

BEPS Action 13  
Country-by-Country Reporting  
**HANDBOOK ON EFFECTIVE  
IMPLEMENTATION**

# Country-by-Country Reporting

## Handbook on Effective Implementation

September 2017

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## *Preface*

Next year will be the first time that tax authorities around the world will receive information on large MNE groups with operations in their country, breaking down a group's revenue, profits, tax and other attributes by tax jurisdiction. This information has never previously been available to tax authorities and represents a great opportunity for tax authorities to understand the structure of a group's business in a way that has not been possible before.

Country-by-Country Reporting (CbC Reporting) is one of the four minimum standards of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project to which over 100 countries have committed, covering the tax residence jurisdictions of nearly all large MNE groups. And the pace of implementation of CbC Reporting is impressive. As of today, more than 55 jurisdictions have already implemented an obligation for relevant MNEs to file CbC Reports. Jurisdictions have also moved quickly to ensure that CbCRs can be exchanged between tax administrations. To date, 65 jurisdictions have signed the Multilateral Competent Authority Agreement and some jurisdictions have entered into bilateral Competent Authority Agreements to operationalise the exchange of CbCRs with specific jurisdictions. With nine months to go until the first CbC Reports are exchanged, over 1 000 exchange relationships between pairs of jurisdictions have already been created.

The onus is now put on tax authorities to develop and implement solutions for the collection and handling of CbC Reports and to make effective and appropriate use of the information they contain. The Canada Revenue Agency, in the context of the OECD Forum on Tax Administration, has sponsored work on two new handbooks, to support countries in the effective implementation of CbC Reporting and on the use of the information contained in CbC Reports for the purposes of tax risk assessment.

The *Country-by-Country Reporting: Handbook on Effective Implementation* is a practical guide to the key elements that countries need to keep in mind when introducing CbC Reporting, including technical issues related to the filing, exchange and use of CbC Reports, as well as practical matters that tax authorities will need to deal with.

Following implementation of CbC Reporting, a tax authority will then need to start using the information they receive, either from a group directly or from a foreign tax authority. The *Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment* explores how this can be done, taking into account the different approaches to tax risk assessment applied in different countries, the types of tax risk indicator that may be identified using information contained in CbC Reports, and the challenges that may be faced by tax authorities and that they need to be aware of. It shows that CbC Reports can be a very important tool for the detection and identification of transfer pricing risk and other BEPS-related risk in the hands of a tax administration, used alongside other information that it holds and as a basis for further enquiries, but also raises cautions about

the risk that simplistic and misleading conclusions may be drawn if CbC Reports are used in isolation.

These two handbooks will provide valuable support to countries introducing CbC Reporting and using the information they receive, but we do not see these handbooks as permanent, static tools. As time passes, tax authorities will gain in experience in collecting, handling and using CbC Reports and each of the handbooks will be updated periodically, to ensure that tax authorities in all countries can benefit from this experience.

Bob Hamilton

Commissioner of the Canada Revenue Agency

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## Abbreviations and acronyms

<b>BEPS</b>	Base erosion and profit shifting
<b>CAA</b>	Competent authority agreement
<b>CbC</b>	Country-by-Country
<b>CbCR</b>	Country-by-Country Reporting
<b>CCN</b>	Common Communications Network
<b>CTS</b>	Common Transmission System
<b>DTC</b>	Double tax convention
<b>EU</b>	European Union
<b>MCAA</b>	Multilateral competent authority agreement
<b>MNE</b>	Multinational enterprise
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>TIEA</b>	Tax information exchange agreement
<b>UPE</b>	Ultimate parent entity
<b>XML</b>	Extensible Markup Language



## *Chapter 1*

### **Introduction and background**

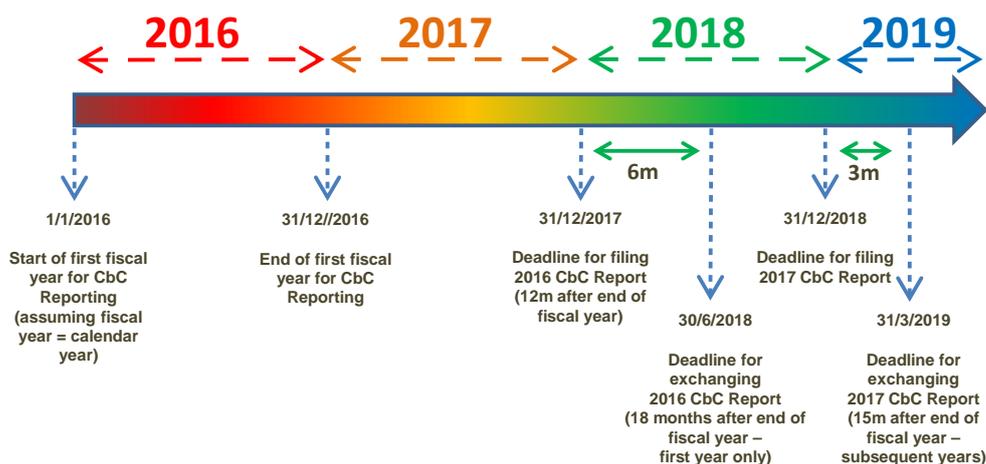
1. The *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report* (Action 13 Report, OECD 2015) introduced a standardised three-tiered approach to transfer pricing documentation for multinational enterprises (MNEs) consisting of a master file, a local file, and an obligation on certain MNE groups to annually file a Country-by-Country Report (CbC Report). A group's CbC Report contains information on the group's global activities and financial attributes by tax jurisdiction, presented in a consistent format.
2. As one of the four minimum standards under the BEPS Action Plan, jurisdictions implementing Country-by-Country reporting (CbC Reporting) will be subject to peer review by all members of the Inclusive Framework. This peer review will be phased in over a three-year period, beginning in 2017 with a review focusing in particular on the legal and administrative framework for CbC Reporting.

#### **A high level overview of CbC Reporting**

3. In general, the ultimate parent entity (UPE) of an MNE group should prepare a CbC Report for each fiscal year of the group commencing on or after 1 January 2016 and file the report within 12 months of the end of the fiscal year with the tax authority in the jurisdiction where it is tax resident. An exception from this general rule applies where the MNE group had total consolidated revenues of less than EUR 750 million in the immediately preceding fiscal period (or the near equivalent in a jurisdiction's domestic currency as of January 2015). It is expected that this threshold should exclude between 85% and 90% of MNE groups from the scope of CbC Reporting.
4. The CbC Report filed by an MNE group includes three tables which contain information on the global activities and financial characteristics of the group.
  - Table 1 sets out the global allocation by tax jurisdiction of an MNE group's third party revenues, related party revenues, profit before tax, tax paid, tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets.
  - Table 2 lists all constituent entities of the MNE group by tax jurisdiction, together with their main business activities.
  - Table 3 allows for the provision of additional information by the MNE group in the form of free text to facilitate the understanding of the information contained in Tables 1 and 2.
5. A model template (CbC Template) for each of these tables has been incorporated into Chapter V of the *OECD Transfer Pricing Guidelines* (OECD, 2017a), which also includes general instructions concerning the definition of key terms used in the template,

the period covered by the template, the sources of data used for completing the template, and specific instructions for the completion of Tables 1 and 2. The CbC Template and instructions should also be read in light of subsequent interpretive guidance provided by the OECD.<sup>1</sup>

6. A CbC Report filed by the UPE of an MNE group with the tax authority in its residence jurisdiction must be exchanged with the tax authorities in other jurisdictions where a member of the MNE group is either a resident for tax purposes or is subject to tax with respect to a business carried on through a permanent establishment, subject to conditions governing the confidentiality, consistency and the appropriate use of the information contained in the CbC Report. The exchange of CbC Reports is carried out under the terms of an international agreement which permits automatic exchange of information<sup>2</sup> and a competent authority agreement (CAA) which sets out the operational details of the exchange. In the first year of CbC Reporting, the exchange should take place within 18 months of the end of the group's reporting fiscal year. In subsequent years the deadline is shortened to 15 months after the end of a group's reporting fiscal year. This is shown in the diagram below, which assumes CbC Reporting commences for reporting fiscal years beginning on 1 January 2016, and an MNE group with a calendar fiscal year.



7. It is intended that an MNE group should only be required to file a CbC Report once for each reporting fiscal year, in the jurisdiction of its UPE. However, there may be cases where a constituent entity (i.e. an entity within the MNE group) that is not the UPE may be required to file the CbC Report directly with its local tax authority (local filing) but only if one or more of the following conditions have been met:

<sup>1</sup> The Guidance (*Guidance on the Implementation of Country-by-Country Reporting*, OECD, 2017b), which is updated periodically, is available on the OECD website at: [www.oecd.org/ctp/exchange-of-tax-information/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.htm](http://www.oecd.org/ctp/exchange-of-tax-information/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.htm).

<sup>2</sup> As described in Chapter 3 of this handbook, an international agreement which permits automatic exchange of information may be one of the following: the *Convention on Mutual Administrative Assistance in Tax Matters* (OECD, 2011); a bilateral tax convention which includes an exchange of information article based on Article 26 of the OECD Model Convention; or a tax information exchange agreement which permits the automatic exchange of information.

- there is no obligation on the UPE to file a CbC Report in its residence jurisdiction
  - there is an international agreement permitting the automatic exchange of information between the jurisdictions of the UPE and the constituent entity but there is no competent authority agreement in effect providing for the automatic exchange of CbC Reports
  - there has been a systemic failure by the residence jurisdiction of the UPE to exchange CbC Reports that has been notified to the constituent entity by the local tax authority.
8. To avoid local filing and ensure that an MNE group is able to file a CbC Report in just one jurisdiction, some jurisdictions allow for surrogate entity filing. In this case, one of the following two scenarios will apply.
- A constituent entity in the group that is not the UPE (known as a surrogate parent entity) will file a CbC Report with the tax authority in the jurisdiction where it is resident, and this tax authority will exchange the CbC Report with other jurisdictions where a constituent entity of the MNE group is a tax resident or is subject to tax in the other jurisdiction with respect to a business carried on through a permanent establishment and with which the jurisdiction has both an international agreement which permits the automatic exchange of information and a CAA for the exchange of CbC Reports.
  - An entity that is the UPE of a group, which is resident in a jurisdiction that does not require CbC Reporting for the relevant reporting fiscal period, may be permitted to file a CbC Report as a parent surrogate entity with the tax authority in its residence jurisdiction (known as parent surrogate filing). The tax authority will exchange the CbC Report with other jurisdictions where a constituent entity of the MNE group is a tax resident or is subject to tax with respect to a business carried on through a permanent establishment and with which the jurisdiction has both an international agreement which permits the automatic exchange of information and a CAA for the exchange of CbC Reports.
9. The Action 13 minimum standard permits the use of the information contained in CbC Reports for high-level transfer pricing risk assessment, the assessment of other BEPS-related risks and, where appropriate, for economic and statistical analysis. As such, CbC Reports will provide tax authorities with a powerful tool that can be used alongside the master file, local file, and other information, such as internal and external data, and the audit history of an MNE group, to identify taxpayers and arrangements that pose a potential tax risk. In this respect, CbC Reports provide tax authorities with an opportunity to better understand how local entities fit within their MNE group and to direct resources towards the higher risk taxpayers.

### ***The Country-by-Country Reporting: Handbook on Effective Implementation***

10. Developed by the OECD Forum on Tax Administration, this *Country-by-Country Reporting: Handbook on Effective Implementation* (OECD, 2017) is sponsored by Canada to assist jurisdictions in implementing the Action 13 minimum standard. It contains the following chapters and annex.

- Chapter 1 contains a high-level overview of CbC Reporting, including a timeline for the filing and exchange of CbC Reports. It introduces the CbC Report as a tool

for use by tax authorities, along with other information, in performing risk assessment.

