



BEPS Action 13 country-by- country reporting (CbCR)

**HR and mobility professionals
should join the conversation**

Background

The international debate on tax is constantly evolving and the call for tax transparency to tax authorities, the European Commission, G8, G20, the OECD and to the general public is echoed across the globe, thereby changing the tax landscape for international business.

The Action Plan on Base Erosion and Profit Shifting ('BEPS') is OECD/G20's policy response to perceived aggressive tax avoidance by MNEs and represents one of the most significant changes to the corporate tax landscape.

Transfer pricing documentation and country-by-country reporting

Action 13 focuses on the global value chain of a company, transfer pricing and documentation. The goal of this framework is to collect standardized data on where profit, tax, and economic activity is occurring at a global level. For the purposes of a transfer pricing risk assessment, consistent documentation and access to the same information is required for all relevant tax authorities. Once implemented, qualifying MNEs would be obliged to annually report information to tax authorities regarding their substance, activities and financial position in each of their tax jurisdictions. Non-compliance may result in a fine or even criminal prosecution.

The published OECD guidance on 5 October 2015 includes a template setting out data requirements, definitions and further guidance on which groups will be required to file the report, the timing of preparation and filing, the conditions underpinning the obtaining and use of the report and the framework for exchange mechanisms between countries where they have a taxable presence.

Although the OECD's report itself has no legal force, CbCR legislation is being introduced in response in many countries around the globe. Under the OECD's new inclusive framework initiative, participating countries now extend beyond the OECD, and their number is increasing. More or less in parallel, the EU has been working on its own version of CbCR and all Member States will be legally required to apply the rules to periods, in general as from January 1, 2016. Given the close similarity between the OECD and EU initiatives it is unlikely that countries will introduce separate implementing legislation.

Who's affected?

MNEs headquartered in participating countries, with consolidated group revenues of EUR €750 million or more (or local currency equivalent) in the previous fiscal year, will be required to submit a CbC Report to their parent company tax authority, for periods starting on or after 1 January 2016. The CbC Report will need to be submitted to the parent country tax authority 12 months after the accounting period end. The

parent country tax authority will automatically share the CbC Report with countries where the business operates, providing those other countries have in place certain provisions to protect confidentiality, consistency and appropriate use of the reports. Group companies based in participating countries may be required to report to their respective tax authorities instead of the parent company, in particular where the latter's tax jurisdiction does not require a report to be filed.

Similar rules will apply for EU headquartered companies, or other MNEs operating in the EU but whose parent company is not required to file a report.

The impact of action 13 CbCR on HR and mobility?

HR and mobility teams at MNEs should join the CbCR conversation. CbCR is not just about corporate income tax and transfer pricing. The template requires reporting of "number of employees on a fulltime equivalent basis" and therefore requires coordination with corporate tax and transfer pricing colleagues to ensure proper reporting of employees. Furthermore, HR and mobility may impact the reporting of revenues and functions in the template. The outcome may have effects beyond the transfer pricing focus of BEPS Action 13 and its EU counterpart. For the consistent and accurate gathering of data, the (HR-) process is extremely relevant.

The lack of detailed tracking and reporting of mobile employees and the various work locations could result in a CbC report that raises questions with foreign tax authorities. It will be important to have a detailed discussion with the MNE transfer pricing team about the treatment of seconded employees, short-term travelers, independent contractors and global employment companies — all of which raise questions about the proper jurisdiction for reporting these unique employee populations.

Interpretation of definitions

Interpreting the definitions in advance to determine how to interpret the guidance, agree on the assumptions you are going to make and documenting these to ensure consistent application and retain support for the final CbCR filing is extremely relevant.

The term "employee" is not defined. Making the determination on a global basis can be even more difficult given country-by-country differences. Other definitional issues to be decided include:

- Treatment of employees on long-term leave, secondees and short-term travelers
- Full-time equivalent standard to be determined globally or on a country-by-country basis
- Whether an employee can be counted in two (or more) jurisdictions in the same reporting year?

