



Tax News & Views Health Care Edition

Country-by-Country (CBCR) Reporting

Over the last few years there have been various highly publicized cases of controversy involving large multinational corporations (MNCs). The focus of the controversy has been whether the corporations involved were artificially allocating profits within the group away from jurisdictions with high tax rates towards lower tax jurisdictions or where they receive tax benefits. The controversy resulted in a project led by the Organization for Economic Cooperation and Development's (OECD) Center for Tax Policy and Administration to combat practices that enable Base Erosion and Profit Shifting (BEPS). In 2013, the OECD issued a road map composed of 15 actions to be completed over the next two years to "equip governments with the domestic and international instruments needed to tackle BEPS."

Increased transparency was a main guiding principle of the OECD's BEPS action plans. In this spirit, Action 13 consisted of the development of guidance for the implementation of an updated framework for transfer pricing documentation and a template for CBCR Reporting. In September 2014, the OECD published a report with guidance on transfer pricing documentation and CBCR reporting. The report described a three tiered standardized approach: (i) a master file containing information relevant to all members of

the MNC, (ii) a local file with information relevant to the local taxpayer, and (iii) a CBCR Report containing information relevant to the MNC's allocation of income, taxes paid, assets, and activities, among others. Per the guidance issued by the OECD, the CBCR framework applies to MNCs with operations in multiple jurisdictions that report revenues above a threshold of EUR 750 million.

Generally, the CBCR will be filed by the ultimate parent of the MNC, or a surrogate parent entity, should the ultimate parent not be in a country requiring reporting, and will immediately become available to tax authorities in the various jurisdictions where the MNC operates and where CBCR rules have been implemented pursuant to multilateral or bilateral tax agreements, including information exchange agreements. The large majority of taxing jurisdictions that have implemented a transfer pricing regime also have implemented some form of CBCR requirement. Most MNCs will face the need to prepare a CBCR.

Find it Fast

Country-by-Country Reporting

Court Finds CA Sch B Disclosure Requirement Unconstitutional

Did you know?

The Internal Revenue Service (IRS) has exempted not-for-profit organizations with unrelated business taxable income below \$850 million from the obligation to submit a CBCR in the United States; however, other entities within the group may still be required to have a CBCR available to their tax authorities locally. Managers of US headquartered MNCs that are exempt from CBCR should examine the CBCR rules they are subject to outside of the United States to determine how the lack of a CBCR requirement in the United States would impact them. In many jurisdictions, there may be a “waterfall” process to identify an alternative CBCR filing jurisdiction when the MNCs parent company does not have an obligation to file a CBCR by its tax authority. Alternatively, given that the United States has a one year delay on the implementation of CBCR requirements relative to other countries, taxpayers may consider using a “surrogate” jurisdiction or even filing a voluntary CBCR report in the United States. It is important to consider the jurisdiction’s ability to handle confidential information when evaluating alternative jurisdictions for filing of the CBCR. Many US MNCs might prefer to submit a voluntary filing in the United States to comply with their obligations outside the United States and to preserve the assurance afforded by the IRS’s ability to handle sensitive information confidentially. This is an important decision to be made in the short term, as many countries that have implemented CBCR rules require local taxpayers to inform tax authorities of the jurisdiction where the CBCR will be filed; in some instances, these notifications may be due as soon as the end of calendar year 2016.

Court Finds California Schedule B Disclosure Requirement Unconstitutional

The California Code of Regulations Section 301 requires exempt organizations to annually file Form RRF-1 and attach a copy of the IRS Form 990 and Schedules with the California Registry of Charitable Trusts. This filing requirement includes Form 990, Schedule B, which lists the names, addresses, and contribution amounts of all

individuals who gave more than \$5,000 to the exempt organization. Although the Form 990, schedules, and attachments must be made available to the public, the name and addresses of contributors on Schedule B are not required to be made public.

On November 16, 2016, the US District Court for the Central District of California found that the California Attorney General’s requirement to disclose Form 990, Schedule B unconstitutional as-applied to Thomas More Law Center. In its findings, the court notes that the Attorney General’s requirement to disclose Schedule B is not substantially related to its interest in regulating charitable organizations. The Court also notes the Attorney General could conduct a successful investigation through its “numerous other means” of obtaining the information and that the primary advantage of requiring the disclosure of Schedule B is convenience and efficiency.

The findings of *Thomas More Law Center v. Harris* are consistent with the findings of *Americans for Prosperity Foundation v. Harris*

which found the disclosure requirement unconstitutional as-applied to Americans for Prosperity on April 29, 2016. Both of the above cases are in contrast to the findings of *Center for Competitive Politics v. Harris* which found that the disclosure requirement was not facially unconstitutional.

Deloitte Thoughtware

[Deloitte Center for Health Solutions](#). The source for health care insights: The Deloitte Center for Health Solutions (DCHS) is the research division of Deloitte’s Life Sciences and Health Care practice. The goal of DCHS is to inform stakeholders across the health care system about emerging trends, challenges, and opportunities.

