



Guidance on the Implementation of Country-by-Country Reporting

BEPS ACTION 13

Updated December 2019



Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13

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I. Introduction

All OECD and G20 countries have committed to implementing Country-by-Country (CbC) reporting, as set out in the Action 13 Report “Transfer Pricing Documentation and Country-by-Country Reporting”. Recognising the significant benefits that CbC reporting can offer a tax administration in undertaking high level risk assessment of transfer pricing and other BEPS related tax risks, a number of other jurisdictions have also committed to implementing CbC reporting (which with OECD members form the “Inclusive Framework”), including developing countries.

Jurisdictions have agreed that implementing CbC reporting is a key priority in addressing BEPS risks, and the Action 13 Report recommended that reporting take place with respect to fiscal periods commencing from 1 January 2016. Swift progress has been made in order to meet this timeline, including the introduction of domestic legal frameworks and the entry into competent authority agreements for the international exchange of CbC reports. MNE Groups have likewise made preparations for CbC reporting, and dialogue between governments and business is a critical aspect of ensuring that CbC reporting is implemented consistently across the globe. Consistent implementation will not only ensure a level playing field, but also provide certainty for taxpayers and improve the ability of tax administrations to use CbC reports in their risk assessment work.

The OECD will continue to support the consistent and swift implementation of CbC reporting. Where questions of interpretation have arisen and would be best addressed through common public guidance, the OECD will endeavour to make this available. The guidance in this document is intended to assist in this regard.

Some questions and answers refer to articles of the Model Legislation related to Country-by-Country Reporting contained in the Action 13 Report ("Model Legislation"). Such references do not mean that countries' domestic legislation should follow word-for-word the provisions in the Model Legislation. As indicated in paragraph 61 of the Action 13 Report "jurisdictions will be able to adapt this model legislation to their own legal systems, where changes to current legislation are required". Countries' domestic legal framework should however, be substantively consistent with the Model Legislation.

II. Issues relating to the definition of items reported in the template for the CbC report

1. Definition of revenues (April 2017, September 2017)

1.1 Should extraordinary income and gain from investment activities be included in the column "Revenues" in the CbC report?

Extraordinary income and gains from investment activities are to be included in "Revenues."

1.2 When financial statements are used as the source of the data to complete the CbC template, which items shown in the financial statements should be reported as Revenues in Table 1? (cf. question 5 on fair value accounting).

All revenue, gains, income, or other inflows shown in the financial statement prepared in accordance with the applicable accounting rules relating to profit and loss, such as the income statement or profit and loss statement, should be reported as Revenues in Table 1. For example, if the income statement prepared in accordance with the applicable accounting rules shows sales revenue, net capital gains from sales of assets, unrealized gains, interest received, and extraordinary income, the amount of those items reported in the income statement should be aggregated and reported as Revenues in Table 1. Comprehensive income/earnings, revaluations, and/or unrealized gains reflected in net assets and the equity section of the balance sheet should not be reported as Revenues in Table 1. The amount of any income items shown on the income statement need not be adjusted from a net amount.

Inclusive Framework members are expected to implement the above guidance as soon as possible, taking into account their specific domestic circumstances. It is recognised that time may be needed for MNE Groups to take this guidance into account. Jurisdictions may thus allow some flexibility during a short transitional period.

2. Definition of related parties (April 2017)

2.1 Which entities are considered to be related parties for purposes of reporting related party revenues?

For the third column of Table 1 of the CbC report, 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.

3. Aggregated data or consolidated data to be reported per jurisdiction (July 2017)

3.1 If there is more than one constituent entity in a jurisdiction, should the aggregated data be reported or should the data that is reported for the jurisdiction consist of consolidated data which eliminates intra-jurisdiction transactions between constituent entities in that jurisdiction?

The Action 13 Report and the model legislation contemplate that reporting will occur on an aggregate basis at a jurisdictional level. Accordingly, data should be reported on an aggregated basis, regardless of whether the transactions occurred cross-border or within the jurisdiction, or between related parties or unrelated parties. This guidance will be particularly relevant for the columns on related party revenues and total revenues. An MNE Group may use the notes section in Table 3 to explain the data if it wishes to do so.

Where the jurisdiction of the Ultimate Parent Entity has a system of taxation for corporate groups which includes consolidated reporting for tax purposes, and the consolidation eliminates intra-group transactions at the level of individual line items, that jurisdiction may allow taxpayers an option to complete the CbC report using consolidated data at the jurisdictional level, as long as consolidated data are reported for each jurisdiction in Table 1 of the CbC report and consolidation is used consistently across the years. Taxpayers choosing this option should use the following wording in Table 3 that (or in local language): "This report uses consolidated data at the jurisdictional level for reporting the data in Table 1", and should specify the columns in Table 1 in which the consolidated data is different than if aggregated data were reported.

Inclusive Framework members are expected to implement the above guidance (reporting on an aggregated basis only, apart from the exception described above) as soon as possible, taking into account their specific domestic circumstances. It is recognised that time may be needed for MNE Groups to make the necessary adjustments, for example in situations where guidance permitting the reporting of consolidated data for intra-jurisdiction transactions has already been issued. Jurisdictions may thus allow some flexibility during a short transitional period (i.e. for fiscal years starting in 2016). Taxpayers reporting consolidated data under this transitional mechanism should provide the same information in Table 3 as described in the previous paragraph.

4. Amount of Income Tax Accrued and Income Tax Paid (September 2017)

4.1 Where the income tax for a fiscal year has been paid in advance (e.g., preliminary tax assessments based on an estimate of the year's corporate income tax), should the amount reported in the "Income Tax Accrued-Current Year" column be linked to the amount reported in the "Income Tax Paid (on Cash Basis)" column of Table 1?"

Income Tax Accrued-Current Year is the amount of accrued current tax expense recorded on taxable profits or losses for the Reporting Fiscal Year of all Constituent Entities resident for tax purposes in the relevant tax jurisdiction irrespective of whether or not the tax has been paid (e.g. based on a preliminary tax assessment).

Income Tax Paid (on Cash Basis) is the amount of the taxes actually paid during the Reporting Fiscal Year, which should thus include not only advanced payments fulfilling the relevant fiscal year's tax obligation but also payments fulfilling the previous year(s)' tax obligation (e.g. payment of the unpaid balance of corporate income tax accrued in relation to the previous year(s), including payments related to reassessments of previous years), regardless of whether those taxes have been paid under protest. The amount of Income Tax Accrued-Current Year and Income Tax Paid (on Cash Basis) should be reported independently.

4.2 Where taxes have been paid and subsequently refunded, how should the tax refund be reported for the purposes of Table 1?

In general, a refund of income tax should be reported in Income Tax Paid (on Cash Basis) in the reporting fiscal year in which the refund is received. An exception to this may be permitted where the refund is treated as revenue of the MNE group under the applicable accounting standard or in the source of data used to complete Table 1. Where this is the case, taxpayers should provide the following statement in Table 3: "Tax refunds are reported in Revenues and not in Income Tax Paid (on Cash Basis)".

Inclusive Framework members are expected to implement the above guidance as soon as possible, taking into account the specific domestic circumstances. It is recognised that time may be needed for jurisdictions and MNE Groups to take this guidance into account. Jurisdictions may thus allow some flexibility during a short transitional period. During this short transitional period, taxpayers are encouraged to include voluntarily, if relevant, the statement "Tax refunds are reported in Revenues and not in Income Tax Paid (on Cash Basis)" in Table 3.

5. Fair value accounting (November 2017) (cf. question 1 on definition of revenues)

5.1 When financial statements that were prepared using fair value accounting are used as the source of data, can the amounts reported as revenue and profits in those financial statements be reported as Revenue and Profits in the CbC report without further adjustments?

Yes. The amount of revenues and profits determined in accordance with fair value accounting and reported in financial statements may be reported in the CbC report without further adjustment.

6. Negative figure for accumulated earnings (November 2017)

6.1 If a constituent entity reports a negative figure for accumulated earnings in its financial statements, should the negative figure be reported in the column "accumulated earnings" in Table 1? If there are two or more constituent entities in a jurisdiction, should the negative figure reported by a constituent entity be netted with the earnings from the other constituent entity (entities) per jurisdiction in Table 1?

