

# BEPS Filing Requirements for Multinationals Under Country-by-Country Reporting

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## BEPS FILING REQUIREMENTS FOR MULTATIONALS UNDER COUNTRY-BY-COUNTRY REPORTING

On October 5, 2015, the OECD issued the final BEPS reports that are expected to fundamentally change the course of international taxation and transfer pricing for all multinational enterprises (MNEs). As countries implement some or all of the OECD BEPS recommendations into their domestic legislation, there will inevitably be shifts in tax policy, in addition to the transfer of resources and operations.

The OECD BEPS project aims to prevent base erosion and profit shifting by having taxes paid in the jurisdiction where profits are generated/ company adds value/risk is taken, etc. The result is almost certain to be an increase in interstate disputes as authorities vie over the taxing rights. If countries cannot agree, there will be a real risk of double taxation. To justify that the tax being paid reflects where a company has created value, there needs to be sufficient substance and risk-bearing capacity in the tax location.



### COUNTRY-BY-COUNTRY REPORTING (CBCR)

One of the cornerstones of the OECD BEPS project is CbCR, which is addressed in the Action 13 recommendations. An MNE's CbC report should include detailed financial and tax information related to the global allocation of its income and taxes. CbCR is required where the ultimate parent company has its tax residence. If the parent company taxing jurisdiction has not implemented CbCR, MNEs may be required to file in the jurisdictions where they conduct business. The BEPS Action 13 recommendations would require, as an agreed-upon minimum standard, MNEs with global turnover of at least €750 million in the immediately preceding fiscal year to submit the CbC report each year for accounting periods beginning after January 1, 2016. In addition to the CbC report, the OECD recommends that countries require a master file detailing the transactions and activities of the group as a whole, as well as a local file detailing the company's local business operations. Looking ahead to 2020, the OECD may increase the scope of CbCR, reduce the filing threshold and require companies to publish the reports.

The primary goal of the OECD BEPS Action 13 recommendations is to align profits with value creation and substance. Several countries have already implemented CbCR (or indicated their intent to implement it). Because countries may deviate from the Action 13 recommendations when implementing CbCR (e.g., filing threshold, effective date or both), there most likely will be an increase in cross-border tax disputes between tax authorities and taxpayers.

On June 29, 2016, the OECD released guidance on implementation of CbCR (updated on October 12, 2016), which addressed (1) transitional filing options for MNEs and (2) the impact of exchange rate fluctuations on the agreed €750 million filing threshold for MNE groups, among other topics. Situations can arise where the "Ultimate Parent Entity" of an MNE group resides in a jurisdiction whose CbCR legal framework is in effect for reporting periods that begin later than January 1, 2016. The OECD said that jurisdictions that will not be able to implement CbCR with respect to fiscal periods from January 1, 2016, may be able to accommodate voluntary filing for Ultimate Parent Entities resident in their jurisdiction through a "parent surrogate filing." Hong Kong, Japan, Liechtenstein, Russia, Switzerland and the U.S. have indicated they will have this available with respect to fiscal periods commencing on or after January 1, 2016.

MNEs should gauge their readiness to collect and aggregate the data required under CbCR and will need to determine whether they have technology in place to compile this data. While there is no specific requirement on how data is collected, businesses should bear in mind that the combined group information must be consolidated into one report so that data collection can be standardized. However, the OECD released a CbC XML Schema and User Guide on March 22, 2016 that explains the information that should be included for each CbC data element.



### EU DIRECTIVE ON CBCR

Against this backdrop, MNEs should be cognizant of the CbCR measures that the EU Council adopted on May 25, 2016 and published on June 3, 2016 as part of EU Directive 2016/881 on the automatic exchange of tax information. The EU Directive is meant to expedite CbCR implementation across the 28 EU member states.

The EU Directive requires MNEs to report detailed CbC on revenues, profits, taxes paid, capital, earnings, tangible assets and the number of employees. This information must be reported, for the 2016 fiscal year, to the tax authorities of the member state where the group's parent company is tax resident. If the parent company is not EU tax resident and does not file a report, it must do so through its EU subsidiaries. Such "secondary reporting" will be optional for the 2016 fiscal year but mandatory as from the 2017 fiscal year.

Under the EU Directive, EU MNEs will not be obligated to submit the CbCR information to each EU member state where they operate but only to the tax authorities of their country of residence. The Directive requires EU member states, on receipt of the report, to share the information with other member states in which companies are either resident for tax purposes or are subject to tax, with respect to the business carried out through a permanent establishment (PE). The Directive provides for the automatic exchange of information to build on the existing rules in EU Council Directive 2011/16, including the use of standard forms.

The EC is currently analyzing whether and to what effect, MNEs should make public specific accounting and tax information in the CbC report. A proposal made by the EC on April 12, 2016, seeks to amend the EU Accounting Directive (2013/34) to ensure that large groups publish annually a report disclosing the profit and the tax accrued and paid in in each EU member state. The proposal would require public CbCR only for MNE operations in EU member states, with CbCR information for other jurisdictions to be aggregated as one jurisdiction.



**OECD CbCR MULTILATERAL COMPETENT AUTHORITY AGREEMENT**

As part of continuing efforts to boost transparency by MNEs, on January 27, 2016, 31 countries signed the OECD Multilateral Competent Authority Agreement (CbC MCAA) for the automatic exchange of CbC reports. The U.S. was not among them. Instead, the U.S. plans to implement CbCR through bilateral agreements rather than the OECD MCAA to ensure that countries have appropriate safeguards and infrastructure in place. As of October 21, 2016, 49 countries have signed the OECD MCAA, including Canada.

Under the MCAA, signatories may exchange reports with other signatories if they have CbCR requirements in place and are a party to the OECD Convention on Mutual Administrative Assistance in Tax Matters.

Among other things, the CbC MCAA provides that CbC report information will be used to assess high-level transfer pricing and other BEPS-related risks, but not as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional and comparability analysis. The information may be used as a basis for further inquiry into the MNE’s transfer pricing arrangements in the course of a tax audit. If an adjustment resulting from further inquiries based on the CbC report leads to undesirable economic outcomes, the tax authorities of the jurisdictions of residence of the affected entities must consult each other in attempting to resolve the case.



**U.S. CbCR DEVELOPMENTS**

On June 29, 2016, IRS and Treasury released the final CbCR Regulations (TD 9773, Reg. 1.6038-4), which apply to tax years of ultimate parent entities of U.S. MNE groups that begin on or after June 30, 2016, where the MNEs have revenue for the preceding annual accounting period of \$850 million or more.

While the final Regulations do not address master and local files, the Treasury Deputy Assistant Secretary (International Tax Affairs), Robert Stack, said during an interview with Thomson Reuters on September 28, 2016, that the IRS does not need master and local files as it already receives sufficient information from taxpayers. However, he said this could change over time depending on the quality of information received.

The CbCR threshold is based on the January 1, 2015, U.S. dollar equivalent of €750 million, as provided in the final OECD BEPS Action 13 recommendations. All amounts reported to the IRS must be in U.S. dollars. If an exchange rate is used other than in accordance with U.S. generally accepted accounting principles (GAAP) for conversion to U.S. dollars, the exchange rate must be indicated.

The IRS intends to allow ultimate parent entities of U.S. MNE groups (and U.S. business entities designated by a U.S. territory ultimate parent entity) to file CbC reports for reporting periods that begin on or after January 1, 2016, but before the applicability date of the Final Regulations (i.e., June 30, 2016), under a procedure to be provided in separate, forthcoming guidance. Notably, the Final Regulations do not allow U.S. entities to act as a surrogate for foreign-parented MNE groups, and secondary CbCR is not permitted. Also, the Preamble to the Final Regulations said that Treasury is working to ensure that foreign jurisdictions implementing CbCR requirements will not require constituent entities of U.S. MNE groups to file a CbC report with the foreign jurisdiction if the U.S. MNE group files a CbC report with the IRS.

