



## Tax Espresso

### Transfer Pricing: Malaysia introduces Country-by-Country Reporting Rules

On 23 December 2016, the Malaysian Inland Revenue Board (IRB) issued Income Tax (Country-by-Country Reporting) Rules 2016 (CbCR Rules), in line with the final recommendations of OECD BEPS Action Point 13. The Rules are based on the model legislation contained in the Country-by-Country implementation package of OECD, which was released on 8 June 2015.

This information is expected to assist IRB in conducting effective risk-based audits with more transparent information. However, the Rules also state that the use of Country-by-Country Report (CbCR) information by IRB is restricted for assessing the non-compliance or high level transfer pricing / BEPS risks, and cannot be considered as an alternate to detailed transfer pricing audit. Furthermore, IRB is obligated to preserve the confidentiality of the CbCR information, which will be shared by the taxpayer.

Apart from CbCR Rules, IRB has also notified the Rules,<sup>[1]</sup> laying out special considerations for financial institutions or branches of overseas financial institutions to identify financial accounts in accordance with due diligence procedures. The required information of these accounts have to be collected and furnished to the IRB, which will thereafter be exchanged on an annual basis with the Competent Authorities of other jurisdictions on a reciprocity basis. IRB has also come up with the orders,<sup>[2]</sup> which detail out the administrative modalities of the automatic exchange of information and mutual administrative assistance in tax matters.

<sup>[1]</sup> Income Tax (Automatic Exchange of Financial Account Information) Rules 2016;  
<sup>[2]</sup> Income Tax (Convention on Mutual Administrative Assistance in Tax Matters) Order 2016; Income Tax (Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information) Order 2016; Income Tax (Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports) Order 2016.

## **Framework of the CbCR Rules**

The basic framework of the CbCR Rules is outlined below -

Affected entities – These Rules apply to a multinational corporation group (MNC Group), which is required to prepare consolidated financial statements and have two or more corporations related through ownership, or control having its tax residence in different jurisdictions and carrying out cross border transactions. The ultimate holding company of such MNC Groups (resident and incorporated or registered in Malaysia) or any constituent entities of such MNC Groups (resident and incorporated, registered in Malaysia, or even under the laws of the territory outside Malaysia) need to comply with CbCR Rules.

The Rules will also cover corporation residents in Malaysia and have its permanent establishment (PE) outside Malaysia, which is subject to tax in the respective jurisdictions or vice versa.

In order to reduce compliance burdens for small taxpayers, the Rules have prescribed the minimum threshold for its applicability (i.e. total consolidated group revenue of at least three billion ringgit in the financial year preceding the reporting financial year).

Reporting obligation – As per the Rules, a Malaysian ultimate holding company or surrogate holding company (called reporting entity) of a MNC Group needs to file a CbCR report. The surrogate holding company has been defined as one of the constituent entities that resides in Malaysia, appointed by the MNC Group as a sole substitute for the ultimate holding company to file CbCR (hereinafter referred to as “surrogate parent filing”). The surrogate parent filing is required in the following scenarios:

- The ultimate holding company is not a resident in Malaysia and is not obligated to file a CbCR Report in its respective tax jurisdiction;
- The jurisdiction in which the ultimate holding company is a resident does not have a qualifying competent authority agreement in effect at the time of filing or there is a systematic failure to seek information that has been notified by the Director General to the constituent entity resident in Malaysia.

Timelines - The Rules are effective from 1 January 2017. This requires annual CbCR reporting for the entire financial year (FY) to be filed not later than twelve months from the close of financial year of the reporting entity (e.g. by 31 December 2018 for FY 2017).

Furthermore, notification also needs to be given to the Director General of IRB, in writing, by a constituent entity if it is the holding company or the surrogate holding company on or before the last day of reporting financial year (i.e. by 31<sup>st</sup> December for FY 2017). In case the constituent entity is not a reporting entity, then identity and tax residence of reporting entity needs to be provided on or before the last day of reporting financial year.

Content of CbCR – As per the CbCR Rules, which is in line with the OECD template, the CbCR report will have two parts –

Part I – Aggregate information relating to the amount of revenue; profit or loss before income tax; income tax paid, income tax accrued; stated capital; accumulated earnings; number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNC Group operates. All the information to be reported in Ringgit Malaysia currency.

Part II- List of all the constituent entities of the MNC Group included in aggregation along with specifying the nature of the main business activity.

Format of filing – CbCR Report needs to be filed in an electronic format through a common schema in Extensible Mark-up Language format (yet to be notified) which will again be in line with the OECD suggested standardized electronic format for the exchange of CbCR information between the jurisdictions. Further guidance on this is expected before December 31, 2017.

Penal consequences – The penalty provisions have already been introduced in the Finance Bill of 2016, which lays down the following penal consequences for any CbCR related defaults.

Default	Penal / Prosecution Consequences
Failure to furnish CbCR (Sec 112A)	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.
Furnish an incorrect return, information return / report (Sec 113A)	
Failure to comply with the Rules on mutual administrative assistance (Sec 119B)	

### Way-forward actions for MNC Groups

As an immediate action step, the intimation about the reporting entity (i.e. ultimate holding company or surrogate holding company) needs to be provided to the IRB on or before the end of reporting financial year.

Furthermore, the promulgation of CbCR Rules has provided the desired framework on the reporting obligations and the compliance which needs to be performed by the MNC Groups. Therefore, it is critical for MNC Groups to identify any potential areas of risks or gaps in its global tax structures and make desired changes or build adequate defensible positions to make itself ready for the audits which will be based on CbCR information.

Deloitte Transfer Pricing team can assist clients in conducting risk assessment, CbCR readiness and preparation of CbCR template, master file and local files.

Deloitte will conduct a client seminar shortly on the above development. Please do look out for information on the seminar.

For any queries or assistance, you can reach out to the following contact :

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