The negative figure for accumulated earnings should be reported in Table 1 without modification. Where there are two or more constituent entities in the same jurisdiction, the negative figures for accumulated earnings, if there are any, should be netted with the positive figures for accumulated earnings. Where this is the case, taxpayers should provide the following statement in Table 3: "Accumulated earnings include negative figures for jurisdiction [--]". Inclusive Framework members are encouraged to require their taxpayers to provide the above information in Table 3 as soon as possible, taking into account the specific domestic circumstances.

7. Treatment of dividends for purposes of “profit (loss) before income tax”, “income tax accrued (current year)” and “income tax paid (on cash basis)” in Table 1 (September 2018; updated November 2019)

7.1 Does the profit (loss) before income tax in Table 1 include payments received from other Constituent Entities that are treated as dividends in the payer’s tax jurisdiction?¹

While the BEPS Action 13 report is clear that dividends from other Constituent Entities are excluded from Revenue in completing Table 1 of a CbC report, it does not provide specific instructions as to whether or not dividends from other Constituent Entities are excluded from Profit (Loss) before Income Tax. In the absence of specific guidance on this topic, different approaches have been adopted by jurisdictions and by MNEs. This lack of consistency presents a challenge to tax administrations in using CbC reporting information for the high level assessment of transfer pricing and other BEPS-related risks, and for economic and statistical analysis.

This guidance clarifies that, consistent with Revenue, Profit (Loss) before Income Tax excludes payments received from other Constituent Entities that are treated as dividends in the payer’s tax jurisdiction. This guidance applies to all reporting fiscal years of MNE groups commencing on or after 1 January 2020.² Inclusive Framework members are encouraged to apply this guidance to earlier reporting fiscal years if possible and taking into account specific domestic circumstances. Where an Inclusive Framework member does not apply this guidance to earlier reporting fiscal years it should, to the extent possible, allow resident entities preparing CbC reports to apply this guidance on a voluntary basis.

Where applicable accounting rules require or permit a Constituent Entity to include in profit before tax for financial reporting purposes an amount representing all or part of the profit of another Constituent Entity, this amount should be treated in the same way as dividends from other Constituent Entities and excluded from Revenue and Profit (Loss) before Income Tax.³

For reporting fiscal years commencing before this guidance takes effect, Inclusive Framework members are encouraged to require resident entities preparing CbC reports to indicate in Table 3 if payments received from other Constituent Entities that are treated as dividends in the payer’s jurisdiction and/or amounts representing all or part of the profit of another Constituent Entity are included in Profit (Loss) before Income Tax and, if so, the amounts included and in which jurisdictions. Where such information is not required, MNE groups are encouraged to provide this information on a voluntary basis.

7.2 Should income tax accrued/income tax paid on such dividends be reflected in the columns “Income Tax Paid (on cash basis)” and/or “Income Tax Accrued (current year)”?

Where dividends from other Constituent Entities (CEs) are included in "Profit (loss) before Income Tax" in Table 1, any income tax accrued or income tax paid on these dividends should be reported in the relevant column(s). For consistency, these columns should not include information on income tax accrued or income tax paid with respect to dividends from CEs that are not included in "Profit (loss) before Income Tax".

1. This replaces previous guidance issued in September 2018.
2. Where a jurisdiction’s particular domestic legislative process or other specific circumstances mean that any necessary adjustments to its law in order for this guidance to apply from 1 January 2020 are not possible, steps should be taken to implement the guidance as soon as possible thereafter, taking into account these circumstances.
3. This paragraph does not apply where a Constituent Entity includes in profit before tax for financial reporting purposes an amount representing all or part of the profit of another Constituent Entity that is transparent for tax purposes.

8. The use of shortened or rounded amounts in preparing Table 1 (September 2018, November 2019)

8.1 In completing Table 1, is it acceptable for shortened amounts to be used? As an example, where amounts are shortened to the nearest thousand, an amount of 123 456 789 would be reported as 123 457.

The Action 13 report and published guidance do not provide for any shortening of the amounts to be included in Table 1. Amounts in Table 1 should be reported in full whole units (i.e. an amount of 123 456 789 should be reported as 123 456 789 and should not be shortened, for example, to 123 457).

8.2 Is it permitted for an MNE to report rounded amounts in Table 1 of its CbC report?

The BEPS Action 13 report does not provide any guidance concerning the rounding of amounts in Table 1, other than with respect to the number of employees (where reasonable rounding or approximation is permissible, providing this does not materially distort the relative distribution of employees across tax jurisdictions). As such, the jurisdiction where the Ultimate Parent Entity of an MNE Group is resident is not required to accept any rounding of financial amounts in the preparation of Table 1. Such a jurisdiction may however accept a reasonable level of rounding and, where this is accepted by the residence jurisdiction of the Ultimate Parent Entity, a CbC report prepared on this basis will be considered to be in accordance with the minimum standard.

Each jurisdiction may determine the level of rounding that is reasonable, taking into account factors including the relative nominal value of its currency unit. However, reasonable rounding cannot include any rounding that could materially distort the data contained in Table 1. As a guide, rounding financial data to the nearest EUR 1 000, USD 1 000 or JPY 1 000 000 is likely to be considered reasonable. In all cases, amounts should be reported in full numbers, including all zeroes with no shortening.

The use of rounded amounts and the impact on the usefulness of CbC reporting information will be monitored and this guidance may be revisited in light of the outcomes of this monitoring.

III. Issues relating to the entities to be reported in the CbC report

1. Application of CbC reporting to investment funds (June 2016)

1.1 How should the CbC reporting rules be applied to investment funds?

As stated in paragraph 55 of the Action 13 Report, there is no general exemption for investment funds. Therefore the governing principle to determine an MNE Group is to follow the accounting consolidation rules. For example, if the accounting rules instruct investment entities to not consolidate with investee companies (e.g. because the consolidated accounts for the investment entity should instead report fair value of the investment through profit and loss), then the investee companies should not form part of a Group or MNE Group (as defined in the model legislation) 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, such as where that subsidiary provides services that relate to the investment entity's investment activities, then the subsidiary should be part of a Group and should be considered as a Constituent Entity of the MNE Group (if one exists).

It is still possible for a company, which is owned by an investment fund, to control other entities such that, in combination with these other entities, it forms an MNE Group. In this case, and if the MNE Group exceeds the revenue threshold, it would need to comply with the requirement to file a CbC report.

2. Application of CbC reporting to partnerships (June 2016)

2.1 How should a partnership which is tax transparent and thus has no tax residency anywhere be included in the CbC report? How should a reverse hybrid partnership, which is tax transparent in its jurisdiction of organisation but considered by a partner's jurisdiction to be tax resident in its jurisdiction of organisation, be treated?

The governing principle to determine an MNE Group is to follow the accounting consolidation rules. If the accounting consolidation rules apply to a partnership, then that partnership may be a Constituent Entity of an MNE group subject to CbC reporting.

For the purpose of completing the CbC report, if a partnership is not tax resident in any jurisdiction then the partnership's items, to the extent not attributable to a permanent establishment, should be included in the line in table 1 of the CbC report for stateless entities. Any partners that are also Constituent Entities within the MNE Group should include their share of the partnership's items in table 1 in their jurisdiction of tax residence.

Table 2 of the CbC report should include a row for stateless entities and a sub-row for each stateless entity including partnerships that do not have a tax residence - that is, the reporting for stateless entities should parallel the reporting for Constituent Entities that have a tax residence. For a partnership included in the stateless entity category, the field in table 2 for "tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence" should indicate the jurisdiction under whose laws the partnership is formed/ organised.

It may be advisable for the MNE to provide an explanation in the notes section of the report on the partnership structure and on the stateless entities. For instance, a note in the Additional Information section may indicate that a partnership's "stateless income" is includable and taxable in the partner jurisdiction.

Where a partnership is the Ultimate Parent Entity, for the purpose of determining where it is required to file the CbC report in its capacity as the Ultimate Parent Entity, the jurisdiction under whose laws the partnership is formed / organised will govern if there is no jurisdiction of tax residence.

A permanent establishment of a partnership would be included in the CbC report in the same manner as any other permanent establishment.

