

AN ALERT FROM THE BDO TRANSFER PRICING PRACTICE

# BDO KNOWS:

## TRANSFER PRICING



### SUBJECT

## CBC REPORTING IN THE UNITED STATES

### SUMMARY

On June 30, 2016, the Internal Revenue Service (IRS) and the U.S. Department of the Treasury (Treasury) published final regulations concerning the implementation of country-by-country (CbC) reporting requirements in the United States. These regulations apply to multinational enterprises (MNE) with U.S. ultimate parent entities (UPE) and annual consolidating group revenues equal to or greater than \$850 million in the preceding fiscal year. The IRS also issued additional guidance to clarify certain aspects of the regulations, including reporting requirements, surrogate parent filings, and automatic exchange of CbC reports under the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reporting.

### DETAILS

#### Background

The Organisation for Economic Co-operation and Development (OECD) finalized the Inclusive Framework on Base Erosion and Profit Shifting (BEPS Framework) on October 5, 2015, which includes guidance on CbC reporting in Action 13. The OECD's recommended approach to CbC reporting has been adopted fully or partially by over 60 jurisdictions, including the United States.

U.S. UPEs of MNEs with annual consolidated group revenue equal to or greater than \$850 million dollars are subject to CbC reporting requirements in the United States for fiscal years beginning on or after June 30, 2016. Further guidance has been published by the IRS concerning the CbC filing requirements and forms, the allowance of surrogate parent filings, and the automatic exchange of CbC reports with foreign tax authorities.

#### CbC Filing Requirements in the United States

In the United States, the CbC report should be filed together with the United States UPE's annual corporate tax return using Form 8975 and Schedule A. The information required in Form 8975 and Schedule A is consistent with the OECD's BEPS Framework, and contains three parts.

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Part I of the CbC report requires taxpayers to report ten financial and tax figures for each jurisdiction in which the MNE operates: unrelated party revenues, related party revenues, total revenues, profit or loss before income tax, income tax paid on cash basis, income tax accrued for the current year, stated capital, accumulated earnings, number of employees, and tangible assets other than cash and cash equivalents. Part 2 requires taxpayers to report the main business activities of each constituent entity in the reported jurisdictions, as well as the tax identification numbers and tax jurisdictions of each constituent entity. Part 3 allows taxpayers to report any additional information relevant for understanding the information reported in Part 1 or Part 2. A separate Schedule A must be prepared for each tax jurisdiction in which the MNE operates.

Taxpayers are not required to notify the IRS with the identity of the reporting entity.

### Surrogate Parent Filings in the United States

According to the OECD's BEPS Framework, some MNEs may choose to appoint a constituent entity that is not the UPE as a surrogate parent entity (SPE) to file a surrogate filing of the CbC report with the local tax authority for one of the following reasons:

1. The UPE of the MNE group is not obligated to file a CbC report in its jurisdiction of tax residence.
2. The jurisdiction in which the UPE is resident for tax purposes does not have a qualifying competent authority agreement in effect to which the SPE's country of residence is a party by the time of the CbC exchange.
3. There has been a systemic failure of the jurisdiction of tax residence of the UPE that would prevent CbC exchange.

The final U.S. CbC regulations allow surrogate parent filings only in cases where the U.S. UPE designates another U.S. business entity as the surrogate parent. The IRS will not accept surrogate parent filings from U.S. business entities of a foreign-parented MNE group.

### Automatic Exchange of CbC Reports

As part of the BEPS Framework, the OECD issued an implementation package to facilitate a consistent and swift implementation of CbC reporting that included a model MCAA on the Exchange of CbC Reports. The purpose of the CbC MCAA is to set forth rules and procedures as may be necessary for competent authorities of jurisdictions implementing CbC reporting to automatically exchange CbC reports filed by MNEs. The CbC MCAA itself is not a binding agreement between signatories.

Although nearly 70 jurisdictions, not including the United States, have become signatories of the OECD's MCAA, automatic exchange of CbC reports is not guaranteed unless individual exchange agreements are activated between individual jurisdictions through competent authority or other bilateral agreements or treaties.

The IRS most recently executed a competent authority agreement on the exchange of CbC with Liechtenstein on May 9, 2018. The IRS also has active exchange relationships and will therefore exchange CbC reports beginning in 2017 with Australia, Belgium, Bermuda, Brazil, Canada, the Cayman Islands, Colombia, the Czech Republic, Denmark, Estonia, Finland, Guernsey, Iceland, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, South Africa, Spain, Sweden, and the United Kingdom. For any other countries not listed, a CbC report filed in those countries or in the United States is not guaranteed to be exchanged between those countries and the United States.

Exchange agreements with Greece and Jamaica have been negotiated, but the operative date for the exchanges are still to be determined. The IRS is also expected to activate a competent authority agreement with the Indonesian tax authorities by May 31, 2018. Until then, Indonesian tax authorities will not impose local filing obligations on constituent entities of U.S. MNEs, as announced in a Memorandum of Understanding published by the IRS on April 26, 2018.

The IRS and the French tax authority have agreed to exchange CbC reports for the 2016 fiscal year, although a competent authority agreement has not yet been finalized for the exchange of CbC reports for years starting in 2017. Other jurisdictions with which the IRS is negotiating competent authority agreements for CbC exchange include Austria, Croatia, Germany, Hungary, India, Israel, Mauritius, and Slovenia.

U.S.-parented MNEs with foreign subsidiaries in jurisdictions where there is no active exchange agreement with the United States may need to file a CbC report in those foreign jurisdictions, or in a jurisdiction where the CbC report is ensured to be exchanged with jurisdictions that do not have an active agreement with the United States.

## BDO INSIGHTS

U.S. taxpayers with annual consolidated group revenues that are above or near the \$850 million threshold should become aware of CbC reporting requirements in the United States as well as in countries where the MNE operates.

It is recommended that taxpayers frequently monitor the active list of exchange agreements in order to make determinations as to which tax jurisdictions will be able to receive the CbC report filed by the UPE or whether any local filings of the CbC report will be necessary for compliance. The OECD maintains and regularly updates a list of currently active exchange agreements on its

[website](#) as a reference for taxpayers, and many tax authorities also make available on their websites information on competent authority agreements that are in place or are in negotiations with other tax jurisdictions. Refer to the IRS [website](#) to find the most up-to-date list of exchange status with other jurisdictions.

BDO's tax and transfer pricing professionals are prepared to assist taxpayers with questions concerning CbC reporting and other issues related to the BEPS Framework.

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