

OECD consults on country-by-country reporting to tax authorities

February 10, 2020

In brief

The OECD published a consultation document [Review of Country-by-Country Reporting \(BEPS Action 13\)](#) on 6 February 2020 and launched a public consultation that will end on 6 March 2020, to be followed by a public hearing on 17 March 2020. It seeks to address the implementation and operation of the BEPS Action 13 minimum standard on country-by-country reporting (CbCR) of tax information to tax authorities. The 2020 review mandated by that standard is to consider whether changes should be made to require the reporting of additional or different data, the appropriateness of the applicable revenue threshold, and the effectiveness of filing and dissemination mechanisms. Extra questions are posed, including whether the reports are being used appropriately and effectively by tax authorities.

In detail

Background

As of January 2020, 90 members of the Inclusive Framework had implemented legislation to introduce a CbCR requirement and a further 25 had legislation in draft form. Further, there are currently in excess of 2,400 bilateral instruments in place for the exchange of reports.

The annual peer review process by the Inclusive Framework members has involved a staged approach. In particular, following the first review, shortcomings in implementation of the minimum standard were addressed and removed. These reviews have also taken into account compliance with the guidance published by the OECD in post-BEPS materials.

Appropriate and effective use of reports

BEPS Action 13 required that recipient jurisdictions use the reports they receive for only assessing high level transfer pricing risk and other BEPS-related risks and initiating enquiries (or statistical purposes). Jurisdictions were not to propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on CbCR data. The guidance backed this up with useful tips on how to link the data with other information sources, tools, etc.

The OECD is interested in how the number, and nature, of requests for additional information has changed as a result of CbCR.

A limited number of multinationals had the benefit of active discussions on their CbCR with a number of tax administrations simultaneously under the first pilot running of the OECD's International Compliance Assurance Programme (ICAP). More businesses and tax administrations are now involved in its second iteration, ICAP2.0.

Scope of CbCR

Questions about the revenue threshold involve a reduction below EUR750m and averaging for more than one fiscal period (or pro-rata where there is a fiscal period of something other than one year). Another issue raised is whether and how countries with a currency other than EUR can review the threshold periodically.

As regards group reporting for this purpose, another question is whether a single enterprise with one or more foreign permanent establishments should be considered a group and whether separate group reporting is appropriate for sub-groups that are under common control. Also questioned is whether groups under common control of an individual or individuals acting together should file a CbCR.

The consultation document includes another question about whether revenue should include extraordinary income and gains from investment activity.

Content of CbCR

The three most significant questions for many MNEs in relation to the CbCR content are whether:

- reporting should be by entity rather than by jurisdiction
- consolidated data should be the default rather than aggregate data, and
- additional data should be required.

Other questions relate to the treatment of 'stateless' entities and the common information that could be included in the XML schema (e.g. tax identification number, industry codes, multi-choice options where guidance has been applied).

Transfer pricing master file and local file

While not part of the minimum standard, the review recognises that a number of jurisdictions have introduced transfer pricing master file and local file requirements that differ from, or go further than, the documentation recommended as a best practice in BEPS Action 13. The consultation document identifies benefits from a standardised approach, and risks of not having this, but calls for further comments from respondents.

On the horizon

The OECD will hold a public meeting on 17 March 2020 to discuss the responses to the consultation. They may well call on some of those making key points to make brief presentations, but there likely will be an opportunity for others to speak 'from the floor'.

The consultation document does not mention public CbCR. The OECD has said previously that the publication of the information being disclosed to tax authorities for the purposes of helping identify transfer pricing and other BEPS risks would undermine those objectives and the benefits arising. However, there are a number of initiatives under discussion for publication of tax and tax-related information that involve a subset or variant of the CbCR to tax authorities.

The takeaway

- The consultation document requests comments on inconsistent measures adopted by jurisdictions in requesting transfer pricing master file and local file documentation, as a recommended best practice in BEPS Action 13 alongside the minimum standard for CbCR.
- The scope, content and effective use of CbCR potentially are all being reviewed.
- We will respond to the consultation document and encourage businesses affected by Action 13 to do so as well, either directly or through a representative body.

Let's talk

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

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