- Chapter 2 describes the necessary and optional elements of a jurisdiction's framework for the filing and use of CbC Reports. These elements are largely derived from the model legislation contained in the Country-by-Country Reporting Implementation Package (Implementation Package) contained in the Action 13 Report (OECD, 2015). In particular, this chapter describes the framework that a tax authority should have in place to guard against the inappropriate use of the information in CbC Reports. It also discusses the filing of CbC Reports by surrogate entities and the conditions under which a jurisdiction may, consistent with the minimum standard, impose local filing.
  - Chapter 3 explores the elements of the legal framework for the exchange of CbC Reports with reference to the model competent authority agreements included in the Implementation Package. In particular, this chapter looks at the *Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports*, designed by the OECD to facilitate the establishment of effective exchange relationships between a large number of jurisdictions.
  - Chapter 4 looks at the elements of an effective operational framework for the filing and exchange of CbC Reports. Among other topics, this chapter discusses the notification requirements that can assist a tax authority in anticipating which CbC Reports will be received directly from reporting entities and which should be received indirectly from foreign tax authorities, the imposition of sanctions on MNE groups for failures to comply with CbC Reporting requirements, the XML schema developed for CbC Reporting to ensure that CbC Reports are exchanged in a standardised format, and the Common Transmission System that was created to provide for the secure, confidential transmission of CbC Reports between jurisdictions.
  - Chapter 5 discusses the benefits of providing guidance on CbC Reporting and obtaining input from key stakeholders. It also discusses the importance of training. It is noted that training should not only be provided to staff engaged in the risk assessment process but also to tax compliance and competent authority personnel.
  - The annex to the handbook includes a copy of the *Country-by-Country Reporting: Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports* (OECD, 2017), which is also available as a standalone publication. The ability of a jurisdiction to obtain and use CbC Reports is conditional upon it using CbCR information appropriately, in accordance with the minimum standard. This guidance considers the meaning of "appropriate use", the consequences of non-compliance with the appropriate use condition and approaches that may be used by tax authorities to ensure the appropriate use of CbCR information,
11. This handbook is supplemented by practical materials on CbC Reporting held on an OECD *Clearspace* site (CbCR *Clearspace*) and accessible by relevant government officials in jurisdictions that are members of the Inclusive Framework. This site will facilitate the sharing of information and resources, such as examples of guidance and training materials relevant to the implementation and administration of CbC Reporting. A selection of these materials will also be posted on the Knowledge Sharing Platform as

part of the Forum on Tax Administration’s commitment to support capacity building efforts. The Knowledge Sharing Platform is a global online resource intended to facilitate knowledge sharing and the development of expertise among tax authorities.

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## *Chapter 2*

### **The filing and use of CbC Reports**

12. The first step in implementing CbC Reporting is having a legal and administrative framework in place that requires certain MNE groups to file CbC Reports in accordance with the Action 13 minimum standard and ensures the confidentiality, consistency and appropriate use of the information contained in those reports. To assist jurisdictions in putting such a framework in place, the Action 13 Report (OECD, 2015) includes an Implementation Package that contains model legislation that jurisdictions may use, as modified to take into account specific features of their tax and legal systems. There is no obligation on jurisdictions to use the model legislation, but adopting the basic provisions found therein should ensure that the main elements are covered. Links to the domestic legislation of several jurisdictions that have already implemented CbC Reporting have been posted on the CbCR *Clearspace* site.

13. To meet the Action 13 minimum standard, a jurisdiction must adopt a legal and administrative framework that includes a number of key elements. There are also some optional elements that may be included in some cases, subject to conditions.

#### **Required elements for the filing and use of CbC Reports**

14. To ensure that it meets the Action 13 minimum standard, a jurisdiction should have in place a legal and administrative framework that includes the following elements relevant to the filing and use of CbC Reports:

- the definition of an MNE group, and which MNE groups are subject to CbC Reporting
- the definition of a reporting entity
- the definition of a reporting fiscal year
- the determination of the first reporting fiscal year
- the format and content of a CbC Report
- the timing for filing
- the appropriate use of CbC Reports
- the confidentiality of CbC Reports.

#### ***The definition of an MNE group, and which groups are subject to CbC Reporting***

15. CbC Reporting applies to entities in certain MNE groups. For this purpose, a group means a collection of enterprises related through ownership or control, that it is

either required to prepare consolidated financial statements under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange. An MNE group is any group which includes two or more enterprises resident in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to a business carried out through a permanent establishment in another jurisdiction.

16. The CbC Reporting requirements are directed at the largest MNE groups which control approximately 90% of corporate revenues and which pose the greatest potential BEPS risk. To limit the reporting burden to the largest MNE groups, a jurisdiction should exempt from the reporting requirement all MNE groups with total consolidated group revenue in the immediately preceding fiscal year of less than EUR 750 million (or near equivalent in the jurisdiction's domestic currency as of January 2015). The exemption is expected to exclude approximately 85% to 90% of MNE groups from the reporting requirements and achieves a balance between the reporting burden and the benefit to tax authorities.

### ***The definition of a reporting entity***

17. The reporting entity for an MNE group is the entity within the group that is required to file a CbC Report on behalf of the group. A CbC Report should be filed by the UPE of the MNE group in its jurisdiction of tax residence. This will generally be the entity at the top of the ownership chain which is required to prepare consolidated financial statements in its jurisdiction of residence, or would be so required, if its equity interests were traded on a public securities exchange in that jurisdiction.

18. The Action 13 Report (OECD, 2015) also provides that other entities in a group may be permitted or required to file CbC Reports in specific circumstances. Surrogate entity filing and constituent entity filing (also known as local filing) are optional elements of CbC Reporting considered below.

### ***The definition of a reporting fiscal year***

19. The reporting entity for an MNE group should prepare its CbC Report based on its fiscal year, which is the annual accounting period with respect to which the UPE of the group prepares its financial statements.

### ***The determination of the first reporting fiscal year***

20. CbC Reporting should apply with respect to all fiscal years beginning on or after 1 January 2016. It is acknowledged that some jurisdictions may need time to follow their particular domestic legislative process to enact the reporting requirements, which may mean a later commencement date is necessary.

21. If a jurisdiction is unable to apply CbC Reporting to all fiscal years beginning on or after 1 January 2016 (e.g. because to do so would mean applying the rule retrospectively, which may not be permitted), the first reporting fiscal year should be the earliest fiscal year permitted by its domestic law.

### ***The format and content of a CbC Report***

22. The CbC Reports of all MNE groups should be prepared in a consistent format, applying definitions and instructions contained in the CbC Template in Annex III to Chapter V of the *OECD Transfer Pricing Guidelines* (OECD, 2017a).

23. The CbC Report should contain the following information:

- aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents, with regard to each tax jurisdiction in which the MNE group operates
- an identification of each constituent entity of the MNE group setting out the jurisdiction of tax residence of such constituent entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such constituent entity is organised, and the nature of the main business activity or activities of such constituent entity.

### ***The timing for filing CbC Reports***

24. To ensure that financial data required for the completion of an MNE group's CbC Report is available, the deadline for filing a CbC Report may be up to 12 months after the last day of the group's reporting fiscal year. An earlier filing deadline (e.g. aligned with the tax reporting filing deadline in the jurisdiction) is not prohibited, but it is not recommended.

### ***The appropriate use of CbC Reports***

25. The Action 13 Report (OECD, 2015) provides that the information contained in a CbC Report can be used only for high-level transfer pricing risk assessment, the assessment of other BEPS-related risks, and, where appropriate, for economic and statistical analysis. The information cannot, under the minimum standard, be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and full comparability analysis. The information contained in a CbC Report cannot be used on its own, as conclusive evidence that transfer prices are, or are not, appropriate, or be used to make adjustments to the income of any taxpayer on the basis of an allocation formula. The standard also imposes an obligation on a jurisdiction that makes an adjustment to the income of any taxpayer in contravention of these conditions to promptly concede such adjustment in any competent authority proceedings. This does not imply, however, that jurisdictions would be prevented from using a CbC Report as a basis for making further inquiries into the transfer pricing arrangements within an MNE group or into other tax matters in the course of a tax audit.

26. In addition to any legal restrictions on the use of the information contained in CbC Reports in its domestic law and in the applicable international agreement under which the CbC Report is exchanged, a jurisdiction should have a framework in place to ensure that such information is used appropriately, as provided in the Action 13 Report (OECD, 2015). While a jurisdiction must adopt measures to ensure compliance with the appropriate use condition, the minimum standard does not prescribe the specific measures that should be used. The development of such measures is discussed in detail in the OECD publication, *Country-by-Country Reporting: Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports* (the appropriate use guidance), which recommends that a jurisdiction should ensure it can answer yes to the following six questions.

1. Do the multilateral and/or bilateral CAAs concerning CbC Reporting signed by your jurisdiction include the appropriate use of information

- contained in CbC Reports as a condition of obtaining and using CbC Reports?
2. Does your tax authority have a clear written policy in place governing the use of CbC Reports, including guidance on appropriate use?
  3. Is this policy effectively communicated to all staff likely to have access to CbC Reports in the course of their work?
  4. Is the use of CbC Reports controlled or monitored to ensure appropriate use, which may include:
    - i. imposing restrictions on access to CbC Reports, and/or
    - ii. ensuring that appropriate use is adequately evidenced?
  5. Is guidance or training provided to appropriate tax authority staff in your jurisdiction that clearly sets out their commitments:
    - i. to notify the Co-ordinating Body Secretariat or other competent authority immediately of any cases of non-compliance with the appropriate use condition; and
    - ii. to promptly concede, any competent authority proceeding that involves a tax adjustment using an income allocation formula based on CbCR information?
  6. Are there measures in place to ensure controls are reviewed and updated as required?

27. Some of these requirements may be met using measures which already exist and can be extended to cover CbC Reports (e.g. controls over the existing risk assessment process, controls over use of information received under treaty, or reviews of transfer pricing adjustments). Where a jurisdiction is currently unable to answer yes to one or more of the above questions, it should consider what steps are needed to enable it to do so. Non-exhaustive examples of different approaches are described in the appropriate use guidance.

28. The appropriate use guidance also contains a discussion of the meaning of “BEPS-related risks”. In summary, the guidance states that the term should be understood to refer to the high level assessment of tax risks that may result in the erosion of a jurisdiction’s tax base. For a discussion of the use of the information contained in CbC Reports to identify BEPS-related risks, reference should be made to the appropriate use guidance as well as to the OECD *Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment* (OECD, 2017).

### ***The confidentiality of CbC Reports***

29. Jurisdictions must apply and enforce legal protections to enforce the confidentiality of CbC Reports under domestic law and under the applicable international agreement under which the CbC Reports are exchanged, as well as to an extent at least equivalent to the internationally agreed standard for automatic exchange of information. Detailed guidance on steps to ensure the confidentiality of information exchanged automatically is described in the Commentary on Section 5 of the Model Competent

Authority Agreement and Common Reporting Standard.<sup>3</sup> The Implementation Package in the Action 13 Report (OECD, 2015) includes a Confidentiality and Data Safeguards Questionnaire, which will be used in the CbC Reporting peer review process to assess a jurisdiction's ability to ensure the required level of confidentiality and data safeguards of the information contained in CbC Reports.

### Optional elements for the filing of CbC Reports

30. In addition to the compulsory elements of the minimum standard described above, the Action 13 Report (OECD, 2015) includes a number of optional elements that jurisdictions may consider. These optional elements are:

- surrogate entity filing
- local filing
- notification requirements.

#### *Surrogate entity filing*

31. One of the aims of the Action 13 minimum standard is to ensure that an MNE group is able to file a CbC Report with the tax authority in one jurisdiction. This tax authority then exchanges the CbC Report with tax authorities in other jurisdictions where the group has constituent entities and with which the jurisdiction has an international agreement which permits the automatic exchange of information and has a CAA for the exchange of CbC Reports, subject to conditions. In most cases, it is expected that an MNE group will file its CbC Report in the jurisdiction of its UPE. However, as described below, there are limited scenarios where a jurisdiction may require local filing by a constituent entity of the group that is not the UPE.

