



**United Arab Emirates introduces  
Country-by-Country Reporting rules**

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## Background

The United Arab Emirates (UAE) joined the Base Erosion and Profit Shifting Inclusive Framework (BEPS IF) on 16 May 2018, and has since taken significant steps to implement the BEPS minimum standards (i.e., Actions 5, 6, 13, and 14) and cement its position as an attractive regional and global hub for foreign direct investment.

The UAE Ministry of Finance (MoF) recently issued 'Cabinet of Ministers Resolution No.31 of 2019', introducing formal regulations for demonstrating economic substance, which come into effect from 30 April 2019.

On 30 April 2019, the UAE MoF also issued 'Cabinet Resolution No. 32 of 2019 on Organizing the Reports Submitted by Multinational Corporations', setting out Country-by-Country Reporting (CbCR) compliance obligations (UAE CbCR rule) for multinational entity groups (MNE) based and/or operating in the UAE, effective for financial years commencing on or after 1 January 2019 ("FY19" or "reporting period").

The underlying framework (i.e., the legal basis and competent authority agreement) necessary for implementing CbCR has been in the works since last year, with the UAE ratifying the Convention on Mutual Administrative Assistance (the Convention) on 21 May 2018, and signing the Multilateral Competent Authority Agreement (MCAA) on the Exchange of CbC on 24 June 2018. Below, we have outlined the filing obligations, deadlines, penalties and our initial views on the UAE CbCR rules.

## When are the UAE CbCR rules effective?

The rules are effective for financial years commencing on or after 1 January 2019 (i.e., FY19 shall be the first reporting period).

## What is the eligibility criteria?

The UAE CbCR rules shall apply to MNE groups:

- with consolidated revenues of at least Arab Emirate Dirham (AED) 3.15 billion (approximately United States Dollars (USD) 857 million) in the financial year immediately preceding the reporting period, based on the consolidated financial statements of that preceding year (i.e., FY18); and
- if the ultimate parent entity (UPE) of the MNE group is resident in the UAE; or
- if a UAE-resident constituent entity (CE) of the MNE group (with its UPE outside the UAE) is nominated as the Alternate Parent Entity (APE); or
- if the MNE group has a UAE-resident CE, which neither the UPE or an APE.

## What are the filing requirements?

The CbC report must be submitted within 12 months of the end of the reporting period. Accordingly, for the financial years commencing on 1 January 2019, the CbC report must be submitted by 31 December 2020. Notifications to the UAE MoF shall therefore be due by the last day of the reporting period (i.e., by 31 December 2019).

## What are the contents and format of the report?

The content and format of the CbC report is in line with Organization for Economic Co-operation and Development (OECD) CbCR guidance. The CbC report would need to be filed electronically, and we expect further guidance on any specific changes to the OECD XML schema adopted by the UAE, if any<sup>3</sup>.

## What are the penalties for non-compliance?

The UAE CbCR rules outline several penalties for non-compliance, as summarized in the table below:

<b>Non-compliance criteria</b>	<b>Penalty (in AED)</b>
Failure to retain the documents and information for at least 5 years	100,000
Failure to provide information to MoF	100,000
Failure and delay in submission of CbC report within 12 months of the end of the reporting period	1,000,000 + 10,000 per day up to a maximum of AED 250,000
Failure to ensure completeness and accuracy of information in the CbC report	50,000 to 500,000

## What are the implications for MNE groups operating in the UAE?

### ● MNE groups with UPE based in the UAE:

MNE groups with UAE-based UPEs may now submit their CbC reports directly to the UAE MoF. Based on our current reading of the UAE CbCR rules, such MNE groups may also nominate an APE to file the report in a foreign jurisdiction, if the APE's country of tax residence has the necessary qualifying competent authority agreements in place, to allow for automatic exchange of the CbC reports with the UAE MoF. Prima facie, this appears to be a helpful provision for such MNE groups, and we will be seeking to clarify with the UAE MoF, their intention of including this provision in the regulations.

### ● MNE groups with UPE not based in the UAE:

If for an MNE group, the UAE-based CE is not the group's UPE or APE, then any such CE must file a notification with the UAE MoF with details of the UPE and/or APE and the respective jurisdiction where the group's CbC report will be filed. The notification process has not been outlined in the UAE CbCR rules, but we expect further guidance to be issued in the coming months, before the notification deadline of 31 December 2019.

## What are the powers of the MoF?

The UAE CbCR rules afford broad powers to the UAE MoF, in that it may request additional information from any reporting entity (i.e., the entity filing the CbC report) to determine the accuracy and completeness of the information reported, and to validate the reasons for any missing information, including the right to enter the business premises of the reporting entity to obtain the aforementioned information. However, it is unlikely that this will be an issue for non-UAE reporting entities.

<sup>1</sup><https://www2.deloitte.com/xe/en/pages/tax/articles/uae-introduces-new-economic-substance-rules.html>

<sup>2</sup><https://www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf>

<sup>3</sup><https://www.oecd.org/ctp/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.htm>

## Results of recent peer reviews

In the second peer review report of OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes, released in October 2018, the UAE received an overall rating of 'largely compliant'.

The report considers the implementation of the legal and regulatory framework for the exchange of information in practice. The UAE was ranked as 'compliant' for confidentiality, rights and safeguards, and availability of banking information. However, on quality and timeliness of response, the UAE was rated 'non-compliant', and received a 'partially compliant' rating for availability of accounting information, access to information, and exchange of information request mechanism.

Given current timelines, we expect the UAE MoF to have all necessary systems and processes in place, to accept notifications by the end of this year, and to electronically receive and exchange CbC reports by end of next year (i.e., FY20). However, the results of such peer reviews may certainly influence the decision of MNE groups on whether to file their CbC reports in the UAE.

## Key takeaways

The UAE formalizing CbCR rules is an important development – one which sends a strong signal to the international tax community about the UAE's commitment to adopt new legislation to combat BEPS, and to distance itself from being perceived as a tax haven jurisdiction.

For most MNE groups operating in the UAE, the new rules provide flexibility, allowing for CbC reports (FY19 and onwards) to be filed in the UAE. For MNE groups with UPEs and/or APEs outside the UAE, the new rules introduce an additional notification requirement for CEs based in the UAE. In our view, the most significant impact will be felt by qualifying UAE-headquartered MNE groups that will be required to prepare and file a CbC report for the first time, as a result of the new rules.

It is therefore in the best interest of all qualifying MNE groups to review their position and ensure compliance, particularly given the hefty penalties for non-compliance. That being said, there is still sufficient time for such MNE groups to prepare, before the first CbC reports are due by 31 December 2020.

We expect the UAE MoF to release further guidance in the coming months on several key areas, such as details of an online filing portal, notifications and CbC report filing process, and final XML specifications, if different from the OECD XML schema.



## Contacts

**Shiv Mahalingham**

Middle East Transfer Pricing  
Leader  
[smahalingham@deloitte.com](mailto:smahalingham@deloitte.com)

**Danial Khalid**

KSA Transfer Pricing  
Lead  
[dkhalid@deloitte.com](mailto:dkhalid@deloitte.com)

**Jan Roderick Van Abbe**

International Tax and  
Transfer Pricing Director  
[jvanabbe@deloitte.com](mailto:jvanabbe@deloitte.com)

**Alena Kovalova**

Oil and Gas Transfer  
Pricing Lead  
[alekovalova@deloitte.com](mailto:alekovalova@deloitte.com)

**Saumitra Bhagwat**

Transfer Pricing Senior  
Manager  
[sbhagwat@deloitte.com](mailto:sbhagwat@deloitte.com)

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