

Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting



OECD/G20 Base Erosion and Profit Shifting Project

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1. In September 2014 the countries participating in the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project published the report “Guidance on Transfer Pricing Documentation and Country-by- Country Reporting” (the September Report). The September Report was presented to the G20 Finance Ministers at their September 2014 meeting in Cairns and to G20 Leaders at their November 2014 meeting in Brisbane, Australia.

2. The September Report described a three-tiered standardised approach to transfer pricing documentation. This standard consists of (i) a master file containing standardised information relevant for all MNE group members; (ii) a local file referring specifically to material transactions of the local taxpayer; and (iii) a Country-by-Country Report containing certain information relating to the global allocation of the MNE group’s income and taxes paid together with certain indicators of the location of economic activity within the MNE group (the “CbC Report”).

3. The September Report noted that “it is essential that the recommendations in the September Report be implemented consistently and effectively” taking into account a number of important considerations that were outlined in that Report. The Explanatory Report to the 2014 deliverables added that “. . . this major achievement will require careful implementation, in particular as regards the way to transmit sensitive information, and guidance in this respect will be developed by February 2015.”

4. This note sets out guidance on the following matters relating to the implementation of the CbC Report: (i) the timing of preparation and filing of the CbC Report, (ii) which MNE groups should be required to file the CbC Report, (iii) the necessary conditions underpinning the obtaining and the use of the CbC Report by jurisdictions and (iv) the framework for government-to-government mechanisms to exchange CbC Reports together with the work plan for developing an implementation package.

5. This note relates primarily to the implementation of the CbC Report. In addition, it is recommended that the master file and local file elements of the new transfer pricing documentation standard be implemented through local country legislation or administrative procedures and that the master file and local file be filed directly with the tax administrations in each relevant jurisdiction as required by those administrations. Countries participating in the OECD/G20 Project agree that with regard to the local file and the master file confidentiality and consistent use of the standards contained in Annex I and Annex II of Chapter V of the Transfer Pricing Guidelines, and included in the September Report, should be taken into account when introducing these elements in local country legislation or administrative procedures.

6. Further, mechanisms will be developed to monitor jurisdictions’ compliance with their commitments and to monitor the effectiveness of the filing and dissemination mechanisms described below, in addition to but acknowledging the role of the 2020 review of implementation set out in the September Report. Finally, it is recognised that the need 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 and the work under Action 14 of the BEPS Project should take that into account.

(i) Timing: When Should the CbC Reporting Requirement Start?

7. It is recommended that the first CbC Reports be required to be filed for MNE fiscal years beginning on or after 1 January 2016. However, it is acknowledged that some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to the law. In order to assist countries in preparing timely legislation, the key elements of statutory provisions requiring ultimate parent entities of MNE groups to file the CbC Report in their jurisdiction of residence will be developed. Jurisdictions will be able to adapt these elements to their own legal systems. Given the recommendation in the September Report that MNEs be allowed one year from the close of the fiscal year to which the CbC Report relates to prepare and file the CbC Report, this recommendation means that the first CbC Reports would be filed by 31 December 2017. For MNEs with a fiscal year ending on a date other than 31 December, the first CbC Report would be required to be filed later in 2018, 12 months after the close of the relevant MNE fiscal year, and would report on the MNE group's first fiscal year beginning after 1 January 2016. It follows from this recommendation that the countries participating in the OECD/G20 BEPS Project agree that they will not require filing of a CbC Report based on the new template for MNE fiscal years beginning prior to 1 January 2016. The MNE fiscal year relates to the consolidated reporting period for financial statement purposes and not to taxable years or to the financial reporting periods of individual subsidiaries.

(ii) Which MNE Groups Should Be Required to File the CbC Report?

8. It is recommended that all MNE groups be required to file the CbC Report each year except as follows.

9. There would be an exemption from the general filing requirement for MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of less than € 750 million or a near equivalent amount in domestic currency. Thus, for example, if an MNE that keeps its financial accounts on a calendar year basis has € 625 million in consolidated group revenue for its 2015 calendar year, it would not be required to file the CbC Report in any country with respect to its fiscal year ending 31 December 2016.

10. It is believed that the exemption described in paragraph 9, which provides a threshold of €750 million, will exclude approximately 85 to 90 percent of MNE groups from the requirement to file the CbC Report, but that the CbC Report will nevertheless be filed by MNE groups controlling approximately 90 percent of corporate revenues. The prescribed exemption threshold therefore represents an appropriate balancing of reporting burden and benefit to tax administrations.

11. It is the intention of the countries participating in the OECD/G20 BEPS Project to reconsider the appropriateness of the applicable revenue threshold described in the preceding paragraph in connection with their 2020 review of implementation of the new standard, including whether additional or different data should be reported, as set out in the September Report.

