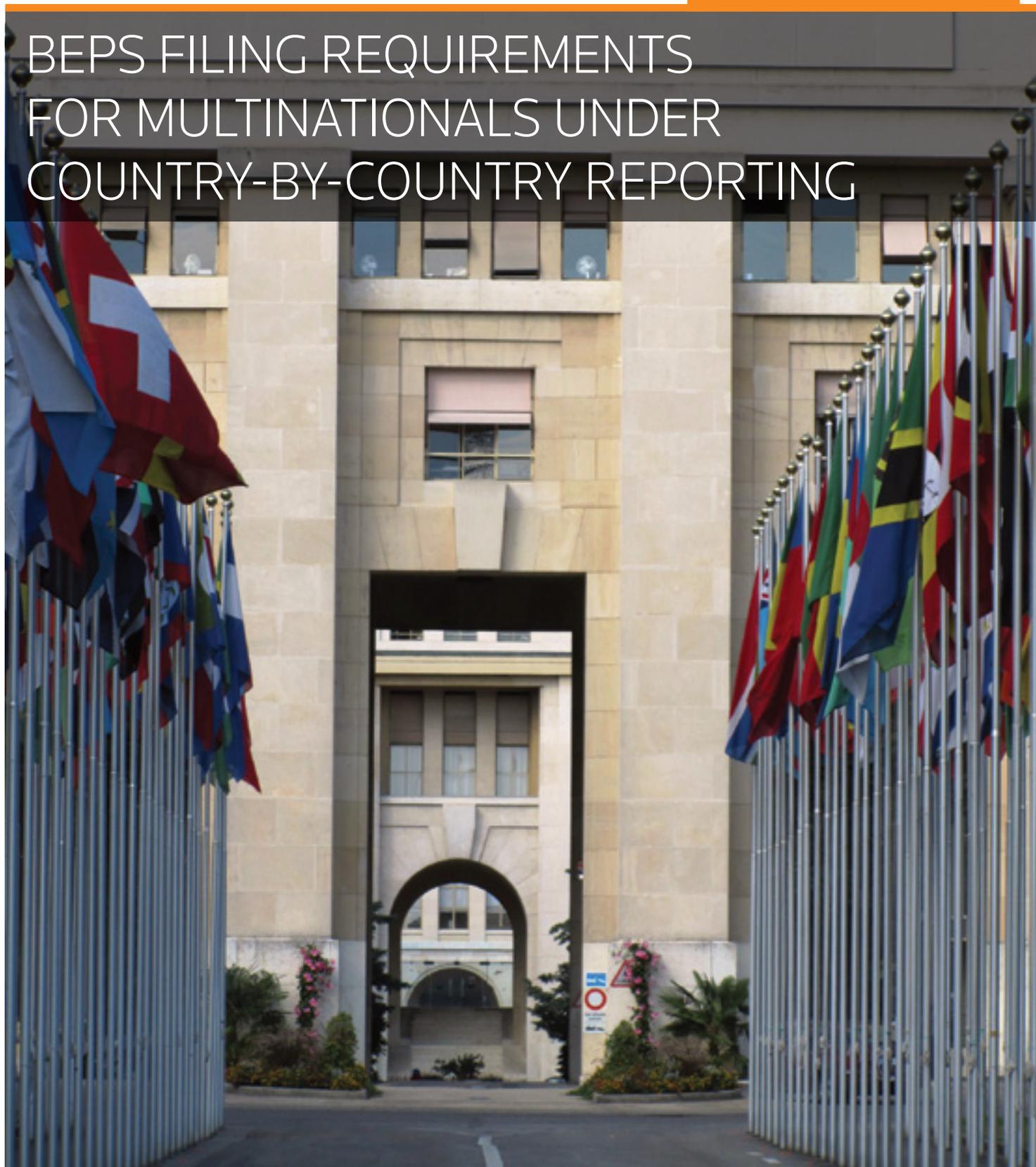


SPECIAL REPORT

# BEPS FILING REQUIREMENTS FOR MULTINATIONALS UNDER COUNTRY-BY-COUNTRY REPORTING





## FILING REQUIREMENTS FOR MULTINATIONALS UNDER COUNTRY-BY-COUNTRY REPORTING

On October 5, 2015, the OECD issued the final BEPS reports that are expected to fundamentally change the course of international taxation and transfer pricing for all multinational enterprises (MNEs). As countries implement some or all of the OECD BEPS recommendations into their domestic legislation, there will inevitably be shifts in tax policy, in addition to the transfer of resources and operations.

The OECD BEPS project aims to prevent base erosion and profit shifting by having taxes paid in the jurisdiction where profits are generated/company adds value/risk is taken, etc. The result is almost certain to be an increase in interstate disputes as authorities vie over the taxing rights. If countries cannot agree, there will be a real risk of double taxation. To justify that the tax being paid reflects where a company has created value, there needs to be sufficient people, intellectual property generation and risk-bearing capacity in the tax location.

### COUNTRY-BY-COUNTRY REPORTING (CbCR)



One of the cornerstones of the OECD BEPS project is CbCR, which is addressed in the Action 13 recommendations. An MNE's CbC report should include detailed financial and tax information relating to the global allocation of its income and taxes. CbCR is required where the ultimate parent company has its tax residence. If the parent company taxing jurisdiction has not implemented CbCR, MNEs may be required to file in the jurisdictions where they conduct business. The BEPS Action 13 recommendations would require MNEs with global turnover of at least €750 million in the immediately preceding fiscal year to submit the CbC report each year for accounting periods beginning after January 1, 2016. In addition to the CbC report, the OECD recommends that countries require a master file detailing the transactions and activities of the group as a whole, as well as a local file detailing the company's local business operations.