32. To minimise local filing and protect the ability of an MNE group to file a CbC Report in just one jurisdiction, some jurisdictions permit the filing of the CbC Report by a surrogate entity on behalf of the MNE group. This may take either of two forms. In the first form, a jurisdiction which is not the jurisdiction of the group's UPE permits the filing of a CbC Report by a resident constituent entity of the group (referred to as a surrogate parent entity) with its tax authority. In the second form (referred to as parent surrogate filing), the jurisdiction of the UPE of a group permits the UPE to file a CbC Report with its tax authority on a voluntary basis, in circumstances where UPE filing is not required (e.g. because an obligation to file CbC Reports is being introduced but does not apply to the relevant reporting fiscal period). In both cases, the tax authority with which the surrogate entity files the CbC Report will exchange this report with the tax authorities in other jurisdictions where a constituent entity of the MNE group is either a resident for tax purposes or is subject to tax with respect to a business carried out through a permanent establishment and where there is an international agreement with the other jurisdiction that permits the automatic exchange of information and a CAA in effect.

33. There is no obligation under the minimum standard for a jurisdiction to allow a surrogate entity to file CbC Reports with its tax authority. Where a jurisdiction allows surrogate entity filing, the other required elements of the minimum standard (e.g. the content of CbC Reports and the timing of filing) should be applied to those reports in the same way as to CbC Reports filed by UPEs resident in that jurisdiction.

<sup>3</sup> [www.oecd.org/tax/automatic-exchange/common-reporting-standard](http://www.oecd.org/tax/automatic-exchange/common-reporting-standard).

34. A tax authority should not distinguish between CbC Reports received through exchange with another jurisdiction based on whether those reports were filed in the other jurisdiction by the UPE or by a surrogate entity. For example, local filing cannot be required under the minimum standard where the CbC Report for the MNE group has been exchanged by the jurisdiction in which the surrogate entity filed the report.

### ***Local filing***

35. The tax authority in the jurisdiction where the UPE or surrogate entity of an MNE group is resident will receive the group's CbC Report directly from that UPE or surrogate. Tax authorities in other jurisdictions where the group has constituent entities will receive the CbC Report under automatic exchange of information, subject to conditions described in Chapter 3. The Action 13 Report (OECD, 2015) provides that a constituent entity of the MNE group (other than the UPE or a surrogate entity) may be required to file a CbC Report directly with the tax authority in its residence jurisdiction but only where one or more of the following applies.

- The UPE of the group is not obligated to file a CbC Report in its residence jurisdiction.
- The residence jurisdiction of the UPE has an international agreement which permits automatic exchange of information with the local jurisdiction, but there is no CAA in effect between these jurisdictions by the time for filing the CbC Report.
- There is an international agreement and a CAA in effect between the jurisdiction of the UPE and the local jurisdiction, but the jurisdiction of the UPE has suspended automatic exchange (for reasons other than those permitted under that agreement) or has otherwise persistently failed to automatically provide CbC Reports to the local jurisdiction in accordance with the minimum standard (i.e. a systemic failure) that has been notified to the constituent entity by its tax authority.

36. However, it is intended that local filing will not be required where a CbC Report has been filed, on behalf of the MNE group, by a surrogate entity and provided certain conditions are met. The surrogate entity could be a constituent entity of the MNE group acting as a substitute for the UPE, or the UPE acting in its capacity as a parent surrogate entity (i.e. voluntary filing). Thus, even if one or more of the conditions described in paragraph 35 apply, the minimum standard provides that local filing cannot be required where the following conditions are met.

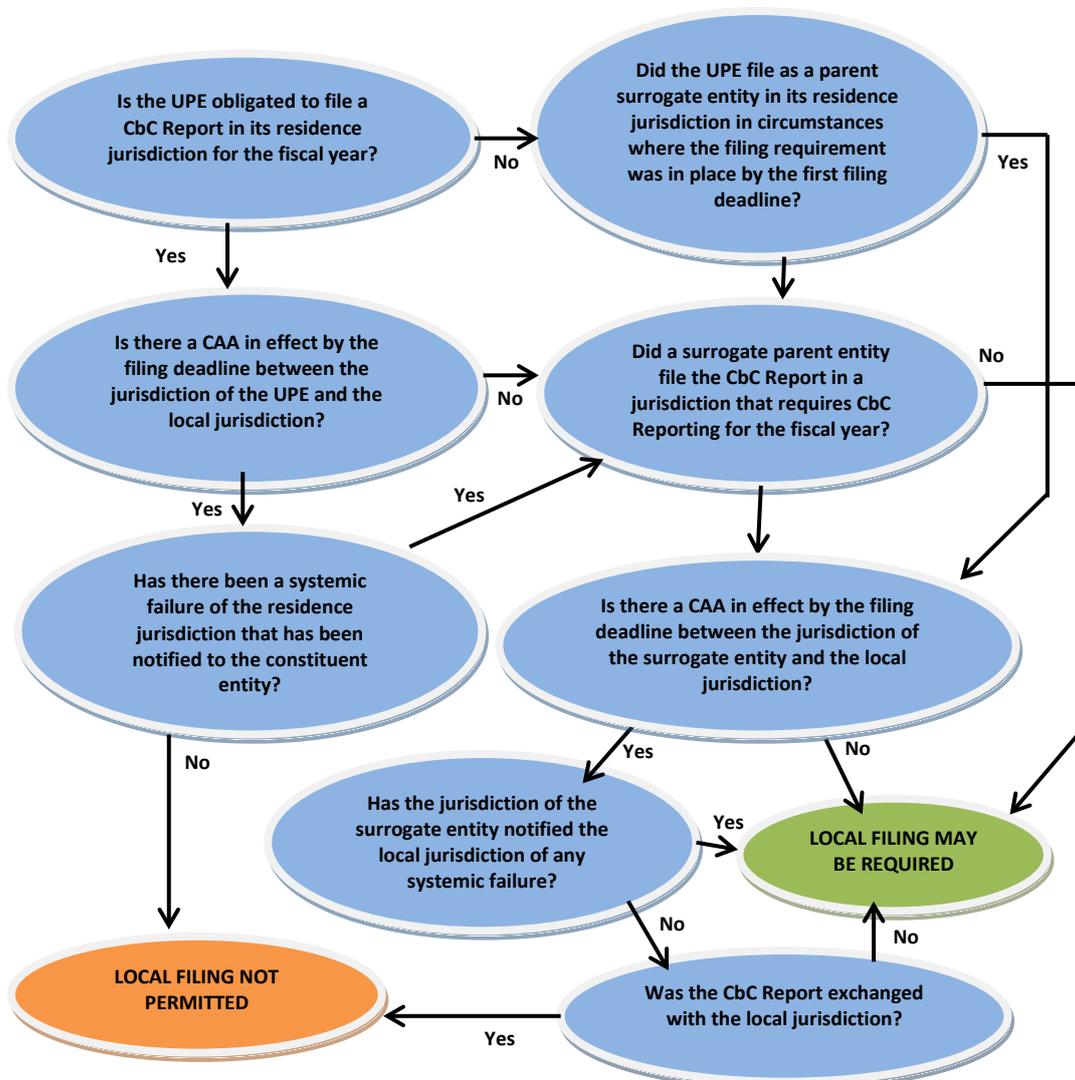
- A CbC Report is filed by a surrogate entity in its residence jurisdiction.
- The residence jurisdiction of the surrogate entity requires the filing of CbC Reports that include all of, and only, the information as contained in the CbC Template.<sup>4</sup>

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<sup>4</sup> With respect to parent surrogate filing (i.e. voluntary filing), the residence jurisdiction must have its laws in place to require CbC Reporting by the first filing deadline of the CbC Report. See: The OECD (2017b) *Guidance on the Implementation of Country-by-Country Reporting – BEPS Action 13*, [www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf](http://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf).

- There is both an international agreement which permits the automatic exchange of information and a competent authority agreement for the exchange of CbC Reports in effect between the residence jurisdiction of the surrogate entity and the local jurisdiction by the filing deadline of the CbC Report.<sup>5</sup>
- The residence jurisdiction of the surrogate entity has not notified the local jurisdiction of any systemic failure.
- The CbC Report is exchanged by the jurisdiction of the surrogate entity.

37. It should be noted that a jurisdiction may also adopt a local filing requirement which is narrower than is permitted under the minimum standard. For example, a jurisdiction could impose a local filing requirement but provide exceptions from the local filing requirement in certain cases where local filing would be consistent with the minimum standard.



<sup>5</sup> In applying the conditions for surrogate entity filing, the filing deadline for CbC Reports is 12 months after the last day of the reporting fiscal year of the MNE group. With respect to parent surrogate filing, the reference to the filing deadline means the first filing deadline.

38. The following illustrates the circumstances under which a local filing requirement would be consistent with the minimum standard. This assumes that the constituent entity is a resident of the local jurisdiction while the UPE is a resident of another jurisdiction and that there is an international agreement which permits automatic exchange of information to which the residence jurisdiction and the local jurisdiction are parties.

### *Notification requirements*

39. The model legislation in the Action 13 Report (OECD, 2015) includes notification requirements that do not form part of the minimum standard, but which may assist a jurisdiction in applying its domestic rules for the filing of CbC Reports and anticipating the number of CbC Reports it will receive directly from resident constituent entities and indirectly from other jurisdictions under automatic exchange of information. In particular, the notification requirements in the model legislation impose an obligation on a constituent entity of an MNE group that is resident in the jurisdiction to provide notification to the tax authority in that jurisdiction as to:

- whether it is the UPE or the surrogate parent entity of an MNE group that is required to file a CbC Report
- the identity and tax residence of the entity filing the CbC Report on behalf of the MNE group (where the constituent entity is not the UPE or surrogate parent entity).

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## *Chapter 3*

### **The exchange of CbC Reports**

40. Where the UPE or surrogate entity of an MNE group files a CbC Report with the tax authority in its residence jurisdiction, this report must be exchanged, subject to conditions described in this chapter, with tax authorities in other jurisdictions where constituent entities in that group are either resident for tax purposes or subject to tax with respect to a business carried on through a permanent establishment. At the heart of these conditions is the need for jurisdictions to have in place both an international agreement that permits automatic exchange of taxpayer information and a competent authority agreement (CAA) that sets out the terms of the exchange.

41. The Action 13 Report (OECD, 2015) anticipates that the legal basis for the exchange of CbC Reports may be derived from one of the following:

- the *Convention on Mutual Administrative Assistance in Tax Matters* (the Convention)<sup>6</sup>
- a bilateral double tax convention (DTC) which includes an exchange of information article based on Article 26 of the OECD Model Convention
- a tax information exchange agreement (TIEA) which permits the automatic exchange of information.

42. These international agreements must be supported by a CAA that governs the terms and conditions of the exchange of CbC Reports. The Implementation Package in the Action 13 Report (OECD, 2015) includes three model CAAs (specifically adapted for exchanges under each of the three categories of international agreement) that contain all of the elements necessary to meet the Action 13 minimum standard.

#### **The CbC multilateral CAA**

43. The *Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports* (the multilateral CAA) is a multilateral agreement designed to facilitate bilateral exchanges of CbC Reports under the Convention between numerous jurisdictions.<sup>7</sup> To the extent that a jurisdiction has ratified the Convention, and plans to

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<sup>6</sup> Information on the *Convention on Mutual Administrative Assistance in Tax Matters* as well as the text of the Convention are available at: [www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm](http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm)

<sup>7</sup> The multilateral CAA is derived from the model multilateral competent authority agreement on the exchange of country-by-country reports contained in the Implementation Package. As of June 2017, the multilateral CAA has been signed by 64 countries. The text of the multilateral CAA is available on the OECD website at: [www.oecd.org/tax/automatic-exchange/about-automatic-exchange/cbc-mcaa.pdf](http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/cbc-mcaa.pdf)

exchange CbC Reports with other jurisdictions that have ratified the Convention, the multilateral CAA should significantly simplify the process.

44. In circumstances where a jurisdiction has not ratified the Convention (and does not plan to) or intends to exchange CbC Reports with jurisdictions which have not ratified the Convention, then it must use bilateral CAAs for exchange under DTCs or TIEAs. A jurisdiction may also prefer to use bilateral CAAs for other reasons. Jurisdictions should have CAAs in effect with jurisdictions of the Inclusive Framework that meet the requirements of the minimum standard.