Under the Final Regulations, U.S. persons that are the “ultimate parent entity” of an MNE group with annual revenue of \$850 million or more for the immediately preceding annual accounting period will be required to file Form 8975 (not yet released) with the IRS. The ultimate parent entity of a U.S. MNE group is a U.S. business entity that meets both of the following:

- Owns directly or indirectly a sufficient interest in one or more other business entities, at least one of which is organized or tax resident in a tax jurisdiction other than the U.S., such that the U.S. business entity is required to consolidate the accounts of the other business entities with its own accounts under U.S. GAAP or would be so required if equity interests in the U.S. business entity were publicly traded on a U.S. securities exchange.
- Is not owned directly or indirectly by another business entity that consolidates the accounts of such U.S. business entity with its own accounts under GAAP in the other business entity’s tax jurisdiction of residence or would be so required if equity interests in the other business entity were traded on a public securities exchange in its tax jurisdiction of residence.

On August 22, 2016, Treasury published a notice in the Federal Register (75 Fed. Reg. 56757) seeking comments on IRS Form 8975. Written comments were due by September 21, 2016. The notice said that “businesses or other for-profits” are to be affected by the new CbCR requirement, which Treasury estimates will take 4,680 hours to comply with each year.



Under the Final Regulations, the following information must be included on Form 8975 (in the form and manner to be prescribed by the IRS) with respect to each constituent entity of the U.S. MNE group, as required:

- The complete legal name of the constituent entity
- The tax jurisdiction, if any, in which the constituent entity is resident for tax purposes
- The tax jurisdiction in which the constituent entity is organized or incorporated (if different from the tax jurisdiction of residence)
- The tax identification number, if any, used for the constituent entity by the tax administration of the constituent entity’s tax jurisdiction of residence
- The main business activity or activities of the constituent entity

In addition, Form 8975 must contain the following information for each tax jurisdiction in which one or more constituent entities of a U.S. MNE group is resident, presented as an aggregate of the information for the constituent entities resident in each tax jurisdiction:

- Revenues generated from transactions with other constituent entities
- Revenues not generated from transactions with other constituent entities
- Profit or loss before income tax
- Total income tax paid on a cash basis to all tax jurisdictions and any taxes withheld on payments received by the constituent entities
- Total accrued tax expense recorded on taxable profits or losses, reflecting only operations in the relevant annual period and excluding deferred taxes or provisions for uncertain tax liabilities
- Stated capital, except that the stated capital of a PE must be reported in the tax jurisdiction of residence of the legal entity of which it is a PE unless there is a defined capital requirement in the PE tax jurisdiction for regulatory purposes
- Total accumulated earnings, except that accumulated earnings of a PE must be reported by the legal entity of which it is a PE
- Total number of employees on a full-time equivalent basis
- Net book value of tangible assets, which does not include cash or cash equivalents, intangibles or financial assets



Failure to file the CbC report may lead to imposition of penalties under Internal Revenue Code (“IRC”) Section 6038. However, the Final Regulations say that taxpayers will still have access to reasonable cause relief under IRC Section 6038 for failure to file. The Final Regulations do not provide a specific waiver of penalties for U.S. MNE groups in which the ultimate parent entity’s tax year begins on or after the applicability date.

The Final Regulations say that information in a CbC report filed with the IRS will be treated as return information subject to IRC Section 6103 confidentiality protections. While the U.S. will issue guidance about countries with which it has reached agreement on exchange of CbCR information, a list of covered countries can be found in Rev. Proc. 2016-18 (issued in March 2016). The U.S. will also create a procedure for taxpayers to report suspected violations of confidentiality (and other) misuses of CbCR information.

On September 22, 2016, U.S. Rep. Mark Pocan issued a press release, saying that he has introduced the Corporate Transparency and Accountability Act (the “Act”) to increase transparency regarding tax avoidance and profit shifting activities. The legislation would require the public disclosure of CbCR information. Under the Act, all publicly traded companies would be required to include CbC financial information in their public Securities and Exchange Commission (SEC) filing.

On October 14, 2016, the IRS issued Chief Counsel Memo AM2016-004, which discusses the exact moment when information that it provides to and receives from foreign tax administrations via the OECD's Common Transmission System (CTS) becomes protected under the confidentiality rules in IRC Section 6103. The CTS will facilitate the automatic exchange of financial account information, CbCR and other exchanges of information between tax administrations.

## CBCR DEVELOPMENTS IN OTHER JURISDICTIONS

CbCR developments are discussed below for Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hong Kong, Iceland, India, Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Russia, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey and the United Kingdom.



### Argentina

While Argentina has not yet announced whether it intends to implement any of the OECD BEPS Action 13 recommendations, on June 30, 2016, Argentina signed the OECD CbC MCAA, thereby signaling its intention to implement some (or all) of the Action 13 recommendations in the future.



### Australia

On December 11, 2015, the Australian government issued the Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015 (Act 170 of 2015) implementing CbCR for "significant global entities," which is an Australian parent entity with an annual global income of AUD\$ 1 billion or more or any Australian member of a foreign global parent entity's group meeting the same threshold. The CbCR obligations are in new Subdiv 815-E of Income Tax Assessment Act (ITAA) 1997. Significant global entities are required to provide three statements to the Tax Commissioner: (1) a CbC report, (2) a master file and (3) a local file. Failure to provide these statements will not in itself prevent an entity from having a reasonably arguable position (RAP) if documentation is still maintained in accordance with existing requirements. The content of these statements is based on Annexes I to III of Chapter V of the OECD Transfer Pricing Guidelines as outlined in the BEPS Action 13 final report.

The Australian Tax Commissioner has the power to grant exemptions from providing statements under Subdiv 815-E for specific entities or classes of entities. In doing so, the Tax Commissioner may take into account the following factors: (1) risk profile of the local entity, including, for example, the amount of its overseas dealings; (2) compliance burden imposed on the entity and (3) whether the Commissioner will receive the relevant statement or statements by alternative means.

On May 24, 2016, the Australian Tax Office (ATO) released the local file design following its consultation with a wide variety of stakeholders, which will have to be reported by taxpayers in a standardized electronic format by December 31, 2017, for the 2016 tax year. The ATO has decided to implement the following types of local files:

- A short form local file, available for use by small taxpayers and those with immaterial related-party transactions
- A full local file, which all other taxpayers subject to the Australian CbCR requirements will have to complete

On July 7, 2016, the ATO released the local file template to help companies understand their new reporting requirements as part of CbCR.

On September 27, 2016, the ATO released guidance outlining the general principles and processes it follows when considering an exemption request from a particular entity with respect to some or all of its CbCR obligations. The approach outlined attempts to balance the underlying policy intent of CbCR with the ATO's commitment to reduce red tape. The ATO said that the guidance represents its transitional administrative practice until the planned 2020 OECD review of CbCR.



## Austria

On August 1, 2016, Austria enacted the EU Tax Amendment Act 2016 (EU-Abgabenänderungsgesetz 2016), which introduced the three-tier standardized transfer pricing documentation requirements in the BEPS Action 13 recommendations. Full documentation (i.e., master file, local file and CbC report) will have to be submitted to the Austrian tax authorities in either German or English.

An MNE group which has a consolidated annual turnover of at least €750 million in the previous fiscal year will have to submit a CbC report with information on the global distribution of income, tax and business activities for fiscal years starting on or after January 1, 2016.

A business unit of an MNE group that is an Austrian resident will also have to submit a master and local file, if the group's revenues exceed €50 million in the previous two fiscal years. The Austrian tax authorities are authorized to request additional documents, which are required for identifying and evaluating appropriate intra-group transfer pricing. The master and local files will be forwarded, following the date of submission of the corporate tax return, to the tax authority within 30 days of its request. If the taxpayer intentionally fails to file or inaccurately reports information, then they will incur a fine of up to €50,000 (gross negligence will be fined up to €25,000). However, a negligent supply of incorrect information will not be a punishable offense.

The master file will include the following:

- Organizational structure of the multinational group
- Description of the business
- Documentation of intangible assets
- Documentation of the group's internal financial activities
- Documentation of investment securities and tax positions

The local file will cover the following three areas:

- Description of the domestic business unit
- Documentation of significant business group internal transactions
- Financial information



## Belgium

On July 4, 2016, Belgium enacted the Program Law, which implemented the three-tiered standardized transfer pricing documentation requirements, included in the BEPS Action 13 recommendations, from January 1, 2016.

