

OECD'S COUNTRY-BY-COUNTRY REPORTING REGIME

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In recent years there has been an international emphasis on improved standards and systems of tax transparency and an effort to combat base erosion and profit shifting (**BEPS**) due to governments' need for revenue and the efforts of multinational enterprises (**MNE**) to minimise taxation.

Base erosion describes the act of reducing the level of taxable profits in a jurisdiction, while profit shifting involves moving the profit on an activity from one tax jurisdiction to another jurisdiction, usually to benefit from a lower tax rate.

The Organisation for Economic Co-operation and Development (**OECD**) aims to tackle BEPS by reforming the way in which tax systems work internationally. One tool developed by the OECD to tackle BEPS is the implementation of country-by-country (**CbC**) reporting.

This article discusses the history of the OECD's CbC regime and provides an overview of CbC reporting and the implications of the Multilateral Competent Authority Agreement on the Exchange of Country-By-Country Reports signed by Bermuda in April 2016 (**MCAA**).

In 2013, the OECD and G20 countries adopted the Action Plan on Base Erosion And Profit Shifting (BEPS Action Plan). The BEPS Action Plan set out 15 key actions to reform the way in which tax systems work internationally and address a variety of issues surrounding tax transparency, accountability, information exchange and BEPS.

The aim of the 15 key actions is to:

- improve or make amendments to existing domestic legislation;

- establish new rules; and
- set requirements for disclosure and transparency.

The report on key Action 13 provides standards for transfer pricing documentation and implementation measures related to the CbC report detailed below. Action 13 requires the development of “rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business”. A “three-tiered standardised approach” has been agreed in relation to transfer pricing documentation. The standard consists of:

- a master file containing standardised information relevant for all MNEs regarding their global business operations and transfer pricing policies;
- a local file referring specifically to material related party transactions of the local taxpayer; and
- a CbC report containing certain information relating to each tax jurisdiction in which large MNEs do business.

CbC reporting is a tool intended to control and tackle BEPS by allowing tax administrations to perform efficient and robust transfer pricing risk assessments to identify whether companies are engaging in transfer pricing and other BEPS related activities. Transfer pricing refers to the pricing of transactions between companies that are part of the same MNE. Although transfer pricing by itself is not necessarily illegal or abusive, transfer mispricing can result in issues of corporate tax avoidance and even possibly evasion.

The MCAA was developed to “set forth rules and procedures as may be necessary for competent authorities of jurisdictions implementing BEPS Action 13 to automatically exchange CbC reports prepared by the reporting entity of an MNE group and filed on an annual basis with the tax authorities of the jurisdiction of tax residence of that entity with the tax authorities of all jurisdictions in which the MNE group operates”.

In April 2016, Bermuda became the 33rd signatory to the MCAA. From and including the 2016 fiscal year, MNEs headquartered in Bermuda will be instructed to file with the Minister of Finance by 31 December 2017 their CbC information relating to the “global allocation of the income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the MNE groups operate”. The information will then be exchanged with other competent authorities in accordance with the MCAA.

Pursuant to the MCAA, Bermuda will be required to have in place “(i) appropriate safeguards to ensure that the information received pursuant to the MCAA remains confidential and is used for the purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks, as well as for economic and statistical analysis, where appropriate, in accordance with the MCAA; (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of the MCAA); and (iii) the necessary legislation to require reporting entities to file the CbC report”.

In response to CbC reporting, MNEs headquartered in Bermuda should follow developments regarding the CbC reporting requirements in Bermuda through the OECD’s website and the website of the Minister of Finance of Bermuda and also in the other jurisdictions in which they operate. Additionally, MNEs should ensure that they have the necessary protocols in place to gather the CbC information in order to be in a position to file their CbC reports by 31 December 2017.

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