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Why did the OECD issue new tax reporting guidelines?

The OECD has developed a set of three documents (Master File, Local File and Country-by-Country reporting, “CbCR”) which aims at enhancing transparency of multinational enterprises (MNEs) vis-à-vis tax administrations regarding the allocation of the income and of economic activities.

The Country-by-Country Report should serve as a basis for high-level transfer pricing risk assessment purposes. It may also be used by tax administrations in evaluating other BEPS related risks and, where appropriate, for economic and statistical analysis.

What structures are in the scope of CbCR?

All MNE groups are in the scope of CbCR. However, MNE groups with annual consolidated group revenues of less than EUR 750 million (or the domestic currency equivalent) in the preceding fiscal year fall below the threshold of CbCR. It is expected that this threshold will exclude approximately 85 to 90% of the MNE groups from the reporting requirement. This means that the entities targeted by the reporting (i) need to be consolidated and (ii) reach the EUR 750 million consolidated revenues threshold.

Paragraph 55 of the Final Report on BEPS Action 13 (Transfer Pricing Documentation) states that no general exemption from CbCR applies to investment funds. Hence, real estate funds should not *per se* be excluded from the scope of CbCR. It should be noted however that RE estate investment platforms are not the primary focus of CbCR and the rules are not well matched to these platforms.

The governing principle to determine whether an investment structure falls within the scope of CbCR is to follow the accounting consolidation rules. When the accounting rules exempt investment vehicles from consolidation requirements, there is no requirement to prepare CbCR. On the contrary, if the accounting rules require an investment entity to consolidate with subsidiaries, then the subsidiaries are to be considered as being part of a group within the meaning of CbCR and the size criteria need to be examined.

Is the tax data I need to provide made publicly available?

No, this information will only be made available to the local tax authorities.

The Final Report on BEPS Action 13 highlights that the content of the various documents reflects an effort to balance the needs of the tax authorities and the risk of inappropriate use of this information. In order to keep such balance, the OECD has provided some tools to ensure data protection.

The OECD has further developed a *Multilateral Competent Authorities Agreement of the Exchange of CbC reports* which will need to be adopted by each country implementing CbCR in order to adopt a common standard and agree on the exchange of information process. As of 27 January 2017, the Multilateral Competent Authority Agreement for Country-by-Country Reporting has been signed by 57 countries.

In addition, a confidentiality and data safeguards questionnaire has been developed to help each jurisdiction in the assessment of the protection of the confidentiality of the exchanged tax information.

However, this principle of confidentiality and data protection may be adjusted if the pending EU proposal of directive on public CbCR is adopted. While the outcome of this proposal is still uncertain, it would require multinationals operating in the EU with global revenues exceeding EUR 750 million per year to publish key information on where they make their profits and where they pay their tax in the EU

on a country-by-country basis, and the same rules would apply to non-European multinationals doing business in Europe.

CbCR template: What does it show?

The Country-by-Country Report requires aggregate tax jurisdiction-wide information relating to the global allocation of the income, the taxes paid, and certain indicators of the location of economic activity (notably revenues, profit, tax, employees, tangible assets) among tax jurisdictions in which the MNE group operates.

Master file: What does it contain?

The aim of the Master file is to provide the tax authorities with high-level information regarding the MNEs' global business operations, its transfer pricing policies and its global allocation of income and economic activities.

The description of the MNE's business together with an organizational structure chart showing the ownership structure and the geographical location of operational entities should be included in the report.

This report will also include a chapter on the MNE's intangibles (overall strategy, list of important agreements with related companies, list of intangibles that are significant for transfer pricing purposes, etc.) and on the MNE's intercompany financial activities (detail of how the group is financed, general transfer pricing policies, etc.).

Finally, the report will include the MNE's financials together with their tax positions.

The Master file will be used by tax authorities to understand the overall position and strategy of a MNE Group regarding intra-group transactions. The other reports (Local file and CbCR) will complement the information provided in the Master File.

Local file: How much detail does the local file entail?

The objective of the local file is to provide tax authorities with information about material transactions with related parties and the related MNE's transfer pricing analysis.

This report will therefore include a description of the local entity's organization together with details of how the business is run and what the business strategy is. A detail of intra-group transactions will also have to be included. Financial information such as financial accounts or details regarding the financial data used for the transfer pricing analysis will complete the local file package.

This file will have to focus on the specific transactions in relation to the local entities and will have to be in line with the overall business operations description included in the Master file. Any divergence from this global framework will have to be duly justified from an operational and an economic perspective.

Are all European countries using the same format for the Local file?

The OECD described the content of the local file in its Final Report on BEPS Action 13. However, unlike the CbCR, no specific format has been provided. Accordingly, taxpayers have a certain leeway when it comes to the content and structure of the local file.

If my investment in an ordinary year does not meet the threshold, does it mean I am off the hook?

If an MNE is below the threshold a given year (on a consolidated basis), it will be out of the scope of CbCR. A threshold review might be necessary on an annual basis.

If for a given year I realise a sale of real estate assets/shares of companies holding such real estate assets which brings the MNE Group above the threshold, will I be in the scope of CbCR?

When investment vehicles do not produce consolidated accounts in accordance with applicable accounting rules, CbCR does not apply irrespective of the amount of revenues realized in a given year.

When a real estate investment group is consolidated for accounting purposes, the revenue realized on a consolidated basis is decisive for the CbCR requirement. In these circumstances, there exists a certain uncertainty as to how to consider capital gains realized upon disposal of real estate assets given that the scope of revenues has been defined very broadly.

At least when capital gains represent exceptional income to a real estate fund (as should generally be the case), there should be good arguments to exclude such capital gains from the revenues that are relevant for the EUR 750 million threshold. This would be consistent with the spirit of CbCR.

Summary of information to be reported in each report

Master file	Local file	CbC Reporting
<p>Organisational structure: chart illustrating MNE's legal and ownership structure as well as geographical location of operating entities</p>	<p>Local entity: description of the management structure, organisation, detailed description of the business and business strategy as well as key competitors of this entity</p>	<p>Overview of the allocation of income, taxes and business activities by tax jurisdictions:</p> <ul style="list-style-type: none"> - Tax jurisdiction involved - Revenues with a split amongst related and unrelated parties
<p>Description of the MNE's business including a general written description with important drivers of business profit, description of the supply chain for the group's five largest products or services offerings by turnover, list of important service arrangements between members of the group, description of the main geographic market, description of important business restructuring transactions/acquisitions and divestures of the year</p>	<p>Controlled transactions: for each controlled transaction, a description of the transaction, amounts involved, identification of associated enterprises, functional analysis, copy of the agreement, transfer pricing information and methodology</p>	<ul style="list-style-type: none"> - Profit/loss before tax - Income tax paid - Accumulated earnings - Number of employees - Tangible assets
<p>MNE's intangibles: general description of the MNE's overall strategy for development, ownership and exploitation of intangibles</p>	<p>Financial information: annual financial accounts as well as information and allocation schedules showing who financial data used for transfer pricing can be tied to annual financial statement</p>	<p>List of all the constituent entities of the MNE group:</p> <ul style="list-style-type: none"> - Tax jurisdiction per entity - Main activity per entity
<p>MNE's intercompany financial activities including a general description of how the group is financed with identification of any members of the MNE group that provide central financing function for the group</p>		
<p>MNE's financial and tax position: annual consolidated financial statement as well as a list and description of the MNE's group existing advance pricing agreements and tax rulings relating to the allocation of income among countries.</p>		