45. To activate the bilateral exchange relationships under the multilateral CAA, a jurisdiction should provide at the time of signing, or as soon as possible thereafter, notification to the Co-ordinating Body Secretariat:

- confirming that the jurisdiction has the laws in place to require CbC Reporting, and that it will require the filing of CbC Reports for fiscal years commencing on or after a date specified in the notification
- specifying whether the jurisdiction is to be included in the list of non-reciprocal jurisdictions (non-reciprocal jurisdictions will exchange, but not receive CbC Reports)
- specifying one or more methods for the electronic transmission of CbC Reports, including encryption
- confirming that it has in place the necessary legal framework and infrastructure to ensure confidentiality, data security, and the appropriate use of CbC Reports
- specifying the jurisdictions with which it intends to exchange CbC Reports, or a statement that it will exchange CbC Reports with all jurisdictions that list it as an exchange partner in their notifications.

46. The bilateral exchange relationship between each pair of signatories of the multilateral CAA will only be activated once both jurisdictions have submitted a complete notification listing the other as an exchange partner. The Implementation Package also includes a Confidentiality and Data Safeguards Questionnaire which must be completed and attached as an annex to their notifications.

### **Essential elements of the CAAs**

47. The essential elements for the exchange of CbC Reports, as found in the multilateral CAA and the model bilateral CAAs, include:

- a commitment to exchange CbC Reports
- the timing of exchange
- the use of a common schema in Extensible Markup Language (XML)
- the manner of transmission
- notification of non-compliance by a reporting entity
- a domestic obligation for the filing of CbC Reports
- confidentiality and appropriate use

- notification of non-compliance with the conditions of confidentiality and appropriate use
- consultations between competent authorities where
  - there are difficulties in the implementation or interpretation of the CAA
  - a competent authority is considering making a determination of systemic failure or significant non-compliance
  - an adjustment to the taxable income of a constituent entity, as a result of enquiries based on the data in the CbC Report, leads to undesirable economic outcomes
- suspension of exchange of CbC Reports
- coming-into-effect
- termination.

### ***A commitment to exchange CbC Reports***

48. A CAA should provide for the automatic annual exchange of all CbC Reports filed by reporting entities in one jurisdiction on behalf of MNE groups which, on the basis of information in the relevant CbC Report, have constituent entities in the other jurisdiction (either because the MNE group includes entities that are resident in the other jurisdiction or that carry on business through a permanent establishment in that other jurisdiction). The automatic exchange of CbC Reports is based on Article 6 of the Convention (in the case of the multilateral CAA), the exchange of information provisions of a DTC, or the provisions allowing for the automatic exchange of information under a TIEA.

### ***The timing of exchange***

49. A CAA should provide for the annual exchange of CbC Reports. The multilateral CAA provides that, for the first exchange, the reports are to be exchanged within 18 months of the end of an MNE group's fiscal year. For subsequent exchanges, CbC Reports are to be exchanged within 15 months of the end of the MNE group's fiscal year.

### ***The use of a common XML schema***

50. The multilateral CAA and the model bilateral CAAs provide that CbC Reports will be exchanged electronically using a common schema in XML. To facilitate a swift and uniform implementation of CbC Reporting, the OECD has developed a common schema in XML specifically for CbC Reporting (CbC XML Schema) along with a CbC Reporting XML Schema User Guide to assist jurisdictions in preparing files for transmission.<sup>8</sup> The CbC XML Schema provides a standardised basis on which the information contained in the CbC Reports may be captured and exchanged.

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<sup>8</sup> OECD (2017), *Country-by-Country Reporting XML Schema: User Guide for Tax Administrations and Taxpayers*, [www.oecd.org/tax/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.htm](http://www.oecd.org/tax/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.htm).

***The manner of transmission***

51. Jurisdictions will work together to agree on one or more methods of electronic data transmission including encryption standards. Except for members of the European Union that, between each other, will exchange through the EU Common Communications Network (CCN), there are essentially two options for the electronic transmission of CbC Reports: transmission of CbC Reports through the Common Transmission System (CTS) or, for exchanges between jurisdictions where at least one jurisdiction is not using the CTS, a bilateral method of electronic transmission.

52. The CTS was developed by the OECD to accommodate the automatic exchange of information. It will be used to exchange financial information under the Common Reporting Standard and is expected to be widely adopted for the exchange of CbC Reports and information relating to tax rulings. This includes the use of the CTS by members of the European Union that may use the CCN and dedicated EU Hub as an access point to the CTS to transmit information to non-EU member states.

53. In the case of a bilateral transmission outside the CTS or CCN, the competent authorities would need to agree on the method of electronic transmission<sup>9</sup> as well as an agreed upon method of encryption.

***Notification of non-compliance by a reporting entity***

54. A jurisdiction which receives a CbC Report should notify the other jurisdiction if it has reason to believe the information in the report to be incorrect or incomplete. A jurisdiction should also notify the other jurisdiction if it has reason to believe there is non-compliance by a reporting entity with an obligation to file a CbC Report. This may occur, for example, if a constituent entity notifies the tax authority in its jurisdiction that the UPE of an MNE group in a different jurisdiction will be filing a CbC Report but no report is subsequently received. In this case, the jurisdiction where the reporting entity of the MNE group is resident should take steps available under its domestic law to address any possible non-compliance.

***A domestic obligation for the filing of CbC Reports***

55. The exchange of CbC Reports is subject to both jurisdictions having in place a domestic law obligation for the filing of CbC Reports in line with the Action 13 minimum standard. If a jurisdiction has not implemented the minimum standard, it will not be eligible to receive CbC Reports filed in other jurisdictions.

***Confidentiality and appropriate use***

56. As described in Chapter 2, the Action 13 minimum standard provides that a jurisdiction's ability to obtain or use CbC Reports is subject to conditions of confidentiality, consistency and appropriate use. Non-compliance with the confidentiality or appropriate use conditions could result in the suspension of exchange. In addition, an adjustment resulting from the inappropriate use of the information contained in a CbC Report is to be promptly conceded in any competent authority proceedings.

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<sup>9</sup> Possible methods of electronic transmission would include email, a USB key, or magnetic disk.

### ***Notification of non-compliance with the conditions of confidentiality and appropriate use***

57. Where there has been non-compliance with either the confidentiality or the appropriate use condition, the competent authority in the jurisdiction where the non-compliance occurred should, to the extent permitted under applicable law, immediately notify the Co-ordinating Body Secretariat<sup>10</sup> (for exchanges under the multilateral CAA) or the other jurisdiction's competent authority (for exchanges under a bilateral CAA), including any remedial action taken. Under the multilateral CAA, the Co-ordinating Body Secretariat will also notify all jurisdictions that have an exchange relationship with the jurisdiction under the multilateral CAA.

### ***Consultations between competent authorities***

58. A CAA should provide for consultations between competent authorities in the following situations:

- where difficulties arise in the implementation or interpretation of the CAA
- prior to making a determination that there is a systemic failure to exchange CbC Reports or significant non-compliance with the CAA.

59. A CAA that relies on the Convention or a TIEA as a legal basis for the exchange of CbC Reports should also provide for consultations between competent authorities where a tax adjustment has led to undesirable economic outcomes. The model bilateral CAA for the exchange of CbC Reports under a DTC does not include a requirement to consult regarding such tax adjustments; however, it requires competent authorities to consult and endeavour to resolve cases foreseen under the mutual agreement procedure article of the DTC.

### ***Implementation or interpretation***

60. A CAA should include a provision that invites competent authorities to consult for the purpose of resolving questions relating to the implementation or interpretation of the relevant CAA. No specific directions are contained in the multilateral CAA and the model bilateral CAAs as to how those consultations should occur or how the resolution of a case should be recorded. It is expected that a competent authority would engage directly with the other competent authority (or competent authorities) in writing, with a view to identifying the issue and facilitating an exchange of views. Follow-up discussions and/or meetings could be scheduled, as necessary. In the event that a resolution is reached, it is suggested that it be memorialised in an exchange of letters.

61. Where consultations occur under the multilateral CAA, the competent authority that requested the consultations is required to notify the Co-ordinating Body Secretariat of any conclusions that were reached and measures that were developed, including the absence of any conclusions or measures.

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<sup>10</sup> The Co-ordinating Body Secretariat means the OECD Secretariat that, pursuant to paragraph 3 of Article 24 of the *Convention on Mutual Administrative Assistance in Tax Matters*, (OECD, 2011), provides support to the Co-ordinating Body.

### *Systemic failure*

62. A CAA should include a commitment by a competent authority to consult with another competent authority before the competent authority determines that there is a systemic failure to exchange CbC Reports by the other competent authority. Where, after consultations, a competent authority makes a determination of systemic failure, it is required to notify the Co-ordinating Body Secretariat (in the case of the multilateral CAA).

### *Significant non-compliance*

63. A CAA should require a competent authority to consult with another competent authority before making a determination of significant non-compliance by the other competent authority. This consultation is critical since significant non-compliance is a basis for suspending the exchange of CbC Reports.

64. Significant non-compliance means non-compliance with the conditions requiring confidentiality or appropriate use of the information contained in CbC Reports or, as applicable, failure to consult with the aim of resolving undesirable economic outcomes from an adjustment following enquiries based on the data in a CbC Report (in the case of the multilateral CAA or the model bilateral CAA based on a TIEA) or failure to endeavour to resolve a case of taxation not in accordance with the provisions of a DTC (in the case of the model bilateral CAA based on a DTC), as well as a failure to provide timely or adequate information under the CAA. The determination of significant non-compliance may, for example, be based upon the outcome of a jurisdiction's peer review evaluation of appropriate use.

65. It is suggested that, as a matter of practice, the competent authority considering making a determination of significant non-compliance should clearly identify the basis for its belief and invite the other competent authority to address its concerns on an expedited basis. If such non-compliance has occurred, the other competent authority would be expected to explain what remedial action, if any, has been taken.

### *Undesirable economic outcomes*

66. Where enquiries, based on the data in the CbC Report, result in an adjustment to the taxable income of an entity in an MNE group that, in turn, leads to “undesirable economic outcomes”, competent authorities should under the multilateral CAA or the model bilateral CAA based on a TIEA, consult with the aim of resolving the case. The term “undesirable economic outcomes” is not defined.

67. In cases where the taxpayer is in a jurisdiction in which there is a DTC in place, the tax adjustment concerns a matter within the scope of the DTC, and the DTC includes a provision for mutual agreement procedure based on Article 25 of the Model Tax Convention, the taxpayer may submit a request under this provision to the competent authority specified in the DTC. This is possible even where the CbC Report has been exchanged by different jurisdictions (i.e., the case concerns two or more members of an MNE group that are not the UPE of the MNE group) or where the exchange of the CbC Report was under the Convention and not the DTC.

### *Suspension of exchange of CbC Reports*

68. CbC Reporting depends on the reliable collection of CbC Reports by the tax authority in the jurisdiction of the reporting entity of an MNE group, and the timely and

effective exchange of these reports with the tax authorities in other jurisdictions, subject to the conditions described in Chapter 2 and in this chapter. Thus, the exchange of CbC Reports should be suspended only in exceptional circumstances, as provided in the relevant CAA.

69. The exchange of CbC Reports may be temporarily suspended under the multilateral CAA or the model bilateral CAAs by giving notice in writing where a jurisdiction determines that there is or has been significant non-compliance by the other jurisdiction. This determination may, for example, be based upon the outcomes of a jurisdiction's peer review evaluation. As already noted, a jurisdiction is required to consult with the other jurisdiction prior to making a determination of significant non-compliance. A suspension will have immediate effect and will continue until both jurisdictions are satisfied that there had been no significant non-compliance, or relevant measures have been adopted by the other jurisdiction to address the non-compliance.

### *Coming-into-effect*

70. A CAA should contain a coming-into-effect provision. The multilateral CAA, for example, provides that it comes into effect on the later of the following dates: (i) the date on which the second of the two competent authorities has provided the required notifications to the Co-ordinating Body Secretariat and (ii) the date on which the Convention has entered into force and is in effect for both jurisdictions.

