

Country-by-Country reporting local filing obligation confirmed for certain Canadian taxpayers

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In brief

The Canada Revenue Agency (CRA) recently confirmed that a Canadian taxpayer must file a 2016 country-by-country (CbC) report as a constituent entity (CE) in Canada — even if a CbC report is filed by the group's ultimate parent entity (UPE) or surrogate parent entity (SPE) in another jurisdiction — in all cases where (1) Canada does *not* have an activated exchange agreement with the jurisdiction of the UPE or SPE by December 31, 2017, or (2) has an activated agreement but it is *not* in effect for fiscal years beginning January 1, 2016 (FY2016). There are only 39 countries that had such a qualified exchange agreement effective for FY 2016. This situation thus affects Multinational Enterprises (MNE) from many countries that have Canadian subsidiaries in their group, including Brazil, China, Israel, Russia, and Switzerland.

In detail

Canada enacted CbC reporting rules that were effective for FY 2016. As a result, certain Canadian taxpayers that are part of an MNE group that had 2015 group consolidated revenue of more than EUR 750 million were required to file an FY2016 CbC report by December 31, 2017.

A CbC report can be filed (1) in Canada by the Canadian taxpayer as a CE or (2) in a jurisdiction outside of Canada if done by the UPE or an appointed SPE of the MNE group, and exchanged with Canada through qualified exchange agreements.

Under clause 233.8(3)(b)(ii) of the Canada Income Tax Act (the Act), local filing in Canada by a Canadian taxpayer as a CE would be required if (1) no SPE has been appointed by the MNE group in another jurisdiction and (2) any of the following conditions occur:

- The UPE of the MNE group is not obligated to provide a CbC report in its jurisdiction of tax residence;
- The jurisdiction in which the UPE of that MNE group is resident for tax purposes does not have a qualifying competent authority agreement (QCAA) in effect with Canada (by the time of filing the CbC report

pursuant to subsection 233.8(6) of the Act) that provides for the automatic exchange of CbC report information; or

- There has been a systemic failure of the jurisdiction of residence of the UPE and the CRA has notified the CE of the systemic failure.

Observation

As of December 31, 2017, only 39 countries had a qualified exchange agreement with Canada that both was put in place by the due date of the CbC report filing (for 2016 calendar year-end companies) and was effective for FY 2016. (See the published [list](#) by OECD, also summarized below.)

Argentina	Australia	Austria	Belgium	Czech Republic
Denmark	Estonia	Finland	France	Germany
Greece	Guernsey	Hungary	Iceland	India
Ireland	Isle of Man	Italy	Japan	Jersey
Korea	Latvia	Lithuania	Luxembourg	Malta
Mauritius	Mexico	Netherlands	New Zealand	Norway
Poland	Portugal	Slovak Republic	Slovenia	South Africa
Spain	Sweden	United Kingdom	United States	

The CRA has recently confirmed that a Canadian taxpayer that is part of an MNE group which has a UPE or SPE in a jurisdiction *other than* the 39 countries listed above, the Canadian taxpayer must file a FY2016 CbC report in Canada as a CE, using form RC4649, 12 months after the end of the reporting period.

Failure to do so would lead to penalties, including CAD 100 for each failure to provide required information in a prescribed form (i.e., RC4649); CAD 25 per day for failure to file an information return (minimum of CAD 100 and maximum of CAD 2,500); and CAD 500 to CAD 1,000 per month for a maximum of 24 months when a taxpayer knowingly fails to file.

Note: Even if a jurisdiction had an activated agreement in place with Canada, but the effective date was only for fiscal years January 1, 2017 and after, the CRA has confirmed that local filing in Canada is required. This affects MNE's based in seven countries: Brazil, Chile, Liechtenstein, Malaysia, Singapore, Switzerland, and Uruguay.

Canada's approach differs from the approach of many other jurisdictions which have taken steps to reduce the incidence of local filing by CEs in an MNE group. At this time it is not clear if Canada will make a similar declaration to provide administrative

relief as provided by these countries. (See OECD's [press release](#).)

The takeaway

We recommend that Canadian taxpayers check whether the jurisdiction of its UPE or SPE is located in one of the 39 countries listed above. For taxpayers with December 31 year-ends, immediate action should be taken to prepare and file a FY2016 CbC report in Canada to avoid further penalties. For taxpayers with January 31 or later year-ends, action should be taken now to prepare for filing a CbC report in Canada.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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