

INTERNATIONAL
TAX BULLETIN

NEW GUIDANCE ON THE IMPLEMENTATION OF CbCR



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NEW GUIDANCE ON THE IMPLEMENTATION OF COUNTRY-BY-COUNTRY REPORTING

OECD has published an updated guidance on the implementation of Country-by-Country Reporting (CbCR) in 6th of April 2017. In this bulletin, we present a summary of the said Guidance and emphasize recent changes indicating new definitions and clarifications regarding CbCR. Following issues are covered in the new Guidance on the Implementation of Country-by-Country Reporting:

- ◆ Issues relating to the definition of items reported in the template for the CbC report (April 2017)
- ◆ Issues relating to the entities to be reported in the CbC report
- ◆ Issues relating to the filing obligation for the CbC report
- ◆ Issues relating to the sharing mechanism for the CbC report

1. Issues Relating to the Definition of Items Reported in the Template for the CbC Report (April 2017)

Within updated guidance on implementation of CbCR;

- ◆ Definition of revenues has been extended. In this sense, extraordinary income and gains from investment activities should be included in “Revenues while filing CbCR”.
- ◆ Definition of related parties has been clarified. In this sense, the related parties, which are defined as “associated enterprises” in the Action 13 Report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report.

2. Issues Relating to the Entities to be Reported in the CbC Report

2.1. Application of CbCR to Investment Funds (June 2016)

The Guidance states that whether investment funds are considered as related parties depends on the accounting consolidation rules of respected country. Thus, if the accounting rules instruct investment entities to not consolidate with investee companies, then the investee companies should not form part of a Group or MNE Group 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, then the subsidiary should be part of a Group and should be considered as a Constituent Entity of the MNE Group.

2.2. Application of CbCR to Partnerships (June 2016)

Similarly, if accounting consolidation rules apply to a partnership, it can be considered as related party or Constituent Entity.

If said partnership is not a tax resident in any jurisdictions, it should be reported as Stateless Entities in CbCR. In this sense, the CbCR should include a row for stateless entities and a sub-row for each stateless entity in the tables.

Based on the explanations in the Guidance, whether stateless income is taxable in partnerships' jurisdiction can be explained in the additional information section of CbCR (Table 3).

2.3. Accounting Principles/Standards (April 2017)

The Action 13 Report does not specify that any particular accounting standard's consolidation rules be used when CbCR is conducted.

Within new guidance on implementation of CbCR, following cases specify consolidation rules:

- ◆ If the ultimate parent entity of a group is a publicly listed company, consolidation rules in the accounting standards used by the Ultimate Parent Entity should be used in the CbCR.
- ◆ If the Ultimate Parent Entity of a Group is not a publicly listed company, then that group can choose either its local GAAP or IFRS. Also, similar accounting standard might be used as its governing accounting standard. However, this choice should be consistent over years.

2.4. Treatment of Major Shareholdings (April 2017)

In the case that the jurisdiction of the Ultimate Parent Entity requires a related party to be fully consolidated, 100% of that party's revenue should be included to determine 750 Million Euro threshold.

In contrast, if proportionate consolidation is applicable in the accounting rules of said jurisdiction, then the related party revenues may be included as pro-rated while determining 750 million Euro threshold.



3. Issues Relating to the Filing Obligation for the CbC Report

3.1. Impact of Currency Fluctuations on the Agreed EUR 750 Million Filing Threshold (June 2016)

The new Guidance indicates that, the agreed threshold for CbC filing is EUR 750 million or a near equivalent amount in domestic currency as of January 2015 as set out in the Action 13 Report.

Accordingly, it is mentioned in the Guidance that to determine 750 Million Euro threshold for a group, domestic currency as of January 2015 shall be used. In this sense, we understand that if a group of companies does not prepare local filing for the CbCR in its jurisdiction, it should not prepare local CbCR filing in other jurisdictions due to threshold in a different currency.

3.2. Definition of Total Consolidated Group Revenue (April 2017)

According to the new Guidance, all revenues in the consolidated financial statements should be used to determine whether 750 million threshold for CbCR filing is reached. In addition, it is expressed in the Guidance that if the accounting rules in the jurisdiction of Ultimate Parent Entity require extraordinary income and gains from investment activities to be included, it should be included to consolidated income while determining 750 Million threshold.

4. Issues Relating to the Sharing Mechanism for the CbC Report

4.1. Transitional Filing Options for MNEs (April 2017)

In the case that Ultimate Parent Entity is resident in a jurisdiction where CbC reporting periods start later than 1 January 2016, Ultimate Parent Entity may voluntarily file the CbC Report for the 2016 fiscal year. This is called "Parent Surrogate Filing".

In order to voluntarily file the CbCR, following conditions should be met:

- ◆ 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.
- ◆ the jurisdiction of tax residence of the Ultimate Parent Entity must have its laws in place to require CbC reporting by the first filing deadline of the CbC report.

- ◆ The jurisdiction of Ultimate Parent Entity should have a Qualifying Competent Authority Agreement in effect with local jurisdictions.

- ◆ The jurisdiction of Ultimate Parent Entity should not notify a systemic failure by the first filing deadline of the CbC report.

- ◆ Before deadlines, the jurisdiction of Ultimate Parent Entity should be notified by Ultimate Parent Entity whereas Constituent Entity should notify local Jurisdictions.

The new Guidance reports that parent surrogate filing is confirmed by the following jurisdictions for the fiscal year 2016.

- ◆ Hong Kong, China
- ◆ Japan
- ◆ Liechtenstein
- ◆ Nigeria
- ◆ Russian Federation
- ◆ Switzerland
- ◆ United States

4.2. CbC Reporting Notification Requirements for MNE Groups During Transitional Phase (December 2016)

Jurisdictions may choose a specific date for notification such as the date for filing corporate income tax return. Hence, the Guidance advises that MNEs take these dates into consideration while notifying Constituent Entities' Jurisdictions of CbCR. In this sense,

- ◆ A notification by a Constituent Entity may be based on tax residence of Reporting Entity;
- ◆ An Updated Notification may be provided by a Constituent Entity;
- ◆ Transitional relief from penalties may be provided by the Jurisdiction of a Constituent Entity.

5. Take Away

Since CbC filing obligations will be applied in jurisdictions for Fiscal Year 2016, OECD has published an additional Guidance for the implementation of the CbCR. This new guidance clarifies important pending issues, and present a road-map for taxpayers to implement CbCR. We advise that recent developments by the OECD should also be chased to meet CbC filing obligations.



Please contact us for our International Tax Bulletin and further details on the implementation of Country-by-Country Reporting.



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