The CbCR requirements in Articles 55 and 56 of the Program Law will apply for MNE groups operating in Belgium with annual consolidated group revenue in the previous year of at least €750 million. The CbC report will follow the format of the BEPS Action 13 recommendations and will be due within 12 months of the end of the fiscal year at issue.

The master and local file requirements in Articles 57 and 58 of the Program Law also align with the BEPS Action 13 recommendations. The format of the master and local files will be provided in a subsequent Royal Decree.

Belgian resident companies and PEs in Belgium of non-resident companies will have to prepare the master and local files, where their total operating and financial income is at least €50 million, their balance sheet total is at least €1 billion or their annual average number of full-time employees is at least 100.

The master file will be due within 12 months of the end of the fiscal year at issue; whereas, the local file will be due with the annual tax return.

Penalties ranging from €1,250 to €25,000 will apply for failure to meet the new documentation requirements.



## Brazil

While Brazil has not yet announced whether it intends to implement any of the OECD BEPS Action 13 recommendations, on October 21, 2016, Brazil signed the OECD CbC MCAA, thereby signaling its intention to implement some (or all) of the Action 13 recommendations in the future.



## Canada

On March 22, 2016, Canada's Minister of Finance presented the 2016 Federal Budget, stating that the government intends to implement CbCR, including the OECD-recommended monetary threshold (€750 million or more) for "taxation years that begin after 2015," with the first CbC reports to be filed with the Canadian tax authorities (CRA) by the end of 2017. The first exchange of Canadian CbCR information would occur by June 2018.

While the Budget did not address master and local files, on August 29, 2016, the Manager of the International Tax Division for the International and Large Business Directorate for the CRA said during a panel discussion at a conference in Toronto that existing CRA documentation requirements cover most of the information that would be included in the foregoing requirements.

On July 29, 2016, Canada's Department of Finance released for consultation draft legislative proposals that would implement certain measures from the Budget, including CbCR in a new section 233.8 of the Income Tax Act. The new section would apply to reporting fiscal years of MNE groups that begin on or after January 1, 2016. The proposals define specific terms and determine the filing obligations for the CbC report. Failure to submit the CbC report when required would result in a penalty of (1) CAD \$500 per month (up to 24 months), when no CRA demand has been served and (2) CAD \$1,000 per month when a CRA demand has been served and is not complied with. On October 25, 2016, the CbCR measures received a First Reading in Canada's Parliament as part of the Budget Implementation Act, 2016, No.2 (Bill C-29), submitted by Canada's Minister of Finance on October 21st for consideration.

On August 29, 2016, a CRA official said that Canada intends to use information obtained under the new documentation requirements for risk-assessment purposes only, in line with the OECD BEPS Action 13 recommendations.



According to a CRA official, Canada intends to use information obtained under new documentation requirements for risk assessment purposes only.



### China

On July 13, 2016, China’s State Administration of Taxation (“SAT”) issued Announcement (2016) No. 42 that implemented certain parts of Revised Circular No. 2 to align China’s transfer pricing documentation rules with the standardized three-tier approach of the BEPS Action 13 recommendations. Announcement No. 42 supersedes Circular No. 2 (issued in 2009) and applies retroactively from January 1, 2016.

Articles 5 through 8 of Announcement No. 42 includes the CbCR requirements. The CbC report will have to be filed by MNEs annually as part of their Chinese tax return, where they have a holding company in China and global consolidated revenue exceeding RMB 5.5 billion (equivalent to the €750 million OECD proposed threshold). If a foreign multinational designates a Chinese group company as their global tax filer, the designated Chinese company will have to include the CbC report as part of its Chinese tax return. Appendix I of Announcement 42 contains the CbCR template, with instructions set out in Appendix II.

Taxpayers whose annual revenue exceed the indicated amounts also have to provide the following “contemporaneous documentation”:

- A master file that provides an overview of the multinational enterprise group business, including the nature of its global business operations, its overall transfer pricing policies and its global allocation of income and economic activity, where the taxpayer has related party transactions that exceed RMB 1 billion
- A local file that focuses on specific transactions between the reporting entity and its associated enterprises in other countries, as well as the amounts involved in those transactions and the entity’s analysis of the transfer pricing determinations that it has made, where the taxpayer has (1) transfers of tangible assets that exceed RMB 200 million, (2) transfer of financial assets that exceed RMB 100 million, (3) transfer of ownership of intangible assets that exceed RMB 100 million or (4) other transactions (e.g., services) that exceed RMB 40 million

Articles 16 and 17 of Announcement No. 42 also require preparation of additional documentation called “Special Documentation” by Chinese taxpayers engaged in related party service transactions and cost sharing agreements (CSAs), which does not have a transaction threshold. The additional documentation will also apply to companies that exceed China’s thin cap limit.



### Cyprus

On April 27, 2016, the Cypriot Ministry of Finance said that it intends to implement CbCR into its legislative framework as a result of the draft European Commission Directive issued on January 28, 2016, that would amend EU Directive 2011/16. The Directive is in line with the OECD BEPS Action 13 recommendations and provides for the automatic exchange of CbC reports.

However, Cyprus has not yet issued any measures to implement any of the BEPS Action 13 recommendations.





### Czech Republic

On August 2, 2016, the Czech Ministry of Finance issued a public consultation on a bill that would implement the CbCR requirements in EU Directive 2016/881 on the exchange of CbC reports among EU member states. The proposals (in section 5 of the bill) also align with the BEPS Action 13 minimum standard. Public comments were due by August 30, 2016.

CbCR would apply for multinationals with Czech parent entities that have consolidated group revenue for the preceding year of €750 million or more (or an equivalent amount in CZK, based on the January 1, 2015, exchange rate). The bill does not say when the CbCR requirements would enter into force. The CbC report would be due within 12 months following the end of the fiscal year at issue.

Czech entities would have to disclose on their tax return whether they are (1) the ultimate parent company of the consolidated group, (2) a surrogate parent company or (3) a domestic constituent entity of a group that has a foreign parent. Domestic constituent entities would also have to disclose on the tax return which group entity would file the CbC report, along with the jurisdiction.

The August 2nd bill includes the following penalties:

- Up to CZK 3 million when the ultimate parent entity does not comply with the CbCR notification requirements.
- Up to CZK 1 million when a Czech entity other than the ultimate parent entity does not comply with the CbCR notification requirements. However, exceptions would be available where the entity demonstrates that it did not receive the required information from the ultimate parent entity.



### Denmark

On December 18, 2015, the Danish Parliament approved legislation (Section 1(2) of L 46 Bill) to introduce CbCR requirements in a new Section 3B of the Danish Corporate Tax Act. The legislation is modeled primarily on the BEPS Action 13 recommendations and supplements Denmark’s current documentation rules from January 1, 2016.

Pursuant to the legislation, the CbC report should be submitted no later than 12 months after the end of the income year. Calendar-year companies will be required to produce a report and prepare documentation under the new rules in 2016, which would be filed no later than December 31, 2017. For surrogate parent companies, the CbCR rules will apply from January 1, 2017.

The following companies will have to submit a CbC report to Denmark’s tax authorities (new Section 3B (11) of the CTA):

- Ultimate parent companies that are Danish tax residents, with consolidated turnover exceeding DKK (Danish kroner) 5.6 billion (about €750 million) in the previous tax year
- Group companies that are Danish tax residents with consolidated turnover exceeding DKK 5.6 billion in the previous tax year and that meet other specified conditions

New Section 3B(15) defines “revenue” as “arising in connection with a company’s ordinary operations, including sales, provision of services, fees, interest, dividends and royalties.” The last three items (interest, dividends, royalties) are not in the OECD BEPS Action 13 recommendations.

On April 28, 2016, Denmark’s Ministry of Taxation issued two Orders (BEK No. 401 and 402) regarding the new transfer pricing documentation requirements enacted into law in December 2015 via Section 1(2) of L 46 Bill. The requirements in BEK No. 401 entered into force on July 1, 2016, and apply to controlled transactions in fiscal years beginning January 1, 2016, or later.

Under the new rules, when computing tax or earnings, taxpayers must use prices and terms of trade with related parties (controlled transactions) that are consistent with those used in independent party transactions (uncontrolled transactions) and depending on their size, they must prepare and retain written documentation on the prices and conditions for the controlled transactions. The documentation consists of two parts, (1) documentation on the entire group (i.e., master file) and (2) country — specific documentation for each taxpayer in the group (i.e., local file).



