



OECD issues additional guidance on CbC reporting

Global Transfer Pricing Alert 2016-023

The OECD on June 29, 2016, issued additional guidance on the implementation of the country-by-country (CbC) reporting requirement introduced in the BEPS Action 13 Final Report issued on October 5, 2015.

The guidance covers four issues:

- Transitional filing options to eliminate initial year effective dates differences (the “gap” year issue)
- The application of CbC reporting to investment funds
- The application of CbC reporting to partnerships
- The impact of currency fluctuations on the EUR 750 million filing threshold

Parent surrogate filing

The OECD guidance introduces the concept of “parent surrogate filing” on a voluntary basis to address transition issues that arise in the case of jurisdictions that have implemented CbC reporting for fiscal periods commencing after the January 1, 2016, recommended date, the so-called gap year issue. In those situations, the OECD recommends that jurisdictions permit voluntary filing by ultimate parent entities resident in their jurisdiction, parent surrogate filings, under specified conditions. When an MNE makes a voluntary parent surrogate filing, the OECD recommends that local filing obligations should not apply in any jurisdiction that otherwise would require local filing of the CbC report.

Japan, Switzerland, and the United States have indicated that they would permit voluntary parent surrogate filings for companies with fiscal years beginning on or after January 1, 2016, and before the effective date of their CbC filing requirements.

The parent surrogate filing rule is subject to the following conditions:

- The ultimate parent entity must make available a 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).
- The ultimate parent entity’s jurisdiction of tax residence must have a CbC reporting requirement in place by the first filing deadline of the CbC report (even if filing a CbC report for the fiscal year in question is not required under those laws).
- A Qualifying Competent Authority Agreement must be in effect between the ultimate parent entity’s jurisdiction of tax residence and the local jurisdiction.
- The ultimate parent entity’s jurisdiction of tax residence must not have notified the local jurisdiction’s tax administration of a systemic failure.
- Two notifications must have been provided:
 - 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

- 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).

Investment Funds

The guidance confirms that there is no general exemption from CbC reporting for investment funds. The governing principles to determine whether an investment fund is part of an MNE group or must include investees in its compliance with the CbC requirements are the accounting consolidation rules.

Partnerships

The release provides additional guidance on the treatment of fiscally transparent partnerships. The guidance clarifies that the general framework to determine whether partnerships are members of an MNE group is provided by the accounting consolidation rules. If under the accounting consolidation rules a partnership is an includable entity, then that partnership may be a constituent entity of an MNE group subject to CbC reporting.

The guidance provides specific guidance on how to report fiscally transparent partnerships. If the partnership is a permanent establishment in the tax jurisdiction of its country of organization or has a permanent establishment in another tax jurisdiction, then the operations attributable to the permanent establishment will be reported in accordance with the rules for permanent establishments. 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.

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.

Impact of currency fluctuations on the CbC reporting threshold

The guidance provides a currency coordination rule to address the impact of currency fluctuations on the agreed EUR 750 million filing threshold. The Action 13 Final Report stated that the agreed filing threshold for the CbC report is EUR 750 million or a near equivalent amount in the domestic currency as of January 2015. 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 additional guidance provides that if the jurisdiction of the ultimate parent entity has implemented a reporting threshold in accordance with the recommended threshold, an MNE group that complies with that local currency threshold should not be exposed to a local filing requirement merely because the other jurisdiction is using a threshold denominated in a different currency.

Contacts

David Varley
Tax Principal
Deloitte Tax LLP
dvarley@deloitte.com

Joseph Tobin
Senior Manager
Deloitte Tax LLP
jtobin@deloitte.com

Christopher Trump
Tax Principal
Deloitte Tax LLP
ctrump@deloitte.com

Jeremy Sina
Senior Manager
Deloitte Tax LLP
jesina@deloitte.com

Alan Shapiro
Senior Advisor
Deloitte Japan
Alan.shapiro@tohmatu.co.jp

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