉后果
		<p>没有提供国别报告（第 112A 条文）；</p> <p>提供错误收益报表，错误信息申报/报告（第 113A 条文）；</p> <p>未能遵守“相互行政援助”政策（第 119B 条文）</p>	<p>罚款两万令吉至十万令吉；或监禁不超过六个月；或两者兼施</p>

需要注意：

国别报告规则的公布，为受影响实体执行呈报义务及相应合规，提供了所需框架。因此，跨国公司集团必须确定全球税务结构中存在的风险或间隙，并进行更改或建立充分的辩护立场，以便为国别报告信息的审计做好准备。

对于中国总部跨国企业集团之马来西亚组成实体，国别报告须由中国最终控股公司提交给国家税务总局，并且可以与马来西亚内陆税收局自动交换信息。马来西亚组成实体须与其总部确认公司的身份和税务居所，以便准备跨国企业集团的国别报告，且须在到期之前通知内陆税收局；例如，在报告财政年度的最后一天或之前。

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Deloitte Malaysia Chinese Services Group Publication

Transfer Pricing: Malaysia introduces Country-by-Country Reporting (CbCR) Rules

On 23 December 2016, the Inland Revenue Board of Malaysia (IRBM) issued Income Tax (Country-by-Country Reporting) Rules 2016 (the "Rules"), in line with the final recommendations of OECD BEPS Action 13.

Though the Rules primarily affect Malaysian headquartered corporations, Malaysian "constituent entities" of China headquartered multinational corporation ("MNC") groups would also have certain obligations under these Rules. For purposes of the Rules, a "constituent entity" includes:

- Any separate business unit of an MNC Group that is included in the consolidated financial statements of the MNC Group; e.g. Malaysian subsidiary of China headquartered MNC Group.
- Any permanent establishment for which separate financial statements are prepared; e.g. Malaysian Branch of China Head Office.

Summary of Country-by-Country Reporting Rules

1.	What is CbCR?	CbCR requires an MNC Group to provide information on income, tax burden, share capital, cumulative surplus, number of employees, tangible assets, types of main business activities, etc. in accordance with the prescribed format.
2.	Purpose of CbCR?	CbCR is a tool for tax administrations to conduct high-level transfer pricing risk assessments, or to assess other base erosion and profit shifting (BEPS) risks. The information contained in CbCR would help tax administrations to identify whether an MNC Group has engaged in transfer pricing and other practices that have the effect of artificially shifting substantial amounts of income into tax-advantaged jurisdictions.
3.	Affected entities	<ul style="list-style-type: none"> • MNC Group headquartered in Malaysia with total consolidated group revenue of at least MYR3billion in the financial year preceding the reporting financial year, and with cross broader transactions between its constituent entities. • Malaysian constituent entity of foreign headquartered MNC Group that meets the CbCR requirement prescribed in tax jurisdiction of the ultimate holding company; e.g. Malaysian subsidiary of China headquartered MNC Group that meets the CNY5.5billion consolidated group revenue threshold prescribed by SAT.
4.	Timeline	<ul style="list-style-type: none"> • Effective for financial years commencing on or after 1 January 2017; e.g. for companies with 31 Dec year end, first reporting financial year would be 1Jan2017 to 31Dec2017. • <i>Notification:</i> To notify the IRBM in writing on or before the last day of the reporting financial year about the identity and tax residence of the company that is preparing CbCR for the MNC Group. • <i>Filing:</i> The ultimate holding company of a Malaysia headquartered MNC Group has to file CbCR with IRBM within 12 months from the end of the reporting financial year. • No local filing obligation for Malaysian constituent entity of China headquartered MNC Group – IRBM to obtain copy of CbCR from China SAT.

5.	Exchange of CbCR	Automatic exchange of CbCR between IRBM and SAT, as both China and Malaysia have signed the Multilateral Competent Authority Agreement (MCAA) for exchange of CbCR.	
6.	Penal consequences	Default	Penal/Prosecution Consequence
		Failure to furnish CbCR (Sec 112A); Furnish an incorrect return, information return/report (Sec 113A); Failure to comply with the Rules on mutual administrative assistance (Sec 119B)	A penalty of not less than RM 20,000 and not more than RM 100,000, or imprisonment for a term not exceeding six months, or both.

Attention required

The promulgation of CbCR Rules has provided the desired framework on the reporting obligations and the compliance which needs to be performed by the affected entities. Therefore, it is critical to identify any potential areas of risk or gaps in the global tax structure of the MNC Group and make desired changes or build adequate defensible positions to be ready for possible audits based on CbCR information.

For China headquartered MNC Groups with constituent entities in Malaysia, the CbCR would likely be prepared by the China ultimate holding company and submitted to the SAT for automatic exchange with IRBM. The immediate action item for such Malaysian constituent entities would be to confirm with their headquarter on the identity and tax residence of the company that would prepare the CbCR for the MNC Group, and make a notification in this regard to the IRBM by the due date, i.e. on or before the last day of the reporting financial year.

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