

Is your organization ready to prepare a country-by-country report?

The issue

The Internal Revenue Service (IRS) is finalizing regulations that require the filing of a new tax form, the country-by-country report (CbCR), by U.S. taxpayers that are a parent of a multinational enterprise (MNE) group. This new tax filing requirement applies to companies with \$850 million or more in global group revenues and is planned to be effective for fiscal years beginning on or after July 1, 2016.

The CbCR is intended to be prepared and filed by the global parent company of the MNE group with its home country's tax authority, which is the IRS in the case of a U.S. MNE. The IRS will then exchange the CbCR with tax authorities of the jurisdictions where the MNE group's subsidiaries operate, provided these tax authorities meet certain requirements related to information exchange protocols.

Your organization may be subject to earlier tax filing deadlines outside the United States. Selected countries have already implemented regulations requiring the CbCR for MNEs with fiscal years commencing Jan. 1, 2016, and may seek CbCRs directly from "constituent entities" under the "secondary" reporting rule. In which case, a subsidiary of the MNE may be required to file the CbCR in its foreign tax return by acting as a surrogate of the parent company.

Whether your CbCR filing takes place at home or abroad, RSM has the capability to assist you in preparing for and complying with this new global tax requirement.

The regulatory environment

The IRS and other tax authorities worldwide are implementing these new regulations on tax reporting as part of an action plan released under the endorsement of the G-20 by the Organization for Economic Co-operation and Development (OECD) pursuant to the Base Erosion and Profit Shifting (BEPS) Project to address current deficiencies in the international tax system.

As a result, the United States and other G-20 and OECD member countries have agreed to implement new standards through domestic and tax treaty laws. The CbCR is part of Action 13 under the BEPS project, which focuses on enhancing transparency in international tax matters. The new standards also include a new approach to transfer pricing documentation by way of a master file and a local file specific to each country.

The CbCR is a template on which the company is required to report for each tax jurisdiction: the amount of revenues from related parties and unrelated parties, profit before income tax, income tax paid, capital, accumulated earnings and number of employees and other information.

Pursuant to income tax conventions and multilateral agreements related to the exchange of tax information, a U.S. CbCR filed with the IRS may be exchanged by the United States with other tax jurisdictions in which the MNE group operates that have agreed to provide the IRS with foreign CbCRs filed in their jurisdiction by foreign MNE groups that have operations in the United States.

It is expected that CbC reports filed by both U.S. MNE groups and foreign MNE groups will help the IRS perform high-level transfer pricing risk identification and assessment. The information in a CbCR will not itself constitute conclusive evidence that transfer pricing practices are or are not at arm's length. However, taxpayers should expect additional IRS or foreign tax authority scrutiny and should review and document their transfer pricing approach for consistency with the regulations to minimize the risk of penalties should the IRS or other tax authorities make an adjustment to transfer prices.

Non-filing penalties

While the IRS requirements and U.S. penalties, if any, are yet to be determined, many other countries have already extended their noncompliance penalties to CbC reporting. The failure to file the CbCR form carries a penalty of 100,000 euros in France, whereas in the Netherlands, a failure to file the CbCR form is a criminal offense punishable with a fine or jail.

RSM's CbCR services

There are a variety of factors at play in the implementation and compliance of the new CbCR form. Having skilled advisors who understand your business and can help facilitate the development of your organization's approach to this new requirement is key to making informed decisions, which, ultimately, impact the bottom line. We can guide you in developing and executing a plan that fits your needs for CbC reporting.

Our integrated services for CbC reporting include:

- Tax compliance support, including the completion and filing of the CbCR form.
- Analysis of new tax law(s) resulting from local country adoption of BEPS Action Items to assess the impact on supply chain effectiveness, tax risk management and compliance, financial reporting of income taxes and communication strategies.

- Tax planning for restructuring operations to address potential exposure resulting from the CbCR.
- Developing transfer pricing analyses and methodologies to support the arm's length nature of intercompany transactions.
- Updating transfer pricing documentation to meet the new standards of the master file and corresponding local files.
- Assisting with the development of governance processes around transfer pricing implementation and policies and assuring consistency between the master file, local files and the CbCR..
- Co-developing reporting processes to generate the CbC reporting data, including the integration of technology solutions.
- Tagging and validating data in financial systems for entry in the CbC template according to the OECD's XML schema.
- Facilitating selection and licensing of CbCR software without vendor preference.

+1 800 274 3978

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