### *Termination*

71. The model bilateral CAAs for exchanges under a DTC or TIEA provide that they may be terminated by a competent authority by giving notice in writing to the competent authority of the other jurisdiction. In the case of the multilateral CAA, a competent authority may terminate its participation in the multilateral CAA, or with respect to a particular competent authority, by giving notice of termination in writing to the Co-ordinating Body Secretariat. In either case, termination will become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination.

## **The importance of ensuring international agreements are in effect when CbC Reporting commences**

72. In implementing CbC Reporting, it is important to note that the exchange of CbC Reports is only possible where the applicable international agreement for automatic exchange of information, as well as the applicable CAA, are in effect for the relevant reporting fiscal year. For example, if a jurisdiction intends to exchange CbC Reports under the Convention and the multilateral CAA, then if it deposits its instrument to ratify the Convention on or before 31 August, the Convention will be in effect from 1 January of the next year (e.g. if the instrument of ratification is deposited on 31 August 2017, the Convention will be in effect from 1 January 2018). If, however, the jurisdiction deposits its instrument to ratify the Convention after 31 August, the Convention will be in effect from 1 January of the year following the next year (e.g. if the instrument of ratification is deposited on 1 September 2017, the Convention will be in effect from 1 January 2019). If nothing is done to avoid this, the jurisdiction would not receive CbC Reports from tax authorities in other jurisdictions under the Convention until 2021 (i.e. when CbC Reports for reporting fiscal periods beginning on or after 1 January 2019 are exchanged).

73. This delay may be avoided where the jurisdiction makes a unilateral declaration on the basis of paragraph 6 of Article 28 of the Convention, bringing forward the effective date of the Convention to the intended first exchange date under the multilateral CAA. This will be effective for all exchanges with jurisdictions that are parties to the Convention and have made a similar declaration. All jurisdictions that are signatories to the Convention are strongly encouraged to lodge a unilateral declaration, in particular those that are still in the process of signing and/or ratifying the Convention.

74. In any case, where a jurisdiction is considering implementing CbC Reporting, it is recommended that the jurisdiction acts, as quickly as possible, to put into effect a broad network of international agreements, including by ratifying the Convention, together with CAAs with all jurisdictions with which it plans to exchange CbC Reports.

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## *Chapter 4*

### **Operational aspects of CbC Reporting**

75. In addition to the need for a robust legal framework, a jurisdiction needs to consider the requirements for an effective operational framework to deal with the technical and practical aspects of the filing and exchanging of CbC Reports.

#### **The filing of CbC Reports**

76. In implementing CbC Reporting, a jurisdiction must ensure it has in place processes for the following stages relevant to the filing of CbC Reports:

- identifying entities required to file CbC Reports
- receiving CbC Reports filed by resident entities
- checking the completeness of CbC Reports and preparing them for exchange
- imposing sanctions for non-compliance.

#### ***Identifying entities required to file CbC Reports***

77. Under the Action 13 minimum standard, CbC Reports must be filed by the UPE of an MNE group so long as the group does not fall below the consolidated revenue threshold. Jurisdictions may also require local filing in specific limited circumstances, including the absence of UPE or surrogate entity filing, although local filing is not required or recommended under the minimum standard.

78. Jurisdictions should consider introducing an obligation on resident constituent entities to file a notification with the tax authority if they are part of an MNE group which is subject to CbC Reporting. This notification should include a statement as to whether the entity is the UPE or a surrogate entity (where applicable) for its group, or if it is not, to provide the identity and residence jurisdiction of the entity filing the CbC Report on behalf of the group. This would let the tax authority know whether it can expect to receive the group's CbC Report directly from the resident entity, indirectly via exchange of information, or whether local filing may be required. Where a resident entity has filed a notification identifying the UPE or surrogate entity in its group, and an international agreement which permits the automatic exchange is in effect between that jurisdiction and the jurisdiction of the UPE or surrogate entity, but a CbC Report is not subsequently received under exchange of information, the competent authority should contact the competent authority in the jurisdiction of the UPE or surrogate entity, as this could suggest possible non-compliance, a failure to exchange by the other jurisdiction, or an error.

79. The accuracy of the notifications should be verified based on the tax authority's information and experience (i.e. where it is aware of resident entities that are members of

MNE groups) and after CbC Reports are received under exchange of information (i.e. if a CbC Report is received from a foreign tax authority but no resident entity had filed a notification).

### ***Receiving CbC Reports filed by resident entities***

80. Under the Action 13 minimum standard, a jurisdiction is required to provide for the filing of a CbC Report that includes the information contained in the CbC Template with regard to each jurisdiction in which the MNE group operates. Those reports will, subject to the conditions described in this handbook and the terms of the applicable international agreement and CAA, be electronically exchanged with tax authorities in other jurisdictions in a format that complies with the CbC XML Schema.

81. A jurisdiction may allow paper or electronic filing of CbC Reports, or a combination of both. However, paper-filed CbC Reports pose an additional challenge as they will have to be converted into an electronic format by the tax authority prior to being exchanged with another jurisdiction. In determining whether to accommodate or require electronic filing, a tax authority should be aware that the creation or modification of an electronic filing system normally requires a number of steps beginning with the development of system specifications and ending with a period of testing to ensure functionality and security. Therefore, it is advisable to address this issue as early as possible. A jurisdiction will also require a system for handling electronic reports that it will receive from other jurisdictions under exchange of information.

82. A key function performed by the tax authority on the filing of CbC Reports is ensuring that the filing entities have properly completed the CbC Report and that any deficiencies are corrected as early as possible. Thus, it is recommended that tax authorities put into place reliable procedures for validating the completeness of filed reports and, where deficiencies are identified, take steps to obtain new or amended CbC Reports from filing entities on a timely basis. Proper validations and follow-up at the filing stage will support the effective implementation of CbC Reporting and minimise the time and effort required to take corrective measures at a later date.

83. Where a tax authority expects to receive CbC Reports filed by UPEs, surrogate entities, or constituent entities in its jurisdiction, the tax authority should consider the benefits of requiring the electronic filing of those reports using an XML schema to facilitate the handling of CbC Reports and the exchange of these reports with other jurisdictions. Where a jurisdiction does not expect to receive CbC Reports directly from UPEs or surrogate entities (i.e. because there are no UPEs headquartered in the jurisdiction, and it does not permit surrogate entity filing) but it imposes local filing, the jurisdiction should still consider the benefits of electronic filing. Apart from the efficiencies achieved by the tax authority in avoiding the handling and conversion of manually filed CbC Reports, the electronic filing of CbC Reports should facilitate both the secure, electronic storage of information contained in those reports and the use of that information within an automated risk assessment system.

84. Another question that will need to be addressed by a jurisdiction is the timing for filing CbC Reports. As noted in Chapter 2, the deadline for filing a CbC Report may be up to 12 months after the last day of the group's reporting fiscal year. An earlier filing deadline (e.g. aligned with the tax reporting filing deadline in the jurisdiction) is not prohibited, but it is not recommended.

### **Illustrative examples of electronic filing**

A number of jurisdictions emphasized the importance of electronic filing of CbC Reports in the XML schema as this facilitates the handling and transmission of this information as well as its use in automated risk assessment processes. Among those jurisdictions that will require the electronic filing of CbC Reports using an XML schema are **Hungary, Ireland, Switzerland, Japan, and Australia.**

#### ***Checking the completeness of CbC Reports and preparing them for exchange***

85. The exchange of CbC Reports between jurisdictions will occur electronically using the CbC XML Schema. This ensures that the information contained in the reports is complete and presented in a consistent format. A jurisdiction should, prior to transmitting a file containing CbC Reports, ensure that each of the mandatory fields of information required in the CbC Template are present in the information to be exchanged and that the format for the information exchanged is provided in accordance with the XML Schema User Guide.

#### ***Imposing sanctions for non-compliance***

86. Under the minimum standard, a jurisdiction is expected to take steps to enforce compliance with the obligation to file CbC Reports. This may include the imposition of penalties for the non-filing or late-filing of CbC Reports, or for the filing of incomplete or inaccurate CbC Reports.

87. The Action 13 Report (OECD, 2015) notes that many jurisdictions have adopted documentation-related penalties to ensure the efficient operation of transfer pricing documentation requirements and that penalty regimes vary widely among jurisdictions. The Report also notes, among other things, that:

- penalty regimes may influence the quality of taxpayers' compliance practices and could drive taxpayers to favour one jurisdiction over another in their compliance practices.
- in developing a penalty regime, a jurisdiction should take care not to impose a documentation-related penalty on a taxpayer for failing to submit data to which the MNE group did not have access.

### Illustrative examples of approaches to non-compliance

Jurisdictions impose a range of monetary and other penalties for the failure to comply with CbC Reporting requirements.

In **Ireland**, the penalty for failure to file a CbC Report is EUR 19 045 plus EUR 2 535 for each day the failure continues. The penalty for filing an incomplete or incorrect CbC Report is EUR 19 045.

In **Mexico**, specific financial penalties related to non-compliance with CbC Reporting range from MXN 140 540 to MXN 200 090 (USD 8 147 to USD 11 599). Specific non-monetary penalties for non-compliance with CbC Reporting include banning a non-compliant taxpayer from performing business transactions and entering bids with the Mexican government. In general, non-compliance with the filing of any tax related return may result in (i) the statute of limitations to conduct a tax audit being extended to 10 years, (ii) the suspension of the taxpayer's importing permit, and (iii) the loss of eligibility for federal government subsidies and incentives.

In **Hungary**, the failure to file the CbC Report or to submit notification of status or change in circumstances, or in the case of late, erroneous, false or incomplete reporting or notification, the taxpayer may be fined up to HUF 20 million. However no fine is imposed on the taxpayer if the taxpayer is able to prove that it proceeded as is reasonably expected in the given situation.

**The Netherlands** applies penalties for the failure to provide notification and the failure to file the CbC Report. These include late filing, incomplete filing and incorrect filing. However, the Netherlands can only impose penalties if the taxpayer is grossly negligent or its conduct was intentional.

**Australia** has enacted increased penalties which will apply to entities that fail to comply with CbC Reporting obligations in Australia with effect from 1 July 2017. The late filing of a CbC Report by a large taxpayer could result in penalties of up to AUD 105 000 if it is lodged 28 days late, and up to AUD 525 000 if the CbC Report is lodged more than 112 days late. In addition, administrative statement penalties (for example, where a taxpayer has made a false or misleading statement) will also double from 1 July 2017.

## The exchange of CbC Reports

88. Where a tax authority receives a CbC Report from a UPE or surrogate entity, it is required to exchange the report with tax authorities in other jurisdictions where the relevant group has either resident entities or permanent establishments, subject to the conditions described in Chapters 2 and 3.

89. The list of jurisdictions where the MNE group has operations can be obtained directly from Table 1 of the CbC Report. A tax authority will then have to match this list against the jurisdictions with which its jurisdiction has a CAA in effect, to identify the jurisdictions with which the CbC Report must be exchanged (subject to exchange not being temporarily suspended for the reasons described in Chapter 3).

90. The exchange of a CbC Report should occur within 15 months of the end of the reporting fiscal period to which the report relates. This deadline is extended to 18 months after the end of the reporting fiscal period for the first year in which CbC Reporting applies, in order to allow a tax authority to gain experience in the handling and exchange of CbC Reports. To ensure compliance with these deadlines, a tax authority should consider putting in place an automated system of reminders linked to the fiscal period of each MNE group. The CbC XML Schema allows for the sending of multiple CbC

Reports within one message. Thus, tax authorities should consider consolidating CbC Reports, where feasible, into one single message, to reduce the number of messages being sent to any particular exchange partner.

91. Many MNE groups have a fiscal year end of 31 December. This means that a large number of the CbC Reports exchanged by a tax authority are likely to have the same exchange deadline. To avoid the exchange of numerous CbC Reports at the same time, a tax authority should consider introducing a staggered timetable for exchanges between 31 December (when many CbC Reports will be filed) and 31 March (when many CbC Reports should be exchanged) each year.

### *The common transmission system*

92. Except for the transmission of CbC Reports between members of the European Union through the EU CCN, CbC Reports will be largely transmitted through the CTS. The CTS is an electronic platform that facilitates the automatic exchange of information between countries, in particular for information pursuant to the Common Reporting Standard, CbC Reports, and tax rulings. The CTS will be operated by the OECD and will be available to participating jurisdictions for an annual fee. The CTS will provide a secure and standardised platform for the automatic exchange of information and relieve individual jurisdictions from the requirement to develop numerous bilateral arrangements and systems.