The primary goal of the OECD BEPS Action 13 recommendations is to align profits with value creation and substance. Several countries (most described further below) have already implemented CbCR (or indicated their intent to implement it). Because countries may deviate from the Action 13 recommendations when implementing CbCR (e.g. filing threshold, effective date or both), there most likely will be an increase in cross-border tax disputes between tax authorities and taxpayers.

MNEs should gauge their readiness to collect and aggregate the data required under CbCR, and will need to determine the technology used to compile this data. While there is no specific requirement on how data is collected, businesses should bear in mind that the combined group information must be consolidated into one report so that data collection can be standardized. However, the OECD released a CbC XML Schema and User Guide on March 22, 2016 that explains the information that should be included for each CbC data element.



#### EUROPEAN COMMISSION ANTI-TAX AVOIDANCE PACKAGE

Against this backdrop, MNEs should be cognizant of the CbCR Directive that the European Commission (EC) released on January 28, 2016, to expedite CbCR implementation across the 28 EU member states. The CbCR Directive responds to the demands from the European Parliament, imposing transparency requirements on MNEs, and is in line with the initiatives announced in the EC's Action Plan for a fairer corporate tax system (COM (2015) 302, June 17, 2015) to tackle tax avoidance.

Under the CbCR Directive, EU MNEs would not be obligated to submit the information to each EU member state where they operate, but only to the tax authorities of their country of residence. The CbCR Directive would require EU member states, on receipt of the report, to share the information with other member states in which companies are either resident for tax purposes, or are subject to tax, with respect to the business carried out through a permanent establishment (PE). The CbCR Directive provides for the automatic exchange of information to build on the existing rules in EU Council Directive 2011/16/EU, including the use of standard forms.

On April 12, 2016, the EC issued its proposal to amend the Accounting Directive (Directive 2013/34/EU) that would require MNEs with consolidated annual revenues of €750 million or more to publish CbC information on their websites for MNE operations in EU member states and identified tax havens. CbCR information for other jurisdictions would be aggregated as one jurisdiction. Several members of the European Parliament have begun to put pressure on the EC to lower the CbCR threshold from €750 million to €40 million.

During a February 12, 2016 meeting to discuss the EC Anti-Tax Avoidance Package, several EU finance ministers said that the EC proposals should not go beyond the OECD BEPS project recommendations. Although some lawmakers and activists criticized the EC proposals for not being ambitious enough, in some areas the proposals go beyond the BEPS project measures, including public filing of CbCRs. In contrast, the British Finance Minister called for increased disclosure of MNEs' tax and financial data, so that not only administrations, but also the general public, could access this information. "I think we should be moving to more public country-by-country reporting. This is something which the U.K. will seek to promote internationally."



#### OECD CbCR MULTILATERAL COMPETENT AUTHORITY AGREEMENT

As part of continuing efforts to boost transparency by MNEs, on January 27, 2016, 31 countries signed the OECD Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of CbC reports. The U.S. was not among them. Instead, a senior U.S. Treasury official said that the U.S. plans to implement CbCR through bilateral agreements rather than the OECD MCAA, to ensure that countries have appropriate safeguards and infrastructure in place. Canada announced similar intentions in its 2016 Federal Budget released on March 22, 2016.

Under the MCAA, signatories may exchange reports with other signatories if they have CbCR requirements in place and are a party to the OECD Convention on Mutual Administrative Assistance in Tax Matters.



### U.S. CbCR DEVELOPMENTS

On December 21, 2015, the IRS and Treasury issued Proposed Regulations (REG-109822-15, Reg. 1.6038-4) that would implement the OECD BEPS Action 13 recommendations on CbCR. However, the Proposed Regulations did not address master and local files. The CbCR rules would apply to tax years of ultimate parent entities of U.S. MNE groups that begin on or after the date of publication of the Treasury Decision adopting the rules as final Regulations. On March 2, 2016, however, a senior U.S. Treasury official said that the government intends to make the CbCR Regulations final by June 30, 2016. They would enter into force for fiscal years starting on July 1, 2016, six months sooner than originally expected. A senior IRS official said on March 9, 2016, that the U.S. will not accept voluntary early CbCR filings before the expected July 1, 2016, entry into force of the CbCR final Regulations. This means that MNEs may have to file CbCRs directly or through a surrogate parent company in other jurisdictions that have implemented CbCR as of January 1, 2016.

Under the Proposed Regulations, U.S. persons that are the “ultimate parent entity” of a MNE group with annual revenue of \$850 million or more for the immediately preceding annual accounting period would be required to file a CbC report with the IRS. The ultimate parent entity of a U.S. MNE group is a U.S. business entity that meets both of the following requirements:

- Owns directly or indirectly a sufficient interest in one or more business entities, at least one of which is organized or tax resident in a tax jurisdiction other than the U.S., such that the U.S. business entity is required to consolidate the accounts of the other business entities with its own accounts under U.S. GAAP or would be so required if equity interests in the U.S. business entity were publicly traded on a U.S. securities exchange
- Is not owned directly or indirectly by another business entity that consolidates the accounts of such U.S. business entity with its own accounts under GAAP in the other business entity’s tax jurisdiction of residence or would be so required if equity interests in the other business entity were traded on a public securities exchange in its tax jurisdiction of residence