In the context of mergers, acquisitions, spin-offs, or other restructuring activities, additional issues may arise depending on the approach taken in reporting since inconsistent approaches may be required year to year in order to provide reasonable estimates.

Perhaps the most challenging definitional issue will be the treatment of independent contractors. According to the guidance, the reporting of independent contractors who participate “in the ordinary operating activities of a constituent entity” is allowed (but not required). MNEs must decide whether to include or exclude independent contractors in their reporting. A determination needs to be made as to what services rise to the level of participation in ordinary operating activities. In other cases, arrangements such as leased employees, contingent workers, or outsourced employees can be more difficult to untangle.

The determination of the number of fulltime equivalent employees is left to the discretion of the MNEs, as of the end of the accounting period, on the basis of average employment levels over the accounting period, or using “any other basis consistently applied”. While flexible, the lack of guidance can present various issues when determining who to report and where.

Next steps

— Awareness HR and mobility

HR and mobility professionals at MNEs should be made aware of the need to report on the number of employees on a CbC basis in the template. The CbCR approach needs to be discussed with their colleagues from corporate tax, transfer pricing and IT.

— Determine strategy

An overall strategy needs to be established by the HR and mobility teams on the employee reporting by an MNE. This may require consistent and automated reporting by mapping the global mobile workforce (including their location, their functions/roles and reporting to whom) and independent contractors.

— Scope and impact

Action 13 scope needs to be determined and the impact of CbCR needs to be assessed. This includes the scope of countries, dealing with corporate structure complexities, interpretation of definitions and agreement on definitions.

— Designing data gathering process and form of assurance over the process

MNEs need to consider the level of resources, ease and costs involved in gathering, aggregation and analysis of consistent and accurate (HR-) data for reporting purposes, develop internal operating manuals, determining responsibilities, timeline and process, potential system changes/updates, enhancing Enterprise Resource Planning (ERP) systems, how KPMG technology tools and other technology can assist, assessing the data and refining the process. Consideration should be given to whether a form of assurance over the (HR-) process is appropriate given

the potential uses of the data both by tax authorities and the public.

— Review employee data

Review of employee data across all countries to assess consistency of data and to analyze and identify potential areas of challenge by tax authorities. Undertake “deep dive” reviews of the employee data for material or complex countries to ensure accuracy and to identify improvements in the data gathering process.

— Transfer pricing risk assessment

Undertaking a transfer pricing risk assessment of the (HR-) data to assess against the operating model and transfer pricing policy of the MNE and to prepare for questions that may come from tax authorities.

— Accompanying narrative and articulating the tax position

Providing an accompanying narrative and articulating the tax position will assist in making the information as useful as possible to the reader and ensuring consistency with the Master and Local file as well as reducing the risk of information being misinterpreted. The template will be shared automatically with entitled tax authorities. Governance with respect to the sharing of the template internally and responding to queries by tax authorities queries should be considered.

— Required format reporting

Preparation of reports in the required formats and production of transparency reports for publication in line with corporate social responsibility reporting.

Other CbCR requirements

The OECD and EU CbC report may not be the only applicable country-by-country reporting requirement. A number of frameworks have been implemented or are under consideration. There are already a number of mandatory public reporting regimes for certain sectors and discussions continue in various forums, including at EU level, about introducing mandatory public country-by-country reporting for large multinationals in all sectors. There are some differences in the definitions and requirements currently on the table and companies will want to consider how to articulate the reason for any differences between these reports, should they become obligatory, and the OECD and EU CbC report to tax authorities.

Our network of HR and mobility professionals — who work closely with our corporate tax and transfer pricing colleagues — can assist MNEs in understanding the implications of and preparing for CbCR. These rules represent yet another new aspect of managing a global workforce and further encourage close coordination between HR, mobility, tax functions and IT within MNEs. Our teams have experience with the delivery of global, complex, CbCR projects across different business sectors and with meeting different reporting requirements.

Contact us

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