93. A competent authority that will utilise the CTS must become familiar with the specific protocols associated with sending and receiving CbC Reports through this platform. CTS users will be provided with access to the CTS portal which will contain all relevant information for using the CTS, as well as information on preparing and encrypting files to be transmitted.

94. The information contained in the CbC XML Schema must be prepared and encrypted prior to transmission in accordance with the common file preparation and encryption approach agreed to at the level of the OECD. In general terms, the encryption process for the CTS involves the combination of private and public encryption/decryption keys. A competent authority's public encryption key is available to other competent authorities to allow them to authenticate and encrypt files being sent to the competent authority. Each competent authority also maintains a private key that allows it to decrypt files received through the CTS.

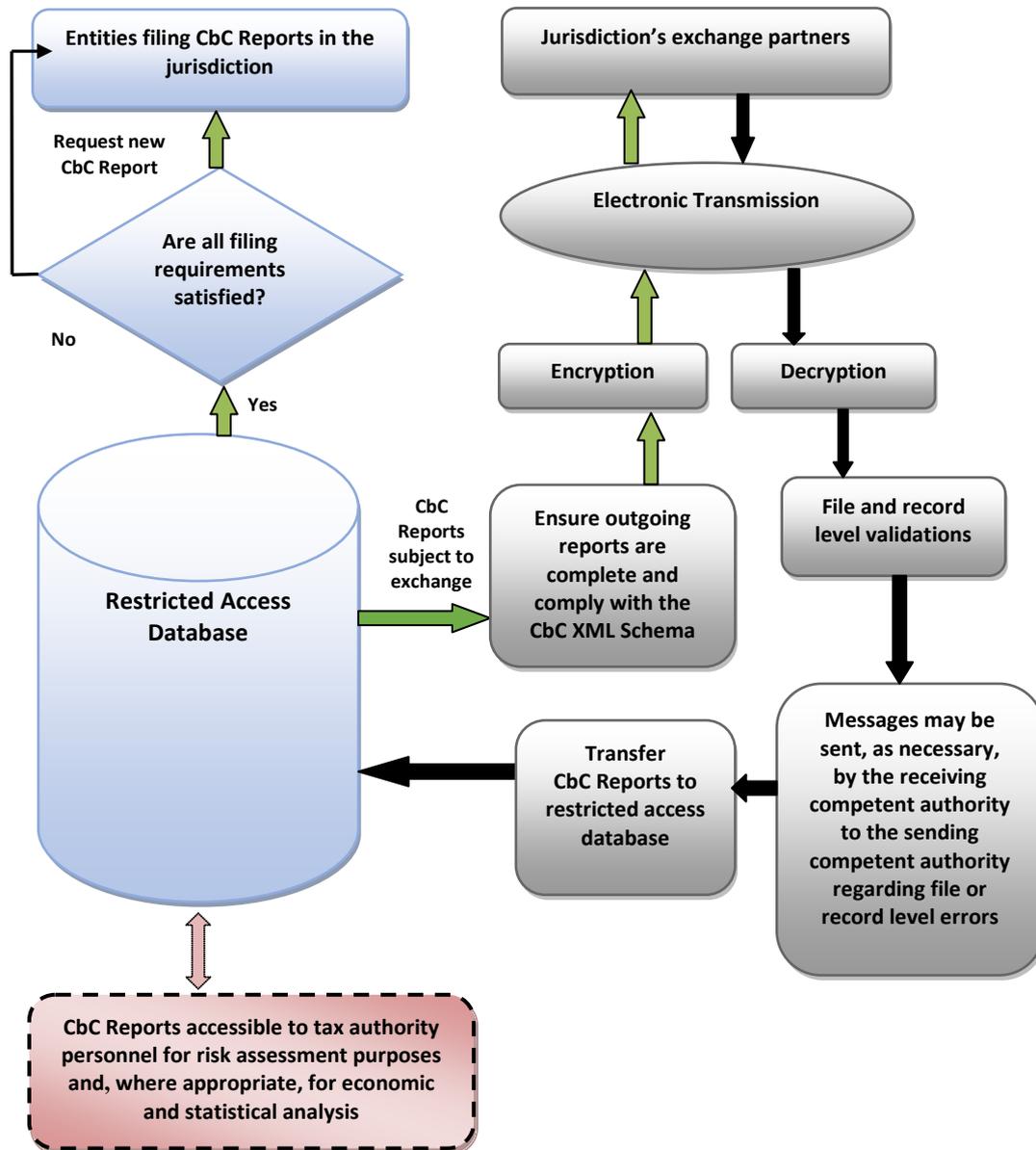
95. Under the CTS, alerts will be automatically generated regarding the status of the transmission (uploaded, downloaded) and status messages are expected to be generated by the receiving competent authority indicating whether the file received contains any of the agreed file or record errors. File errors will generally entail the receiving competent authority is not in a position to open the file and, therefore, a status message would normally be sent to the sending competent authority with a view to receiving a new file. Record level errors relate to key issues of data quality. Where record level errors are communicated to the sending competent authority by the receiving competent authority it is expected that the sending competent authority would take action to address any errors and provide the receiving competent authority with new or amended information on a timely basis.

96. As part of its obligations to protect the confidentiality of the information contained in the CbC Reports, the competent authorities should also take measures, where applicable:

- to ensure the confidentiality and the custody of any log-in identification, passwords, and decryption keys used for the transmission of CbC Reports
- to protect any computers accessing the transmission system and ensure that only designated personnel (personnel who work with CbC Reports in the course of their duties) have access to the data
- to ensure that the CbC Reports received from other countries are securely stored while in the custody of the competent authority and then securely transmitted or made accessible to the tax authority's risk assessment personnel.

97. For competent authorities receiving CbC Reports outside the CTS or CCN, the receiving competent authority should put into place a system to notify the sending competent authority of the delivery status of the CbC Reports, to verify that it is the correct recipient, and notify the other competent authority if there are errors or problems with the quality of the data in the reports.

98. The following is intended to illustrate the various functions associated with the receipt, use, and exchange of CbC Reports by a jurisdiction that receives CbC Reports from entities obligated to file a CbC Report with the tax authority in the jurisdiction and that exchanges (receives and transmits) CbC Reports with other jurisdictions under the terms of an international agreement and a CAA.



 Indicates the flow of CbC Reports filed with the tax authority in the jurisdiction, including those which are required to be transmitted to the jurisdiction's exchange partners.

 Indicates the flow of CbC Reports filed with tax authorities in other jurisdictions and transmitted to the tax authority in the jurisdiction by its exchange partners. Notifications of receipt of a file containing CbC Reports are not included in the process flow. These notifications may be generated automatically (e.g. uploaded/downloaded) if the transmission is through the CTS or may be provided by other means under the terms of a bilateral CAA.

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## *Chapter 5*

### **Guidance, stakeholder engagement and training**

#### **Developing a strategy for stakeholder engagement**

99. A strategy for engaging and encouraging feedback is an important tool for tax authorities in promoting voluntary compliance and building relationships between tax authorities and their stakeholders. While there are a number of potential stakeholders to be considered, those most directly affected by the implementation of CbC Reporting are the MNE groups that will be required to file CbC Reports and those who provide professional advice to these groups. With respect to these key stakeholders, it is suggested that the core elements of a strategy supporting the implementation of CbC Reporting would include:

- providing technical guidance on the application of the CbC Reporting requirements
- engaging in on-going discussions and consultations relating to the challenges of compliance, the nature of the information being sought on the CbC Report, and how that information can best be used by tax authorities.

#### ***Technical guidance***

100. The primary objective of releasing technical guidance is to ensure that the CbC Reporting requirements are known and understood, which, in turn, should positively impact the level of compliance by MNE groups. It also serves to demonstrate a commitment on behalf of the tax authority to effectively implement CbC Reporting. It should be noted that each jurisdiction would have to evaluate the need for such guidance based on the number of entities required to file a CbC Report in the jurisdiction and whether there are other available avenues for ensuring that key stakeholders have adequate guidance to meet their filing requirements.

101. A number of tax authorities have released technical guidance explaining the filing requirements for CbC Reports in their jurisdiction. Although this guidance is directed principally at tax advisers and MNE groups that are affected by the obligation to file a CbC Report, it can also serve as a valuable reference source for employees of the tax authority and, in some cases, can be used as a training tool for tax authority personnel.

102. Links to the guidance published by some of these jurisdictions are available on the CbCR *Clearspace* site. Given the relative similarity in the filing requirements across jurisdictions, tax authorities that have not yet released technical guidance (and intend to do so) are encouraged to consult these documents as they may prove helpful in the development of their own guidance.

103. As a supplement to the technical guidance, it may be helpful to include the contact information for one or more CbC Reporting specialists, or for a generic CbC Reporting contact point, either in the document or on the tax authority's website, so as to provide an access point for stakeholders to ask questions, resolve reporting issues, and provide feedback to the tax authority.

### ***Engagement and feedback***

104. It is often helpful for tax authorities to engage stakeholders and to seek feedback from those affected directly by new legislation or procedures. An engagement strategy with key stakeholders on CbC Reporting could involve the formation of joint working groups with taxpayers and tax advisers to MNE groups. In addition, the tax authority could participate in tax conferences or seminars that provide a forum for raising issues and exchanging views. Some of the benefits of pursuing an engagement strategy with these stakeholders include the following.

- It provides an opportunity for a tax authority to share its views on the challenges of administering CbC Reporting and to address concerns raised by these stakeholders on the maintenance of confidentiality and the appropriate use of the information being provided.
- It can lead to improvements in the quality and consistency of the information provided to the tax authority through the CbC Reports and to improvements in the timely receipt of information.
- It may provide the tax authority with insight that leads to improved risk identification and more focused audit strategies.

### ***Public engagement***

105. The provision of information through press releases or other means of general distribution intended to inform a broad audience about CbC Reporting (and its linkage to BEPS) could be part of the tax authority's overall communications strategy to promote greater awareness of the tax authority's role and to reassure the public that it is actively participating with other countries in key compliance initiatives. Such a strategy can generate support for the implementation of CbC Reporting generally and reinforce public confidence in the integrity of the tax authority.

### **Illustrative examples of stakeholder engagement**

In Ireland, the Irish Tax and Customs (Revenue) has issued detailed guidance in the form of Frequently Asked Questions (FAQs) on CbC Reporting, which guidance is available on its website. The FAQs contain technical guidance on Irish CbC Reporting requirements and are updated on an ongoing basis as necessary. The guidance also includes contact details for a CbC Reporting contact point (i.e. a dedicated electronic mailbox and telephone number).

As part of its stakeholder engagement strategy, Revenue has liaised with relevant tax, accounting and legal representative bodies with regard to the content of the FAQs and will continue to liaise with such representative bodies in advance of the ‘go live’ date for the CbC Reporting electronic filing system.

The United States has pursued external and internal stakeholder engagement. As part of its public outreach efforts, the Internal Revenue Service (IRS) hosted a forum for representatives of several industry associations and IRS officials to discuss CbC Reporting implementation, which included discussions on the completion of the CbC Template, the IRS’s external communication and outreach strategy, general compliance and enforcement issues, as well as issues relating to the international exchange and use of CbC Reports. In the process, the IRS was able to obtain direct feedback on key implementation and compliance challenges while the participants learned more about the expected filing and exchange process being implemented by tax authorities.

During the forum, the IRS responded to questions about the guidance on the appropriate use of CbC Reports and how taxpayers could inform the IRS about the inappropriate use by foreign tax authorities. The discussion also focused on the ongoing need for the IRS to provide taxpayers with an updated list of countries with which it will be sharing CbC Reports as well as information on countries with which it is no longer sharing CbC Reports to assist taxpayers in meeting their global compliance obligations.

