



Arms Length Standard

Country-by-Country Reporting ("CbCR")

South Africa-frequently asked questions

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Subtitle or date

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Background

The Competent Authority of South Africa signed the Multilateral Competent Authority Agreement (“MCAA”) on the Exchange of CbCR on 27 January 2016. In signing this SARS has committed to the process of exchanging of information with other countries, specifically relating to CbCR.

SARS also issued Final Regulations on 23 December 2016 in relation to CbCR. In these Regulations (of which a draft was published earlier in 2016) South African MNEs are required to comply with CbCR for years of assessment starting on or after 1 January 2016.

In this article we have addressed 10 of the most frequently asked questions relating to CbCR. A follow up article will address questions relating to the actual preparation and data used in the CbCR. If you have a particular question that is not addressed in this article, please contact us.

Filing requirements and responsibility

1. What is the effective date for South African multinationals (“MNE”) to file the CbCR?

In terms of the Regulations issued on 23 December 2016, this became effective for financial years starting on or after 1 January 2016.

2. When is the CbCR due to be submitted to SARS?

The CbCR, provided the thresholds are met (refer question 3 below) is due 12 months after the last day of the reporting fiscal year. The reporting fiscal year is the year covered by the CbCR. Therefore, a December year end South African MNE, meeting the threshold, has to submit its first CbCR to SARS on or before 31 December 2017 (i.e. 12 months after its reporting fiscal year of 2016).

3. What is the threshold for a South African based MNE?

For a South African based MNE, the threshold is a total consolidated group turnover ZAR10 billion. This is to be



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measured on the financial results of the MNE in the financial year immediately preceding the reporting fiscal year.

Therefore, if the South African MNE has a December year end, then it has to determine whether it is required to file a CbCR for the year ending 31 December 2016, based upon its financial results for 2015.

If during 2015 the South African MNE did not meet the ZAR10bn threshold, it is not required to submit the CbCR for 2016. If during 2016 it meets the threshold, then the first reporting fiscal year will be 2017, with the report to be submitted in 2018.

4. What is the threshold for a foreign based MNE?

For the majority of foreign based MNEs, the threshold is a total consolidated group turnover of EUR750million. For US based MNEs the threshold is USD850m, and for Australian Groups the threshold is AUD1billion.

5. Which group entity is responsible for preparation and filing of the CbCR?

The number one rule is that the CbCR is to be prepared and submitted to the tax authority in the country where the Ultimate Parent Company of the MNE is a tax resident. In certain instances, the reporting entity will be a Surrogate Parent Entity, as chosen by the Group.

6. When may it be advisable to choose a Surrogate Parent Entity for Filing purposes?

It will be necessary for a Group to select a Surrogate Parent Entity in one of the following situations:

- The Ultimate Parent Entity of the MNE Group is not obliged to file a CbCR in the country where it is located; or
- The country in which the Ultimate Parent Entity of the MNE Group is resident has an International Agreement with South Africa, not does not have a Qualifying Competent Authority Agreement with South Africa through which it is able to exchange the CbCR.

The alternative to selecting a Surrogate Parent Entity is to file CbCR in each country where the group has legal entities and which have CBC filing obligations.

Also refer to the specific question relating to an Ultimate Parent Company residing for tax purposes in the United States.

7. What to do or know where the Ultimate Parent of the Group is based in the US?

With regards to an Ultimate Parent Company located in the US, there are two important points to consider.

The first relates to the fact that the US have introduced CbCR with effect 1 July 2016, therefore there is a potential gap in reporting periods for companies forming part of such a group where the group has a year-end prior to 1 July 2016.

A US Ultimate Parent will have the option to file its CbCR voluntarily with the IRS to avoid filing in countries that require a local Constituent entity of the US MNE Group to file the report in an earlier period due to this different effective date. The current concern is that the US has not yet signed the CbC MCAA and, as discussed below, does not intend signing it. Countries that have signed this agreement are obliged to share the CbCR with other countries as is relevant.

The alternative for such a Group is to choose a Surrogate Parent and file in another jurisdiction that accepts Surrogate Parent filings such as South Africa. Importantly, the chosen Surrogate Parent must be tax resident in a jurisdiction which, like South Africa, is also a signatory to the MCAA for the automatic exchange of CbCR.

Secondly, as referred to above, the US have not yet signed the MCAA on the Exchange of CbCR, and is not intending to do so either. It intends following a different path, whereby it will enter into bilateral agreements with various countries rather than signing the MCAA.

Groups with an Ultimate Parent in the US need to consider its options and whether to select a Surrogate Parent until such time as the US have signed the bilateral agreements to allow for the exchange of CbCR.

8. How is this to be filed to SARS?

The Briefing Note to the SARS Notice issued on 28 October 2016 indicates that the CbCR will be submitted under section 25 of the Tax Administration Act and is to be read in conjunction with the Regulations issued in this regard. The Regulations do not provide specific guidance has been issued in this regard.

It is recommended that South African Ultimate Parent companies upload the CbCR as an attachment to its tax return provided the tax return is submitted on time.

Should further guidance be issued by SARS before the first reporting deadline of 31 December 2017 we will notify the taxpayers impacted by this of the change.

Notifications

9. Which countries require early notifications in relation to CbCR?

Certain countries are requiring taxpayers to submit early notifications in relation to CbCR. This requirement does not impact South African taxpayers.

A South African based MNE with operations in Austria, Bulgaria, Denmark, Ireland, Luxembourg and Spain should note that these countries do require early notifications of the name and details of the Ultimate Parent of the Group.

10. Does a South African taxpayer have a notification obligation to SARS?

A South Africa taxpayer is required to notify SARS on or before the reporting deadline the identify, and tax residence of the Ultimate Parent of the Group, or the Surrogate Parent for the Group. No specific guidance has as yet been provided on how SARS is to be notified of this. We recommend that this be provided as additional information when the South African taxpayer submits its tax return.

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