### Finland

On December 21, 2015, Finland’s Ministry of Finance issued proposed regulations that would introduce CbCR, master and local file documentation requirements from January 1, 2017. Comments on the proposed regulations were due by January 25, 2016. The Ministry of Finance has released a revised draft of the proposed regulations, which reflects the June 3, 2016, amendments to the EU Directive on Mandatory Automatic Exchange of Tax Information (2016/881) that requires all EU member states to implement CbCR.

The CbCR requirements (new Sections 14(d) and (e) of the Tax Assessment Procedure Act) proposed on December 21, 2015, would apply for “ultimate parent entities” of multinational groups resident in Finland, where the annual consolidated group revenue exceeds €750 million. If the ultimate parent entity is resident in a jurisdiction that has not implemented CbCR requirements or Finland is otherwise unable to obtain the CbC report, a Finnish subsidiary of the group would be required to file with the Finnish tax authorities. Failure to file the CbC report would result in penalties of up to €25,000.

On September 15, 2016, Finland submitted its 2017 budget proposals (HE 142/2016) to Parliament for consideration, which would introduce CbCR, master file and local file requirements starting with fiscal years that begin on or after January 1, 2016. The September 15th proposals would extend the deadline for the 2016 fiscal year of CbCR notifications to June 1, 2017. Future CbCR notifications would be due by the end of the fiscal year at issue.



### France

On December 30, 2015, France enacted the 2016 Finance Act, which (1) requires large French multinationals (i.e., annual turnover or gross assets exceeding €400 million) to submit their transfer pricing documentation electronically to the French tax authorities and (2) introduced CbCR that aligns with the BEPS Action 13 recommendations. The public CbCR proposals included as Amendment No. 340 to the 2015 Amended Finance Bill were not enacted into law as part of the final version issued on December 30, 2015.

Article 121 of the 2016 Finance Act requires French multinationals to provide the CbC reports annually to the French tax authorities (starting with tax years on or after January 1, 2016) when all of the following requirements are met:

- The French company draws up consolidated accounts
- The French company holds or controls (directly or indirectly) one or several legal entities created abroad (including foreign branches)
- The French company has annual consolidated turnover of at least €750 million
- The French company is not held by another French entity that has a similar CbCR requirement pursuant to foreign rules

A French multinational would also have to prepare CbC reports where it:

- Is designated by its group to prepare the CbC report on behalf of the consolidated group
- Cannot show that any other consolidated group member located in France or in a listed country or territory has been designated by the group to meet the CbCR requirements

Companies that fail to comply with the CbCR amendments will be subject to penalties of up to €100,000



## Germany

On June 1, 2016, the German Federal Ministry of Finance issued draft legislation that would implement the three-tiered standardized transfer pricing documentation requirements of the BEPS Action 13 recommendations. The Ministry of Finance sought public comments on the draft legislation until June 17, 2016, and submitted an amended version to the German Parliament on July 13, 2016, for consideration. The legislation is expected to be finalized by the German Parliament in the second half of 2016.

The CbCR proposals align with the BEPS Action 13 recommendations and EU Directive 2016/881 amendments on exchange of CbC reports among EU member states. CbCR would apply in Germany for fiscal years that start on or after January 1, 2016, for multinationals with German parent entities that have consolidated group revenue for the preceding year of €750 million or more. Failure to comply with the CbCR requirements would result in penalties of up to €5,000.

The proposals also contain a secondary CbCR requirement for German constituent entities or surrogate parent entities for fiscal years starting on or after January 1, 2017, where Germany is not able to obtain the CbC report from the ultimate parent's country of residence.

The CbC report would be due within 12 months following the end of the fiscal year at issue. Also, German entities would have to disclose on their tax return whether they are (1) the ultimate parent company of the consolidated group, (2) a surrogate parent company or (3) a domestic constituent entity of a group that has a foreign parent. Domestic constituent entities would also have to disclose on the tax return which group entity would file the CbC report, along with the jurisdiction.

On April 12, 2016, the Ministry of Finance issued a draft law that would implement the OECD CbC MCAA that the government signed with 30 other countries on January 27, 2016. The CbC MCAA describes the type of information to be exchanged between Germany and other countries with respect to the activities of certain multinational enterprises. The draft law says that Germany intends to maintain any CbCR information that it receives from taxpayers as confidential. On October 25, 2016, Germany published the legislation, issued by the Ministry of Finance on April 12th, in the official gazette.



## Hong Kong

On June 20, 2016, Hong Kong announced that it will join the inclusive framework for the global implementation of the OECD BEPS project and that it intends to implement the minimum standard set out in the BEPS Action 13 final report on CbCR.

On October 26, 2016, Hong Kong issued a public consultation on implementation of the OECD BEPS recommendations, including transfer pricing documentation. The consultation proposes that master and local files would be prepared for each fiscal year and retained for a period of at least seven years following the relevant fiscal year. Hong Kong would impose a HK \$100,000 penalty for failure to comply with the CbCR and master and local file requirements without any reasonable excuse. Secondary and surrogate CbCR filings would be permitted for MNEs whose ultimate parent entity is not resident in Hong Kong. Hong Kong intends to rely on tax treaties and tax information exchange agreements as the basis for conducting automatic exchanges of CbC reports on a bilateral basis with its treaty partners.

Enterprises which satisfy any two of the following three conditions would not be required to prepare master and local files:

- Total annual revenue not more than HK \$100 million
- Total assets not more than HK \$100 million
- No more than 100 employees in Hong Kong

In the October 26th consultation, Hong Kong said that it intends to introduce relevant amendment bills before the Legislative Council in mid-2017 to implement the four OECD BEPS minimum standards (which includes CbCR). Comments are due by December 31, 2016.



### Iceland

On October 13, 2016, Iceland’s Parliament adopted Bill No. 787, which would introduce CbCR from January 1, 2017, for MNE groups operating in Iceland that have ISK (kroner) 100 billion or more of consolidated annual income in the preceding tax year. The legislation does not address master and local filing.

Iceland’s tax authorities will require notification of the reporting entity each year by the end of the fiscal year at issue and whether the CbC report would be filed in Iceland or abroad. The Ministry of Finance will issue implementing regulations in the future to address the content of the CbCR requirements, among other items.



