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Singapore releases CbCR guidelines

On 10 October 2016, the Inland Revenue Authority of Singapore ("IRAS") released the much awaited e-tax guide on Country-by-Country Reporting ("CbCR"). The e-tax guide builds on the 16 June 2016 announcement of [Singapore joining the inclusive framework](#). By joining the inclusive framework, Singapore has committed to implement four minimum standards of the 15 point action plan under the Base Erosion and Profit Shifting ("BEPS") project; one of them being Action Point 13 – CbC Reporting.

The e-tax guide aims to provide taxpayers with guidance around the purpose and obligation to provide a CbC Report and practical considerations on completing and submitting the report to IRAS. The information contained within CbC Reports will be used by IRAS in line with OECD's recommendations, namely:

- To assess high level transfer pricing risk;
- To assess other BEPS-related risks; and
- For economics and statistical analysis.

In line with the permitted usage, the information in the CbC Report should not be used as a substitute for a detailed transfer pricing analysis and that tax administrations should not use CbC Report to propose transfer pricing adjustments.

Applicability of CbCR and the period

Broadly, a multinational enterprise ("MNE") group will be required to prepare (along with the existing requirements to prepare a transfer pricing master file and local file) CbC Report starting from financial year 2017 if:

- The MNE group is a Singapore MNE group (i.e. a group whose ultimate parent entity is tax resident in Singapore for the financial year when CbCR will be prepared);
- The consolidated group revenue in the preceding financial year is at least S\$1,125 million (approximately €750 million); and
- The MNE group has subsidiaries or operations in at least one foreign jurisdiction.

It effectively means that the MNE is required to file a CbC Report for FY 2017 if the consolidated group revenue for FY 2016 exceeded the threshold of S\$1,125 million. Even if the consolidated group revenue for FY 2017 is below the threshold it would not exempt the MNE from filing a CbC Report for FY 2017 as the group revenue in preceding financial year is the determinant factor; consequentially, the MNE should not file a CbC Report for FY 2018 as the consolidated group revenue for FY 2017 did not exceed the threshold.

The due date to file the CbCR is within 12 months from the end of that financial year. In other words, the earliest CbC Report required to be submitted to IRAS would be due by 31 December 2018 (for a financial year ending on 31 December 2017). It therefore implies that the CbCR will be applicable for financial years beginning on after 1 January 2017 (though the precise start date for FY 2017 is not explicitly stated in the e-tax guide but was clarified when Singapore joined the inclusive framework for implementing measures against BEPS on 16 June 2016).

The important factor to note is the difference in periods when CbCR has to be prepared under the OECD's Final Report on Action 13 and the e-tax guide. Whilst, OECD has recommended that the first CbC Reports be prepared for financial years beginning on or after 1 January 2016, the IRAS recommends on or after 1 January 2017. The differing dates therefore create a "gap-year" during which

the Singapore MNE may be required to file the CbC Report directly in another country. That could occur as other countries have adopted CbCR rules beginning on or after 1 January 2016, requiring reporting of CbC information by constituent entities of MNE groups with an ultimate parent entity resident in Singapore that does not have a CbC reporting requirement for the same period (under a so-called "secondary mechanism" within the OECD's model legislation). Under the so-called "secondary mechanism" each jurisdiction may require a CbC Report from any constituent entity of an MNE group that is tax resident in that jurisdiction if, the ultimate parent is not obligated to file, or the jurisdiction of the ultimate parent does not have an exchange of information agreement in place, or there has been a systematic failure under that agreement.

The OECD's model legislation also includes an alternative mechanism to the "secondary mechanism" that would allow MNEs to avoid filing CbC Reports locally in situations in which reporting and exchange is not carried out in ultimate parent's jurisdiction and instead by designating a "surrogate parent" to do the filing in its country of tax residence that collects and exchanges CbC Reports.