The CbC report would contain the following information for each tax jurisdiction in which one or more “constituent entities” of a U.S. MNE group is resident:

- Revenues generated from transactions with other constituent entities
- Revenues not generated from transactions with other constituent entities
- Profit or loss before income tax
- Total income tax paid on a cash basis to all tax jurisdictions and any taxes withheld on payments to the constituent entities
- Total accrued tax expense recorded on taxable profits or losses, reflecting only operations in the relevant annual accounting period (and excluding deferred taxes or provisions for uncertain tax liabilities)
- Stated capital of all of the constituent entities, except that the stated capital of a PE must be reported by the legal entity of which it is a PE, unless there is a defined capital requirement in the PE tax jurisdiction for regulatory purposes
- Total accumulated earnings, except that accumulated earnings of a PE must be reported by the legal entity of which it is a PE
- Total number of employees on a full-time equivalent basis in the relevant tax jurisdiction
- Net book value of tangible assets other than cash or cash equivalents

Each business entity of a U.S. MNE group is considered a separate “constituent entity” of that U.S. MNE group. However, the term “constituent entity” does not include (i) a foreign corporation or foreign partnership for which the ultimate parent entity is not required to furnish information under Code Section 6038(a) or (ii) any PE of such foreign corporation or foreign partnership.

Under the contemplated competent authority arrangements for the exchange of CbC reports, the competent authorities of the U.S. and other tax jurisdictions would further limit the permissible uses of exchanged reports, including the assessment of high-level transfer pricing and other tax risks and, where appropriate, economic and statistical analysis. Prior to entering into an information exchange agreement with another tax jurisdiction, Treasury and IRS intend to closely review the tax jurisdiction’s legal framework for maintaining confidentiality of taxpayer information and its track record of complying with that legal framework.

Prior to the release of the proposed CbCR regulations, Chairman of the U.S. House Ways and Means Oversight Subcommittee, Charles Boustany, introduced U.S. H.R. 4297 Bill on December 18, 2015, imposing requirements with respect to the collection and transmission of reports by Treasury. The Bill expressly prohibits the Secretary from collecting, or transmitting to any foreign jurisdiction, any CbCR information of any U.S. person with respect to tax years beginning before January 1, 2017. The Treasury Secretary would also be required to suspend the transmittal of the report to a foreign jurisdiction if the jurisdiction is either abusing master file documentation requirements or failing to safeguard the confidentiality of information.



### CbCR DEVELOPMENTS IN OTHER JURISDICTIONS

CbCR developments are discussed below for Australia, Canada, China, Denmark, Finland, France, Germany, India, Ireland, Italy, Japan, Luxembourg, Malaysia, Mexico, the Netherlands, Norway, Poland, Portugal, Russia, South Africa, South Korea, Spain, Sweden, Switzerland and the United Kingdom.



#### AUSTRALIA

On December 11, 2015, the Australian government issued the Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015 (Act 170 of 2015) implementing CbCR for “significant global entities,” which is a global parent entity with an annual global income of AUD\$ 1 billion or more or any member of such a global parent entity’s group. The CbCR obligations are in new Subdiv 815-E of Income Tax Assessment Act (ITAA) 1997. Significant global entities are required to provide three statements to the Tax Commissioner: (1) a CbC report, (2) a master file and (3) a local file. Failure to provide these statements will not in itself prevent an entity from having a reasonably arguable position (RAP) if documentation is still maintained in accordance with existing requirements. The content of these statements is based on Annexes I to III of Chapter V of the OECD Transfer Pricing Guidelines as outlined in the BEPS Action 13 final report.

The Australian Tax Commissioner has the power to grant exemptions from providing statements under Subdiv 815-E for specific entities or classes of entities. In doing so, the Tax Commissioner may take into account the following factors: (1) Risk profile of the local entity, including, for example, the amount of its overseas dealings; (2) compliance burden imposed on the entity and (3) whether the Commissioner will receive the relevant statement or statements by alternative means.

On February 29, 2016, the Tax Laws Amendment (Tougher Penalties for Country-by-Country Reporting) Bill 2016 was introduced in the Australian House of Representatives. This bill would amend the ITAA 1997 to insert new Sections 287-75, introducing a specific penalty regime for significant global entities with CbCR obligations. Under this new regime, the penalty for failing to provide a report to the Commissioner would be 125 penalty units for each period of 28 days that a report is outstanding after it becomes due, with a maximum penalty of 1,500 penalty units (AUD \$270,000). Under current law, there is no specific penalty regime for failing to provide a CbC report).



### CANADA

On March 22, 2016, Canada's Minister of Finance presented the 2016 Federal Budget, stating that the government intends to implement CbCR, including the OECD-recommended monetary threshold (€750 million or more) for "taxation years that begin after 2015," with the first CbC reports to be filed with the Canadian tax authorities (CRA) by the end of 2017. The first exchange of Canadian CbCR information would occur by June 2018. Canada will issue draft CbCR legislation "in the coming months." However, the budget does not address master and local files.

Similar to the U.S., Canada has not signed on to the OECD MCAA to automatically exchange CbCR information. Instead, the 2016 Budget says that the government intends to enter into agreements with each jurisdiction on the exchange of CbCR information, an approach that the U.S. tax authorities follow, to ensure that participating jurisdictions maintain confidentiality.