A section of IRS website has been dedicated to CbC Reporting to assist taxpayers and representatives with locating available resources, including guidance and instructions on filing requirements. To respond to concerns about inappropriate use of CbC Reports, the IRS has created a link on its website with instructions on how to report an unauthorized disclosure or use of information exchanged under an international agreement. The website also includes answers to a number of frequently asked questions.

Finally, to ensure effective implementation, the IRS invited tax return preparers to engage in system testing exercises to confirm that the IRS filing systems for CbC Reporting are successfully operating prior to the filing deadline for the first reporting period.

Canada has, in addition to releasing a detailed guidance document on CbC Reporting, created a dedicated electronic mailbox where questions relating to CbC Reporting can be directed. This provisional service is intended to provide assistance to MNE groups and their representatives to ensure that MNE groups that are required to file CbC Reports meet their CbC Reporting obligations.

## **Developing a training programme**

106. The implementation of CbC Reporting requires tax authorities to put into place an organisational structure that supports the collection and exchange of CbC Reports while ensuring the confidentiality and appropriate use of the information contained in those reports. Therefore, an integral part of the implementation process is to provide thorough and effective training on the key areas such as maintaining the confidentiality of the information contained in CbC Reports, the appropriate use of that information, and the integration and effective use of the information in the risk assessment process. The

OECD has produced guidance on each of these topics, which may be incorporated into training programmes.

107. The objective of training is to support the effective implementation of CbC Reporting by ensuring that the employees of the tax authority are properly prepared to perform their various duties. To be effective, a training program must provide the right type of training to the right employees in a timely manner. In addition, it is important for the tax authority to identify the right tools with which to deliver that training. Those tools include, but are not limited to, on-line training modules, presentations (that can be viewed from an employee's work station or delivered in person), classroom instruction, workshops, and internal communications regarding policy and procedures. The ultimate decision on the nature, scope and timing of training must be based on an evaluation of each tax authority's specific circumstances.

### *Types of training*

108. The type of training that any particular employee may require to prepare for CbC Reporting will generally fall into one or both of the following categories: awareness training and specialist training.

- Awareness training is intended to convey general information relating to CbC Reporting, such as the basic elements of the CbC Report, the filing requirements for CbC Reports, the commitment to protect the confidentiality of CbC Reports, and restrictions relating to inappropriate use of CbC Reports
- Specialist training is intended to foster the development of specific skills relating to CbC Reporting, such as the analysis of the information contained in a CbC Report and the specific steps required to handle, prepare, and transmit a CbC Report to a jurisdiction's exchange partners.

### *Awareness training*

109. Awareness training on CbC Reporting would primarily be directed at any employee involved directly or indirectly in international tax compliance, including employees who have access to CbC Reports or who require some basic understanding of CbC Reporting. This type of training would also be expected to be provided to employees who require specialist training.

110. An example of the type of employee for which awareness training would be appropriate is a non-specialist employee who handles taxpayer inquiries. Awareness training would provide the employee with sufficient information to respond to basic questions, direct the caller to a document/webpage where the information may be found, or to connect the caller with a specialist.

111. One of the advantages of awareness training is that it can be delivered effectively through a web-based training product (or through the tax authority's intranet) and completed at an employee's workstation at a time that fits within the employee's specific work schedule.

112. Awareness training is often delivered on a just-in-time basis to better ensure that the information provided in the course of the training is not forgotten before it is put into use and to minimise repeating the training due to employee turnover.

*Specialist training*

113. Specialist training on CbC Reporting would primarily be directed at those employees of the tax authority who are engaged in performing specialised functions with respect to CbC Reports. This type of training is more focused than awareness training and is intended to address the development of specific skills. Such training would normally be provided to employees whose duties include the interpretation or analysis of the information contained in CbC Reports (referred to herein as risk analysts) and, to some extent, employees responsible for preparing and transmitting the files containing the information in the CbC Reports to the tax authority's exchange partners.

*Timing of training*

114. Careful consideration should also be given to the timing of training. Those employees who will deal with inquiries will be the first to require training. Other groups, such as competent authority personnel, will require training at some later point but prior to processing files for exchange. Specialist training needs tend to be a work-in-progress and should be revised and delivered on a periodic basis. In putting together training programs and modules, tax authorities must also give consideration to how often training should be repeated or refreshed.

*Centralisation of training responsibilities*

115. A tax authority may find it useful to assign the responsibility for training matters in relation to CbC Reporting to a central team within the tax authority with the expertise and resources to design targeted training modules and to organise the delivery of training. This central team could be responsible for a range of functions in relation to CbC Reporting, such as:

- conducting outreach activities with taxpayers and tax advisers on the CbC Reporting requirements
- preparing presentations and training modules on CbC Reporting tailored for specific groups of employees or other stakeholders and ensuring that they are delivered in the most effective manner (e.g., through a web-based platform, in a classroom, conference, or workshop)
- acting as a central point of contact for taxpayers, tax advisers, and other tax authority personnel.

*Specific employee groups*

116. The following discusses some of the training needs of specific employee groups and is intended to be broadly representative of the training-related needs faced by tax authorities implementing CbC Reporting. It should be emphasised that both the content of the training and the method of delivery should be tailored to the specific needs of each employee group.

*Risk analysts*

117. The training of risk analysts is largely concerned with developing their capacity to effectively use the information contained in a CbC Report in tax risk assessment (alone and in conjunction with other taxpayer information). The type of training ranges from

identifying key risk indicators from the information contained in a CbC Report to identifying trends or patterns across industries or geographic areas using data analytics.

118. A valuable training tool for risk analysts is the recent work of the OECD FTA in providing guidance on the development of effective risk assessment approaches to the information contained in the CbC Report. The risk assessment of information contained in a CbC Report is discussed in detail in the OECD *Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment* (2017).

119. There are a number of valuable training and reference materials available on the subject of transfer pricing and risk assessment. The OECD has addressed these issues in the publications, *Dealing Effectively with the Challenges of Transfer Pricing*<sup>11</sup> (OECD, 2012) and the *Draft Handbook on Transfer Pricing Risk Assessment*<sup>12</sup> (OECD, 2013). In addition, the OECD Task Force on Tax and Development has a programme of support for developing countries seeking to implement or strengthen their transfer pricing rules.<sup>13</sup>

120. Given the importance of ensuring that individuals involved in risk assessment have adequate training and experience, it is expected that many countries will develop specialist training modules that would be used as a basis for training risk analysts on the effective use of the information contained in the CbC Reports. Generally, the ideal forum for such training would be in a workshop environment that facilitates active interaction among the participants. By facilitating the active exchange of views, such workshops have the potential to act as an incubator for new ideas and approaches.

121. While the information contained in a CbC Report provides tax authorities with valuable input into the risk assessment process, it also adds a level of complexity. Thus, risk assessment models, and the training of risk analysts, will have to evolve to accommodate the introduction of this new variable. In the process, risk analysts may be challenged to supplement their knowledge of transfer pricing risks, as presented through traditional transfer pricing documentation, with a broader understanding of how both transfer pricing and other BEPS-related risks may be identified using, in addition to other information traditionally available, the information contained in CbC Reports.

#### *Tax auditors/tax specialists*

122. Tax auditors and tax specialists (who are not directly involved in the risk assessment process but are granted access to CbC Reports in the course of an audit or in developing or approving an audit plan) would be appropriate candidates for both awareness and specialist training. As a matter of good governance, it is suggested that auditors/specialists not be given access to CbC Reports until they have completed training designed to verify that they fully understand:

- the nature and purpose of the CbC Report
- the basic elements and content of the CbC Report, including an understanding of potential risk indicators contained in the report

<sup>11</sup> [www.oecd.org/publications/dealing-effectively-with-the-challenges-of-transfer-pricing-9789264169463-en.htm](http://www.oecd.org/publications/dealing-effectively-with-the-challenges-of-transfer-pricing-9789264169463-en.htm)

<sup>12</sup> [www.oecd.org/tax/transfer-pricing/Draft-Handbook-TP-Risk-Assessment-ENG.pdf](http://www.oecd.org/tax/transfer-pricing/Draft-Handbook-TP-Risk-Assessment-ENG.pdf)

<sup>13</sup> [www.oecd.org/ctp/tax-global/developing-capacity-in-beps-and-transfer-pricing.pdf](http://www.oecd.org/ctp/tax-global/developing-capacity-in-beps-and-transfer-pricing.pdf)

- the commitment to use the information contained in the CbC Report in an appropriate way and to document the use, if any, of the information contained in the report in the course of the audit
- the commitment to maintain the confidentiality of CbC Reports, including an awareness of not revealing any particular CbC Report received in exchange from another jurisdiction to a local member of the MNE group.

### *Competent authority personnel*

123. Competent authority personnel working in the exchange of information function will be required to understand and execute the proper procedures for effectively and securely transmitting the CbC Reports to countries with which it has a CAA. These procedures should be clearly explained in an operations manual and supplemented by basic training modules designed to ensure that competent authority personnel understand the procedures. It should be expected that, during the implementation period for CbC Reporting, employees would also require a period of structured on-the-job supervision.

124. Given the importance of the CAAs to the effective exchange of CbC Reports, it is incumbent on tax authorities to ensure that competent authority personnel responsible for administering these agreements are familiar with their responsibilities and are prepared to fulfil those responsibilities as necessary. In this respect, some type of instruction or training may be advisable, which could be delivered informally through in-house seminars, to ensure that the relevant competent authority personnel fully understand their responsibilities under the applicable CAA to:

- consult, if requested, with the one or more other competent authorities to resolve any difficulties in the implementation or interpretation of the CAA
- notify the competent authority of the other country (or the Co-ordinating Body Secretariat, in the case of the multilateral CAA) of cases of non-compliance with the rules regarding the confidentiality and appropriate use of the information in CbC Reports and any remedial measures taken to rectify the non-compliance
- take measures, such as initiating consultations with another competent authority, prior to making a determination of systemic failure, or significant non-compliance with the terms of a CAA
- consult and discuss with the aim of resolving cases involving adjustments to the taxable income of an entity based on data in the CbC Report that led to undesirable economic outcomes.

125. The competent authority personnel who work in the resolution of double tax cases should be provided with awareness training to ensure that they have a good understanding of both the nature and purpose of CbC Reports and the importance of the appropriate use of the information contained in those reports. In addition, specific instructions and/or guidance should be reflected in an operations manual or policy document that explains the obligation imposed on the competent authority to concede, in the course of competent authority proceedings, any adjustment by its tax authority based on the inappropriate use of the information contained in a CbC Report.

### Illustrative examples of approaches to training

**The Netherlands** has a group of CbC Reporting specialists that provide training to colleagues in various offices throughout the country. The training provides these specialists with an opportunity to establish and build relationships within the tax authority. The emphasis during the training sessions is on explaining the background and mechanics underlying CbC Reporting and how the tax authority will use and manage the information contained in the CbC Reports. In particular, the training sessions emphasise the appropriate use of the information.

The **United States** uses technology to facilitate continuous and just-in-time learning for employees. Just-in-time training supplements both annual mandatory training and foundational training provided to new employees on topics such as unauthorized access of taxpayer information and focuses on specific issues or techniques. This training may be offered in a virtual, self-serve environment or in team-based or other interactive environment. The agility of these courses helps the IRS to increase workforce competency in specific areas where business demand is high so that employees have the necessary skills to respond to the changing risk and examination environment.

To specifically address CbC Reporting, the IRS is developing just-in-time training on CbC filing requirements and the appropriate use of the information contained in CbC Reports. This training, which will be tailored to meet the needs of those who will be working directly with the CbC Reports, may include different sections on confidentiality protections for those accessing CbC Reports as a tax return attachment, those accessing CbC Reports through exchange mechanisms, and officials in the United States Competent Authority who may be involved in discussions with other competent authorities concerning the inappropriate use of the information contained in CbC Reports. The objective in delivering subject-specific training modules on a just-in-time basis is to ensure an efficient use of limited resources through the timely dissemination of new information to those with immediate needs while enhancing workforce adaptability. This training will serve as a prerequisite for accessing CbC Reporting information. Selected employees will receive access to the information contained in CbC Reports only after completing the training and obtaining approval through an online system.