12. It is considered that no exemptions from filing the CbC Report should be adopted apart from the exemptions outlined in this section. In particular, no special industry exemptions should be provided, no general exemption for investment funds¹ should be provided, and no exemption for non-corporate entities or non-public corporate entities should be provided. Notwithstanding this conclusion, countries participating in the OECD/G20 BEPS Project agree that MNE groups with income derived from international transportation or transportation in inland waterways that is covered by treaty provisions that are specific to such income and under which the taxing rights on such income are allocated exclusively to one jurisdiction, should include the information required by the CbC template with respect to such income only against the name of the jurisdiction to which the relevant treaty provisions allocate these taxing rights.

(iii) Necessary conditions underpinning the obtaining and the use of the CbC Report

13. Countries participating in the OECD/G20 BEPS Project agree to the following conditions underpinning the obtaining and the use of the CbC Report.

- **Confidentiality.** Jurisdictions should have in place and enforce legal protections of the confidentiality of the reported information. Such protections would preserve the confidentiality of the CbC Report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a TIEA or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes. Such protections include limitation of the use of information, rules on the persons to whom the information may be disclosed, ordre public, etc.
- **Consistency.** Jurisdictions should use their best efforts to adopt a legal requirement that MNE groups' ultimate parent entities resident in their jurisdiction prepare and file the CbC Report, unless exempted as set out in paragraph 9. Jurisdictions should utilise the standard template contained in Annex III of Chapter V of the Transfer Pricing Guidelines, and included in the September Report. Stated otherwise, under this condition no jurisdiction will require that the CbC Report contain either additional information not contained in Annex III, nor will it fail to require reporting of information included in Annex III.
- **Appropriate Use.** Jurisdictions should use appropriately the information in the CbC Report template in accordance with paragraph 25 of the September Report. In particular, jurisdictions will commit to use the CbC Report for assessing high-level transfer pricing risk. Jurisdictions may also use the CbC Report for assessing other BEPS-related risks. Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the CbC Report. They will further commit that if such adjustments based on CbC Report data are made by the local tax administration of the jurisdiction, the jurisdiction's competent authority will

¹ Clarification will be provided on the different forms of consolidation and the consequences of these forms of consolidation for investment funds.

promptly concede the adjustment in any relevant competent authority proceeding. This does not imply, however, that jurisdictions would be prevented from using the CbC Report data as a basis for making further enquiries into the MNE’s transfer pricing arrangements or into other tax matters in the course of a tax audit.²

(iv) The framework for government-to-government mechanisms to exchange CbC Reports and implementation package

a) Framework

14. Jurisdictions should require in a timely manner CbC reporting from ultimate parent entities of MNE groups resident in their country and referred to in (ii) and exchange this information on an automatic basis with the jurisdictions in which the MNE group operates and which fulfil the conditions listed in (iii). In case a jurisdiction fails to provide information to a jurisdiction fulfilling the conditions listed in (iii), because (a) it has not required CbC reporting from the ultimate parent entity of such MNE groups, (b) no competent authority agreement has been agreed in a timely manner under the current international agreements of the jurisdiction for the exchange of the CbC Reports or (c) it has been established that there is a failure to exchange the information in practice with a jurisdiction after agreeing with that jurisdiction to do so, a secondary mechanism would be accepted as appropriate, through local filing or by moving the obligation for requiring the filing of the CbC Reports and automatically exchanging these reports to the next tier parent country.

b) Implementation package

15. Countries participating in the OECD/G20 BEPS Project therefore have agreed to develop an implementation package for government-to-government exchange of CbC Reports.

More specifically:

- The key elements of domestic legislation requiring the ultimate parent entity of an MNE group to file the CbC Report in its jurisdiction of residence will be developed. Jurisdictions will be able to adapt this language to their own legal systems, where changes to current legislation are required. Key elements of secondary mechanisms will also be developed.
- Implementing arrangements for the automatic exchange of the CbC Reports under international agreements will be developed, incorporating the conditions set out in (iii) above. The work related to such implementing arrangements will include the development of competent authority agreements (“CAAs”) based on existing international agreements (the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties and TIEAs). Both bilateral and

² Access to a mutual agreement procedure (MAP) will be available when the government-to-government exchange of the CbC Reports is based on bilateral treaties. In cases where the international agreements on which the government-to-government exchanges of the CbC Reports are based do not contain provisions providing access to MAP, countries commit to introducing in the competent authority agreement to be developed a mechanism for competent authority procedures to discuss with the aim of resolving cases of undesirable economic outcomes, including if such cases arise for individual businesses.

multilateral CAAs will be explored, drawing on the existing models developed by the OECD working with G20 countries for the automatic exchange of financial account information.

- A comprehensive package containing the different elements indicated above will be developed by April 2015.

16. Participating jurisdictions endeavour to introduce as necessary domestic legislation in a timely manner. They are also encouraged to expand the coverage of their international agreements for exchange of information. The implementation of the package will be monitored on an ongoing basis. The outcomes of this monitoring will be taken into consideration in the 2020 review.