### CHINA

On September 17, 2015, China released a draft of revised Circular No. 2 (first released in January 2009) on transfer pricing and anti-avoidance rules, which provides a three-tiered documentation structure that generally aligns with the OECD BEPS Action 13 recommendations. China has not yet finalized the proposed regulations. However, on March 15, 2016, a former Chinese tax authority (SAT) official said at a transfer pricing conference in Paris that the SAT likely will not make draft Circular 2 final until May 2016, so the CbCR proposals would enter into force around May 31, 2017.

The revised Circular No. 2 calls for a master file, local file and CbCR. MNEs would file the CbC report annually as part of their Chinese tax return if they have a holding company in China and global consolidated revenue exceeding RMB 5 billion (equivalent to the €750 million OECD proposed threshold). If a foreign MNE designates a Chinese group company as its global tax filer, the designated Chinese company would include the report as part of its Chinese tax return.

Taxpayers, including entities with limited risk and function profiles, with revenue exceeding RMB 200 million (buy-sell transactions) or RMB 40 million (other transactions) would also have to provide a master and local file.

Revised Circular No. 2 would also require preparation of additional documentation called "Special Documentation" by Chinese taxpayers engaged in related-party service transactions and cost sharing agreements (CSAs). The special documentation rules would also apply to companies that exceed China's thin capitalization expense limit.



### DENMARK

On December 18, 2015, the Danish Parliament approved legislation (Section 1(2) of L 46 Bill) to introduce CbCR requirements in a new Section 3B of the Danish Corporate Tax Act. The legislation is modeled primarily on the OECD BEPS Action 13 recommendations and supplements Denmark's current documentation rules from January 1, 2016.

Pursuant to the legislation, the CbC report should be submitted no later than 12 months after the end of the income year. Calendar-year companies will be required to produce a report and prepare documentation under the new rules in 2016, which would be filed no later than December 31, 2017. For surrogate parent companies, the CbCR rules will apply from January 1, 2017.

The following companies will have to submit a CbC report to Denmark's tax authorities (new Section 3B (11) of the CTA):

- Ultimate parent companies that are Danish tax residents with consolidated turnover exceeding DKK (Danish kroner) 5.6 billion (about €750 million or more) in the previous tax year
- Group companies that are Danish tax residents with consolidated turnover exceeding DKK 5.6 billion in the previous tax year and that meet other specified conditions

While the December 18, 2015, legislation does not address master and local file requirements, Denmark's Minister of Taxation has indicated that future regulations will address them.

New Section 3B(15) defines "revenue" as "revenue arising in connection with a company's ordinary operations, including sales, provision of services, fees, interest, dividends and royalties." The last three items (interest, dividends, royalties) are not in the OECD BEPS Action 13 recommendations.



### FINLAND

On December 21, 2015, Finland's Ministry of Finance issued proposed regulations that would introduce CbCR and master and local file requirements from January 1, 2017. The CbCR requirements (new Sections 14(d) and (e) of the Tax Assessment Procedure Act) would apply for "ultimate parent entities" of MNE groups resident in Finland, when the annual consolidated group revenue is €750 million or more in the preceding tax year. If the ultimate parent entity is resident in a jurisdiction that has not implemented CbCR requirements or Finland is otherwise unable to obtain the CbC report, a Finnish subsidiary of the group would be required to file with the Finnish tax authorities. Failure to file the report would result in penalties of up to €25,000.



### FRANCE

On December 30, 2015, France enacted the 2016 Finance Act, which introduced CbCR based on the OECD BEPS Action 13 recommendations. The public CbCR proposals included as Amendment No. 340 on December 4, 2015, to the 2015 Amended Finance Bill were not enacted into law as part of the final version issued on December 30, 2015. However, the French Minister of Finance said during the French National Assembly's open question time on March 16, 2016, that he supports public release of CbCR information "in a European context."

Article 121 of the 2016 Finance Act requires French MNEs to provide the CbC report annually to the French tax authorities (starting with tax years beginning on or after January 1, 2016) when the French company meets all of the following requirements:

- Has consolidated accounts
- Holds or controls (directly or indirectly) one or several legal entities created abroad (including foreign branches)
- Has annual consolidated turnover of at least €750 million
- Is not held by another French entity that has a similar CbCR requirement pursuant to foreign rules

The French tax authorities will issue the format for the French CbCR in early 2016. Companies that fail to comply with the CbCR amendments will be subject to penalties of up to €100,000.



## GERMANY

Germany announced that it will adopt the OECD BEPS Action 13 recommendations relating to the CbCR template and master file by early 2016, so that the rules would enter into force retroactively from January 1, 2016. Germany does not plan to make any changes to the OECD CbCR template.

On February 18, 2016, the Ministry of Finance Deputy Director of International Tax said during an international tax conference in Berlin that Germany is opposed to publication of CbCR information and beneficial owner registries.

On February 26, 2016, the German Federal Council of the Bundesrat issued a decision (No. 47/16), stating its intention to introduce several BEPS-related measures in 2016, including CbCR. The Bundesrat accordingly called on the German government to issue draft legislation that would impose reasonable and achievable transfer pricing reporting requirements, including ensuring that trade secrets remain confidential.

On April 12, 2016, Germany's Federal Ministry of Finance issued a draft law that would implement the MCAA that the government signed on January 27, 2016. The draft law says that Germany intends to maintain the confidentiality of any CbCR information that it receives from taxpayers. It does not appear that the draft law has been submitted to the German Parliament for consideration.