The present e-tax guide does not address the gap year issue for Singapore MNEs. When the OECD released "Guidance on the implementation of country-by-country reporting" on 29 June 2016, it addressed this issue by recommending that other countries accept reports filed voluntarily in the MNE's parent jurisdiction (known as "parent surrogate filing") for reporting periods beginning on or after 1 January 2016. The reference to this "parent surrogate filing" mechanism is missing in the e-tax guide and leaves the issue of so-called "gap year" open for Singapore MNEs.

Having said, it is clear that Singapore will not impose secondary mechanisms on non-Singapore headquartered MNE groups. In addition, Singapore does not see a need to provide for surrogate parent filing mechanism for foreign MNE groups. And this leaves the question open whether other countries will also reciprocate to Singapore's position and if not then Singapore MNEs will be burdened by adhering to those countries CbCR requirements either through secondary filing mechanism or surrogate parent.

Filing procedure and exchange mechanism

The submission of CbCR must be done electronically. Currently, IRAS is developing e-services for sending and receiving CbC Reports with a sufficient level of encryption. As the first submission would be due only by 31 December 2018, IRAS will identify taxpayers affected by CbCR and will provide further information on the submission of CbC Reports in the first half of 2018.

The CbCR filed with IRAS will be exchanged with other jurisdictions by IRAS only after establishing that these jurisdictions have a strong rule of law and are able to ensure confidentiality of the information exchanged and prevent its unauthorised use. For exchange mechanism to work, IRAS will enter into agreements with these jurisdictions after it has satisfied that the subject requirements are met. The exchange programme will be suspended in case of any misuse of information contained in the CbC Reports or breach of the confidentiality obligation by the other jurisdictions.

Revenue threshold

The revenue threshold is the consolidated group revenue of S\$1,125 million (approximately €750 million). This amount refers to the revenue figure disclosed in the consolidated financial statements of the MNE. In working out the revenue amount, revenue of associated companies and joint ventures accounted for under the equity method and partnerships that are not consolidated under applicable accounting rules will not form part of this figure. "Revenues" should also include other income and all extraordinary income, for instance, gains from sales of properties and notional items such as unrealised gains/ losses. The only exception would be "dividends" received from constituent entities which should be specifically excluded from "Revenues" (however, dividends from associated companies, which are not constituent entities, should be included).

If the constituent entities of the MNE has different financial year ends from the ultimate parent entity, then the ultimate parent entity which has the obligation to prepare and file CbCR ("Reporting MNE") has the discretion to adopt either one of the following, on a consistent basis:

- Information for the financial year end of constituent entities ending on the same date as the financial year end of the Reporting MNE, or ending within the 12 month period preceding such date; or
 - Information for all constituent entities reported for the financial year end of the Reporting MNE (i.e. to include financial information of all constituent entities for the same period as the Reporting MNE). For example, if the CbC Report relates to the period 1 January 2017 to 31 December 2017 for the Reporting MNE, the CbC Report should include financial information of all constituent entities for that same period i.e. 1 January 2017 to 31 December 2017. Further, time apportionment basis can be applied to obtain financial information relating to the relevant period for constituent entities.
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Sources of data

The IRAS has no preference for the source of data to complete CbCR information requirements. A broad list of sources is provided – Group's consolidated reporting packages, separate entity statutory financial statements, regulatory financial statements or internal management accounts.

Taxpayers are not expected to create or maintain records to reconcile CbC reporting information to consolidated financial statements. Further, in case of difference in functional currency between the Reporting MNE and constituent entity, the average exchange rate for the reporting year should be used to translate the financial statements of constituent entities to the functional currency of the Reporting MNE.

Employees

The CbCR requires Reporting MNE to report the total number of employees (including part timers and contract staff hired on a fairly long-term or permanent basis) on a full-time equivalent basis of all the constituent entities resident for tax purposes in the relevant tax jurisdiction. Taxpayers may use any reasonable approach, consistently applied across tax jurisdictions to determine the number of employees and report them as of the year-end and may include independent contractors participating in the ordinary operating activities in the number of full-time equivalent employees. Clarification is provided to exclude non-executive directors as they do not participate actively in the running of business operations. Similarly, consultants/ freelancers engaged on short-term basis are to be excluded; however, if they are engaged on a fairly long-term or permanent basis, then they may be included as full-time equivalent employees.

