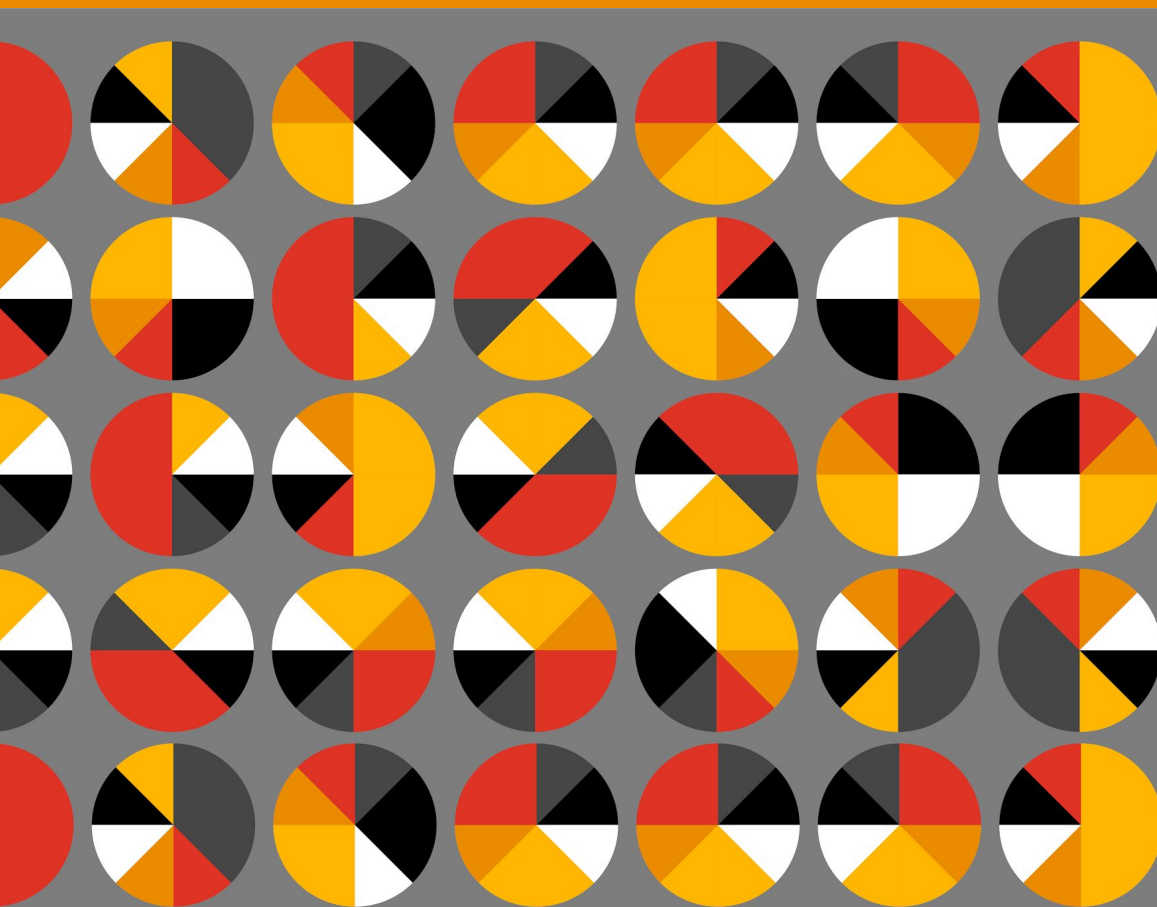


# UAE: Country by Country requirements in the United Arab Emirates

July 2019



## In brief

On 30 April 2019, the Cabinet Resolution No. 32 of 2019 (the “Resolution”) on Country-by-Country Reporting (“CbCR”) was issued in the United Arab Emirates (“UAE”). The Resolution was recently published in the UAE Ministry of Finance’s Official Gazette.

The CbCR rules outlined under the Resolution are in line with the guidance issued by the Organization for Economic Cooperation and Development (“OECD”) on CbCR. The Resolution introduces a CbCR requirement (either filing or notification) for entities that are tax resident in the UAE, and that are part of a multinational group with consolidated revenues equal to or exceeding UAE Dirhams (“AED”) 3.15 billion (approx. EUR 764 million or USD 858 million) in the preceding financial year. According to the Resolution, CbCR requirements are applicable to ‘financial reporting years’ starting on or after January 1st 2019. Accordingly, for the financial reporting year starting on January 1st 2019, the CbC report must be submitted latest by December 31st 2020.

Failure to comply with the CbCR requirements is likely to expose the UAE taxpayers concerned to stringent and varying levels of administrative penalties.

## In detail

### CbCR threshold

The CbCR requirements apply to entities that are tax resident in the UAE (hereinafter, “tax resident in the UAE”) and are part of a multinational group of enterprises (“MNE”) with consolidated revenues equal to or exceeding AED 3.15 billion (approx. EUR 764 million / USD 858 million) in the financial year preceding the ‘financial reporting year’ concerned.