[Health Care Current](#). Weekly insights to keep you informed and ahead. This weekly series explores breaking news and developments in the US health care industry; examines key issues facing life sciences and health care companies; and provides updates and insights on policy, regulatory, and legislative changes.

Did you know?

2016 Due Date Extended for Form 1095-B and 1095-C

[Notice 2016-70](#) extends the due date to furnish individuals the 2016 Form 1095-B, Health Coverage, and the 2016 Form 1095-C, Employer-Provided Health Insurance Office and Coverage, from January 31, 2017, to March 2, 2017. The Notice does not extend the due dates for filing with the Service the 2016 Forms 1094-B, 1095-B, 1094-C, or 1095-C.

Notice 2016-70 also provides relief of penalties imposed under IRC sections 6721 and 6722, if the reporting entity can show that it made a good-faith effort to comply with the information reporting requirements. The relief will apply only to incorrect or incomplete information reported on a statement or return and not to failure to timely furnish or file a statement or return.

Final 2016 Form 990 and Schedules Released

The IRS has released the final Forms 990 and associated schedules. Currently, only the Schedule D instructions have been released. The final forms can be accessed [here](#).

IRS Releases Updated Report on 1023-EZ

Since the release of Form 1023-EZ in 2014, the IRS has monitored the effect that its release has had on the Exempt Organization (EO) Division performance through a Customer Satisfaction Survey. The Survey shows an increase in customer satisfaction, a decrease in customer dissatisfaction, and an increase in the cost effectiveness of the EO division. The average processing time for the Form 1023-EZ is 14 days in comparison to 97 days for the Form 1023. Further, the EO division has realigned 31 determination agents to EO examinations.

Deloitte Dbriefs

Deloitte Dbriefs are live webcasts that give you valuable insights on important developments affecting your business. Register for the following webcasts or view archived recordings by clicking on the respective hyperlinked button below.



Global Mobility, Talent, & Rewards

Affordable Care Act tax reporting: Last-minute preparations for the January 31 deadline

December 7 | 2 p.m. ET

Employers could be scrambling in December with last-minute preparations to meet January 31, 2017, filing deadlines for Affordable Care Act tax reporting. What should you focus on? Learn about 2016 ACA reporting issues likely to arise and ways to prepare for them.

[Register or View archive](#)



International Tax

From all directions—trends making alignment of business and tax a growing imperative

December 8 | 2 p.m. ET

The finance and tax departments of many multinational companies are struggling to keep pace with dramatic changes coming at them from all sides. Yet more than ever, tax executives are being challenged to align international tax strategies with business strategies and operating models. Learn how multinationals are adapting to rapid changes from all directions.

[Register or View archive](#)



Financial Reporting for Taxes

Tax accounting: Year-end update, potential pitfalls, and other hot topics

December 12 | 2 p.m. ET

As year-end 2016 approaches, companies are often pressured to accomplish a lot in a short time. What financial reporting matters may be important for your company as you approach year end? Gain valuable insights on the latest tax accounting developments and their impact on financial reporting for taxes.

[Register or View archive](#)



Health Sciences

A look ahead to 2017: What changes can the health care industry expect?

December 16 | 1 p.m. ET

In a health care environment characterized by continuing rapid change, what strategic priorities and trends should life sciences and health care organizations be mindful of looking ahead to 2017? Explore US and global market forces influencing the life sciences and health care environment in 2017.

[Register or View archive](#)



Contact

Please contact your local Deloitte Tax LLP provider for more information on our services.

Fran Bedard—Nashville

fbedard@deloitte.com

+1 615 259 1811

Joan McMahon—San Francisco

jmcmahon@deloitte.com

+1 415 783 5568

Lori Boyce—Detroit

lboyce@deloitte.com

+1 313 396 3324

Kristina Rasmussen—Minneapolis

krasmussen@deloitte.com

+1 612 397 4178

Jeff Frank—Indianapolis

jdfrank@deloitte.com

+1 317 656 6921

**Mary Rauschenberg—
Chicago and Washington National Tax**

mrauschenberg@deloitte.com

+1 312 486 9544

William Homer—Philadelphia

whomer@deloitte.com

+1 215 299 4642

Steve Rovner—Tampa

srovner@deloitte.com

+1 813 273 8355

Alicia Janisch—Detroit

ajanisch@deloitte.com

+1 313 324 1442

John W. Sadoff, Jr.—Atlanta

jsadoff@deloitte.com

+1 704 887 1810

Christine Kawecki—Jericho

ckawecki@deloitte.com

+1 516 918 7138

Jim Sowar—Cincinnati

jsowar@deloitte.com

+1 513 784 7242

The information contained in Tax News & Views: Health Care Edition is for general purposes only and Deloitte is not, by means of this newsletter, rendering accounting, business, financial investment, legal, tax, or other professional advice or services. This material is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this newsletter. If you have questions about the content of Tax News & Views: Health Care Edition, contact Mary Rauschenberg at +1 312 486 9544 or at mrauschenberg@deloitte.com.

As used in this document, "Deloitte" means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2016 Deloitte Development LLC. All rights reserved.