



Guidance on the Implementation of Country-by-Country Reporting

BEPS ACTION 13

December 2016

OECD/G20 Base Erosion and Profit Shifting Project

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Introduction

All OECD and G20 countries have committed to implementing country by country (CbC) reporting, as set out in the Action 13 Report “Transfer Pricing Documentation and Country-by-Country Reporting”. Recognising the significant benefits that CbC reporting can offer a tax administration in undertaking high level risk assessment of transfer pricing and other tax risks, a number of other countries have also committed to implementing CbC reporting, including developing countries.

Countries have agreed that implementing CbC reporting is a key priority in addressing BEPS risks, and the Action 13 Report recommended that reporting take place with respect to fiscal periods commencing from 1 January 2016. Swift progress is being made in order to meet this timeline, including the introduction of domestic legal frameworks and the entry into competent authority agreements for the international exchange of CbC reports. MNE Groups are likewise making preparations for CbC reporting, and dialogue between governments and business is a critical aspect of ensuring that CbC reporting is implemented consistently across the globe. Consistent implementation will not only ensure a level playing field, but also provide certainty for taxpayers and improve the ability of tax administrations to use CbC reports in their risk assessment work.

The OECD will continue to support the consistent and swift implementation of CbC reporting. Where questions of interpretation have arisen and would be best addressed through common public guidance, the OECD will endeavour to make this available.

The guidance below is intended to assist in this regard. This guidance covers the following issues:

- Transitional filing options for MNEs (“parent surrogate filing”).
- CbC reporting notification requirements for MNE Groups during transitional phase.
- The application of CbC reporting to investment funds.
- The application of CbC reporting to partnerships.
- The impact of currency fluctuations on the agreed EUR 750 million filing threshold.

In addition, the OECD is providing information on country specific aspects of CbC implementation, including the effective dates of CbC legal frameworks, local filing and surrogate filing mechanisms, and identifying the agreements for exchange of CbC reports that are in effect. Given that CbC Reporting is one of the BEPS minimum standards, a peer review of the implementation of CbC reporting will be conducted to ensure that the implementation of jurisdictions’ domestic legal frameworks is timely and in accordance with the Action 13 Report.

1. Can MNE Groups with an Ultimate Parent Entity resident in a jurisdiction whose CbC reporting legal framework is in effect for Reporting Periods later than 1 January 2016 voluntarily file the CbC report for fiscal periods commencing on or from 1 January 2016 in that jurisdiction? What is the impact of such filing on local filing obligations in other jurisdictions?

All OECD and G20 countries, as well as others, have committed to implementing the minimum standard of Country by Country (CbC) reporting agreed in the Action 13 Report. The Action 13 Report recommended that countries implement a legal requirement for CbC reporting with respect to MNEs’ fiscal periods commencing on or from 1 January 2016. At the same time, the Action 13 Report recognises that “some jurisdictions may need time to follow their particular domestic legislative process in order to make

necessary adjustments to the law.” Where jurisdictions are implementing CbC Reporting but will not be able to implement with respect to the fiscal period commencing from 1 January 2016, this therefore gives rise to a transition issue. Where other jurisdictions introduce a local filing obligation (which is an option but not a requirement under the Action 13 minimum standard) and do not otherwise provide any transition relief to address this issue - which some countries have done recognising the differences in legislative processes as noted in the Report - there is a need to issue guidance as to the local filing obligations that may arise during such a period.

In such situations, jurisdictions that will not be able to implement with respect to fiscal periods from 1 January 2016 may be able to accommodate voluntary filing for Ultimate Parent Entities resident in their jurisdiction. This would allow the Ultimate Parent Entities of an MNE Group resident in those jurisdictions to voluntarily file their CbC report for the fiscal periods commencing on or from 1 January 2016 in their jurisdiction of tax residence. This is referred to as “parent surrogate filing” because it is a form of surrogate filing, the framework for which is set out in the Action 13 Report. As such, parent surrogate filing does not alter the timelines or the minimum standard, and thus ensures the integrity of the agreement reached in the Action 13 Report.

