

Readiness for country-by-country reporting

edition №26



Recommendations of the OECD prescribe submission of CbCR by an ultimate parent entity of a MNE in the country of its incorporation with a following provision of CbCR to foreign tax administrations under information exchange procedure or, in particular cases, by an authorized subsidiary of an MNE in a country of its residence (so-called “secondary mechanism”).

General requirements

Introduction of CbCR is a novelty. This report should contain **summary information on revenues, profits, income tax, share capital, number of staff and other data regarding a reporting MNE broken down by jurisdictions, identification of activities of each entity of the MNE and notes to CbCR** at discretion of the MNE.

The main objective of CbCR is to identify cases where revenue of a member of an MNE is disproportionate to its contribution to the entire value chain.

According to the OECD recommendations, **the first reporting period for CbCR is 2016** (CbCR should be submitted no later than 31 December 2017) in the majority of the countries that have adopted CbCR legislation or announced its introduction, although there are exceptions.

Failure to submit CbCR in some countries leads to penalties. Settlement of such penalties does not exempt from the obligation to prepare and submit CbCR.

Recommended formats of a Master-file and a Local file contain several important additions as compared to the existing practice. In particular there are requirements to disclose in a Master-file an entire value chain and factors affecting the value chain of the MNE as well as pricing agreements and rulings concluded with tax authorities.

The OECD recommends requesting a Master-file and a Local file from each member of an MNE in the country of its incorporation.

Primary and “secondary” filing mechanisms

According to the OECD recommendations, as a general rule, an ultimate parent company is responsible for preparing CbCR and submitting it to the tax administration in the country of its incorporation. However, a subsidiary company might be assigned to prepare and submit CbCR on behalf of an MNE (a so-called “surrogate parent entity”) by means of a “secondary filing mechanism”.

Kazakhstan based MNEs should pay special attention to **the application of a “secondary filing mechanism” to their foreign subsidiaries** in the countries of their residence.

Under this mechanism, foreign tax authorities may require a subsidiary (or a permanent establishment), which is a tax resident in that foreign jurisdiction to submit CbCR for the entire MNE. According to the OECD recommendations such requirement may be imposed in the following cases:

- an ultimate parent company of an MNE is not obliged to submit CbCR in the country of its residence; or
- there is no information exchange agreement between tax administrations in the country of residence of an ultimate parent company and the country of residence of its subsidiary, where CbCR requirements exist; or
- tax administration in the country of residence of an ultimate parent company despite an existing information exchange agreement fails to share CbCR with tax administration where a subsidiary resides.

Therefore, ***Kazakhstan based ultimate parent companies of MNE may already have an obligation to prepare CbCR for 2016*** – in particular, if there are entities within the group, which are registered in jurisdictions that have introduced CbCR requirements and "secondary filing mechanism" starting from 2016. In such jurisdictions, subsidiaries must notify local tax administration about an entity responsible for CbCR submission for the entire MNE. In countries ***where CbCR is due for filing for 2016, a resident subsidiary has to notify the local tax administration before the end of 2016 regarding the entity that will file CbCR and the respective country of CbCR filing.***

CbCR legislation introduced in certain countries is not detailed. Currently, there are a lot of practical issues related to the preparation of CbCR. Therefore, it is important to monitor clarifications released by tax administration in jurisdictions where MNE subsidiaries are present.

Multilateral Competent Authority Agreement on the Exchange of CbCR

On 27 January 2016, representatives of 31 countries signed an agreement on automatic exchange of CbCR ("Multilateral Competent Authority Agreement", the "MCAA"). Ratification of the MCAA implies ***automatic exchange of information between competent authorities on an annual basis in the standardized format*** subject to confidentiality rules and an ***opportunity for competent authorities to consult with each other***. This tool should significantly reduce time and resources for conclusion of bilateral agreements between countries.

Countries will have to introduce certain rules at the local level in order to let the competent authorities of respective jurisdictions to exchange CbCR under the MCAA. It is expected that new countries will be joining the MCAA.

Invitation to developing countries to implement BEPS initiatives

At the meeting in Shanghai (PRC) held on 26-27 February 2016, OECD Secretary General presented a report on the status of the implementation of the BEPS to the G20 Finance Ministers and Central Bank Governors. As part of this meeting, the OECD program on the integration of developing countries into the BEPS as approved which involves granting a special status of a BEPS "Partner" to all interested countries that committed to introduce minimal BEPS requirements. This status implies equal rights with the G20 and the OECD countries in setting standards and monitoring the implementation of the BEPS initiative. It is expected that these initiatives will lead to the expansion of the CbCR exchange and adoption of appropriate legislation.

Your takeaway

CbCR rules are currently being drafted in Kazakhstan, but their introduction with respect to 2016 is still in question. At the same time, the number of countries that have introduced requirements for preparation and submission of CbCR for 2016 (including the "secondary mechanism") is growing.

In case your MNE has subsidiaries in the jurisdictions that have adopted legislation on CbCR or announced the adoption of such legislation in the near future, we recommend you to check whether the

CbCR rules apply to your MNE and, if necessary, start working on the preparation of CbCR now, in particular:

- assemble a project team (who in your MNE will be responsible for collection of information and preparation of CbCR) and develop methodology for preparing CbCR using available guidance;
- prepare a “pilot” version of CbCR based on 2015 information;
- analyze 2015 results and current information and, if necessary, take actions to change intra-group relationships.

In addition, in the light of other requirements for TP documentation, we recommend you to:

- assess the necessity to prepare a Master-File in your MNE;
- collect and evaluate information that will be disclosed in view of the new requirements to the contents and structure of a Master-File; and
- determine who will be responsible for preparation of a Master-File in the MNE;
- evaluate the readiness of Local files of subsidiaries.

If you are interested in receiving more information, please refer to PwC's professionals serving your company, or to any of the following persons:

Michael Ahern, Partner
michael.ahern@kz.pwc.com

Anuar Mukanov, Director
anuar.mukanov@kz.pwc.com

Adel Sapargaliyeva, Senior Manager
adel.sapargaliyeva@kz.pwc.com

Timur Zhursunov, Partner
timur.zhursunov@kz.pwc.com

Nursultan Nurbayev, Senior Manager
nursultan.nurbayev@kz.pwc.com

Our offices:

34 Al-Farabi Ave.
Building A, 4th floor
Almaty, Kazakhstan, A25D5F6
Tel.: +7 (727) 330 32 00
Fax: +7 (727) 244 68 68
www.pwc.kz

15/1 Kabanbay batyr Ave.
Business Centre “Q2”, 4th floor
Astana, Kazakhstan, Z05M6H9
Tel.: +7 (7172) 55 07 07
Fax: +7 (7172) 55 07 08
www.pwc.kz