

Country-by-Country Reporting Is Here

By Kurt Wulfekuhler

March 2015

News: At the February meeting of the Group of Twenty (“G20”) Finance Ministers in Istanbul, the Organization for Economic Co-operation and Development (“OECD”) provided an update on efforts to combat base erosion and profit shifting (“BEPS”), including the OECD’s new *Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*. The implementation recommendations follow the OECD’s development of a three-tiered approach to documentation comprising a master file available to all relevant tax administrations; a local file for each country; and a country-by-country (“CbC”) report, providing for each tax jurisdiction in which the multinational enterprise (“MNE”) does business, the amount of total revenue, profit before income tax, income tax paid and accrued, headcount, capital, retained earnings, and tangible assets, along with a functional matrix for the group.

Views: If you like transfer pricing documentation, you are going to love CbC reporting. The new report will require large taxpayers to provide financial information about each of their jurisdictions and functional information about each of their entities, which will be shared with an array of tax administrations. This increased transparency is intended to assist revenue bodies in assessing transfer pricing risks, deploying audit resources most effectively, and targeting their audit inquiries. Taxpayers have expressed concern that the information could be used for other purposes but now that CbC reporting is here, they will need to accept the reality of the CbC report. That means collecting and reporting the necessary information and considering carefully their current transfer pricing structures and transfer pricing documentation to make sure that they support the distribution of profits among members of the group.

While the CbC report requires a considerable amount of information, it could have been worse. That may come as little solace to taxpayers faced with the new reporting requirements but the OECD originally considered a much larger set of information in its model template, including related-party royalties, interest, and service fees. Still, the juiciest bits from the initial template remain. Profit before income tax, income tax paid, income tax accrued, headcount, and tangible assets will all be reported by jurisdiction.

At a recent conference, Brian Jenn from the U.S. Treasury Department indicated that the United States will develop a reporting form in line with the CbC template. Based on other past comments from Treasury and the Internal Revenue Service, replacement of existing U.S. documentation requirements with the master file and local file elements of the new OECD documentation guidelines seems less likely. Taxpayers, though, may wish to consider a master file and local file approach to manage their global transfer pricing documentation provided they also meet the U.S. principal-document requirements.

The OECD established an exemption for smaller MNEs. The CbC report will not be required for MNEs with total revenues less than EUR 750 million (or equivalent in domestic currency) for the immediately preceding fiscal year. The OECD recommends that the first CbC reports be required for fiscal years beginning on or after January 1, 2016. Thus, a MNE with revenues equal to or

greater than EUR 750 million in a fiscal year ending December 31, 2015, will be required to file the CbC report for the 2016 fiscal year. The OECD recommended allowing taxpayers one year to prepare and file the report, so the first reports will be due by December 31, 2017. The reports are to be filed annually.

The CbC report will be filed in the jurisdiction of residence of the ultimate parent of the MNE. To safeguard the use of the CbC report for its intended purposes, countries participating in the BEPS project agreed to the following conditions for obtaining and using the CbC report:

- Confidentiality;
- Consistency; and
- Appropriate use.

The participating countries agreed that they should have in place legal protections for the confidentiality of the report. They also agreed to apply the reporting requirement consistently across MNE parent entities resident in their jurisdiction and they should use the standard template, without adding or removing required information. Finally, they agreed that they should use the CbC report for assessing high-level transfer pricing and other BEPS-related risks and that they should not propose adjustments to income according to an income allocation based on data from the CbC report.

The implementation guidance on transfer pricing documentation marks an important early action by the G20 and the OECD on the BEPS initiative. The OECD has moved beyond policy and discussion documents to recommendations for implementing changes. The implementation guidance shows that the G20 and the OECD are delivering on their promises. Expect more to come. Taxpayers will want to prepare.

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