3. Accounting principles/standards for determining the existence of and membership of a group (April 2017)

3.1 To determine the existence of a “Group” and the membership of the Group under Article 1.1 of the model legislation in the Action 13 report:

- a) *If the equity interests of the relevant enterprise* are traded on a public securities exchange, should the applicable accounting standards be the accounting standards that currently apply to that enterprise for consolidated financial statement purposes?*
- b) *If the equity interests of the relevant enterprise* are not traded on a public securities exchange, can the applicable accounting standards be chosen provided that the choice is either (i) local GAAP in the jurisdiction of the enterprise assumed to be listed or (ii) International Financial Reporting Standards (IFRS), and provided the method chosen is used consistently?*

****Relevant enterprise would be the Ultimate Parent Entity under Article 1.6 of the model legislation in the Action 13 report.***

The Action 13 report does not specify that any particular accounting standard's consolidation rules be used. It is expected that:

- a) If the equity interests of the relevant enterprise, which would be an Ultimate Parent Entity under Article 1.6 of the model legislation, are traded on a public securities exchange, jurisdictions will require the Group to use the consolidation rules in the accounting standards already used by the Group.
- b) If the equity interests of the relevant enterprise, which would be an Ultimate Parent Entity under Article 1.6 of the model legislation, are not traded on a public securities exchange, jurisdictions may allow the Group to choose to use either local GAAP of the jurisdiction of the Ultimate Parent Entity (which includes US GAAP if it is permitted under the local rules and regulations of the jurisdiction of the Ultimate Parent Entity) or IFRS as its governing accounting standard, as long as the Group applies this choice consistently across years and for other aspects of the CbC report requiring reference to an accounting standard. However, if the jurisdiction of residence of the enterprise that would be the Ultimate Parent Entity mandates the use of a particular accounting standard (or standards) for enterprises the equity of which is traded on a public securities exchange, this mandatory standard (or one of these mandatory standards) must be used. Exceptionally, if a jurisdiction's consolidation rules generally require investment entities to be consolidated with investee companies, the jurisdiction may mandate the use of IFRS consolidation rules for the purpose of determining the membership of a Group. Any such deviation from the accounting standards generally followed for the CbC report of a particular MNE Group should be noted in Table 3 of the CbC report for the MNE Group.

This guidance relates to what a jurisdiction may require from a Group which is a Group that is required to file a CbC report in the jurisdiction by reason of its Ultimate Parent Entity or Surrogate Parent Entity being resident in the jurisdiction.

4. Treatment of major shareholdings (April 2017; updated September 2018)

4.1 Where there are minority interests held by unrelated parties in a Constituent Entity, should the previous year's consolidated group revenue include 100 percent of the Constituent Entity's revenue for the purpose of applying the 750 million Euro threshold (or near equivalent amount in local currency as of January 2015) to identify an Excluded MNE Group, or should the revenue be pro-rated? Further, should the entity's financial data that is included in the CbC report represent the full 100 percent or should it be pro-rated?

Under the condition that accounting rules in the jurisdiction of the Ultimate Parent Entity require a Constituent Entity, the minority interests of which are held by unrelated parties, to be fully consolidated, 100 percent of the entity's revenue should be included for the purpose of applying the 750 million Euro threshold (or near equivalent amount in local currency as of January 2015). In such a case, the entity's financial data that is included in the CbC report should represent the full 100 percent amount and should not be pro-rated. In contrast, if the accounting rules require proportionate consolidation in the presence of minority interests, then the jurisdiction may allow the entity's revenue to be pro-rated for the purpose of applying the 750 million Euro threshold and may also allow its financial data that is included in the CbC report to be pro-rated.

Where the financial data of a Constituent Entity is reported on a pro-rata basis, the number of employees of the Constituent Entity should also be reported on a pro-rata basis. Where this is the case, the taxpayer should insert the following statement in Table 3 of the CbC Report: "The number of employees of the Constituent Entity A (specified) in Jurisdiction X (specified) is reported on a pro-rata basis in accordance with the pro-rata reporting of the financial data of A". Inclusive Framework members are encouraged to require their taxpayers to provide the above information in Table 3 as soon as possible, taking into account the specific domestic circumstances.

5. Treatment of an entity owned and/or operated by more than one unrelated MNE Groups (July 2017)

5.1 Where an entity owned and/or operated by more than one unrelated MNE Groups (e.g. a joint venture entity) is consolidated in the consolidated financial statements of one or more of these MNE Groups, including under a pro rata consolidation rule, is such an entity considered a Constituent Entity of those unrelated MNE Groups (i.e. should it be included in Table 2)? If so, where a pro rata consolidation rule is applied to the entity under the applicable accounting rules, should Table 1 include the pro rata data of the entity, and should the entity's revenue be included pro rata for the purpose of applying the 750 million Euro threshold?

The treatment of an entity for CbC reporting purposes should follow the accounting treatment. In the case of an entity which is owned and/or operated by more than one unrelated MNE Groups, the treatment of the entity for CbC reporting purposes should be determined under the accounting rules applicable to each of the unrelated MNE Groups separately. If the applicable accounting rules require an entity to be consolidated into the consolidated financial statements of an MNE Group, the entity would be considered as a Constituent Entity of that group under Article 1.4 of the Model Legislation. Accordingly, the financial data of such an entity should be reported in the CbC report of the MNE Group. This applies to entities included in the MNE Group's consolidated financial statements using either full consolidation or pro rata consolidation. If an entity is not required to be consolidated under applicable accounting rules, the entity would not be considered a Constituent Entity and, accordingly, the financial data of such an entity would not be reported in the CbC Report. Therefore an entity included in the MNE Group's consolidated financial statements under equity accounting rules would not be a constituent entity.

Where pro rata consolidation is applied to an entity in an MNE Group in preparing the group's consolidated financial statements, jurisdictions may allow a pro rata share of the entity's total revenue to be taken into account for the purpose of applying the 750 million Euro threshold, instead of the full amount of the entity's total revenue. Jurisdictions may also allow an MNE group to include a pro rata share of the entity's financial data in its CbC report, in line with the information included in the MNE Group's consolidated financial statements, instead of the full amount of this financial data.

6. Deemed listing provision (November 2017, November 2019)

6.1 What is the purpose of the deemed listing provision in the definition of the term "Group" in Article 1.1 of the Model Legislation?

The deemed listing provision in the definition of the term "Group" in Article 1.1 of the Model Legislation is only relevant where an enterprise would otherwise be the Ultimate Parent Entity (UPE), but it is not required to prepare Consolidated Financial Statements in the jurisdiction where it is a resident for tax purposes. In this case, the Group includes all entities that would be included in the Consolidated Financial Statements that the relevant enterprise would be required to prepare if it was listed on a public securities exchange. In applying the deemed listing provision, it is irrelevant whether or not a particular type of entity is in fact able to be listed, taking into account, among other things, the jurisdiction's company law and/or regulations governing the relevant public securities exchange.

For instance, some jurisdictions differentiate between public entities and non-public entities (or private entities) in determining whether Consolidated Financial Statements are required to be prepared (e.g. the United States and Canada). In this case, the deemed listing provision would be relevant in determining the constituent entities in an MNE Group where the UPE is a non-public entity. The term "public entities" refers to entities which have instruments listed on a public securities exchange and the expression "non-public entities" refers to entities which have no instruments traded on a public securities exchange. The term "public entity" does not refer to an entity held by public sector bodies.

In accordance with paragraph 55 of the Action 13 Report, neither the deemed listing provision nor this guidance should be interpreted as giving rise to any exemption from the obligation to file the Country-by-Country report other than as set out in paragraph 52 of the Action 13 Report and Article 1.3 of the Model Legislation.

6.2 How does the "deemed listing provision" set out in Article 1, paragraph 6 of the CbC reporting model legislation operate where the parent entity of an MNE Group is tax resident in a jurisdiction that does not have a securities exchange?

Paragraph 51 of the BEPS Action 13 report requires that all MNE groups be required to file a CbC report, subject to the consolidated group revenue threshold in paragraph 52. The model legislation contained in the CbC Reporting Implementation Package includes an example of how this could be done.

Article 1, paragraph 6 of the model legislation provides that the Ultimate Parent Entity of an MNE is an entity that is required to prepare consolidated financial statements, or would be required to do so if its equity instruments were traded on a securities exchange in its jurisdiction of tax residence. A question has arisen as to how this test is to be applied or adapted in cases where there is no securities exchange in the jurisdiction where an entity is tax resident.