Where surrogate filing (including parent surrogate filing) is available, it will mean that there are no local filing obligations for the particular MNE in any jurisdiction which otherwise would require local filing in which the MNE has a Constituent Entity (herein referred to as the Local Jurisdiction). This is subject to the following conditions:

1. the Ultimate Parent Entity has made available a CbC report conforming to the requirements of the Action 13 Report to the tax authority of its jurisdiction of tax residence, by the filing deadline (i.e. 12 months after the last day of the Reporting Fiscal Year of the MNE Group); and
2. by the first filing deadline of the CbC report, the jurisdiction of tax residence of the Ultimate Parent Entity must have its laws in place to require CbC reporting (even if filing of a CbC report for the Reporting Fiscal Year in question is not required under those laws); and
3. by the first filing deadline of the CbC report, a Qualifying Competent Authority Agreement must be in effect between the jurisdiction of tax residence of the Ultimate Parent Entity and the Local Jurisdiction;¹ and
4. the jurisdiction of tax residence of the Ultimate Parent Entity has not notified the Local Jurisdiction’s tax administration of a Systemic Failure; and
5. the following notifications have been provided:²

¹ A necessary condition for having a Qualifying Competent Authority Agreement in effect is that there is also an International Agreement in effect between the jurisdiction of tax residence of the Ultimate Parent Entity and the Local Jurisdiction.

² If the tax administration in the jurisdiction where the Ultimate Parent Entity or Constituent Entity (as applicable) is resident for tax purposes chooses not to require notifications or has not specified a procedure for providing such notifications, then this condition will not be relevant. Furthermore, where such notification is required, the square brackets included in this section reflect that it is at the discretion of the jurisdiction to choose the notification date most appropriate in its domestic circumstances, for example the date that would coincide with the date for filing of a CbC Report.

- the jurisdiction of tax residence of the Ultimate Parent Entity has been notified by the Ultimate Parent Entity, no later than [the last day of the Reporting Fiscal Year of such MNE Group]; and
- the Local Jurisdiction's tax administration has 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 such MNE Group].

The following jurisdictions have confirmed they will have parent surrogate filing available consistent with the framework outlined above for Ultimate Parent Entities that are resident in their jurisdiction, with respect to fiscal periods commencing on or from 1 January 2016:³

- Hong Kong, China
- Japan
- Liechtenstein⁴
- Nigeria
- Russian Federation⁵
- Switzerland⁶
- United States

2. Article 3 of the Action 13 model legislation for CbC reporting includes an option for jurisdictions to require notifications to be sent to the country tax administration identifying the Reporting Entity for the MNE Group. Where a Constituent Entity of an MNE Group is required to notify its tax administration of the identity and tax residence of the Reporting Entity (including the Surrogate Parent Entity) of the MNE Group by 31 December 2016 (with respect to the 2016 fiscal year), would it be consistent with the Action 13 minimum standard for jurisdictions to provide some transitional relief during the period in which domestic CbC legal frameworks and Qualifying Competent Authority Agreements are still being put in place?

A practical issue may arise for a number of MNE Groups around the world which are currently in the process of identifying the reporting entity and considering whether to proceed with surrogate filing where local filing obligations would otherwise be applicable. This issue relates to the domestic notification requirements that Constituent Entities of MNE Groups may be subject to, requiring them to inform their tax administration about the identity of the Reporting Entity that will be filing the CbC report. In a number of cases these notifications will need to be submitted by 31 December 2016 with respect to the 2016 fiscal year.

However, the identity of the appropriate reporting entity may not be known by that time. This is because the identity of the reporting entity will depend on the domestic CbC legal frameworks and the international exchange of information relationships that are formed through Qualifying Competent

³ This list of jurisdictions is dynamic and will be updated.

⁴ Contemplated in draft legislation – subject to approval by legislature.

⁵ Contemplated in draft legislation currently under consultation - subject to approval by legislature.

⁶ Contemplated in draft legislation currently under consultation - subject to approval by legislature.

Authority Agreements (QCAAs). Domestic legal frameworks are still being finalised, and Qualifying Competent Authority Agreements may not be in place by 31 December 2016.