## INDIA

On February 29, 2016, the government issued Budget Bill 2016, which contains measures to introduce CbCR that aligns with the OECD BEPS Action 13 recommendations. Clause 110 of Budget Bill 2016 would add a new Section 286 to the Income Tax Act, 1962, to implement CbCR. The CbCR proposals would enter into force from April 1, 2017, and apply starting with the 2017 tax year, one year later than the BEPS Action 13 recommendations.

The Budget Bill 2016 proposals indicate that the Indian tax authorities (Central Board of Direct Taxation) (CBDT) will issue regulations prescribing the form and manner of filing the CbC report, which is to contain "aggregate information in respect of the amount of revenue, profit or loss before income tax, amount of income tax paid, amount of income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets (excluding cash or cash equivalents), with regard to each country or territory in which the group operates (proposed Section 286(3)(a)). The report would also require disclosure of "the nature and details of the main business activity or activities of each constituent entity...."

While the Budget Bill 2016 proposals do not provide a threshold for filing the CbC report, on December 7, 2015, a senior official from the Indian Ministry of Finance said that the threshold would equal €750 million or more, converted into Indian rupees using a conversion rate from February 2015 (about INR 52.79 billion).

Also, on December 4, 2015, the Indian Commissioner for Income Tax said that India will use best practices in handling sensitive business information in the reports and that it intends to keep any CbCR information confidential. The senior official said that India has taken (or intends to take) the following steps in preparation of CbCR:

- Ensure implementation of the CbCR requirements through domestic legislation
- Align India's present transfer pricing documentation rules with the new standardized approach under the OECD BEPS Action 13 recommendations
- Develop risk assessment systems for the effective use of information
- Strengthen the effectiveness and efficiency of India's mutual agreement procedure (MAP) in some of its income tax treaties (BEPS Action 14 recommendations)
- Establish mechanisms for receiving information from and transmitting to tax administrations in other countries



## IRELAND

On December 21, 2015, Finance Act 2015 was signed into law, maintaining the CbCR provisions (Section 33) that Ireland's Minister of Finance proposed on October 22, 2015, and aligning with the BEPS Action 13 recommendations. However, Finance Act 2015 did not contain any provisions relating to master and local files.

For fiscal years beginning on or after January 1, 2016, an Irish MNE's ultimate parent entity, which is tax resident in Ireland, will have to file an annual CbC report with the tax authorities when the group's consolidated revenue is €750 million or more. MNEs will be required to file their report no later than 12 months after the end of the relevant fiscal year.

On January 5, 2016, the Irish tax authorities issued CbCR regulations [Taxes (Country-by-Country Reporting) Regulations 2015] that provide the CbCR requirements enacted as part of Finance Act 2015. The regulations include the following notification requirements:

- An ultimate parent or surrogate parent entity tax resident in Ireland must notify the tax authorities that it is such an entity by the last day of the fiscal year concerned
- A constituent entity tax resident in Ireland must notify the tax authorities of the identity and jurisdiction of tax residence of the reporting entity by the last day of the fiscal year concerned (if multiple constituent entities, only one is required to notify)

Failure to provide the CbC report, or providing an incomplete or inaccurate report, will trigger a penalty of €19,045. In some instances, an additional penalty of up to €2,535 may be charged for each day during which the default continues.



## ITALY

On December 30, 2015, Italy introduced CbCR via Articles 145 and 146 of Law No. 208. Effective January 1, 2016, Italian MNEs will have to submit an annual report to the Italian tax authorities indicating the global amount of revenues, gross profit, taxes paid and accrued and other indicators of economic activities, broken down by country. The Italian Ministry of Economy and Finance will issue additional rules regulating the detailed procedural aspects (e.g., filing date) within 90 days of January 1, 2016, which are expected to meet the BEPS Action 13 reporting templates.

Italian taxpayers subject to the CbCR rules include:

- Italian parent companies of groups that (1) are required to submit group consolidated financial statements, (2) have realized a consolidated annual turnover in the prior year of at least €750 million and (3) are not controlled by any other entities
- Italian-resident companies, controlled by a foreign company, which are required to submit group consolidated financial statements in a country where CbCR does not apply or in a country that does not grant an actual exchange of information of CbCR

Article 145 of Law No. 208 of December 30, 2015, authorizes the Italian tax authorities to levy penalties ranging from €10,000 to €50,000 when there is an omission or incomplete submission of the CbC report. Article 145 also says that the Italian tax authorities will maintain any CbCR information as confidential to the same extent as under the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters.



## JAPAN

On March 29, 2016, Japan's National Diet (legislature) enacted the 2016 Tax Reform Bill that introduces the three-tiered documentation requirements in the OECD BEPS Action 13 recommendations. The amendments will require annual preparation and filing of a master file and CbC report by the "ultimate parent company" of an MNE group. Existing local file requirements in Article 22-10(1) of the Ordinance for Enforcement of the Act on Special Measures Concerning Taxation of Japan ("ASMT Ministerial Order") are amended to include additional reporting items to align with the BEPS Action 13 recommendations.

The CbC report will contain certain information about the MNE group in the same format as Annex III of the BEPS Action 13 recommendations. Filing of the report will be required in Japan for taxpayers belonging to an MNE group that has consolidated revenues of JPY 100 billion or more in the preceding fiscal year. The report will be required for Japanese parent companies or any Japanese subsidiaries or branches of foreign MNEs for fiscal years beginning on or after April 1, 2016. The submission deadline will be one year following the close of the ultimate parent company's fiscal year to which CbCR relates.