In these cases, an entity will be the Ultimate Parent Entity of an MNE group if it would be required to prepare consolidated financial statements if its equity instruments were traded on a securities exchange upon which equity instruments of entities tax resident in the same jurisdiction are commonly traded. To provide greater certainty for MNEs and for other jurisdictions, jurisdictions that do not have a securities exchange are encouraged to specify one or more jurisdictions with a securities exchange that would be considered acceptable for these purposes.

If the equity instruments of an entity that would be the Ultimate Parent Entity of an MNE group under Article 1, paragraph 6 are not traded on a public securities exchange, question 3.1 in part III of this guidance will also apply, to identify the applicable accounting standards that should be used to determine membership of the MNE group.

IV. Issues relating to the filing obligation for the CbC report

1. Impact of currency fluctuations on the agreed EUR 750 million filing threshold (June 2016)

1.1 If Country A is using a domestic currency equivalent of EUR 750 million for its filing threshold, Country B is using EUR 750 million for its filing threshold, and as a result of currency fluctuations Country A's threshold is in excess of EUR 750 million, can Country B impose its local filing requirement on a Constituent Entity of an MNE Group headquartered in Country A which is not filing a CbC report in Country A because its revenues, while in excess of EUR 750 million, are below the threshold in Country A?

As set out in the Action 13 Report, the agreed threshold is EUR 750 million or a near equivalent amount in domestic currency as of January 2015. Provided that the jurisdiction of the Ultimate Parent Entity has implemented a reporting threshold that is a near equivalent of EUR 750 million in domestic currency as it was at January 2015, an MNE Group that complies with this local threshold should not be exposed to local filing in any other jurisdiction that is using a threshold denominated in a different currency.

There is no requirement for a jurisdiction using a threshold denominated other than in euros to periodically revise this in order to reflect currency fluctuations. The appropriateness of the EUR 750 million threshold (and near equivalent amounts in domestic currency as of January 2015) may be included in the review of the CbC reporting minimum standard to occur in 2020.

2. Definition of total consolidated group revenue (April 2017; updated November 2017, February 2018)

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.

2.2 To calculate total consolidated group revenue under Article 1.3 of the Model Legislation, can an MNE Group which does not have equity interests traded on a public securities exchange use consolidated financial statements based on accounting principles/standards different from those that are used to determine the existence of and membership of a group under Article 1.1 of the Model Legislation?

An MNE Group which is not required to prepare Consolidated Financial Statements in its residence jurisdiction, for example because it does not have its equity interests traded on a public securities exchange, may still prepare Consolidated Financial Statements. These may be, for example, for use by investors and lenders. In some cases, these may be prepared using generally accepted accounting principles other than those that must be used for the purposes of determining the existence and membership of a group under Article 1.1. of the Model Legislation. In these cases, the MNE Group is still required to calculate total consolidated group revenue for the purposes of Article 1.3 based on the accounting standards to be used for identifying a group under Article 1.1.

3. Short accounting periods / long accounting periods (September 2017, November 2017, November 2019)

3.1 Is transitional relief available for MNE Groups with a short accounting period that starts on or after 1 January 2016 and that ends before 31 December 2016?

As a transitional measure, jurisdictions may allow the Reporting Entity of an MNE Group with a short accounting period beginning on or after 1 January 2016 and ending before 31 December 2016 to file the required CbC report in accordance with the same timelines as for MNE Groups with a fiscal year ending on 31 December 2016. The date by which the CbC report is to be exchanged would be similarly extended. This transitional relief would not frustrate the policy intention of the Action 13 minimum standard.

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.

3.3 Can a reporting fiscal year be for a period of other than 12 months?

Paragraph 51 of the BEPS Action 13 report recommends that all MNE Groups be required to file a CbC report each year. Paragraph 50 recommends that this should first be required for MNE fiscal years beginning on or after 1 January 2016 and confirms that an "MNE fiscal year" refers to the MNE Group's consolidated financial reporting period for financial statement purposes. The model legislation in the CbC reporting implementation package defines "Fiscal Year" as "an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements".

These references to a fiscal year and an annual accounting period have led to some jurisdictions and MNE Groups forming a view that a CbC report cannot be required where an MNE Group prepares consolidated financial statements for a period other than 12 months. This view is not intended and is inconsistent with existing guidance, which specifically contemplates that a CbC report can be required for a fiscal year of less than 12 months.⁴

4. Question 3.1 in section IV of this guidance permits jurisdictions to allow the Reporting Entity of an MNE Group with a short accounting period beginning on or after 1 January 2016 and ending before 31 December

In the majority of cases, the Ultimate Parent Entity of an MNE Group will prepare consolidated financial statements for a period of 12 months. However, there may be cases where consolidated financial statements are prepared for a period that is shorter than 12 months or longer than 12 months, for example the first accounting period of a newly incorporated entity or upon a change in the financial reporting date of the entity. In these cases, subject to the exemption described in paragraph 52 of the BEPS Action 13 report, a CbC report should be prepared by the MNE Group for the period covered by the consolidated financial statements prepared by the Ultimate Parent Entity.

4. Information with respect to the sources of data in Table 3 (November 2019)

4.1 What information should an MNE Group include in Table 3 with respect to the sources of data used in preparing its CbC Report?

The general instructions for completion of the CbC report template provide, at page 32 of the BEPS Action 13 report, that a reporting MNE should consistently use the same sources of data from year to year in completing the CbC report template. The reporting MNE may choose to use data from its consolidation reporting packages, from separate entity financial statements, regulatory financial statements, or internal management accounts. The reporting MNE should also provide a brief description of the sources of data used in preparing the template in Table 3. If a change is made to the source of data used from year to year, the reporting MNE should explain the reasons for the change and its consequences. However, from CbC reports filed to date, it appears that not all MNEs are providing this information, or the information being provided is insufficient for a tax administration to understand the different data sources used in completing the CbC report.

This guidance clarifies that MNEs are required to provide a description of the sources of data used and, while this may be brief, it should be sufficient to enable an understanding of the source of each item of information in the CbC report. Where a general principle applies, this should be described together with any exceptions that exist. Where information relevant to a particular jurisdiction is taken from different sources of data, or where the sources of data used change over time, this must be explained.

As an illustrative example, Table 3 could include a statement that information has been obtained from the MNE Group's consolidation package with the exception of the following.

- [Specified items for jurisdictions A, B and C] were obtained from entity financial statements prepared in accordance with local GAAP.
- [Specified items for jurisdictions D, E and F] were obtained from regulatory financial statements prepared in accordance with local law.
- [Specified items for jurisdictions B, D and F] were obtained from internal management accounts.
- Since the CbC report for [previous reporting fiscal year], the source of data used for [specified items for jurisdiction D] has changed from [previous source] to [current source]. [Description of the reasons and consequences of this change].

Inclusive Framework members should implement this guidance as soon as possible, taking into their specific domestic circumstances, but it is recognised that time may be needed to make any required changes to domestic law or administrative guidance. During this short transitional period, taxpayers are encouraged to include voluntarily in Table 3 the information on sources of data used set out in this guidance.

5. Common errors made by MNE groups in preparing CbC reports (November 2019)

5.1 What common errors have been made by MNE groups in preparing CbC reports?

CbC reports contain valuable information on the global allocation of the income, taxes paid and the location of economic activity among tax jurisdictions in which an MNE group operates, for use in a high level transfer pricing risk assessment, assessment of other BEPS-related risks, and economic and statistical analysis, if appropriate. However, this information can only be used effectively for these purposes if the data contained in CbC reports prepared by MNEs is robust and accurate.

Tax administrations have encountered a number of concerns with the data in CbC reports filed to date, and the most common of these are described on the OECD website at <https://www.oecd.org/tax/beps/common-errors-mnes-cbc-reports.pdf>. MNEs within the scope of CbC reporting should review these descriptions and ensure that these errors are not repeated in CbC reports they are preparing. Where a tax administration identifies that a CbC report filed with it contains errors (including but not limited to those described on the OECD website) it should require these errors to be corrected by the Reporting MNE.