MNE Groups that are seeking to comply with their legal obligations to provide notifications, where such obligations exist, therefore face a practical difficulty in doing so because necessary information will not be available. To address this issue, jurisdictions may provide some flexibility regarding the date for the notification requirement if applicable, as neither the Action 13 standard nor the model legislation requires the notification to be at the end of the reporting fiscal year. For example, jurisdictions which are introducing notification requirements may choose another date for notifications, such as the date for filing a CbC report or the date for filing a corporate tax return.

Jurisdictions which require notifications may also provide administrative guidance to allow transitional relief in respect of these requirements. For example, Constituent Entities could be authorised to provide a notification based on a preliminary assessment of the identity and tax residence of the Reporting Entity. An updated notification based on new information could be provided by the Constituent Entity by the date for filing the CbC report. Jurisdictions which require notifications could also provide transitional relief from penalties in connection with MNE Groups updating their notification.

Transitional relief in these circumstances would not be frustrating the policy intention of the Action 13 minimum standard.

In addition, to provide clarity as soon as possible to MNE Groups, jurisdictions will work towards bringing their Qualifying Competent Authority Agreements (QCAA) into effect as soon as possible so as to minimize this transitional issue.

3. How should the CbC reporting rules be applied to investment funds?

As stated in paragraph 55 of the Action 13 Report, there is no general exemption for investment funds. Therefore the governing principle to determine an MNE Group is to follow the accounting consolidation rules. For example, if the accounting rules instruct investment entities to not consolidate with investee companies (e.g. because the consolidated accounts for the investment entity should instead report fair value of the investment through profit and loss), then the investee companies should not form part of a Group or MNE Group (as defined in the model legislation) or be considered as Constituent Entities of an MNE Group. This principle applies even where the investment entity has a controlling interest in the investee company.

On the other hand, if the accounting rules require an investment entity to consolidate with a subsidiary, such as where that subsidiary provides services that relate to the investment entity's investment activities, then the subsidiary should be part of a Group and should be considered as a Constituent Entity of the MNE Group (if one exists).

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.

4. How should a partnership which is tax transparent and thus has no tax residency anywhere be included in the CbC report? How should a reverse hybrid partnership, which is tax transparent in its jurisdiction of organisation but considered by a partner's jurisdiction to be tax resident in its jurisdiction of organisation, be treated?

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 Constituent Entity of an MNE group subject to CbC reporting.

For the purpose of completing the CbC report, if a partnership is not tax resident in any jurisdiction then the partnership's items, to the extent not attributable to a permanent establishment, should be included in the line in table 1 of the CbC report for stateless entities. Any partners that are also Constituent Entities within the MNE Group should include their share of the partnership's items in table 1 in their jurisdiction of tax residence.

Table 2 of the CbC report should include a row for stateless entities, and a sub-row for each stateless entity including partnerships that do not have a tax residence - that is, the reporting for stateless entities should parallel the reporting for Constituent Entities that have a tax residence. For a partnership included in the stateless entity category, the field in table 2 for "tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence" should indicate the jurisdiction under whose laws the partnership is formed / organised.

It may be advisable for the MNE to provide an explanation in the notes section of the report on the partnership structure and on the stateless entities. For instance, a note in the Additional Information section may indicate that a partnership's "stateless income" is includable and taxable in the partner jurisdiction.

Where a partnership is the Ultimate Parent Entity, for the purpose of determining where it is required to file the CbC report in its capacity as the Ultimate Parent Entity, 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.

5. If Country A is using a domestic currency equivalent of EUR 750 million for its filing threshold, Country B is using EUR 750 million for its filing threshold, and as a result of currency fluctuations Country A's threshold is in excess of EUR 750 million, can Country B impose its local filing requirement on a Constituent Entity of an MNE Group headquartered in Country A which is not filing a CbC report in Country A because its revenues, while in excess of EUR 750 million, are below the threshold in Country A?

As set out in the Action 13 Report, the agreed threshold is EUR 750 million or a near equivalent amount in domestic currency as of January 2015. Provided that the jurisdiction of the Ultimate Parent Entity 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 in order to reflect 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.

