

Guidance on the implementation of Country-by-Country reporting: Compilation of approaches adopted by jurisdictions

OECD *Guidance on the Implementation of Country-by-Country Reporting* contains a number of items of interpretative guidance prepared in response to questions raised by tax authorities and business on aspects of the BEPS Action 13 minimum standard. Several of these items of guidance provide flexibility for jurisdictions to take different approaches including, in particular: (i) whether extraordinary income and gains from investment activities are required to be included in total consolidated group revenues when applying the EUR 750 million threshold, (ii) how to apply the EUR 750 million threshold in cases where the previous fiscal period is less than 12 months, and (iii) whether a CbC report must be prepared by the ultimate parent entity of an MNE group for the first fiscal period in which the group has independent existence, following disposal by another group.

This document contains a compilation of information as to which jurisdictions apply, or intend to apply, each approach permitted under these pieces of guidance. This may be of use to MNE groups and other jurisdictions in determining whether a jurisdiction requires a CbC report to be filed in a particular scenario. The question numbering used in this compilation reflects that used in the guidance itself. The jurisdictions included in this compilation are Argentina, Australia, Belgium, Canada, Colombia, Costa Rica, the Czech Republic, Denmark, Estonia, Germany, Greece, Guernsey, Hong Kong China, Ireland, the Isle of Man, Japan, Jersey, Latvia, Luxembourg, Malta, the Netherlands, New Zealand, Poland, Portugal, Russia, Singapore, Slovenia, Sweden, the United Kingdom and the United States. The categorisation of jurisdictions in this compilation is based wholly on information provided by each jurisdiction. Questions concerning the approach adopted in a jurisdiction should be addressed to the relevant jurisdiction's tax administration. This version reflects information provided up to **30 April 2018**.

Part IV 2. Definition of total consolidated group revenue

2.1 For the purpose of determining whether an MNE Group is an Excluded MNE Group, are extraordinary income and gains from investment activities included in total consolidated group revenue?

In determining whether the total consolidated group revenue of an MNE Group is less than 750 million Euro (or near equivalent amount in local currency as of January 2015), all of the revenue that is (or would be) reflected in the consolidated financial statements should be used. A jurisdiction where the Ultimate Parent Entity resides is allowed to require inclusion of extraordinary income and gains from investment activities in total consolidated group revenue if those items are presented in the consolidated financial statements under applicable accounting rules.

For financial entities, which may not record gross amounts from transactions in their financial statements with respect to certain items, the item(s) considered similar to revenue under the applicable accounting rules should be used in the context of financial activities. Those items could be labelled as 'net banking product', 'net revenues' or others depending on accounting rules. For example, if the income or gain from a financial transaction, such as an interest rate swap, is appropriately reported on a net basis under applicable accounting rules, the term 'revenue' means the net amount from the transaction.

An MNE Group that complies with the rules of the jurisdiction of the Ultimate Parent Entity or the Surrogate Parent Entity on the calculation of consolidated group revenue for purposes of determining its CbC filing obligations, should not be exposed to local filing in any other jurisdiction provided the rules of the jurisdiction where the Ultimate Parent Entity/Surrogate Parent Entity is resident for tax purposes are consistent with the Action 13 minimum standard, as supplemented by the implementation guidance.

Jurisdictions which require inclusion of extraordinary income and gains from investment activities in consolidated group revenue, if these items are presented in the consolidated financial statements under applicable accounting rules

Argentinaⁱ, Australia, Belgium, Canada, Colombia, Costa Rica, the Czech Republic, Germany, Greece, Hong Kong Chinaⁱⁱ, Ireland, Japan, Luxembourg, Malta, New Zealand, Poland, Portugal, Singapore,ⁱⁱⁱ Sweden and the United States

Jurisdictions which do not require inclusion of extraordinary income and gains from investment activities in consolidated group revenue, unless these items are included in revenue under applicable accounting rules

Denmark^{iv}, Estonia, Guernsey, the Isle of Man, Jersey, Latvia, the Netherlands^v, Russia^{vi}, Slovenia^{vii} and the United Kingdom^{viii}.

Part IV 3. Short accounting period

3.2 When the preceding fiscal year of an Ultimate Parent Entity was shorter than 12 months, how should it be determined whether the Group is or is not an Excluded MNE Group?

For purposes of applying the 750 million Euro threshold in Article 1.3 of the Model Legislation when the preceding fiscal year of an Ultimate Parent Entity (UPE) is shorter than 12 months, the jurisdiction of the Ultimate Parent Entity may choose to adopt one of a number of different approaches, including the following:

1. Use the actual total consolidated group revenue obtained by the Group for the short accounting period;
2. Adjust the total consolidated group revenue for the short accounting period to reflect the consolidated group revenue that would correspond to a 12 month accounting period; or
3. Calculate the pro rata share of the 750 million Euro threshold that would correspond to the short accounting period.

This flexibility given to jurisdictions may lead to cases where divergent views are reached on whether the Group meets the 750 million Euro threshold in Article 1.3 of the Model Legislation. This may happen when the jurisdiction where the UPE is a resident for tax purposes adopts the approach described in option 1, while one or more jurisdictions where the Constituents Entities are resident for tax purposes adopt the approaches described in options 2 or 3. In those cases, when the jurisdiction where the UPE or Surrogate Parent Entity (SPE) is resident for tax purposes applies option 1, the jurisdiction of UPE or SPE's residence is encouraged (but not required) to allow the UPE or SPE to file a CbC report on a voluntary basis (as there is no legal obligation to do so) and exchange it under exchange of information mechanisms in order to avoid one or more constituent entities being subject to local filing in those jurisdictions that apply options 2 or 3 and where constituent entities of the MNE Group are resident for tax purposes.