V. Issues relating to the sharing mechanism for the CbC report (EOI, surrogate filing and local filing)

1. Transitional filing options for MNEs (“parent surrogate filing”) (June 2016; updated July 2017⁵)

1.1 Can MNE Groups with an Ultimate Parent Entity resident in a jurisdiction whose CbC reporting legal framework is in effect for Reporting Periods later than 1 January 2016 voluntarily file the CbC report for fiscal periods commencing on or from 1 January 2016 in that jurisdiction? What is the impact of such filing on local filing obligations in other jurisdictions?

All OECD and G20 countries, as well as others, have committed to implementing the minimum standard of Country by Country (CbC) reporting agreed in the Action 13 Report. The Action 13 Report recommended that countries implement a legal requirement for CbC reporting with respect to MNEs’ fiscal periods commencing on or from 1 January 2016. At the same time, the Action 13 Report recognises that “some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to the law.” Where jurisdictions are implementing CbC Reporting but will not be able to implement with respect to the fiscal period commencing from 1 January 2016, this therefore gives rise to a transition issue. Where other jurisdictions introduce a local filing obligation (which is an option but not a requirement under the Action 13 minimum standard) and do not otherwise provide any transition relief to address this issue - which some countries have done recognising the differences in legislative processes as noted in the Report - there is a need to issue guidance as to the local filing obligations that may arise during such a period.

In such situations, jurisdictions that will not be able to implement with respect to fiscal periods from 1 January 2016 may be able to accommodate voluntary filing for Ultimate Parent Entities resident in their jurisdiction. This would allow the Ultimate Parent Entities of an MNE Group resident in those jurisdictions to voluntarily file their CbC report for the fiscal periods commencing on or from 1 January 2016 in their jurisdiction of tax residence. This is referred to as “parent surrogate filing” because it is a form of surrogate filing, the framework for which is set out in the Action 13 Report. As such, parent surrogate filing does not alter the timelines or the minimum standard, and thus ensures the integrity of the agreement reached in the Action 13 Report.

Where surrogate filing (including parent surrogate filing) is available, it will mean that there are no local filing obligations for the particular MNE in any jurisdiction which otherwise would require local filing in which the MNE has a Constituent Entity (herein referred to as the Local Jurisdiction). This is subject to the following conditions:

1. 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 (i.e. 12 months after the last day of the Reporting Fiscal Year of the MNE Group); and
2. by the first filing deadline of the CbC report, the jurisdiction of tax residence of the Ultimate Parent Entity must have its laws in place to require CbC reporting (even if filing of a CbC report for the Reporting Fiscal Year in question is not required under those laws); and

5. The list of jurisdictions at the end of this guidance is dynamic and is updated periodically.

3. by the first filing deadline of the CbC report, a Qualifying Competent Authority Agreement must be in effect between the jurisdiction of tax residence of the Ultimate Parent Entity and the Local Jurisdiction;⁶ and
4. the jurisdiction of tax residence of the Ultimate Parent Entity has not notified the Local Jurisdiction's tax administration of a Systemic Failure; and
5. the following notifications have been provided:⁷
 - the jurisdiction of tax residence of the Ultimate Parent Entity has been notified by the Ultimate Parent Entity, no later than [the last day of the Reporting Fiscal Year of such MNE Group]; and
 - the Local Jurisdiction's tax administration has been notified by a Constituent Entity of the MNE Group that is resident for tax purposes in the Local Jurisdiction that it is not the Ultimate Parent Entity nor the Surrogate Parent Entity, stating the identity and tax residence of the Reporting Entity, no later than [the last day of the Reporting Fiscal Year of such MNE Group].

The jurisdictions which have confirmed they will have parent surrogate filing available consistent with the framework outlined above for Ultimate Parent Entities that are resident in their jurisdiction, with respect to fiscal periods commencing on or from 1 January 2016, are listed here: www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm

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6. A necessary condition for having a Qualifying Competent Authority Agreement in effect is that there is also an International Agreement in effect between the jurisdiction of tax residence of the Ultimate Parent Entity and the Local Jurisdiction.
 7. If the tax administration in the jurisdiction where the Ultimate Parent Entity or Constituent Entity (as applicable) is resident for tax purposes chooses not to require notifications or has not specified a procedure for providing such notifications, then this condition will not be relevant. Furthermore, where such notification is required, the square brackets included in this section reflect that it is at the discretion of the jurisdiction to choose the notification date most appropriate in its domestic circumstances, for example the date that would coincide with the date for filing of a CbC Report.

2. CbC reporting notification requirements for MNE Groups during transitional phase (December 2016)

2.1 Article 3 of the Action 13 model legislation for CbC reporting includes an option for jurisdictions to require notifications to be sent to the country tax administration identifying the Reporting Entity for the MNE Group. Where a Constituent Entity of an MNE Group is required to notify its tax administration of the identity and tax residence of the Reporting Entity (including the Surrogate Parent Entity) of the MNE Group by 31 December 2016 (with respect to the 2016 fiscal year), would it be consistent with the Action 13 minimum standard for jurisdictions to provide some transitional relief during the period in which domestic CbC legal frameworks and Qualifying Competent Authority Agreements are still being put in place?

A practical issue may arise for a number of MNE Groups around the world which are currently in the process of identifying the reporting entity and considering whether to proceed with surrogate filing where local filing obligations would otherwise be applicable. This issue relates to the domestic notification requirements that Constituent Entities of MNE Groups may be subject to, requiring them to inform their tax administration about the identity of the Reporting Entity that will be filing the CbC report. In a number of cases these notifications will need to be submitted by 31 December 2016 with respect to the 2016 fiscal year.

However, the identity of the appropriate reporting entity may not be known by that time. This is because the identity of the reporting entity will depend on the domestic CbC legal frameworks and the international exchange of information relationships that are formed through Qualifying Competent Authority Agreements (QCAAs). Domestic legal frameworks are still being finalised, and Qualifying Competent Authority Agreements may not be in place by 31 December 2016.

MNE Groups that are seeking to comply with their legal obligations to provide notifications, where such obligations exist, therefore face a practical difficulty in doing so because necessary information will not be available. To address this issue, jurisdictions may provide some flexibility regarding the date for the notification requirement if applicable, as neither the Action 13 standard nor the model legislation requires the notification to be at the end of the reporting fiscal year. For example, jurisdictions which are introducing notification requirements may choose another date for notifications, such as the date for filing a CbC report or the date for filing a corporate tax return.

Jurisdictions which require notifications may also provide administrative guidance to allow transitional relief in respect of these requirements. For example, Constituent Entities could be authorised to provide a notification based on a preliminary assessment of the identity and tax residence of the Reporting Entity. An updated notification based on new information could be provided by the Constituent Entity by the date for filing the CbC report. Jurisdictions which require notifications could also provide transitional relief from penalties in connection with MNE Groups updating their notification.

Transitional relief in these circumstances would not be frustrating the policy intention of the Action 13 minimum standard.

In addition, to provide clarity as soon as possible to MNE Groups, jurisdictions will work towards bringing their Qualifying Competent Authority Agreements (QCAA) into effect as soon as possible so as to minimise this transitional issue.

3. Non-compliance with the confidentiality, appropriate use and consistency conditions and Systemic Failure (February 2018)

3.1 When it is found that a jurisdiction does not in practice meet the conditions of confidentiality, appropriate use or consistency, are other jurisdictions allowed to suspend exchanges of the CbC report? If yes, would such a suspension be treated as a Systemic Failure?

As specified in Paragraph 56 of the Action 13 Report, confidentiality, consistency and appropriate use are necessary conditions underpinning the obtaining and use of CbC reports. The consequences of non-compliance with these conditions will depend on the terms of the Qualifying Competent Authority Agreement (QCAA) between the jurisdictions. Under Section 5, Paragraph 1 of the Multilateral CAA and the Model Bilateral CAAs contained in the Action 13 Report, all information exchanged is subject to the confidentiality rules and other safeguards provided in the relevant Convention or Tax Information Exchange Agreement (TIEA), including provisions limiting the use of information exchanged. Under Section 5, Paragraph 2 of these agreements, the use of information is further limited to assessing high-level transfer pricing, base erosion and profit shifting risks and, where appropriate, for economic and statistical analysis.