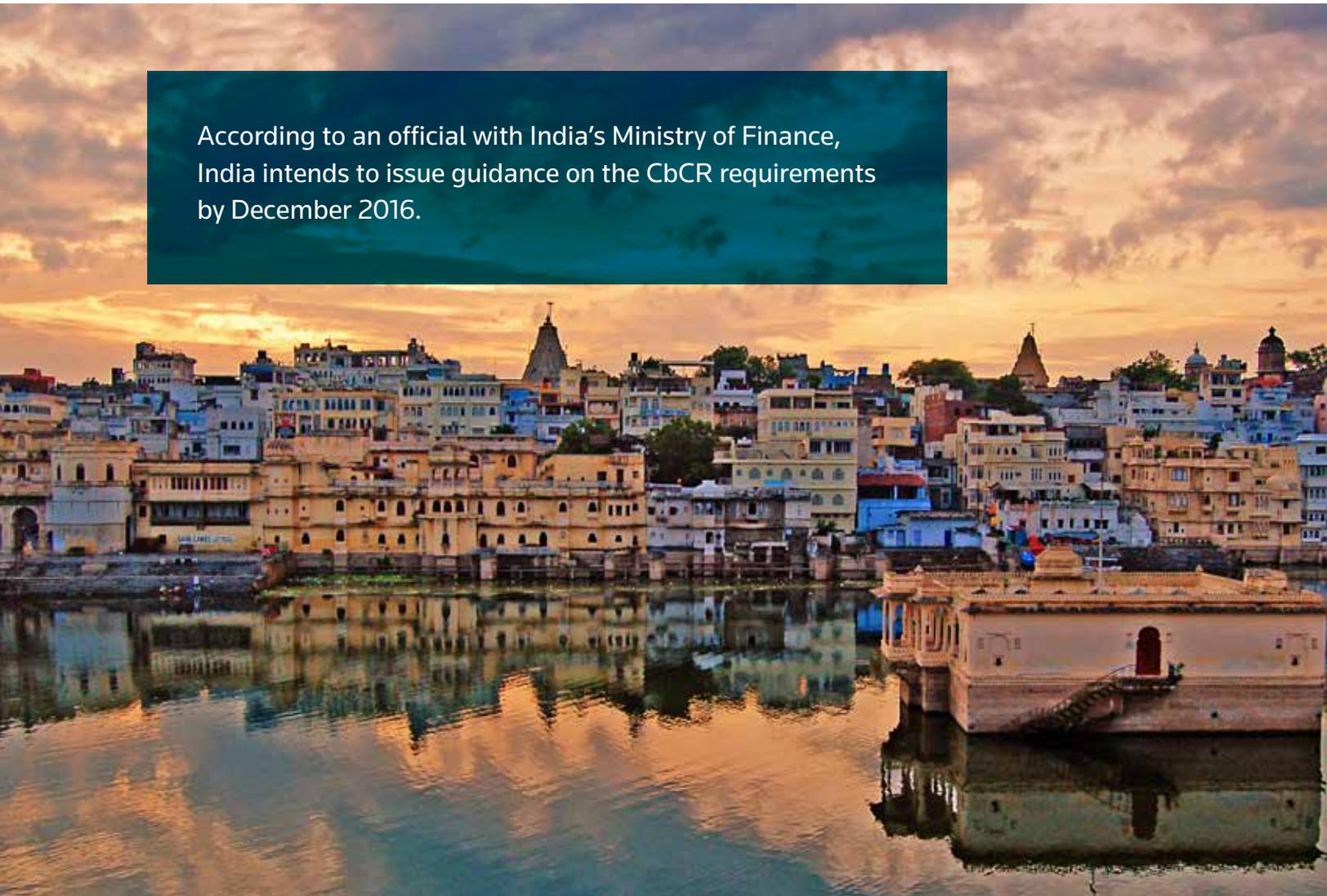
### India

On May 14, 2016, India enacted Finance Act 2016, which introduced CbCR that aligns with the BEPS Action 13 recommendations. Section 113 of Finance Act 2016 added a new Section 286 to the Income Tax Act, 1962 to implement CbCR. The CbC measures will enter into force from April 1, 2017, and will apply starting with the 2017 tax year, one year later than the BEPS Action 13 recommendations.

Finance Act 2016 stated that the Indian tax authorities (CBDT) will issue regulations that set out the form and manner of filing the CbC report, which is to contain “aggregate information in respect of the amount of revenue, profit or loss before income tax, amount of income tax paid, amount of income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets (not including cash or cash equivalents) with regard to each country or territory in which the group operates (Section 286(3)(a)). The CbC report would also require disclosure of “the nature and details of the main business activity or activities of each constituent entity...”

On September 19, 2016, while speaking at a transfer pricing conference in Hong Kong, an official with India’s Ministry of Finance said that India intends to issue guidance on the CbCR requirements by December 2016.

According to an official with India’s Ministry of Finance, India intends to issue guidance on the CbCR requirements by December 2016.





## Ireland

On December 21, 2015, Finance Act 2015 was signed into law, maintaining the CbCR provisions (Section 33) that Ireland’s Minister of Finance proposed on October 22, 2015, that align with the BEPS Action 13 recommendations. However, Finance Act 2015 did not contain any provisions relating to master and local files.

For fiscal years beginning on or after January 1, 2016, an Irish MNE’s ultimate parent entity, which is tax resident in Ireland, will have to file an annual CbC report with the tax authorities when the group’s consolidated revenue is €750 million or more. MNEs will be required to file their report no later than 12 months after the end of the relevant fiscal year.

On January 5, 2016, the Irish tax authorities issued CbCR regulations [Taxes (Country-by-Country Reporting) Regulations 2015], which include the following notification requirements:

- An ultimate parent or surrogate parent entity tax resident in Ireland must notify the tax authorities that it is such an entity by the last day of the fiscal year concerned
- A constituent entity tax resident in Ireland must notify the tax authorities of the identity and jurisdiction of tax residence of the reporting entity by the last day of the fiscal year concerned (if multiple constituent entities, only one is required to notify)

Failure to provide the CbC report or providing an incomplete or inaccurate report will trigger a penalty of €19,045. In some instances, an additional penalty of up to €2,535 may be charged for each day during which the default continues.

On June 23, 2016, Irish Revenue issued frequently asked questions (FAQs), regarding CbCR requirements, addressing the following issues:

- A secondary reporting mechanism is provided by the Irish rules, where the local Irish constituent entity files on behalf of the entire multinational group as a local filer, which is limited to reporting on just the Irish resident entities and their subsidiaries — however, in this instance, the Irish local reporting entity will not be permitted to file EU CbC reports on behalf of the remaining EU entities
- Details about the notification requirement due at the end of the multinational group’s fiscal year end, which will have to be made electronically to Ireland’s tax authorities
- Rules around fiscal years that are less than 12 months, along with rules that apply when a multinational group is purchased during its fiscal year

On October 13, 2016, Irish Revenue issued updated FAQs on the CbCR requirements that address (1) Ireland’s intended treatment of voluntary CbCR filings made in jurisdictions that allow them from January 1, 2016 (e.g., the U.S.), (2) CbCR notifications in Ireland and (3) treatment of investment funds for Irish CbCR purposes.

On October 20, 2016, Ireland’s Minister of Finance issued Finance Bill 2016 to amend the Irish CbCR rules to implement the CbCR requirements introduced in EU Directive 2016/881 on the automatic exchange of CbC reports in the EU and to clarify certain fiscal year calculations for determining CbCR periods.



## Israel

On May 12, 2016, Israel signed the OECD CbC MCAA. On August 12, 2016, the Israeli government approved the Budget Plan for 2017 – 2018 proposed by the Ministry of Finance, which would introduce CbCR and other transfer pricing documentation requirements in proposed section 4. However, the measures do not contain master and local file requirements. The measures have been submitted to the Israel’s legislature (Knesset) for consideration.

The CbCR proposals would apply to multinational groups with consolidated group revenue of at least Israeli Shekel (ILS) 3.4 billion in the preceding fiscal year. The Income Tax Ordinance (ITO) would be amended to authorize Israel’s Ministry of Finance to set the CbCR registration and documentation requirements.



### Italy

On December 30, 2015, Italy introduced CbCR via Articles 145 and 146 of Law No. 208. Effective January 1, 2016, Italian MNEs will have to submit an annual report to the Italian tax authorities indicating the global amount of revenues, gross profit, taxes paid and accrued and other indicators of economic activities, broken down by country. Additional rules regulating the detailed procedural aspects (e.g., the filing date) were to be issued by the Italian Ministry of Economy and Finance within 90 days of January 1, 2016, but they have not yet been issued.

Italian taxpayers subject to the CbCR rules include:

- Italian parent companies of groups that (1) are required to submit group consolidated financial statements, (2) have realized a consolidated annual turnover in the prior year of at least €750 million and (3) are not controlled by any other entities
- Italian-resident companies, controlled by a foreign company, which are required to submit group consolidated financial statements in a country where CbCR does not apply or in a country that does not grant an actual exchange of CbCR information

Article 145 authorizes the Italian tax authorities to levy penalties ranging from €10,000 to €50,000 when there is an omission or incomplete submission of the CbC report. Article 145 also says that the Italian tax authorities will maintain any CbCR information as confidential to the same extent as under the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters.



### Japan

On March 29, 2016, Japan's National Diet (legislature) enacted the 2016 Tax Reform Bill that implemented the three-tiered documentation requirements in the OECD BEPS Action 13 recommendations. The amendments will require annual preparation and filing of a master file and CbC report by the "ultimate parent company" of an MNE group. Existing local file requirements in Article 22-10(1) of the Ordinance for Enforcement of the Act on Special Measures Concerning Taxation of Japan ("ASMT Ministerial Order") were amended to include additional reporting items to align with the BEPS Action 13 recommendations.

