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Implementation of BEPS Measures: Country-by-Country Reporting Required in Multiple Jurisdictions

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This article provides an update on recent measures taken by the Organization for Economic Cooperation and Development and national governments to require country-by-country reporting for the 2016 tax year and onward.

I. The Latest Developments

In recent years, the Organization for Economic Cooperation and Development ("OECD") has committed to making international tax filing more transparent. In the wake of the "Panama papers" this news could not be more timely. The latest developments bring the international community one step closer to achieving this goal.

Under Action 13 of the Base Erosion and Profit Shifting ("BEPS") project, the OECD suggests that each ultimate parent entity of a multinational enterprise ("MNE") group having a total consolidated group revenue equal to or above 750 million euros, or the local equivalent, in the relevant tax year shall file a country-by-country ("CbC") report in the country of which it is a resident, no later than 12 months after the last day of the relevant tax year.[1]

In order to assist tax administrations in obtaining a complete understanding of the way in which MNEs structure their operations, the OECD released a standardized electronic format for the exchange of CbC reports on March 22, 2016, which is to be employed among jurisdictions. The first exchanges of CbC reports under the standardized electronic format are expected to start in 2018, with information on the year 2016.

In addition, the OECD facilitated the development of the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (the "CbC MCAA"), which received its most recent adhesion on February 4, 2016, reaching 33 signatories.[2] The CbC MCAA is meant to enable the signatory countries to automatically exchange CbC reports, allowing tax administrations to obtain a complete understanding of the way MNEs structure their operations globally, while also ensuring that the confidentiality of such information is safeguarded. Several other countries are expected to sign the CbCMCAA in the near future.

Several jurisdictions have enacted legislation on CbC reporting or have published draft legislation, among which a number are signatories of the CbC

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MCAA. The authors now discuss below the CbC requirements implemented by some of these countries.

II. CbC Requirements by Country

A. Canada

Introduced by the 2016 Federal Budget published on March 22, 2016, the Canadian requirement to file a CbC report generally aligns with the requirements developed by the OECD in its BEPS project and applies to Canadian MNEs with annual consolidated revenues exceeding 750 million euros (as of drafting, approximately C$1.08 billion), for tax years beginning after 2015. Further legislation will be enacted to implement the Canadian CbC measures, and draft legislative proposals are expected to be released for comment in the coming months.

B. U.S.

On December 21, 2015, the Internal Revenue Service announced proposed CbC reporting rules (REG-109822-15), under which U.S. persons that are the ultimate parent entity of an MNE group earning at least $850 million in annual consolidated group revenue for the preceding annual accounting period will be required to file a CbC report according to a prescribed template form. The reports are to be filed with the U.S. parent company's federal tax return, including extensions.

C. Australia

Under Law Companion Guidelines 2015/3 dated December 17, 2015 and applicable to taxation years starting on or after January 1, 2016, Australian-headquartered multinationals are required to submit annual CbC statements if they had annual global income of at least AU$1 billion (approximately 650 million euros) during the period immediately preceding the relevant fiscal year.

D. Denmark

The Danish Parliament approved, on December 18, 2015, and effective for tax years beginning on or after January 1, 2016, a bill introducing CbC reporting requirements applicable to Danish parent companies whose global consolidated revenues equal or exceed 5.6 billion Danish krone (approximately 750 million euros) in the relevant taxation year.

E. France

The French Tax Code has been amended as of December 29, 2015, effective January 1, 2016, to require French companies with a consolidated group revenue equal to or over 750 million euros before taxes to report CbC information on each of the entities they hold or control outside of France, directly or indirectly.

F. Ireland

The Irish Revenue on December 23, 2015 published the Taxes (CbC Reporting) Regulations 2015, which implement specific aspects of the CbC reporting requirements established earlier in the year by the Finance Bill 2015, and require Irish companies with annual consolidated income equal to or exceeding 750 million euros to file a CbC report, effective January 1, 2016.

G. Italy

CbC reporting requirements have been introduced in Italy through the 2016 Budget Law approved on December 22, 2015. These requirements, effective from January 1, 2016, apply to Italian parent companies required to file a group consolidated statement and having a consolidated annual turnover equal to or exceeding 750 million euros.

H. Netherlands

Introduced by the Tax Plan 2016 and implemented through a Regulation published on December 30, 2015 and effective January 1, 2016, the new Dutch transfer pricing documentation requirements include CbC reporting obligations aimed at Dutch companies that are part of a multinational corporate group with a consolidated turnover equal to or exceeding 750 million euros.

I. Mexico

The Mexican Income Tax Law was amended on November 18, 2015 to introduce CbC reporting requirements, effective as of January 1, 2016. The CbC reporting obligation is applicable to Mexican parent companies with foreign subsidiaries or permanent establishments, which are not themselves a subsidiary of a foreign corporate group and had consolidated income equal to or exceeding 12 billion Mexican pesos (approximately 600 million euros).

J. Poland

Through the Act of September 9, 2015, Poland implemented several changes to its transfer pricing regulations, out of which emerged the introduction of CbC reporting requirements effective for fiscal years starting on or after January 1, 2016. The CbC reporting obligation affects Polish companies that are members of corporate groups with net consolidated revenues equal to or exceeding 750 million euros.

K. Spain

Spain implemented its CbC reporting regulations through a Royal Decree published on July 11, 2015. Under these requirements, a parent company of a corporate group resident in Spain with net turnover equal to or exceeding 750 million euros must submit, for fiscal years starting on or after January 1, 2016, a CbC report under the format provided by the Spanish tax administration.

II. Businesses and Practitioners Need to Be CbC-Ready

With more and more countries adopting new policies and legislation to comply with the CbC reporting requirements for the 2016 tax year and onward, businesses and international tax practitioners need to follow suit. It will take effort to analyze the full implications of CbC in each jurisdiction where the MNE operates as well as to implement the business measures and procedures required for effective compliance with the CbC requirements.

Affected MNEs should be aware of the duties that they may now need to perform, including readiness assessments of their IT systems in conjunction with their company's IT departments, assessment of gaps between the existing transfer pricing documentation (global and local) and the new documentation requirements, and the assessment of possible opportunities and risks related to the MNE's global corporate organizational structure and intercompany transactions.

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Notes

[1] A CbC report shall contain data such as information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE group operates; and identification of each entity constituting the MNE group setting out the jurisdiction of tax residence of such entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such entity is organized, and the nature of the main business activity or activities of such entity.

[2] Australia, Austria, Belgium, Bermuda, Chile, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Mexico, Netherlands, Nigeria, Norway, Poland, Portugal, Senegal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland and U.K.

