

AN ALERT FROM THE BDO TRANSFER PRICING PRACTICE

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TRANSFER PRICING



SUBJECT

OECD GUIDANCE ON IMPLEMENTATION OF COUNTRY-BY-COUNTRY REPORTING

SUMMARY

On February 6, 2015, the Organization for Economic Cooperation and Development (“OECD”) issued guidance on the implementation aspects of country-by-country (“CBC”) reporting for tax. This implementation guidance follows from its report in September 2014 describing a three-tiered (master file, local file, and CBC report) approach to transfer pricing documentation as part of the OECD’s Base Erosion and Profit Shifting (“BEPS”) initiative. The OECD sees the publication of this item as the single most important achievement of the international tax transparency agenda to date.

AFFECTING

Groups where the ultimate parent of the multinational enterprise (“MNE”) is located in a country that participates in the BEPS project will be affected. Although the reporting threshold of €750 million will exclude approximately 85% to 90% of all MNE groups from the filing the reports, the requirement would still cover groups that control approximately 90% of global corporate revenue.

BACKGROUND

The BEPS Action Plan provides for 15 actions covering coherence of corporate income taxation, realignment of taxation and relevant substance, and ensuring transparency while promoting increased certainty and predictability. The CBC reporting requirements are covered under Action 13, which addresses changes to the transfer pricing rules in relation to documentation.

CONTACT:

ROBERT PEDERSEN, INTERNATIONAL
TAX PRACTICE LEADER
212-885-8398 / rpedersen@bdo.com

VEENA PARRIKAR, Partner
408-352-3534 / vparrikar@bdo.com

MICHIKO HAMADA HANEY, Sr. Director
212-885-8577 / mhamada@bdo.com

KIRK HESSER, Sr. Director
312-233-1802 / khesser@bdo.com

JON JENNI, Sr. Director
714-913-2574 / jjenni@bdo.com

KLAUS OEHRING, Sr. Director
713-407-3184 / koehring@bdo.com

DETAILS

The key highlights are as follows:

- **Timing** - The first CBC Reports are required for fiscal years beginning on or after January 1, 2016.
- **Exemption for smaller international groups** - There is to be an exemption for groups with total revenues of less than €750 million (approximately \$850 million at the time of publication of the guidance), but the appropriateness of this threshold will be reviewed in 2020.
- **Other exemptions** - No exemptions are provided. All industries will be included, as will investment funds and all “non-corporate” entities.
- **Consistency of data disclosed** - The OECD emphasized the importance of utilizing the standard CBC reporting template.
- **Confidentiality** - Information provided in the CBC reports will *not* be available to the public and will only be exchanged between tax authorities through existing mechanisms under double tax conventions (or as enabled through the OECD’s proposed multinational instrument). Countries participating in the project have agreed to be prepared to enforce legal protections of the confidentiality of the information contained in the CbC reports as currently covered under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a tax treaty, or a tax information exchange agreement.
- **Appropriate use** - Jurisdictions are directed to use the CBC report to assess high-level transfer pricing risk but may also use it to assess other BEPS-related risks.
- **Filing mechanisms** - CBC reports will be filed with the jurisdiction of the ultimate parent entity of a group within one year from the close of the fiscal year concerned. A requirement to file locally or to the next-tier parent entity may be imposed if the ultimate parent jurisdiction does not require CBC reporting or there is no adequate mechanism for the timely exchange of CBC reports (or there is a failure to do so in practice).
- **Government-to-government exchange of information** - There is to be an “implementation package” to facilitate effective exchange of information.

The primary purpose of CBC reporting is as a risk assessment tool for tax administrations. The OECD specifically recognizes in its release that the need for countries “for more effective dispute resolution may increase as a result of the enhanced risk assessment capability following the adoption and implementation of a CbC reporting requirement.”

HOW BDO CAN HELP

Businesses should begin to prepare for the nature and level of scrutiny by tax authorities that will inevitably arise from the implementation of CBC reporting. As part of these preparations, each MNE group should determine if it will need to file a report and if preparation of a draft CBC report would be worthwhile. While this publication relates primarily to the implementation of CBC reporting, the OECD recommends that the master file and the local file elements of documentation also be implemented. Please contact your BDO advisor for help in determining the steps your group should take in anticipation of CBC reporting and related documentation requirements.

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