The CbC report will contain certain information about the MNE group in the same format as Annex III of the BEPS Action 13 recommendations. Filing of the report will be required in Japan for taxpayers belonging to an MNE group that has consolidated revenues of JPY 100 billion or more in the preceding fiscal year. The report will be required for Japanese parent companies or any Japanese subsidiaries or branches of foreign MNEs for fiscal years beginning on or after April 1, 2016. The submission deadline will be one year following the close of the ultimate parent company's fiscal year to which CbCR relates.

The master file will contain the same general information as in the BEPS Action 13 recommendations for taxpayers belonging to an MNE group with consolidated revenues of JPY 100 billion or more in the preceding fiscal year. However, unlike the CbC report, Japanese subsidiaries or branches of foreign MNEs will have to file the master file with the Japanese tax authorities, who would not otherwise obtain the information through exchange-of-information provisions in Japanese tax treaties.

Because the local file amendments include a contemporaneous preparation requirement, they will be effective for fiscal years beginning on or after April 1, 2017 (as opposed to the April 1, 2016 effective date for CbCR and master file requirements).

On June 30, 2016, Japan's National Tax Agency (NTA) issued updated guidance (original guidance published on April 28, 2016) on the three-tiered transfer pricing documentation requirements. The new guidance included the format of reporting for CbC reports, master files and local files.



### Liechtenstein

On May 3, 2016, Liechtenstein’s tax authority issued a public consultation on implementing the OECD BEPS Action 13 recommendations, among others. Public comments were due by June 17, 2016. The consultation report suggested that Liechtenstein adopt the three-tier standardized documentation requirements in a new Article 49(2) of the Liechtenstein Tax Act. Proposed Article 49(2) of the Act would authorize the government to issue further guidance on the documentation requirements, including its format. On July 12, 2016, the government sent the proposed legislation to Parliament for consideration. If approved, Liechtenstein would adopt the master and local file components.

On July 5, 2016, the Liechtenstein government initiated a separate consultation on the implementation of CbCR, including its automatic exchange with participating countries. The consultation ran until August 2, 2016, and the measures would apply from January 1, 2017, a year later than the OECD-recommended timeline. However, Liechtenstein will accept early voluntary CbC report filings for fiscal years that begin on or after January 1, 2016.

On August 31, 2016, Liechtenstein’s Ministry of Finance issued a press release saying that the government adopted the July 5th CbCR proposals. Liechtenstein-based multinationals with annual consolidated group revenues that exceed CHF 900 million in the preceding fiscal year will have to submit a CbC report to the Liechtenstein tax authorities each year that the threshold amount is met. The CbC report could be filed in German or English. Failure to comply with the CbCR requirements could lead to penalties ranging up to CHF 250,000.

On September 29, 2016, Liechtenstein’s Parliament approved the July 5th proposals (Bill Nos. 99/2016 and 99A/2016) on the OECD CbC MCAA.



### Luxembourg

On August 2, 2016, Luxembourg’s Parliament issued draft Bill No. 7031 that would implement EU Directive 2016/881 regarding the automatic and mandatory exchange of tax information and CbCR for MNEs. The ultimate parent entity of an MNE group that is a Luxembourg tax resident or any other entity reporting under Annex, section II of the draft law, would have to file annually with the Tax Administration a CbC report for the reportable fiscal year. The CbC report would have to be filed for fiscal years beginning on or after January 1, 2016, and the deadline for submission would be 12 months after the last day of the MNE’s relevant fiscal year.

The CbC report would contain the following information on the MNE group (e.g., any group that includes two or more companies the fiscal residence of which is in different jurisdictions or includes an undertaking established in a jurisdiction for tax purposes but that is subject to tax in another jurisdiction in respect of activities carried on through a PE and has total consolidated turnover of at least €750 million (or an equivalent amount in local currency) in the preceding fiscal year:

- Aggregate information on sales, profit (loss) before taxes, taxes paid on profits, income taxes payable, social capital, retained earnings, number of employees and tangible assets excluding cash or cash equivalents for each of the jurisdictions in which the group operates
- Identity of each constituent entity of the MNE group, the tax residence jurisdiction of this constituent entity and, if different from the jurisdiction of tax residence, jurisdiction under the laws of which this entity is organized and the nature of its business or its principal business activities
- Additional information or explanations, if any, to provide a better understanding of the information listed above

Late filing, incomplete or inaccurate information or other cases of non-compliance would subject the reporting entity to a fine of up to €250,000.



## Malaysia

On March 24, 2016, the Malaysian tax authorities (IRB) said during a consultation that the government intends to amend existing master and local file requirements and to introduce CbCR around the middle of 2016 that would likely apply from January 1, 2017. The measures have not yet been proposed. Malaysia was among the 31 countries that signed the OECD CbC MCAA on January 27, 2016.

On May 17, 2016, the IRB announced that it is developing systems to process CbC reports starting in 2017.

On October 25, 2016, Malaysia's Finance Bill 2016 completed its first reading in the House of Representatives. The Bill includes measures that would apply penalties for failing to submit a CbC report to the Malaysian tax authorities.



## Mexico

On November 18, 2015, Mexico published the 2016 Tax Reform, which the Mexican President signed into law on November 13, 2015. It includes transfer pricing documentation requirements in a new Article 76-A of the Income Tax Act that align with the OECD BEPS Action 13 recommendations. The amendments apply from January 1, 2016, with initial CbC reports due by December 31, 2017.

The CbC report will require information on the following indicators of economic activities that are not in the BEPS Action 13 recommendations: Royalties paid and received, interest paid and received and management services paid and received. Local taxpayers will also have to provide certain information on non-resident related parties not otherwise available to Mexico's tax authorities through tax information exchange.

The local and master file requirements will apply to companies with annual revenue in the preceding year exceeding MXN 645 million (to be adjusted annually). The CbCR requirement will apply to Mexican multinational holding companies (or those that are designated by their parent company as responsible for filing the CbC report) with consolidated annual group revenue exceeding MXN 12 billion (approximately €670 million, as of January 1, 2015) in the preceding year.

Failure to file the transfer pricing documentation will disqualify Mexican taxpayers from entering into contracts with the Mexican public sector and will subject taxpayers to fines ranging from MXN 140,540 to MXN 200,090.

On August 29, 2016, the Director of Transfer Pricing Examinations for the Mexican tax authorities (SAT) said during a panel discussion at a conference in Toronto that the SAT intends to use the information obtained under the new documentation requirements for risk-assessment purposes only, in line with the OECD BEPS Action 13 recommendations.

On October 17, 2016, the Mexican Office of the Taxpayer Advocate issued draft administrative rules for public consultation with respect to the new three-tier transfer pricing documentation. Comments are due by November 18, 2016. The draft administrative rules address the method for submission, the specific content that must be included and the filing deadlines.



## Netherlands

On December 22, 2015, the Dutch Parliament approved the Tax Plan 2016 Bill, which implemented the BEPS Action 13 transfer pricing documentation recommendations on CbCR, master and local files. On December 30, 2015, the Dutch Ministry of Finance issued Regulation No. DB/2015/462M, which provides the information required under the three-tiered transfer pricing documentation requirements.

Under the new law, which entered into force on January 1, 2016, master and local file submissions will be required from Dutch entities that are part of an MNE group with consolidated revenue of at least €50 million and a CbC report must be filed by Dutch resident parents of MNE groups with consolidated revenue of at least €750 million. The December 30 regulations allow taxpayers to prepare master and local files in Dutch or English. The CbC report must be prepared in accordance with the model in the regulations and submitted in XML format, which may also be submitted in Dutch or English.

Penalties will be imposed in instances of intentional non-compliance or "serious misconduct" of the reporting entity regarding its obligation to file the CbC report, with a potential maximum penalty in the amount of €20,250, in addition to possible criminal prosecution.



### New Zealand

On May 12, 2016, New Zealand signed the OECD CbC MCAA, thereby signaling its intention to implement CbCR in the future.

On June 27, 2016, several New Zealand ministers released a cabinet paper that explained the OECD BEPS project and outlined New Zealand’s response to date as well as planned work. With respect to BEPS Action 13, paragraph 26(e) of the cabinet paper said that New Zealand will issue legislation to require CbCR in line with the BEPS Action 13 recommendations. New Zealand has not yet issued any such legislation.