The master file will contain the same general information as in the BEPS Action 13 recommendations for taxpayers belonging to an MNE group with consolidated revenues of JPY 100 billion or more in the preceding fiscal year. However, unlike the CbCR, Japanese subsidiaries or branches of foreign MNEs will have to file the master file with the Japanese tax authorities, who would not otherwise obtain the information through exchange-of-information provisions in Japanese tax treaties.

Because the local file amendments include a contemporaneous preparation requirement, they will be effective for fiscal years beginning on or after April 1, 2017 (as opposed to the April 1, 2016, effective date for CbCR and master file requirements).



## LUXEMBOURG

Luxembourg has indicated that it is necessary to push for appropriate transfer pricing documentation and a CbCR template as part of its participation in the OECD BEPS project. On December 11, 2015, the Minister of Finance said at a conference that Luxembourg is open to the idea of public CbCR, but that private tax rulings would remain private.



## MALAYSIA

On March 24, 2016, the Malaysian tax authorities (Inland Revenue Board) said during a consultation that the government intends to amend existing master and local file requirements and to introduce CbCR around the middle of 2016 that would likely apply from January 1, 2017. Malaysia was among the 31 countries that signed the MCAA on January 27, 2016.



## MEXICO

On November 18, 2015, Mexico published the 2016 Tax Reform that the Mexican President signed into law on November 13, 2015. It includes transfer pricing documentation requirements in new Article 76-A of the Income Tax Act that align with the OECD BEPS Action 13 recommendations. The amendments apply from January 1, 2016, with initial CbCR due by December 31, 2017 (for tax year 2016).

The CbC report will require information on the following indicators of economic activities that are not in the BEPS Action 13 recommendations: royalties paid and received, interest paid and received and management services paid and received. Local taxpayers will also have to provide certain information on non-resident related parties not otherwise available to Mexico's tax authorities through tax information exchange.

The local and master file requirements will apply to companies with annual revenue in the preceding year exceeding MXN 645 million (to be adjusted yearly - approximately US \$38 million), whereas the CbCR requirement will apply to Mexican MNE holding companies with consolidated annual group revenue exceeding MXN 12 billion (approximately US \$714 million) in the preceding year.

Failure to file the transfer pricing documentation will disqualify Mexican taxpayers from entering into contracts with the Mexican public sector and subject the taxpayer to fines ranging from MXN 140,540 (approximately US \$8,365) to MXN 200,090 (approximately US \$11,910).



## NETHERLANDS

On December 22, 2015, the Dutch Parliament approved the Tax Plan 2016 Bill, which implements the OECD BEPS Action 13 transfer pricing documentation recommendations on CbCR and master and local files. On December 30, 2015, the Dutch Ministry of Finance issued Regulation No. DB/2015/462M, which provides the information required under the newly adopted documentation requirements.

Under the new law, which entered into force on January 1, 2016, master and local file submissions will be required from Dutch entities that are part of an MNE group with consolidated revenue of at least €50 million, and a CbC report must be filed by Dutch resident parents of MNE groups with consolidated revenue of at least €750 million. The December 30 regulations allow taxpayers to prepare master and local files in Dutch or English. The report must be prepared in accordance with the model in the regulations and submitted in XML format, which may also be submitted in Dutch or English.

Penalties will be imposed in instances of intentional non-compliance or "serious misconduct" of the reporting entity regarding its obligation to file the CbC report, with a potential maximum penalty in the amount of €20,250, in addition to possible criminal prosecution.



### NORWAY

On October 7, 2015, the government announced a proposal (included in the 2016 Budget) for implementing CbCR into Norwegian domestic law. On December 2, 2015, the Ministry of Finance issued the proposed CbCR regulations that align with the OECD BEPS Action 13 recommendations. The CbCR requirements would apply for tax years beginning on or after January 1, 2016.

The proposed CbCR requirement would apply to Norwegian companies that are part of an MNE group with consolidated annual revenue of NOK 6.5 billion (about US \$725 million). If the “ultimate parent entity” of the group is resident in Norway, it would be required to file the CbC report. If the ultimate parent entity is not resident in Norway, a local Norwegian subsidiary would be required to file if (1) the parent is not required to submit a report in its jurisdiction of residence, (2) the parent’s jurisdiction of residence has not signed an agreement with Norway for the exchange of CbCR or (3) Norway is otherwise unable to obtain the report.



### POLAND

On October 27, 2015, Poland enacted amendments to Article 9a of the Corporate Income Tax Act regarding documentation of intercompany transactions that align with the OECD BEPS Action 13 recommendations. The amendments will enter into force on January 1, 2017, except for the CbCR requirements that entered into force from January 1, 2016. The following documentation will be required pursuant to Article 2 of the October 27th legislation, subject to the specified thresholds:

- A local file detailing related-party transactions and other information of the local entity
- A benchmarking (comparables) study if annual revenue exceeds €10 million in the previous year
- A simplified related-party transactions report attached to the tax return when annual revenue exceeds €10 million in the previous year
- A master file detailing, e.g., the transfer pricing policy of the group, its organizational structure, business activities and intangibles when annual revenue exceeds €20 million in the previous year
- A CbC report when annual consolidated group revenue exceeds €750 million in the previous year

An exemption from the documentation requirements listed above is available for companies with annual revenue below €2 million with additional thresholds to determine which transactions are covered based on the taxpayer’s annual revenue.



### PORTUGAL

On March 30, 2016, Portugal enacted its 2016 Budget via Law No. 7-A/2016, which introduces CbCR in line with the OECD BEPS Action 13 minimum standard. However, the 2016 Budget does not address the master and local file requirements in the Action 13 recommendations.