Jurisdictions which use the actual total consolidated group revenue for the short accounting period and the threshold applicable to a 12 month fiscal year

Colombia, the Czech Republic, Denmark, Germany, Guernsey, the Isle of Man, Japan, Latvia, the Netherlands, New Zealand, Poland, Portugal, Slovenia^x and Sweden.

Jurisdictions which adjust the total consolidated group revenue for the short accounting period to reflect the consolidated group revenue that would correspond to a 12 month accounting period

Australia, Belgium, Luxembourg and Singapore.

Jurisdictions which calculate the pro-rata share of the EUR 750 million threshold that would correspond to the short accounting period

Argentina, Canada, Costa Rica, Greece, Hong Kong China^x, Ireland, Jersey, Malta, Russia and the United Kingdom

Jurisdictions applying other approaches

The United States^{xi}.

Part VI 1. Treatment in case of Mergers/Acquisitions/Demergers

Fact Pattern #1

In Y1, Group S sells a sub-group of its own entities. The sub-group of entities subsequently becomes an independent Group, Group E.

1.2 How should Group S and Group E determine if they qualify as Excluded MNE Group(s) for Y1?

In order to determine whether a Group is an Excluded MNE Group under Article 1.3 of the Model Legislation, there is no need to adjust the consolidated group revenue for the preceding Fiscal Year due to a merger/acquisition/demerger occurring during the following year. Group S should be required to file a CbC report for Y1 if the total consolidated group revenue of Group S for Y0 was equal to or greater than 750 million euros (or near equivalent amount in local currency as of January 2015).

In the case of Group E, the Action 13 minimum standard does not contain specific guidance on how to treat a group that was part of another MNE group in the previous fiscal year. Jurisdictions may take the view that, as Group E did not exist legally as an independent Group in Y0, Group E is not required to file a CbC report for Y1. Some other jurisdictions may consider that the sub-group of entities (which upon sale become an independent Group E) already existed from an economic point of view before the sale, as part of Group S and should, therefore, be required to file the CbC report for Y1 if the total consolidated revenues for the sub-group of entities in Y0 is equal to or greater than 750 million Euro. Where Group E complies with the approach adopted by the jurisdiction of its UPE on this specific aspect, the constituent entities of Group E should not be exposed to local filing in any other jurisdiction.

Jurisdictions which would require Group E to submit a CbC report for reporting fiscal year Y1 (unless the total consolidated revenues of the constituent entities making up Group E were below the relevant threshold in Y0)

Argentina, Australia^{xi}, Belgium, Denmark, Germany, Hong Kong China^{xiii}, Luxembourg, Malta, Slovenia, Sweden and the United States.

Jurisdictions which would not require Group E to submit a CbC report for reporting fiscal year Y1, on the basis the group did not exist as an independent MNE group in Y0

Canada, Colombia, Costa Rica, the Czech Republic, Estonia, Greece, Guernsey, Ireland, the Isle of Man, Japan, Jersey, Latvia, the Netherlands, New Zealand, Poland, Portugal, Russia, Singapore and the United Kingdom.

Notes

- i Argentina's domestic legal framework for CbC reporting is set out in General Resolution No. 4130-E (AFIP), which can be found at: <https://www.boletinoficial.gob.ar/#!DetalleNorma/171032/20170920>. The definition of "income" is contained in item b) of Part C, in Annex II.
- ii Subject to legislative amendments.
- iii In Singapore, this concerns the treatment of gains from investment activities only. Extraordinary income is not included in the definition of consolidated group revenue, unless included in revenue in the MNE group's consolidated income statement.
- iv While Denmark does not specifically exclude extraordinary income from the definition of consolidated group revenue, it is noted that Denmark requires MNE groups to calculate consolidated group revenue using IFRS, which no longer provides for groups to recognise items of income or expense as "extraordinary".
- v Revenue is as reflected in an MNE group's Consolidated Financial Statements.
- vi Total revenue of the MNE is determined on the basis of its consolidated financial statements.
- vii In Slovenia the definition of consolidated group revenue follows the applicable accounting rules. The Slovenian UPE prepares consolidated financial statements taking into account International Accounting Standards (IAS). In general, extraordinary income and gains from investment activities are included in consolidated group revenue.
- viii The United Kingdom follows the appropriate definition of revenue according to the accounting standard that is used by the MNE group. Where extraordinary items and gains from investment activities fit within that definition, they would be included in determining the total consolidated group revenue.
- ix A Slovenian UPE is able to file a CbC report on a voluntary basis to avoid its constituent entities being subject to local filing in jurisdictions that adopt a different approach. For a Slovenian constituent entity with a foreign UPE, the rules in the foreign UPE's jurisdiction regarding short accounting periods would apply.
- x Subject to legislative amendments.
- xi The preceding 12-month period (rather than a short period) should be used. See Treas. Reg. §1.6038-4(c) and (h).
- xii The new MNE group has a filing obligation if the former MNE group it was demerged from was not an Excluded MNE Group in the prior year.
- xiii Subject to legislative amendments