Reasonable rounding or approximation of the number of employees is permitted on the basis that such rounding or approximation does not materially distort the relative distribution of employees across tax jurisdictions.

Definition of terms

- Constituent entities – these entities are required to be reported in a separate table of the CbCR and they are (i) any separate business unit of an MNE group that is included in the consolidated financial statements of the MNE group for financial reporting purposes, or would be so included if equity interests in such business unit of the MNE group were traded on a public securities exchange; or (ii) any business unit excluded from the MNE group's consolidated financial statements on size or materiality; and (iii) any permanent establishment included in (i) or (ii) above provided that separate financial statements for such permanent establishment are prepared by the business unit. Dormant entities must also be included for CbCR requirements.

Further, associated companies and joint ventures do not fall within any of the above and therefore are not considered as constituent entities of MNE group for CbCR.

- Income tax paid on cash basis – refers to the total amount of income tax actually paid during the relevant financial year by all constituent entities resident for tax purposes in the relevant tax jurisdiction. It should include withholding taxes paid by other entities but exclude taxes such as VAT or other business taxes which are not paid on the company's profit.
- Tangible assets refers to physical hard assets like inventories, property, plant and equipment, etc. Therefore, it should exclude financial assets (i.e. trade receivables, investments, etc) intangibles and cash or cash equivalents.

Penalties

In the event that taxpayers do not submit the CbC Report or files late or files an incorrect CbC Report, penalties may be imposed under Section 105M of the Singapore Income tax Act. The maximum penalty on conviction is a fine not exceeding S\$10,000 or an imprisonment for a term not exceeding two years or both. Having said, before levying the subject penalties, IRAS may consider mitigating factors.

Key takeaways

With the introduction of CbCR requirements, Singapore MNEs will have to prepare and file CbCR if their consolidated turnover exceeds S\$1,125 million. This requirement is in addition to the preparation of master file and local files. Given that the deadline for filing is by 31 December 2018, MNEs should start assessing/ undertaking dry runs to determine whether they have the necessary data sources to compile the information required and gaps if any that needs to be addressed.

One of the key factors for Singapore MNEs would be the issue of so-called "gap year". As the e-tax guide has not addressed this issue by introducing voluntary filing of CbCR for the "gap year" under OECD's "parent surrogate" filing mechanism, Singapore MNEs could be required to file CbCR in jurisdictions implementing CbCR requirements from 1 January 2016 under the "secondary mechanism". Therefore, an assessment should be undertaken of countries in which these MNEs undertake business activities and determine whether CbCR requirements are triggered.

In addition, if they are required to file CbCR locally in foreign jurisdictions under the "secondary mechanism", protecting data confidentiality contained in CbCR may be an issue. Any confidentiality protections may effectively be overridden by rules in other jurisdictions in which Singapore MNEs are doing business by mandating public disclosure of CbC Reports. For example, UK government is considering amendments that will enable HM Treasury to make regulations requiring large MNEs to publish CbC Reports of their profits and taxes. In addition, European Commission is also developing a directive that will require public CbC reporting of tax and other financial data by large companies operating in the European Union.

Lastly, significant amount of work needs to be done by Singapore through signing of competent authority agreements with relevant countries for exchanging CbCR on a confidential basis which have a strong rule of law and are able to ensure confidentiality of the information exchanged. Since, Singapore is not a signatory to the Multilateral Competent Authority Agreement on exchange of CbC Reports ("MCAA"), it remains to be seen whether Singapore will sign competent authority agreements only with countries that have an existing tax treaty or tax information exchange agreements.

Kindly contact us to understand further on how we can support you in riding this new wave of change.

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