Without prejudice to other rights of suspension which may exist, under Section 8, Paragraph 5 of the Multilateral CAA and Section 8, Paragraph 2 of the Model Bilateral CAAs, a Competent Authority may temporarily suspend the exchange of information by giving notice in writing if it is determined that there is or there has been significant non-compliance by the other Competent Authority. Significant non-compliance is defined in these agreements to include non-compliance with Paragraphs 1 and 2 of Section 5 as well as the corresponding provisions of the relevant International Agreement (which correspond to the conditions for confidentiality and appropriate use) as well as failure by the other Competent Authority to provide timely or adequate information as required under the agreement (which is linked to compliance with the consistency condition). As set out in the OECD "Guidance on the Appropriate Use of Information Contained in CbC Reports"⁸, this determination may, for example, be based on the outcomes of a jurisdiction's peer review evaluation of appropriate use.

Once a Competent Authority has determined there is or has been significant non-compliance by the other Competent Authority, it is encouraged to take into account factors including the frequency and severity of non-compliance and whether other remedies are available, in deciding whether to temporarily suspend the exchange of information (for example, if inappropriate adjustments have been conceded in MAP or other Competent Authority proceedings, as required under Section 5, Paragraph 2).

Under the Multilateral CAA and the Model Bilateral CAAs, before any such suspension of exchange, the first Competent Authority must consult with the other Competent Authority.

Systemic Failure, as defined in Paragraph 13 of Article 1 of the Model Legislation, arises where a jurisdiction suspends automatic exchange of information for reasons that are other than in accordance with the terms of the relevant QCAA or otherwise persistently fails to exchange CbC Reports in its possession. Because a temporary suspension of exchange of information under Section 8 is in accordance with the terms of the relevant QCAA, this does not constitute Systemic Failure.

8. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

4. Local filing (November 2019; updated December 2019) (NEW)

4.1 Can a jurisdiction apply local filing where the Ultimate Parent Entity of an MNE is not required to file a CbC report in circumstances where a CbC report would be required in the local jurisdiction?

The BEPS Action 13 report is clear that local filing is accepted where one of the following conditions applies:

- the Ultimate Parent Entity of the MNE is not obligated to file a country-by-country report in its jurisdiction of tax residence
- the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current international agreement to which the local jurisdiction is a party but does not have a qualifying competent authority agreement in effect to which the local jurisdiction is a party by the deadline for filing a country-by-country report for the reporting fiscal year
- there has been a systemic failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the tax administration in the local jurisdiction to the Constituent Entity resident for tax purposes in that jurisdiction.

The first of these conditions applies if the tax jurisdiction where the Ultimate Parent Entity of an MNE group is resident has not introduced a requirement for a CbC report to be filed. It also applies where the jurisdiction has introduced a requirement for a CbC report to be filed but this is not in accordance with the BEPS Action 13 minimum standard (including taking into account interpretative guidance) and, as a result, the Ultimate Parent Entity of an MNE group is not obligated to file a CbC report in that jurisdiction.

Where the tax residence jurisdiction of the Ultimate Parent Entity of an MNE group does not require a CbC report to be filed, and this is in accordance with the BEPS Action 13 minimum standard (including taking into account interpretative guidance), the first condition is not met. In this case, local filing is not accepted and jurisdictions cannot under the minimum standard require Constituent Entities to file a CbC report under local filing rules.

4.2 In applying local filing, should a jurisdiction accept a CbC report containing information as prepared for filing in the Ultimate Parent Entity jurisdiction?

The BEPS Action 13 report includes a template and definitions to be used by jurisdictions in implementing a CbC reporting obligation, supported by subsequent interpretative guidance. Consistency with the minimum standard is monitored through the BEPS Action 13 peer review process. As such, CbC reports prepared in accordance with the laws in different jurisdictions should contain substantially consistent information. However, there may be cases where differences do exist in the information that must or may be included in a CbC report under the laws of two jurisdictions, and both are in accordance with the BEPS Action 13 minimum standard (e.g. where a different language is to be used, a different level of reasonable rounding is permitted in preparing Table 1, or where information on the addresses and tax identification numbers of constituent entities is required to be provided in Table 2 by one jurisdiction but not the other).

Where the Ultimate Parent Entity of an MNE files a CbC report, and constituent entities of the MNE are also subject to local filing, jurisdictions applying local filing are encouraged to consider flexibility in allowing the MNE to file a CbC report containing the information included in the CbC report filed in the Ultimate Parent Entity jurisdiction. In many cases, this would simply mean that the jurisdiction applying local filing would receive the same information as if it had obtained the CbC report under exchange of information. In all cases, a CbC report filed in a jurisdiction should be in a format required or permitted in that jurisdiction.

4.3 Should local filing be required no earlier than 12 months after the end of the MNE group's reporting fiscal year?

Paragraph 31 of BEPS Action 13 report states that “the deadline for filing a CbC report by the Ultimate Parent Entity (UPE) of the MNE group may be extended to one year following the last day of the reporting fiscal year of the UPE of the MNE Group.” This takes into account the fact that the necessary financial information to prepare a

CbC report might not be available until after the due date for filing a tax return for a given fiscal year. However, the report remains silent on the deadline for filing CbC reports in the case of local filing. In practice, many jurisdictions apply the same deadline for the filing of CbC reports by UPEs and for local filing. This raises two important issues, in particular where the filing deadline applied in a jurisdiction is earlier than 12 months after the end of the reporting fiscal year.

- First, a local entity may find it difficult or impossible to obtain accurate CbC reporting information earlier than 12 months after the end of the reporting fiscal year, in particular if the UPE of the MNE is required to file a CbC report 12 months after the end of the reporting fiscal year and the MNE's systems are intended to gather information to this timeframe.
- Second, an early deadline for local filing may mean local filing is required in cases where the conditions for local filing are no longer met by the time at which the UPE is required to file a CbC report. For example, if local filing is required because there is no CbC reporting obligation in the residence jurisdiction of the UPE, or because there is an international agreement in effect but no qualifying competent authority agreement between the jurisdictions, this shortcoming may be addressed before 12 months after the end of the reporting fiscal year. This could mean that local filing is required in cases where the UPE of an MNE group does file a CbC report which is exchanged with the jurisdiction within the envisaged timeframe. Given paragraph 60 of the BEPS Action 13 report specifically only accepts local filing in certain circumstances where a CbC report is not exchanged, this should never be the case.

Both of these risks are reduced where a jurisdiction requires local filing no earlier than 12 months after the end of the reporting fiscal year, even though the deadline for filing by a resident UPE may be required earlier. Under the BEPS Action 13 minimum standard, the deadline for local filing may also be extended to later than 12 months after the end of the reporting fiscal year (e.g. to 15 months which would correspond with the time when competent authorities typically receive CbC reports under exchange of information).⁹

In light of these considerations, jurisdictions with local filing requirements (or introducing such requirements) are encouraged to apply a filing deadline for these CbC reports no earlier than 12 months after the end of the reporting fiscal year.

4.4 Is the automatic exchange of CbC reports filed under local filing rules intended under the BEPS Action 13 minimum standard? (December 2019) (NEW)

Paragraph 60 of the BEPS Action 13 report sets out the framework underpinning the minimum standard. Under this framework, jurisdictions commit to require the filing of a CbC report by resident ultimate parent entities (UPE) of MNE groups, and to automatically exchange this information with other jurisdictions in which the MNE group operates, subject to conditions. As such, the automatic exchange of a CbC report filed by the UPE of an MNE group is at the heart of the minimum standard.¹⁰

Paragraph 60 also provides that local filing of a CbC report by a resident Constituent Entity that is not the Ultimate Parent Entity of an MNE group may be accepted in certain specific circumstances. The minimum standard does not anticipate the automatic exchange of CbC reports filed in accordance with local filing rules, and the automatic exchange of these CbC reports could result in the exchange and cross-exchange of multiple CbC reports on the same MNE group. This could potentially overwhelm and confuse tax administrations, with no additional benefit from the perspective of an MNE group's tax risk assessment. Such automatic exchanges are also inconsistent with the scope of a jurisdiction's commitment to automatically exchange CbC reports, as defined in paragraph 60 (e.g. where there is currently no international agreement for the exchange of CbC reports in effect between the residence tax jurisdiction of the UPE of an MNE group and another jurisdiction).