### CbCR filing requirements

The Resolution places a requirement on MNEs with an ultimate parent entity (“UPE”) that is tax resident in the UAE, and exceeds the AED 3.15 billion consolidated revenues threshold, to file a CbC report within 12 months after the end of the financial reporting year.

The Resolution states that any affiliated entity of an MNE that is tax resident in the UAE, but is not the UPE, shall prepare and submit the CbCR on behalf of the MNE if certain conditions are met.

However, where the tax resident entity in the UAE is not an UPE, a notification (discussed below) in lieu of an actual filing would satisfy the CbCR requirements, so long as the MNE has filed the CbCR in the UPE’s tax jurisdiction or in a Surrogate Parent Entity’s (“SPE”) tax jurisdiction, and certain conditions in relation to automatic exchange of the CbCR, by such tax jurisdictions with the UAE, are met.

### CbCR notification requirements

Any affiliated entity of an MNE that is tax resident in the UAE, shall notify the Competent Authority (i.e. the UAE Ministry of Finance, MOF) whether it bears the capacity of an ultimate or surrogate parent entity, (“SPE”) no later than the last day of the financial reporting year of such MNE.

If such entity is not an UPE nor an SPE, it shall notify the Competent Authority of the identity of the entity submitting the CbCR and its tax residence, no later than the last day of the financial reporting year of such MNE.

## Important filing dates

The CbCR requirements are applicable to financial reporting years starting on or after January 1st 2019, and the CbCR is required to be submitted within 12 months from the end of the financial reporting year.

Accordingly, for the financial reporting year starting on January 1st 2019, the CbC report must be submitted latest by December 31st 2020.

CbCR notifications must be submitted by an MNE affiliated entity that is tax resident in the UAE, no later than the last day of the financial reporting year of the MNE. Accordingly, for the MNE financial reporting years starting on 1 January 2019, notifications are due by no later than 31 December 2019.

## Filing format

The information to be reported for CbCR purposes as per the Resolution is aligned with the format put forth by the OECD for Tables 1, 2 and 3 respectively.

Nevertheless, the Resolution does not provide guidance on the filing format i.e. xml schema, and notification i.e. web-based or manual, at this stage.

