

LT In Focus

Review of Guidance on the Implementation of Country-by-Country Reporting

On 29 June 2016 The Organization for Economic Co-operation and Development (OECD) published the guidance on the implementation of Country-by-Country reporting. The full text of guidance can be found on the [OECD Portal](#).

The purpose of the guidance is to support the consistent and swift implementation of country-by-country (CbC) reporting that provide certainty for taxpayers and improve the ability of tax administrations to use CbC reports in their risk assessment work.

Detailed review of the guidance is presented below.

Transitional filing options for multinational enterprises ("parent surrogate filing")

Application of country-by-country reporting to investment funds

Application of country-by-country reporting to partnerships

Impact of currency fluctuations on the agreed EUR 750 million filing threshold

Transitional filing options for multinational enterprises

Jurisdictions that will not be able to implement country-by-country (CbC) reporting with respect to fiscal periods from 1 January 2016 may be able to accommodate voluntary filing CbC report with respect to parent companies of multinational enterprises (parent surrogate filing).

Where surrogate filing (including parent surrogate filing) is available, there are no local filing obligations for the particular multinational enterprise (MNE) in any jurisdiction.

This rule is effective when the following requirements are simultaneously met:

- the parent company of MNE (parent company) has made available CbC report to the tax authority of its jurisdiction of tax residence, by the filing deadline (12 months after the last day of the MNE group's reporting fiscal year);
- by the first filing deadline of the CbC report, (1) the jurisdiction of tax residence of the parent company must have its laws in place to require CbC reporting and (2) a Qualifying Competent Authority Agreement must be in effect between the jurisdiction of tax residence of the parent company and the local jurisdiction;

- the jurisdiction of tax residence of the parent company has not notified the local jurisdiction's tax administration of a systemic failure of exchange CbC reports;
- the required notifications have been provided (if relevant). Firstly, The jurisdiction of tax residence of the ultimate parent entity must have been notified by the ultimate parent entity, no later than the last day of the reporting fiscal year of the MNE group (or other date as chosen by that jurisdiction); and secondly, the local jurisdiction's tax administration must have been notified by a constituent entity of the MNE group that is resident for tax purposes in the local jurisdiction that it is not the ultimate parent entity nor the surrogate parent entity, stating the identity and tax residence of the reporting entity, no later than the last day of the reporting fiscal year of the MNE group (or other date as chosen by the jurisdiction).

The United States, Japan and Switzerland have already confirmed that they will have parent surrogate filing available for parent companies that are resident in their jurisdiction, with respect to fiscal periods commencing on or from 1 January 2016.

The application of country-by-country reporting to investment funds

The governing principle to determine an MNE group is to follow the accounting consolidation rules.

If the accounting consolidation rules apply to an investment fund, then that investment fund may be a participant of an MNE group subject to CbC reporting. This principle applies even where the investment entity has a controlling interest in the investee company.

It is still possible for a company, which is owned by an investment fund, to control other entities such that, in combination with these other entities, it forms an MNE group. In this case, and if the MNE group exceeds the revenue threshold, it would need to comply with the requirement to file a CbC report.

The application of country-by-country reporting to partnerships

The governing principle to determine an MNE group is to follow the accounting consolidation rules. If the accounting consolidation rules apply to a partnership, then that partnership may be a participant of an MNE group subject to CbC reporting.

The reporting for stateless entities (partnerships that do not have a tax residence in any jurisdiction) should parallel the reporting for participants of an MNE group that have a tax residence. If the partnership earns income that is not attributable to a permanent establishment in a tax jurisdiction, the income will be reported as stateless income. Partners that are constituent entities within the MNE group should also include their share of the partnership's stateless income in their jurisdiction of tax residence.

Where a partnership is the parent company, for the purpose of determining where it is required to file the CbC report in its capacity as the parent company, the jurisdiction under whose laws the partnership is formed / organised will govern if there is no jurisdiction of tax residence.

A permanent establishment of a partnership would be included in the CbC report in the same manner as any other permanent establishment. It may be advisable, according to the OECD guidance, for the MNE to provide an explanation in the notes section of the CbC report on the partnership structure and the stateless income reported in the owner's jurisdiction of residence.

The impact of currency fluctuations on the agreed EUR 750 million filing threshold

If the jurisdiction of the parent company has implemented a reporting threshold that is a near equivalent of EUR 750 million in domestic currency as it was at January 2015, an MNE group that complies with this local threshold should not be exposed to local filing in any other jurisdiction that is using a threshold denominated in a different currency.

There is no requirement for a jurisdiction using a threshold denominated other than in euros to

periodically revise this to reflect currency fluctuations. Notably, some countries have adopted a local currency threshold that had met the "near equivalent" rule when adopted, but no longer meets that rule because of currency fluctuations.

The appropriateness of the EUR 750 million threshold (and near equivalent amounts in domestic currency as of January 2015) may be included in the review of the CbC reporting minimum standard to occur in 2020.

We hope that you will find the information presented in this issue useful and interesting. Our professionals are ready to answer any questions you may have regarding the topic presented in this issue and assist you in preparing the required documents.

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