The CbC measures in Article 134 of the 2016 Budget reflect the same measures that the Cabinet presented to Parliament on February 5, 2016, as Draft Law No. 12/XIII. Article 134 of the 2016 Budget amends the Corporate Income Tax Code by adding a new Article 121-A to introduce CbCR for resident entities with annual global consolidated income of at least €750 million for tax years beginning on or after January 1, 2016.

Any entity with a tax presence in Portugal through a legal entity or PE that is a member of a group in which at least one entity is required to submit a CbC report will have to inform the Portuguese tax authorities of the identity of the reporting entity.



### RUSSIA

On April 8, 2016, the Ministry of Finance presented for public discussion a draft law addressing the preparation and submission of CbC reports that generally aligns with the OECD BEPS Action 13 recommendations. The draft law would require taxpayers who are members of an international group, whose revenues for the preceding fiscal year were at least RUB 50 billion (about US \$685 million), to submit annual CbC reports.

Multinational group taxpayers would have to notify the Russian tax authorities of their participation in the group by September 20th of each calendar year. Failure to notify or submitting false information would incur a penalty of RUB 50,000. Also, failure to submit a CbC report or submitting false CbC information would incur a penalty of RUB 100,000.

CbC reports would have to be submitted for financial years starting from January 1, 2017. Reports for prior years would be permitted on a voluntary basis.



### SOUTH AFRICA

On April 11, 2016, South Africa's Minister of Finance issued draft CbCR regulations that are open for public consultation through May 3, 2016. The regulations closely align with the OECD BEPS Action 13 minimum standards, and would apply for fiscal years beginning on or after January 1, 2016, with initial CbC reports due within 12 months of the last day of the reporting fiscal year, but no later than December 31, 2017.

Multinational groups with consolidated group revenue of ZAR 10 billion or more (about US \$644 million) in the preceding tax year whose "ultimate parent entity" is in South Africa would be subject to the CbCR requirements; however, multinationals doing business in South Africa whose "ultimate parent entity" is not located in South Africa would be subject to the OECD-recommended €750 million or more CbC consolidated group revenue threshold and would be required to file in South Africa in certain situations. Although SARS previously indicated that it likely would require more information in its CbCR template than what is provided in the BEPS Action 13 recommendations, SARS now has confirmed that the OECD template should be used.

Also, on December 15, 2015, SARS issued Draft Notice 2015-66 for public consultation to implement master/local file recordkeeping requirements for transfer pricing transactions, which would affect South African companies that have entered into potentially affected (related-party) transactions and are members of a group (50% equity or voting rights threshold) with consolidated South African revenue of ZAR 1 billion (about US \$63 million) or more in the preceding tax year.



### SOUTH KOREA

On December 15, 2015, South Korea enacted the 2015 Tax Revision Bill, which introduces the master and local file documentation requirements that the Ministry of Strategy and Finance proposed on August 6, 2015. The amendments apply from January 1, 2016, subject to certain thresholds not yet announced. Taxpayers that fail to comply with the documentation requirements will be subject to a penalty of KRW 10 million (about US \$8,500).

While the 2015 Tax Revision Bill amendments do not include CbCR requirements, the Director of the International Tax Division at the Ministry of Strategy and Finance said on March 24, 2016, that the government intends to implement CbCR by the end of 2016, which would apply starting in 2017.

On December 24, 2015, South Korea issued proposed amendments to the corresponding Enforcement Decree, which provides more detailed guidance on application of the master and local file documentation requirements enacted on December 15, 2015. The new documentation requirements will apply to South Korean corporations and foreign corporations with business operations in South Korea that meet both of the following thresholds each fiscal year: (1) cross-border related-party transaction volume that exceeds KRW 50 billion (about US \$40 million) and (2) sales revenue that exceeds KRW 100 billion (about US \$80 million).



## SPAIN

On July 11, 2015, Spain enacted Decree No. 634, which includes changes to implement CbCR and other transfer pricing documentation requirements. The amendments entered into force from January 1, 2016. Decree No. 634 aligns closely with the OECD BEPS Action 13 recommendations and requires (for tax years beginning on or after January 1, 2016) Spanish tax resident entities that are “head” of a group (as defined under the Spanish transfer pricing rules) and that are not dependent on any other entity, with consolidated group revenue of €750 million or more in 2015, to provide a CbC report to the Spanish tax authorities.

The information in the report should be denominated in the local currency of each jurisdiction. It must be completed within a 12-month period from the close of the fiscal year to which the CbCR relates (e.g., companies with a fiscal year ending December 31, 2016, would be required to file the report by December 31, 2017).

Articles 15 and 16 of Decree No. 634 requires taxpayers belonging to groups with an aggregate net turnover of €45 million or more in the preceding year to submit a master file and local file, respectively.

There are no penalty provisions in Decree No. 634 for failure to file the CbC report with Spain’s tax authorities. Decree No. 634 also does not address the use and confidentiality of the CbCR information by Spain’s tax authorities.



## SWEDEN

On December 23, 2015, the Swedish tax authority (Skatteverket) released guidance saying that the government tasked it in November 2015 with developing proposed amendments to the transfer pricing documentation rules so that they align with the OECD BEPS Action 13 minimum standard on implementing CbCR. The guidance did not address master and local files. The Skatteverket will finalize the CbCR proposals by April 2016, and they are expected to enter into force from January 1, 2017.