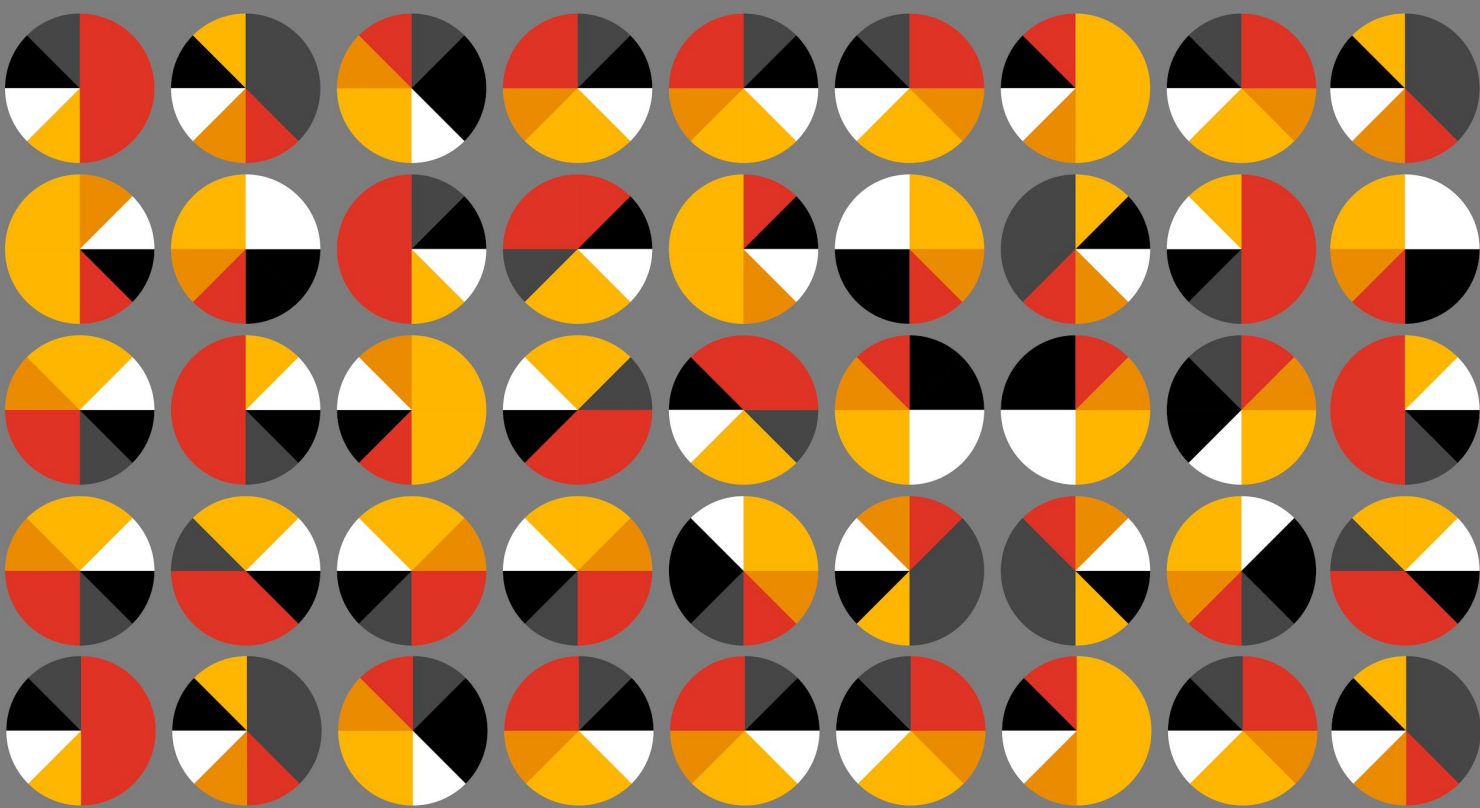
## Administrative penalties

The Resolution imposes four types of administrative penalties on UAE tax resident entities subject to the CbC reporting / notification requirements as per the following:

- A. Failure to keep documents and information: an administrative fine of AED 100,000 is applicable in case of failure to keep the documents and information required under the Resolution for a period of no less than five years from the date on which the CbCR is submitted to the Competent Authority.
- B. Failure to provide information: an administrative fine of AED 100,000 is applicable in case of failure to provide the Competent Authority with any information required in accordance with the CbCR and notification requirements.
- C. Failure to report information for reporting / notification purposes: an administrative fine of AED 1,000,000 (plus AED 10,000 for each day of failure up to a maximum of AED 250,000) is applicable in case of failure to report the information required on the reporting date fixed, or in case of failure to notify the Competent Authority, on or prior to the date fixed for reporting, of the intention to submit the CbCR with respect to a particular accounting period.
- D. Failure to provide full and accurate information: an administrative fine of no less than AED 50,000 and not exceeding AED 500,000 is applicable in case of failure to report full and accurate information.

Except for the additional fine provided for under (C.), the total fines imposed for any of the violations above may not exceed, within any financial reporting year, the sum of AED 1,000,000.

Further, the Resolution outlines in detail the procedures for imposing the administrative penalties as well as procedures for appealing the decision(s) imposing such penalties.



## Other important considerations

### Retention of effective records

The Resolution imposes a requirement to retain effective records for 5 years following the date on which the CbCR is submitted to the Competent Authority. The aforementioned records may be kept electronically, provided it is a compliant and readable electronic format.

### Language considerations

In case records are created and/or kept in a language other than English, translation (to English) shall be provided upon request by the Competent Authority.

### Reporting avoidance

In case a tax resident entity that is subject to CbC reporting / notification requirements, concludes any arrangements or engages in any act which could reasonably be deemed to have mainly aimed at avoiding the obligations imposed under the Resolution, such entity shall remain liable as if none of such arrangements have been concluded.



## PwC observations

### UAE MNEs with previous CbCR filing

MNEs with a UAE resident UPE, which previously filed a CbCR for 2016 (i.e. first year of CbCR requirement) through an SPE in a different jurisdiction, will need to carefully assess whether the filing obligation will transfer to the UPE (based in the UAE). As part of this exercise, careful consideration also needs to be given to ensure that all relevant jurisdictions are appropriately notified of the change in the MNE's reporting entity for CbCR purposes.

For example, a particular MNE may have filed its 2016 CbC report in jurisdiction 'X' using an SPE and may have submitted CbCR notifications in several jurisdictions, accordingly. In such an instance, if the reporting obligation is transferred from the SPE in jurisdiction X to the UPE in the UAE, the CbCR notifications previously submitted will need to be updated to reflect this change. In addition, where CbCR notifications for financial year 2019 have already been submitted, the respective notifications will likely have to be updated as well, accordingly.

### Filing by UAE tax residents with UPE or SPE outside of the UAE (i.e. Foreign MNE)

As of July 2019, the UAE has signed and ratified the multilateral competent authority agreement (MCAA) on the exchange of CbC reports, but has not activated any exchange relationships for the automatic exchange of CbC reports with other tax jurisdictions. As such, as per Article 2 of the Resolution, a CbCR filing requirement (secondary filing requirement), in the UAE may arise in the hands of the entity that is tax resident in the UAE and meeting the CbC reporting criteria. However, since the first CbCR obligations only fall due on December 31, 2020, it is expected that before the first reports are due, the UAE will endeavour to activate exchange relationships with other tax jurisdictions.

### Importance of transfer pricing

Under the Resolution's section on the "Use and confidentiality of the CbCR information", the Competent Authority has the right to use the CbCR information for the following objectives:

- Assess the risks of transfer pricing on "high risk" transactions
- Assess other risks associated with base erosion and profit shifting
- Assess the risks of non-compliance by the MNE's affiliates with the applicable transfer pricing regulations.

Further, the Resolution highlights that the Competent Authority may not use the CbCR information for transfer pricing adjustment purposes.

These aspects of the Resolution provides an insight into UAE's view on the necessity for having properly substantiated, well documented, intercompany transfer pricing arrangements.

## Let's Talk

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

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