### Norway

On May 11, 2016, Norway’s Ministry of Finance submitted Proposal 120 L [Endringer i ligningsloven (land-for-land-rapportering) til skattemyndighetene] to Parliament for consideration, which would require certain large multinational groups to provide a CbC report to the Norwegian tax authorities (IRS), pursuant to a new Section 4-13 in the Tax Administration Act.

The proposed CbCR requirement would apply to Norwegian companies that are part of an MNE group with consolidated annual revenue of NOK 6.5 billion. If the “ultimate parent entity” of the group is resident in Norway, it would be required to file the CbC report. If the ultimate parent entity is not resident in Norway, a local Norwegian subsidiary would be required to file if (1) the parent is not required to submit a report in its jurisdiction of residence, (2) the parent’s jurisdiction of residence has not signed an agreement with Norway for the exchange of the report or (3) Norway is otherwise unable to obtain the report.

The CbC report would be submitted no later than December 31 of the year following the fiscal year at issue. The first report would be submitted no later than December 31, 2017, for the financial year starting January 1, 2016, or later. Secondary reporting would be postponed until fiscal year 2017.

On September 30, 2016, the government issued proposed amendments to the CbCR proposals for public consultation with comments due by November 25, 2016. The amendments would include companies engaged in natural resources and logging industries.



### Poland

On October 27, 2015, Poland enacted amendments to Article 9a of the Corporate Income Tax Act regarding documentation of intercompany transactions that align with the OECD BEPS Action 13 recommendations. The amendments will enter into force on January 1, 2017, except for the CbCR requirements that entered into force from January 1, 2016. The following documentation will be required pursuant to Article 2 of the legislation, subject to the specified thresholds:

- A local file detailing related party transactions and other information of the local entity
- A benchmarking (comparables) study if annual revenue exceeds €10 million in the previous year
- A simplified related-party transactions report attached to the tax return if annual revenue exceeds €10 million in the previous year
- A master file detailing the transfer pricing policy of the group, its organizational structure, business activities, intangibles, etc. if annual revenue exceeds €20 million in the previous year
- A CbC report, where annual consolidated group revenue exceeds €750 million in the previous year — CbC report to be prepared by the parent company of the group and includes an overview of revenue, profits, taxes, employee numbers, etc. for each jurisdiction where the group operates

An exemption from the documentation requirements listed above is available for companies with annual revenue below €2 million.



## Portugal

On March 30, 2016, Portugal enacted its 2016 Budget via Law No. 7-A/2016, which introduces CbCR in line with the OECD BEPS Action 13 minimum standard. However, the 2016 Budget does not address the master and local file requirements in the Action 13 recommendations.

The CbC measures in Article 134 of the 2016 Budget reflect the same measures that the Cabinet presented to Parliament on February 5, 2016, as Draft Law No. 12/XIII. Article 134 of the 2016 Budget amends the Corporate Income Tax Code by adding a new Article 121-A to introduce CbCR for resident entities with annual global consolidated income of at least €750 million for tax years beginning on or after January 1, 2016.

Any entity with a tax presence in Portugal through a legal entity or PE and that is a member of a group in which at least one entity is required to submit a CbC report will have to inform the Portuguese tax authorities of the identity of the reporting entity.

On June 3, 2016, Portugal's unicameral parliament (the Assembly) issued Draft Resolution No. 362-XIII that recommends increased coordination of EU action on tax transparency and in combating tax avoidance.



## Russia

On April 8, 2016, the Ministry of Finance of the Russian Federation presented for public discussion a draft law addressing the preparation and submission of CbC reports. The draft legislation, which amends Part One of the Russian Tax Code, was developed in response to OECD BEPS initiatives and in general, is in line with the BEPS Action 13 minimum standard.

The proposed amendments would require taxpayers who are members of an international group, whose total revenue for the preceding fiscal year was at least RUB 50 billion, to submit annual CbC reports to the Russian tax authorities (FTS).

On September 6, 2016, the Ministry of Finance issued a revised draft of the April 8th legislation that had minor changes to the CbCR measures but which introduced master and local file requirements in line with the BEPS Action 13 recommendations with the same RUB 50 billion filing threshold as for CbCR. The only change to the original CbCR proposals is that taxpayers would have to provide a notice of participation in a multinational group within three months of the end of the group's fiscal year. The master and local files would have to be filed within three months of any request by the FTS and no later than 15 months after the end of the fiscal year at issue.

Failure to submit a CbC report, master or local file or submitting false information would incur a penalty of RUB 100,000.



Russian draft legislation states that failure to submit a CbC report, master or local file — or submitting false information — would incur a penalty of RUB 100,000.



## Singapore

On June 16, 2016, Singapore’s Ministry of Finance announced that it will join the OECD inclusive framework for the global implementation of the BEPS project and that it has committed to implementing the four BEPS minimum standards into its domestic rules, including CbCR. Singapore has committed to implement CbCR for financial years beginning on or after January 1, 2017, for ultimate parent entities of MNEs, in Singapore, where group turnover exceeds S\$1,125 million (approximately €750 million). These enterprises would be required to file annual CbC reports with the Singapore tax authorities (IRAS) within 12 months from the last day of their financial year.

On July 8, 2016, the Ministry of Finance issued a public consultation on the draft Income Tax (Amendment) (No. 3) Bill 2016 that would implement CbCR, with effect from enterprises’ financial years commencing on or after January 1, 2017. Comments on the proposals were due by July 29, 2016.

On October 10, 2016, IRAS released an e-Tax guide on CbCR. The guide provides taxpayers with guidance on the following:

- The purpose of CbCR
- The obligation to provide a CbC report
- How to complete a CbC report
- How to submit a CbC report to IRAS

The October 10th guide says that IRAS is currently developing e-services for receiving and sending CbC reports with a sufficient level of encryption. As the first CbC reports will be required for data for fiscal year 2017 and a Reporting Entity will have 12 months from the end of a financial year to submit the CbC report for that financial year, the earliest CbC report required to be submitted to IRAS would be due by December 31, 2018.



## South Africa

On April 11, 2016, South Africa’s Minister of Finance issued draft CbCR regulations that were open for public consultation through May 3, 2016. The regulations closely align with the BEPS Action 13 minimum standard and would apply for fiscal years beginning on or after January 1, 2016, with initial CbC reports due within 12 months of the last day of the reporting fiscal year but no later than December 31, 2017.

MNE groups with consolidated group revenue of R 10 billion or more in the preceding tax year whose “ultimate parent entity” is in South Africa would be subject to the CbCR requirements; however, MNEs doing business in South Africa whose “ultimate parent entity” is not located in South Africa would be subject to the OECD-recommended €750 million or more CbC consolidated group revenue threshold and would be required to file in South Africa where any of the following are met:

- The ultimate parent is not required to file in its jurisdiction of residence
- The required agreements to exchange CbC reports between the parent’s jurisdiction of residence and South Africa are not in effect by the deadline to file the report in South Africa
- There has been a systemic failure to exchange with the parent’s jurisdiction and South Africa’s tax authorities (SARS) have informed the constituent entity of such failure

SARS has confirmed that the template issued by the OECD should be used for CbCR in South Africa.

The regulations state that the CbC data will only be used by SARS for transfer pricing risk assessment purposes. SARS will not use the data for transfer pricing adjustments. The CbC data will be treated as confidential and will be exchanged with other participating countries in accordance with the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which entered into force in South Africa on March 1, 2014.

The regulations do not address whether any penalties would be levied for failure to comply with the CbC proposals.



### South Korea

On December 15, 2015, South Korea enacted the 2015 Tax Revision Bill, which introduces the master and local file documentation requirements that the Ministry of Strategy and Finance proposed on August 6, 2015. The amendments apply from January 1, 2016. Taxpayers that fail to comply with the documentation requirements will be subject to a penalty of KRW 10 million.

The new master and local file documentation requirements apply to South Korean corporations and foreign corporations with business operations in South Korea that meet both of the following thresholds each fiscal year:

- Cross-border related-party transaction volume that exceeds KRW 50 billion
- Sales revenue that exceeds KRW 100 billion

While the 2015 Tax Revision Bill amendments did not include CbCR requirements, the Ministry of Strategy and Finance published the 2016 Tax Law Amendment Bill on July 28, 2016, introducing CbCR and extending the master and local file filing deadline from three months after the fiscal year to 12 months after the fiscal year end. MNE groups operating in South Korea would need to submit a CbC report for fiscal years beginning on or after January 1, 2016, where they meet a KRW 1 trillion consolidated revenue threshold in the previous year.