Because several countries will have CbCR enacted from January 1, 2016, the Skatteverket said in its December 23, 2015, guidance that Swedish MNEs should anticipate having to file CbC reports in other countries before the expected Swedish regime enters into force on January 1, 2017.



## SWITZERLAND

On October 5, 2015, Switzerland’s Federal Department of Finance (FDF) issued a press release indicating that the June 5, 2015, draft Corporate Tax Reform III bill (CTR III) incorporates some of the BEPS recommendations and stating that it is in the process of preparing the legal foundations for implementing CbCR. The draft CTR III bill was subsequently submitted to the Swiss Parliament for consideration, which the Council of States approved on December 14, 2015, and the Economic Committee of the National Council amended on February 22 - 23, 2016. The Swiss National Council approved the draft CTR III bill on March 16 - 17, 2016, including the amendments by the Economic Committee.

On January 29, 2016, the FDF issued a report on international financial and tax matters that provided an overview of the government’s 2015 international tax policy and an outlook on its anticipated tax agenda for 2016. The report says that the government intends to implement CbCR in 2016.

On April 13, 2016, Switzerland’s Federal Council announced that it initiated a consultation on the MCAA that the government signed on January 27, 2016. The MCAA has not yet been submitted to the Swiss Federal Assembly for consideration. The MCAA consultation will run through July 13, 2016.



## UNITED KINGDOM

The U.K. confirmed in Section 122 of its Finance Act 2015 (enacted into law on March 17, 2015) that it will introduce CbCR rules for reporting a group's profits to the U.K. tax authorities (HMRC). CbCR "would not be published" so as to protect the confidentiality of information in the report. However, on February 12, 2016, the U.K. Chancellor of the Exchequer said that the EU needs to push for public disclosure of CbCR information.

On February 26, 2016, the government submitted to Parliament the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016, which entered into force on March 18, 2016. The final regulations follow the public technical consultation that ran through November 16, 2015. The final regulations do not contain master and local file requirements, as HMRC says that it can require those documentation requirements under its existing powers.

Multinationals with parent entities resident in the U.K. and with consolidated group revenue of €750 million or more in a 12-month accounting period (reduced proportionately for periods of less than 12 months) will be obligated to submit an annual CbC report to HMRC for the following period. The final regulations say that HMRC will issue guidance on the specific information to be included in the report.

HMRC may issue fixed penalties (£300) if the ultimate parent fails to file the report (or if the reporting entity fails to provide information on time). If the failure continues after fixed penalties are assessed, daily penalties not exceeding £60 a day would accrue automatically.

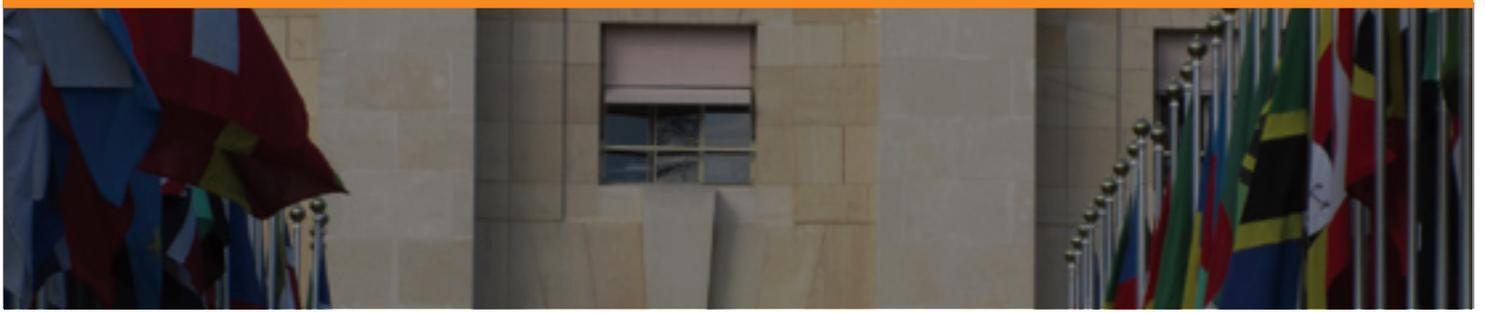
During a panel discussion at a Tax Council Policy Institute conference on February 12, 2016, the HMRC Director of Business and International Tax said that the U.K. will accept "surrogate" filings of CbC reports for 2016 by U.K. subsidiaries of U.S. MNEs: "[The U.K.] would have no difficulty if a U.S.-based group wants to file for 2016 on a surrogate basis with [the U.K.] tax administration so long as there is some nexus with the U.K." The Director also said that the U.K. will issue CbCR regulations in the first quarter of 2016.

## CONCLUSION

The OECD BEPS project has put transfer pricing in the spotlight with active involvement by governments, tax authorities and businesses around the globe. More and more governments are implementing some form of the BEPS Action 13 recommendations in their domestic legislation. Going forward, jurisdictions will need to continue to balance the need for transparency against compliance burdens and confidentiality concerns for businesses. There will likely be an increase in cross-border disputes, which will require timely and efficient dispute resolution. MNEs should begin collecting and compiling data to populate the CbC reports and ensure that they satisfy individual country deadlines.

MNEs risk reputational damage and tax adjustments that can affect their future earnings if they do not heed this changing tax landscape. Accordingly, boards should work with their tax departments in navigating their companies through this landscape.

The information provided in this special report is current as of April 20, 2016, the date of publication.



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