

## OECD updates its guidance on Country-by- Country Reporting

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### Executive summary

On 6 April 2017, the Organisation for Economic Co-operation and Development (OECD) released an updated version of its *Guidance on the Implementation of Country-by-Country Reporting* (the Guidance). The content of the Guidance has been rearranged into topics and five new questions have been added. The Guidance is divided into four areas addressing issues relating to: (i) the definition of items reported in the template for the Country-by-Country (CbC) report; (ii) the entities to be reported in the CbC report; (iii) the filing obligation for the CbC report; and (iv) the sharing mechanism for the CbC report (i.e., exchange of Information, surrogate filing and local filing).

The Guidance is available in English and French, and soon will also be available in German.

### Detailed discussion

In June 2016, the OECD released additional guidance aimed at the consistent implementation of Country-by-Country Reporting (CbCR) under Action 13 of the Base Erosion and Profit Shifting (BEPS) project. The Guidance addressed four topics, namely transitional filing options for multinational enterprises (MNEs) that voluntarily file in the parent company jurisdiction, application of CbCR to

investment funds and to partnerships, and the impact of exchange rate fluctuations on the agreed filing threshold for MNE groups.<sup>1</sup> The OECD updated the Guidance in December 2016 to include a new question on CbCR notifications wherein the OECD addressed whether a flexible approach on notifications would be consistent with the Action 13 minimum standard.<sup>2</sup>

The Guidance has been reorganized into four areas or topics, covering issues relating to:

- ▶ The definition of items reported in the template for the CbC report
- ▶ The entities to be reported in the CbC report
- ▶ The filing obligation for the CbC report
- ▶ The sharing mechanism for the CbC report

Five new specific issues are addressed in this Guidance: (i) the definition of revenues; (ii) the accounting principles/standards for determining the existence of and membership in a group; (iii) the definition of total consolidated group revenue; (iv) the treatment of major shareholdings; and (v) the definition of related party for purposes of completing Table 1 of the CbC report.

The Guidance is currently available in English and French, and will soon be available in German too.

### **Definition of items reported in the template for the CbC report**

The Guidance clarifies that extraordinary income and gains from investment activities are to be included in the Revenue columns in Table 1 of the CbC report.

Moreover, for purposes of reporting related party revenues, the Guidance states that related party is defined in Action 13 as associated enterprises, which should be interpreted as the constituent entities listed in Table 2 of the CbC report. This clarification narrows the definition of related party to only comprise associated enterprises meeting the definition of constituent entities of the MNE group.

### **Entities to be reported in the CbC report**

The Guidance explains that Action 13 does not specify that any particular accounting standard's consolidation rules should be used to determine the existence of a Group and the membership of a Group. However, it is expected that if the equity interests of the Ultimate Parent Entity (UPE) or

the Surrogate Parent Entity (SPE) are traded on a public securities exchange, the UPE/SPE jurisdiction will require the MNE group to use the consolidation rules in the accounting standards already used by the group.

In contrast, if the equity interests of the UPE/SPE are not traded on a public securities exchange, the UPE/SPE jurisdiction may allow the MNE group to decide whether to use a local Generally Accepted Accounting Principles, International Financial Reporting Standards (IFRS) or any other particular standard, provided that this choice is consistently used across years. However, if a particular standard is required by the UPE/SPE jurisdiction, then that same standard must be used. The Guidance also provides that if a jurisdiction's consolidation rules generally require investment entities to be consolidated with investee companies, the jurisdiction may allow the use of IFRS consolidation rules for the purpose of determining the membership of a Group. Nevertheless, any deviation from the accounting standards generally followed for the CbC report of a particular MNE Group should be noted in Table 3 of the CbC report for the MNE Group.

Furthermore, the Guidance clarifies how to treat constituent entities whose minority interests are held by unrelated parties. According to the Guidance, provided that the applicable accounting rules require a constituent entity, the minority interests of which are held by unrelated parties to be fully consolidated. All of the entity's revenue should be included for the purpose of applying the €750 million threshold. In addition, that constituent entity's financial data that is included in the CbC report should represent the full 100% amount and should not be pro-rated.

### **Filing obligation for the CbC report**

In line with the clarified definition of revenue for Table 1, the Guidance states that jurisdictions are allowed to require inclusion of extraordinary income and gains from investment activities in total consolidated group revenue for the determination of whether the €750 million threshold is met if those items are presented in the consolidated financial statements under applicable accounting rules.

Further, it is clarified that for determining the threshold revenue of financial entities, which may not record gross amounts from transactions in their financial statements with respect to certain items, the MNE group should consider the item(s) which are similar to revenue under the applicable

accounting rules (e.g., net banking product, net revenues, etc.). By way of example, the Guidance provides that if the income or gain from a financial transaction, such as an interest rate swap, is appropriately reported on a net basis under applicable accounting rules, the term "revenue" means the net amount from the transaction.

### Sharing mechanism for the CbC report

No new Guidance on issues relating to the sharing mechanism for the CbC report has been added in this latest release by the OECD.

## Implications

The new consolidated Guidance represents the third release by the members of the BEPS inclusive framework and the OECD with respect to CbCR implementation and interpretation issues and should be helpful in ensuring consistency among countries. The Guidance provides greater clarity regarding the treatment of the issues addressed therein. In the past year, there has been ongoing and increasing activity around CbCR in general, and in particular on notifications requirements. It remains to be seen whether any further Guidance would be issued by this group. Business should continue to closely monitor new or amended reporting requirements and how countries implement or react to the new Guidance.

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### Endnotes

1. See EY Global Tax Alert, [OECD releases additional Guidance on implementation of Country-by-Country reporting](#), dated 29 June 2016.
2. See EY Global Tax Alert, [OECD updates Guidance on Country-by-Country Reporting and launches new site on country-specific implementation](#), dated 5 December 2016.

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