The required content of the CbC report would align with BEPS Action 13 recommendations, including aggregate tax information (revenue, taxes paid/accrued, etc.) for each jurisdiction in which the group operates and details of each constituent entity. When required, the CbC report would be due within 12 months following the close of the ultimate parent’s fiscal year and would be exchanged with other jurisdictions with which South Korea has entered into a competent authority agreement for exchange (with the first CbC report due by December 31, 2017).



### Spain

On July 11, 2015, Spain enacted Decree No. 634, which introduced CbCR (Articles 13 and 14) and other transfer pricing documentation requirements (Articles 15 and 16). The documentation amendments entered into force from January 1, 2016. Decree No. 634 closely aligns with the OECD BEPS Action 13 recommendations and requires (as from January 1, 2016) Spanish tax resident entities that are “head” of a group (as defined under the Spanish transfer pricing rules) and that are not a dependent of any other entity with consolidated group revenue of €750 million or more in the preceding tax year to provide a CbC report to the Spanish tax authorities.

The information in the report should be denominated in the local currency of each jurisdiction. It must be completed within a 12-month period from the close of the fiscal year to which the CbCR relates (e.g., companies with a fiscal year ending December 31, 2016, would be required to file the report by December 31, 2017).

The CbCR regulations also require Spanish companies belonging to reporting groups to notify the Spanish tax authorities before the reporting fiscal year end of the name and tax residence of the company within the group filing the CbC report.

Articles 15 and 16 of Decree No. 634 requires taxpayers belonging to groups with an aggregate net turnover of €45 million or more in the preceding year to submit a master file and local file.

There are no penalty provisions in Decree No. 634 for failure to file the CbC report with Spain’s tax authorities. Decree No. 634 also does not address the use and confidentiality of the CbCR information by Spain’s tax authorities.



## Sweden

On December 23, 2015, the Swedish tax authority (Skatteverket) released guidance saying that the government tasked it in November 2015 with developing proposed amendments to the transfer pricing documentation rules so that they align with the OECD BEPS Action 13 minimum standard on implementing CbCR. The guidance did not address master and local files. The CbCR proposals are expected to enter into force from January 1, 2017, and apply retroactively for fiscal years beginning on or after January 1, 2016.

Because several countries will have CbCR enacted from January 1, 2016, the Skatteverket said in its December 23, 2015, guidance that Swedish MNEs should anticipate having to file CbC reports in other countries before the expected Swedish regime enters into force.

On April 29, 2016, the Skatteverket sent draft proposals to the Ministry of Finance to implement the three-tiered transfer pricing documentation requirements included in the BEPS Action 13 recommendations. The proposed CbCR requirements would apply for fiscal years beginning on or after January 1, 2016, for MNE groups with consolidated revenue exceeding SEK 7 billion in the previous year and would align with the BEPS Action 13 recommendations as to content. The master and local file requirements would apply for multinational groups with (1) 250 or more employees and (2) consolidated revenue exceeding SEK 450 million (or a balance sheet total exceeding SEK 400 million) in the previous fiscal year.

On September 20, 2016, the government submitted its 2017 Budget proposals to Parliament (Riksdagen), which address implementation of CbCR. The Budget proposals say the government intends to issue proposed CbCR legislation in 2016.



## Switzerland

On April 13, 2016, Switzerland's Federal Council initiated a consultation on the OECD CbC MCAA that the government signed with 30 other countries on January 27, 2016. The CbC MCAA legislation has not yet been submitted to the Swiss Federal Assembly for consideration and the consultation ran through July 13, 2016, which included an explanatory report, proposed CbCR legislation, proposed CbC MCAA legislation and a supporting letter by the Federal Council.

The CbCR legislation generally aligns with the BEPS Action 13 recommendations but it does not propose to adopt master and local filing. The CbC report would be filed in English, German, French or Italian within 12 months following the end of the reporting period. Penalties for non-compliance would amount up to CHF 250,000.

The corresponding April 13, 2016, press release stated that CbCR will likely enter into force in Switzerland in 2018, with the first automatic exchange of CbC information to take place in 2020. However, taxpayers would be permitted to voluntarily file CbC reports before 2018, which Switzerland would then transmit to other participating countries, while maintaining confidentiality of the CbC data.



### Turkey

On March 16, 2016, the Turkish Revenue Administration issued draft General Communiqué No. 3 (the “Communiqué”) that, once finalized, would expand certain legal requirements and would introduce new transfer pricing documentation rules that generally follow the OECD BEPS Action 13 recommendations and provide for CbCR. Turkey has not yet adopted the Communiqué proposals.

Under proposed Section 7.1.3 of the Communiqué, ultimate parent companies that are tax residents of Turkey and have a minimum consolidated turnover of TRY 2.37 billion in 2016 would be required to prepare and provide a CbC report in 2017. Starting with the 2017 fiscal year, the CbCR threshold would be set at the Turkish Lira equivalent of €750 million based on the January average of the foreign exchange rate announced by the Central Bank of Turkey for the previous year. If the fiscal year of the group begins on January 1, 2016, the corporate group will need to file the CbC report by December 31, 2017.

Under proposed Section 7.1.2 of the Communiqué, all group entities that are tax residents in Turkey would be required to prepare a local file for transactions exceeding TRY 30,000. Companies with a turnover and minimum asset value at the end of the previous fiscal year of TRY 100 million would be required to submit a form providing detailed information regarding related parties and related-party transactions.

Under proposed Section 7.1.1 of the Communiqué, companies that are part of a multinational group having (1) an asset value of a minimum of TRY 250 million at the close of the previous fiscal year and (2) a turnover of TRY 250 million or more would be required to prepare the master file by the end of the second month following the due date for filing the corporate income tax return. The master file would include five categories: (1) Organizational structure, (2) definition of business operations, (3) intangible assets, (4) intra-group financial transactions and (5) tax and financial status of the group.



### United Kingdom

On February 26, 2016, the U.K. issued the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016, which implemented CbCR. The final regulations follow the public technical consultation that ran through November 16, 2015. The final regulations do not contain master and local file requirements since HMRC said that it can receive this information under its existing administrative powers. The final regulations entered into force on March 18, 2016, and apply for fiscal years beginning on or after January 1, 2016.

Multinationals with parent entities resident in the U.K. and with consolidated group revenue of €750 million or more in a 12-month accounting period (reduced proportionately for periods of less than 12 months), will be obligated to submit an annual CbC report to HMRC for the next tax period. The final regulations say that HMRC will issue guidance (not yet issued) on the specific information to be included in the report.

HMRC may issue fixed penalties (£300) if the ultimate parent fails to file the CbC report (or if the reporting entity fails to provide information on time). If the failure continues after fixed penalties are assessed, daily penalties not exceeding £60 a day would accrue automatically. HMRC will also be permitted to issue fixed penalties (up to £3000) for inaccurate reports, if the person filing the report knew of the inaccuracy when filing the report or later discovered the inaccuracy and failed to take steps to notify HMRC. HMRC may ignore any arrangements entered into for the purpose of avoiding any obligations under the final regulations.

On September 5, 2016, U.K. MPs approved, without division, Amendment 145 to the Finance (No. 2) Bill 2016 relating to public CbCR of taxes paid by multinationals. The amendment would give HM Treasury the power to require groups to publish, as part of their tax strategy disclosures, a CbC report showing their profits, taxes paid and other financial information for the countries in which they operate. The amendment itself does not require public disclosure of CbC reports but would allow HM Treasury to issue regulations for the requirement.



## CONCLUSION

The OECD BEPS project has put transfer pricing in the spotlight with active involvement by governments, tax authorities and businesses around the globe. More and more governments are implementing some form of the BEPS Action 13 recommendations in their domestic legislation. Going forward, jurisdictions will need to continue to balance the need for transparency against compliance burdens and confidentiality concerns for businesses. There will likely be an increase in cross-border disputes, which will require timely and efficient dispute resolution. MNEs should begin collecting and compiling data to populate the CbC reports and ensure that they satisfy individual country deadlines.

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