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PwC's Transfer Pricing Series

Nigeria's Country by Country Reporting Regulations – What you need to know

Beyond compliance, affected taxpayers need to have a closer look at how the information to be provided can be interpreted. They will need to prepare the CbCR and do an upfront review to see how their global allocation of profits could be perceived by tax authorities when they receive these reports.



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If your company is a subsidiary of a multinational group or if you are the headquarters of a Nigerian group with operations in other countries, you need to read this article. Nigeria recently published its Country-by-Country Reporting Regulations (“the Regulation”).

The introduction of the Regulations (Income Tax (Country-by-Country Reporting) Regulations 2018) completes the process that began with Nigeria signing the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of country-by-country reports (CbCRs) in January 2016, alongside 30 other countries.

The Regulations require Multinational Enterprises (MNEs) that are headquartered in Nigeria to prepare and submit annual CbCRs which summarise the global financial and tax information of all members of the group to the Federal Inland Revenue Service (FIRS). This will apply to MNEs with consolidated group revenues of ₦160 billion and above.

Subsidiaries of MNEs (who cross the threshold) with headquarters outside Nigeria will also be required to make certain notifications to the FIRS. Groups that operate solely in Nigeria are not affected by the Regulations. In this article, we provide some of the other highlights of the Regulations.

What is a Country-by-Country Report?

A CbCR is a report that provides certain financial information about each member of an MNE group (including permanent establishments and foreign branches). The information to be included in the CbCR include: information on the revenues (from related and unrelated parties), profit or loss before income tax, income tax paid (on cash basis), income tax accrued, stated capital, number of employees, retained earnings, and tangible assets (other than cash and cash equivalents) of each entity within the group. In addition to the quantitative information listed above, the CbCR will contain information such as the jurisdiction of tax residence of each group member; a description of their main business activities; and their current status (i.e. dormant or active).

The CbCR is to be prepared and filed annually by the ultimate parent company of the group (or a designated member of the group in some cases) to its local tax authority. The local tax authority then transmits this information to countries where the MNE group has activities provided the tax authorities in the foreign countries have signed the CbCR MCAA (there are currently 70 countries as at June 2018 that have signed up to the CbCR MCAA), introduced CbCR legislation and activated CbCR relationships with the local tax authority.

Objectives of the Nigerian CbCR regulations

The objectives of the Regulations are to; a) provide the FIRS with information about MNEs' global activities, profits and taxes; b) provide the FIRS with information to better assess international tax avoidance risks; c) improve transparency of MNEs in their tax practices; and d) prevent tax evasion or avoidance through base erosion and profit shifting (BEPS).

Obligations of Nigerian headquartered MNEs and their local subsidiaries

Under the Regulations, Nigerian headquartered MNEs with consolidated group revenues of ₦160 billion (in the preceding accounting year) have an obligation to prepare and file CbCRs with the FIRS annually. This is to be done no later than 12 months after the group's accounting year end date with effect from the accounting year beginning on or after 1st January 2018. We will use the following example to illustrate. Assume you have a group with a 31 December year end. This group must first determine if it has a CbCR obligation for the financial period starting 1 January 2018 and ending on 31 December 2018. For the group to be required to file a CbCR in this period, it must check that its consolidated group revenue for the preceding year (i.e. the year ended 31 December 2017) crosses the ₦160 billion threshold. If this is the case, then there is a CbCR obligation for the 2018 financial year.

Since the group's CbCR obligation for the current year has been established, each member of the group that is tax resident in Nigeria (including the ultimate parent entity) must notify the FIRS of the entity making the CbCR disclosure on behalf of the group. This notification must be done before the end of the accounting year that the CbCR will relate to (in this case 31 December 2018). Finally, the ultimate parent entity of the group (or an appointed surrogate) must file the CbCR with the FIRS no later than 12 months after the end of the year that the CbCR relates to (i.e. on or before 31 December 2019).

Obligations of Nigerian subsidiaries of foreign MNEs

Nigerian subsidiaries of foreign MNEs will be required to notify the FIRS of the identity and tax residence of the entity making the CbCR disclosure on behalf of the group. This notification is expected to be filed no later than the last day of the group's accounting year. Similar to the example above, where the foreign group's year end is 31 December; the Nigerian subsidiary's first notification to the FIRS must be made before 31 December 2018.

In general, these Nigerian subsidiaries will not be required to file a CbCR directly with the FIRS. Under certain circumstances however, the Nigerian subsidiaries of foreign MNEs may be required to submit the CbCR directly to the FIRS. Such circumstances may arise where a) the ultimate parent company of the group is not obligated to submit CbCRs in its home jurisdiction; b) FIRS and the tax authority in the ultimate parent company's home jurisdiction have not activated the CbCR exchange relationship as at the time the disclosures are due; or c) the tax authority in the ultimate parent company's jurisdiction has suspended automatic exchange of CbCRs with Nigeria.

Penalties

The Regulations include penalties for non-compliance. Late filing of CbCRs will attract a penalty of ₦10 million in the first instance and ₦1 million for every month in which the failure continues. Taxpayers will also be penalized for making false declarations or filing incorrect information in CbCRs. This will attract a ₦10 million penalty.

Lastly, failure to notify the FIRS of the identity and tax residence of the entity within the group who has the responsibility to file the CbCR on behalf of the group will attract a penalty of ₦5 million in the first instance and ₦10,000 for every day of default.

What will tax authorities use the CbCR information for?

The CbCR has been designed in a manner that summarises key financial information which tax authorities can analyse in order to identify and detect common BEPS risk indicators. The OECD's guidance on how to use CbCRs suggests that tax authorities can generate useful insight into the global allocation of income and taxes within MNEs by calculating certain financial ratios. These ratios, in the OECD's view, will help tax authorities assess BEPS risk indicators and enable them ask more targeted questions during enquiries and TP audits.

Final thoughts; and what MNEs should be doing

The Regulations have an effective date of 1 January 2018 but were only recently gazetted and made available to the public. This in a sense seems like a retroactive application of the regulations which is inconsistent with the National Tax Policy. Taxpayers will need to take steps to comply immediately. This will require a detailed understanding of the information requirements since the information to be provided in the CbCR sometimes have definitions that are different from their ordinary accounting usage. There are also other technicalities that are not immediately apparent. Further, it may be necessary to put in place systems that will allow for easy collation of information and preparation of the reports.

Beyond compliance, affected taxpayers need to have a closer look at how the information to be provided can be interpreted. They will need to prepare the CbCR and do an upfront review to see how their global allocation of profits could be perceived by tax authorities when they receive these reports.

Taxpayers should use the timeframe between now and the first filing period to put together a strategy and systems that will enable them discharge their obligations in a timely, accurate and efficient manner to avoid penalties.

On the part of the tax authority, it will be interesting to see how prepared and equipped they are to analyse the volume of data that will be submitted by taxpayers including those from foreign tax authorities.

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Topic: Nigerian Labour Law and Employment Practices: Key issues and insights to put you ahead.
Date: Tuesday 17 July
Time: 9:00am - 1:00pm



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