9. It is noted that currently this would not be possible for jurisdictions that are EU Member States, which are obliged to require local filing within 12 months of the end of the reporting fiscal year under the terms of Directive 2016/881/EU.
10. The minimum standard also anticipates the automatic exchange of a CbC report filed by a "surrogate parent entity" which is a Constituent Entity appointed by an MNE as a sole substitute for the Ultimate Parent Entity, to file a CbC report on behalf of the MNE where certain conditions are met. This guidance does not concern the exchange of CbC reports filed by a surrogate parent entity.

As such, this guidance makes clear that, under the BEPS Action 13 minimum standard, the automatic exchange of CbC reports filed under local filing rules is not intended.¹¹¹²

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11. This guidance does not prevent the automatic exchange of locally filed CbC reports within the European Union, which is required under Directive 2016/881/EU.
 12. This guidance does not concern the spontaneous exchange of CbC reports or the exchange of CbC reports on request.

5. Lodging a unilateral declaration for the purposes of exchanging CbC reports (November 2019)

5.1 Should jurisdictions consider lodging a unilateral declaration to bring forward the effective date of the multilateral convention on mutual administrative assistance in tax matters, for the purposes of exchanging CbC reports?

Under the BEPS Action 13 minimum standard, jurisdictions that are members of the Inclusive Framework are committed to requiring the filing of a CbC report by all MNEs above the consolidated revenue threshold, and exchanging these CbC reports under existing international agreements with other members of the Inclusive Framework where an MNE has constituent entities, subject to conditions. In order to improve transparency and promote greater co-operation and exchange of tax information, including CbC reports, a number of jurisdictions have recently ratified the multilateral convention on mutual administrative assistance in tax matters (the Convention), are in the process of ratifying the Convention, or are considering ratifying (or signing and ratifying) the Convention.

Under paragraph 5 of Article 28, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositories. Under paragraph 6 of Article 28, the Convention shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention enters into force. However, any two jurisdictions may agree that the Convention shall have effect for administrative assistance related to earlier periods.

The provisions of Article 28 mean that there can be a period of over three years between the Convention being ratified by a jurisdiction, and that jurisdiction beginning to receive CbC reports under exchange of information, as described below:

1 September 2019 – Instrument of ratification of the Convention deposited

1 January 2020 – Convention enters into force

1 January 2021 – Convention in effect

31 December 2021 – End of reporting fiscal year 2021, the first reporting fiscal year for which the Convention is in effect

31 December 2022 – Typical CbC reporting filing deadline for reporting fiscal year 2021 (12 months after the end of the reporting fiscal year)

31 March 2023 (or 30 June 2023) – The first exchanges of CbC reports under the Convention, for reporting fiscal year 2021 (assuming all conditions for the exchange of CbC reports are met).

This period can be significantly reduced with respect to the exchange of CbC reports between jurisdictions that have lodged a unilateral declaration stating that they intend the Convention to have effect for earlier periods with respect to the exchange of CbC reports, in line with the first exchanges contemplated under the CbC Multilateral Competent Authority Agreement (CbC MCAA). Where a jurisdiction lodges such a unilateral declaration on the same date as it ratifies the Convention, the timeframe for the exchange of reports under the Convention is modified as follows:

1 September 2019 – Instrument of ratification of the Convention deposited and unilateral declaration lodged

1 January 2020 – Convention enters into force and immediately comes into effect for all exchanges contemplated by the jurisdiction in the CbC MCAA

31 March 2020 (or 30 June 2020) - The first exchanges of CbC reports under the Convention by other jurisdictions that have submitted a unilateral declaration and which have the CbC MCAA in effect for reporting fiscal year 2018 (assuming all conditions for the exchange of CbC reports are met).

The submission of a unilateral declaration can thus bring forward the first exchanges of CbC reports by up to three years, where conditions for the exchange of CbC reports are met. This is only effective for exchanges of CbC reports with jurisdictions that have lodged a unilateral declaration. However, a large number of jurisdictions, including most OECD members and G20 economies, have lodged unilateral declarations, and these are likely to cover the significant majority of CbC reports to be exchanged under the Convention.

In light of this, all jurisdictions that have not yet ratified the Convention are encouraged to consider lodging a unilateral declaration at the same time as they deposit the instrument of ratification. Jurisdictions that have already ratified the Convention, but for which the Convention is not yet in effect, are encouraged to lodge a unilateral declaration as soon as possible. Jurisdictions that already have the Convention in effect are also encouraged to lodge a unilateral declaration if they have not already done so, to facilitate the early exchange of CbC reports with other jurisdictions that meet the conditions set out in the BEPS Action 13 report. However, it is recognised that, for some jurisdictions, lodging a unilateral declaration may not be feasible given that the domestic processes necessary for such an action may be lengthy and resource intensive.

VI. Issues relating to Mergers/Acquisitions/Demergers

1. Treatment in case of Mergers/Acquisitions/Demergers (November 2017)

1.1 When in a given year there are changes in ownership due to mergers, acquisitions and demergers, how is the CbC filing obligation for that given year affected and what information should be reported in the CbC report?

For the year in which a merger/acquisition/demerger occurs, the determination of whether the Group is or is not an Excluded MNE Group shall be based on the Group's total consolidated group revenue during the Fiscal Year immediately preceding the Reporting Fiscal Year, as reflected in its Consolidated Financial Statements for such preceding Fiscal Year. 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.

As to the information to be reported in the CbC report for the year in which the merger/acquisition/demerger occurs, the accounting principles/standards (as determined in accordance with the guidance to identify the accounting principles/standards for determining the existence and membership of a group) will govern the determination as to the period for which the financial data of the merged/acquired/demergered constituent entities should be included in CbC reports of the relevant MNE Groups (e.g. a pro rata share or full year). In accordance with the flexibility given on the source of data for purposes of completing Table 1, the information reported in Table 1 may be taken from a source using different accounting principles/standards from those applied in the Consolidated Financial Statements.

There may be cases where a group (Acquired Group) is acquired by another group (Succeeding Group) on a date other than the Acquired Group's regular fiscal year end. For example, Acquired Group could prepare its regular financial statements on a calendar year basis, but be acquired by Succeeding Group on 30 June Y1. Assuming the Acquired Group had total consolidated group revenues in Y0 which were not less than 750 million EUR, whether the Acquired Group will be obligated to submit a CbC report for the period from 1 January Y1 to 30 June Y1 will depend upon whether it is required to prepare Consolidated Financial Statements for this period in the jurisdiction where its Ultimate Parent Entity is tax resident (or if the deemed listing provision applies). If there is no such requirement, then the Acquired Group will not be obligated to submit a CbC report for this period. In such a case, the Succeeding Group should in Table 3 of its CbC Report for Y1: a) indicate that the Succeeding Group acquired the Acquired Group and the date of acquisition; and, b) include the following statement: "The Acquired Group did not file a CbC report in any jurisdiction for the period 1 January Y1 to 30 June Y1". Inclusive Framework members are encouraged to require their taxpayers to provide the above information in Table 3 as soon as possible, taking into account the specific domestic circumstances.

The following fact patterns illustrate the application of this guidance.

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.

1.3 In a case where Group S is not an Excluded MNE in Y1 based on its total consolidated group revenue for Y0, should Group S include only a pro rata share of the sub-group's financial data in its CbC report for Y1?

The determination as to the period for which the financial data of the sub-group should be included in the CbC reports of Group S (e.g. pro rata share or full year) should be governed by the accounting principles/standards applicable to Group S (as determined in accordance with the guidance to identify the accounting principles/standards for determining the existence and membership of a group). Thus, if the accounting principles/standards applicable to Group S require its Consolidated Financial Statements to incorporate a pro rata share of the financial data of the sub-group (i.e. Group E subsequently), Group S's CbC report should also include a pro rata share of the financial data of the sub-group (Group E).

Fact Pattern #2

In Y1, Group B acquires 100% of Group E. Both Group B and Group E qualify as an Excluded MNE Group for purposes of Y1 as the total consolidated group revenue of each during the preceding Fiscal Year (Y0) is less than 750 million Euros.

1.4 If the combined total consolidated group revenues of Group B and Group E during Y0 are equal to or greater than 750 million Euros, does this change the position of Group B as an Excluded MNE Group for purposes of its CbC report filing obligation for Y1?

No, Group B will continue to be an Excluded MNE Group for Y1 purposes. For the year in which a merger/acquisition/demerger occurs, i.e. Y1, the determination of whether the Group is or not an Excluded MNE Group shall be based on the Group's total consolidated group revenue during the Fiscal Year immediately preceding (i.e. Y0) the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year. 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.

Fact Pattern #3

On 30 June of Y1, Group B acquires 100% of Group E. Neither Group B nor Group E qualify as an Excluded MNE Group for purposes of Y1, as the total consolidated group revenue of each during the preceding Fiscal Year (Y0) is equal to or greater than 750 million Euros.

1.5 Should Group E file a CbC report for the period from 1 January Y1 to 30 June Y1?

The determination as to whether Group E should file a CbC report for the period from 1 January Y1 to 30 June Y1 will depend on whether Group E is required to prepare Consolidated Financial Statements. If Group E is obligated to prepare Consolidated Financial Statements for the period from 1 January Y1 to 30 June Y1 (or if the deemed listing provision applies) under the financial reporting rules in the jurisdiction of the UPE's residence, Group E should also prepare and file a CbC report for the short fiscal period before the acquisition.*

However, where the UPE of Group E is not obligated to prepare the Consolidated Financial Statements for the period from 1 January Y1 to 30 June Y1 under financial reporting rules in the jurisdiction where the UPE is a tax resident, Group E is not obligated to prepare and file a CbC report for the short fiscal period either. In these circumstances, Group B should in Table 3 of its CbC Report a) indicate that Group B acquired Group E; and, b) include the following statement: "Group E did not file a CbC report with any jurisdictions for the short accounting period before the acquisition." Inclusive Framework members are encouraged to require taxpayers to provide the above information in Table 3 as soon as possible, taking into account the specific domestic circumstances.

*In case where the UPE of Group E does not exist after the acquisition, the entity or person (e.g. a lawyer or agent) responsible under the applicable rules (e.g. accounting, regulatory, or any other relevant legal provisions) to file the Consolidated Financial Statements for the short fiscal period is also expected to file the CbC report for Group E.

1.6 Should Group B report all or a pro rata share of Group E's financial data?

The determination as to the period for which the financial data of Group E should be included in the CbC report of Group B (e.g. pro rata share or full year) should be governed by the accounting principles/standards (as determined in accordance with the guidance to identify the accounting principles/standards for determining the existence and membership of a group) applied to Group B. Thus, if the accounting principles/standards applicable to Group B require Group B's Consolidated Financial Statements to incorporate a pro rata share of the financial data of Group E, the CbC report of Group B should also include a pro rata share of the financial data of the Group E.

Fact Pattern #4

In Y1, Group S sells a sub-group of its entities to Group B. The total consolidated group revenue of Group B for Y0 is less than EUR 750 million i.e. Group B is an Excluded MNE Group.

1.7 Should the amount of total consolidated group revenues in Y0 of Group S be adjusted due to its selling the sub-group?

The amount of total consolidated group revenue of the Fiscal Year immediately preceding the Reporting Fiscal Year (i.e. Y0) should not be adjusted to take into account the sale that occurred in Y1. If total consolidated group revenue in Y0 of Group S is equal to or greater than 750 million Euros, Group S would not qualify as an Excluded MNE Group for Y1. Alternatively, if total consolidated group revenue in Y0 is less than 750 million Euros, Group S remains an Excluded MNE Group for Y1.

1.8 To determine for Y1 whether it is an Excluded MNE Group under Article 1.3 of the Model Legislation, should Group B include in the amount of total consolidated group revenues for Y0 some or all of the revenues of the acquired sub-group of entities?

The amount of total consolidated group revenue of the Fiscal Year immediately preceding the Reporting Fiscal Year (i.e. Y0) should not be adjusted to take into account the acquisition that occurred in Y1. Group B should continue to qualify as an Excluded MNE Group based on the total consolidated group revenue of the Group for the preceding year.

Fact Pattern #5

In Y1, Group S sells a sub-group of entities to Group B. The total consolidated group revenue of each of Group B and Group S for Y0 is not less than EUR 750 million i.e. for Y1 purposes they are both non-Excluded MNE Groups

1.9 For Y1, should Group S's CbC report include any financial data of the sub-group of entities sold to Group B in Y1?

The determination as to whether any financial data of the sub-group of entities sold to Group B in Y1 should be included in the CbC report of Group S for Y1 should be governed by the accounting principles/standards (as determined in accordance with the guidance to identify the accounting principles/standards for determining the existence and membership of a group) applicable to Group S. Thus, if the governing accounting principles/standards applied to Group S require Group S's Consolidated Financial Statements to incorporate a pro rata share of the financial data of the sub-group of entities sold to Group B, the CbC report of Group S should also include a pro rata share of the financial data of the sub-group.

1.10 For Y1, should Group B include only a pro rata share of the acquired sub-group's financial data in its CbC report?

The determination as to the period for which financial data of the sub-group should be included in the CbC report of Group B (e.g. a pro rata share or full year) should be governed by the accounting principles/standards (as determined in accordance with the guidance to identify the accounting principles/standards for determining the existence and membership of a group) applicable to Group B. Thus, if the governing accounting principles/standards applied to Group B require Group B's Consolidated Financial Statements to incorporate a pro rata share of the financial data of the sub-group, the CbC report of Group B should also include a pro rata share of the financial data of the sub-group.

1.2 Table summarising the interpretation on Mergers/Demerger/Acquisitions (September 2018)

Events and Consequences in Fact Patterns #1-#5 of Mergers/Acquisitions/Demergers

| | Reference Year (Y0) | Event in Reporting Year (Y1) | Threshold | Consequence (Y1) | Table 1 |
|--|---|--|--|---|---------|
| Fact Pattern #1 Demerger | The total consolidated group revenue of Group S is equal to or greater than 750 million Euros. | Group S sells a sub-group of its own entities. The sub-group of entities subsequently becomes an independent Group, Group E. | Group S remains a non-Excluded MNE Group. Whether Group E qualifies as an Excluded MNE Group or not depends on the legislation of each jurisdiction. However, where Group E follows the rule of the jurisdiction of its UPE, local filing should not be applied to the CEs of Group E in any other jurisdiction. | The period for which the financial data of the sub-group should be reported in CbC reports of Group S should follow the rule applied to the Consolidated Financial Statements of Group S. | |
| Fact Pattern #2 Merger | The total consolidated group revenue of Group B and Group E is respectively less than 750 million Euros. | Both Group B and Group E qualify as an Excluded MNE Group. Group B acquires 100% of Group E. It turns out that combined total consolidated group revenues of Group B and Group E for Y0 was equal or greater than 750 million Euros. | Group B qualifies as an Excluded MNE Group. | N.A. | |
| Fact Pattern #3 Merger | The total consolidated group revenue of Group B and Group E is respectively equal to or greater than 750 million Euros. | Neither Group B nor Group E qualifies as an Excluded MNE Group. On 30 June, Group B acquires 100% of Group E. | Whether Group E is obliged to file the last CbC reports before the merger depends on the financial reporting rules in the jurisdiction of Group E. Group B remains a non-Excluded MNE Group. | The period for which the financial data should be reported in CbC reports should follow the rule applied to the Consolidated Financial Statements of Group B (and E, if it is the case). | |
| Fact Pattern #4 Selling/Buying sub-group | The total consolidated group revenue of Group B is less than 750 million Euros. | Group S sells a sub-group of its entities to Group B. Group B is an Excluded MNE Group. | Group B qualifies as an Excluded MNE Group. Whether Group S qualifies as an Excluded MNE Group or not follows its total consolidated group revenue in Y0. | N.A. | |

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|---|---|--|--|---|
| Fact Pattern #5 Selling/Buying sub- group | The total consolidated group revenue of Group B and Group S is respectively equal to or greater than 750 million Euros. | Group S sells a sub-group of entities to Group B. Both Group B and Group S are non-Excluded MNE Groups. | Both Group B and Group S remain non-Excluded MNE Groups. | The period for which the financial data of the sub-group should be reported in CbC reports of Group S/B should follow the rule applied to the Consolidated Financial Statements of Group S/B. |
|---|---|--|--|---|