**Australia's** approach to training for CbC Reporting will include training sessions for compliance staff to provide an overview of the reporting requirements and the type of information contained in the CbC Report, master file and local file. This will be complemented by more in-depth sessions for targeted staff, for example power users, who will provide assistance to site based compliance teams. Training will be provided through face-to-face sessions, webinars and self-paced learning products. In addition, Australia is developing a specific training module on the appropriate use of information contained in the CbC Report, which will need to be completed before staff can access the data.

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## *Annex*

# **Country-by-Country Reporting: Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports**

### **Introduction and background**

1. The Action 13 Report (OECD, 2015) introduced a three-tiered approach to transfer pricing documentation, consisting of a master file containing standardised information relevant for all members of a multinational group; a local file referring specifically to material transactions of the local taxpayer; and a Country-by-Country Report (CbC Report) containing certain information relating to the global allocation of the group's income and taxes, together with indicators of the location of economic activity within the group (CbCR information).

2. Where Country-by-Country Reporting (CbC Reporting) applies, the ultimate parent entity (UPE) of a group with annual consolidated group revenue equal to or higher than EUR 750 million (or near equivalent in domestic currency as of January 2015) in the preceding fiscal year is required to file a CbC Report on behalf of the group with its local tax authority. The deadline for filing the CbC Report is by no later than 12 months after the last day of the group's reporting fiscal year. A jurisdiction may set an earlier filing deadline than this, but this is not required or recommended. The tax authority with which the CbC Report is filed will exchange the CbC Report with the tax authority in other jurisdictions where the group has operations, under bilateral or multilateral tax treaties or tax information exchange agreements (TIEAs) that permit the automatic exchange of information. This is subject to conditions, including the jurisdictions having a legal framework for CbC Reporting in place and meeting conditions concerning confidentiality, consistency and the appropriate use of CbCR information. Implementation of CbC Reporting is one of the four minimum standards within the Base Erosion and Profit Shifting (BEPS) Action Plan, and will be implemented by all jurisdictions that are members of the OECD Inclusive Framework on BEPS.

3. The terms of CbC Reporting are described in the Action 13 Report (OECD, 2015), which is supplemented by guidance on specific elements of the design, operation and implementation of the regime. In addition, Annex IV to Chapter V of the Action 13 Report includes an implementation package to assist countries, which includes a model for domestic legislation, a model multilateral competent authority agreement (CAA) for jurisdictions exchanging CbC Reports under the *Convention on Mutual Administrative Assistance in Tax Matters* (the Multilateral Convention) and model bilateral CAAs for jurisdictions exchanging CbC Reports under Double Tax Conventions (DTCs) or TIEAs. The model multilateral CAA was used as the basis for the OECD CbC multilateral CAA (the multilateral CAA), which is used by many countries to operationalise the automatic exchange of CbC Reports. It is not required that jurisdictions use these models in implementing CbC Reporting, but they are useful reference tools to ensure key elements

are covered in a consistent manner. Elements of these instruments are described in this guidance.

### The meaning of "appropriate use"

4. The ability of a jurisdiction to obtain and use CbC Reports is conditional upon it using CbCR information appropriately. This condition is described in paragraphs 25 and 59 of the Action 13 Report (OECD, 2015), and is given effect through Article 6(1) of the model legislation and paragraph 2 of Section 5 of the multilateral and model bilateral CAAs. For these purposes, appropriate use is restricted to:

- high level transfer pricing risk assessment
- assessment of other base erosion and profit shifting related risks
- economic and statistical analysis, where appropriate.

5. The Action 13 Report (OECD, 2015) includes two paragraphs which clarify what would not be considered appropriate use. This text is substantially repeated in Section 5 of the multilateral and model bilateral CAAs.

*... the information in the Country-by-Country Report should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. The information in the Country-by-Country Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate. It should not be used by tax administrations to propose transfer pricing adjustments based on a global formulary apportionment of income. (Paragraph 25)*

*Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the Country-by-Country Report. [...] This does not imply, however, that jurisdictions would be prevented from using the Country-by-Country Report data as a basis for making further enquiries into the MNE's transfer pricing arrangements or into other tax matters in the course of a tax audit (Paragraph 59)*

6. It is therefore clear that information contained in CbC Reports may be used for high level transfer pricing risk assessment, but should not be used by itself as a basis for proposing changes to transfer prices or adjusting a taxpayer's income using global formulary apportionment. However, there is nothing to prevent a tax authority from using CbCR information in planning a tax audit or as the basis for making further enquiries, into the group's transfer pricing arrangements or other tax matters, in the course of an audit. There is no commitment that these enquiries must relate specifically to potential risks identified through the use of CbCR information. For example, CbCR information (such as the details of constituent entities in Table 2) may be used as the basis for making enquiries into tax matters identified using other data sources or arising during the course of a tax audit. The OECD Forum on Tax Administration has prepared a *Country-by-Country Reporting: Effective Tax Risk Assessment Handbook* (OECD, 2017), to support tax authorities in making effective use of CbCR information for the purposes of tax risk assessment.

7. The Action 13 Report (OECD, 2015) does not contain guidance with respect to the ability of tax authorities to use information in CbC Reports for assessing other BEPS-related risks or for economic and statistical analysis. CbCR information may be used for

economic and statistical analysis, where appropriate (e.g. such use is not appropriate where it is not permitted under the relevant tax convention or TIEA) but no other details on this are provided. The Action 13 Report also does not define the term "BEPS-related risks".

### ***The meaning of "BEPS-related risk"***

8. The introduction to the February 2013 Report *Addressing Base Erosion and Profit Shifting* (the BEPS Report, OECD 2013) refers to the challenge faced by countries as "planning aimed at shifting profits in ways that erode the taxable base to locations where they are subject to a more favourable tax treatment". The report goes on to state that:

*While the specific goals will vary among MNEs, in particular with respect to companies headquartered in different jurisdictions, broadly speaking BEPS focuses on moving profits to where they are taxed at lower rates and expenses to where they are relieved at higher rates. Specific strategies may also be put in place to make use of existing "tax attributes" such as tax credits, loss-carry forwards, etc. These generic goals are often achieved in a way that aligns with the overall management of the treasury operations of the group, e.g. in terms of cash management, management of foreign exchange risks and efficient repatriation strategies.*

9. The BEPS Report gives a number of examples of how tax rules in place at the time could be used to achieve low or no taxation, based around existing rules on jurisdiction to tax, transfer pricing, the tax treatment of debt and anti-avoidance rules. These include the use of a low-taxed branch of a foreign company, hybrid entities, hybrid financial instruments, conduit companies, the use of derivatives to avoid withholding taxes, and profit shifting using the contractual allocation of risk and the pricing of intangibles.

10. The *Action Plan on Base Erosion and Profit Shifting* (the BEPS Action Plan, OECD 2013), released in July 2013, does not change this broad definition of BEPS, but identifies actions needed to address BEPS and the methodology to implement those actions. A number of the 15 Action Items set out in the BEPS Action Plan target specific arrangements (e.g. hybrid mismatch arrangements in Action 2 and treaty abuse in Action 6), but this is not the case for all of the Action Items. However, taken together and implemented consistently, the 15 Action Items represent a comprehensive response to the BEPS risks faced by countries, by improving coherency and transparency in the international tax system, and ensuring that the location of a group's taxable profit corresponds with the location of its substantial economic activity.

11. Thus, consistent with the BEPS Report, the term "assessment of other BEPS-related risks", should be understood to refer to the high level assessment of tax risks that may result in the erosion of a country's tax base. In practice, while CbC Reports may be used to identify indicators of possible tax risk, it will usually only be possible to understand the arrangements giving rise to that risk once further enquiries have been conducted. It remains key that CbCR information should be limited to use in risk assessment and as a basis for making further enquiries in the course of a tax audit (and economic and statistical analysis, where appropriate). In the same way that CbCR information on its own does not constitute conclusive evidence that transfer prices are not appropriate, it also does not constitute conclusive evidence that a group is engaged in other forms of BEPS.

### **Consequences of non-compliance with the appropriate use condition**

12. The Action 13 Report (OECD, 2015) includes a number of consequences for a jurisdiction resulting from non-compliance, or possible non-compliance with the

appropriate use condition, which are given effect through the model CAAs where these are used in implementing CbC Reporting.

- Appropriate use as a condition for receiving and using CbC Reports.
  - A commitment by competent authorities to disclose breaches of appropriate use, to the Co-ordinating Body Secretariat (for exchanges pursuant to the multilateral CAA) or other competent authority (for exchanges pursuant to the model bilateral CAAs).
  - A commitment by competent authorities to promptly concede inappropriate adjustments in competent authority proceedings.
  - The ability of competent authorities to temporarily suspend exchange of CbC Reports following consultation in cases of non-compliance.
13. In addition, there is a serious risk that inappropriate use of CbC Reports could result in entities being issued incorrect tax assessments.

#### ***Appropriate use as a condition to receiving and using CbC Reports***

14. Paragraph 56 of the Action 13 Report (OECD, 2015) describes the appropriate use of CbCR information as one of three conditions underpinning the obtaining and use of CbC Reports (together with confidentiality and consistency). The appropriate use condition is given effect through paragraph 2 of Section 5 of the multilateral and model bilateral CAAs. This provides that information received by means of the CbC Report will be used for assessing high-level transfer pricing, base erosion and profit shifting related risks, and, where appropriate, for economic and statistical analysis.

15. Under the recitals to the multilateral and model bilateral CAAs, jurisdictions indicate that they have, or expect to have, in place by the time the first exchange of CbC Reports takes place, appropriate safeguards to ensure that information received is used for the purposes of assessing high-level transfer pricing risks and other BEPS-related risks, as well as for economic and statistical analysis, where appropriate. Further, under paragraph 1(d) of Section 8 of the multilateral CAA, a jurisdiction's competent authority must provide notification to the Co-ordinating Body Secretariat "that it has in place the necessary legal framework and infrastructure to ensure [...] the appropriate use of the information in the CbC Reports". As such, tax authorities will not exchange CbC Reports until this condition is met and, under the multilateral CAA, until such notification has been provided. Similarly, under the Action 13 minimum standard, a jurisdiction may not require a CbC Report to be submitted by an entity that is not the UPE of its group (also referred to as local filing), unless that jurisdiction satisfies the appropriate use condition and the other conditions for local filing in the Action 13 Report (OECD, 2015) are met. Where a jurisdiction imposes local filing in circumstances that are not permitted under the Action 13 Report (OECD, 2015), this will be identified during the jurisdiction's peer review evaluation.

#### ***A commitment by competent authorities to disclose breaches of appropriate use***

16. The multilateral and model bilateral CAAs provide at paragraph 3 of Section 5 that, to the extent permitted under applicable law, a competent authority will notify the Co-ordinating Body Secretariat (where exchange occurs pursuant to the multilateral CAA) or the other competent authority (where exchange occurs pursuant to the model bilateral CAAs) immediately of any cases of non-compliance with respect to the

appropriate use condition (as well as the conditions of confidentiality and consistency), together with any remedial actions and measures taken in respect of the non-compliance. Where this notification is made to the Co-ordinating Body Secretariat, the Secretariat will notify all competent authorities which have an exchange relationship under the multilateral CAA with the competent authority that provided notice of the non-compliance.

***A commitment by competent authorities to promptly concede inappropriate adjustments in competent authority proceedings***

17. The appropriate use condition does not permit a tax authority to make an adjustment to the income of any taxpayer on the basis of a global formulary apportionment of income based on the data from the CbC Report. All adjustments should be supported by appropriate documentation. Paragraph 59 of the Action 13 Report (OECD, 2015) further provides that:

*[jurisdictions] will further commit that if such adjustments based on Country-by-Country Report data are made by the local tax administration of the jurisdiction, the jurisdiction's competent authority will promptly concede the adjustment in any relevant competent authority proceeding.*

18. Paragraph 2 of Section 5 of the multilateral and model bilateral CAAs implements this commitment and extends it to cover competent authority proceedings concerning any adjustment made in non-compliance with the appropriate use condition.

***The ability of competent authorities to temporarily suspend exchange of CbC Reports following consultation in cases of non-compliance***

19. Section 8 of the multilateral and model bilateral CAAs makes it clear that any non-compliance with the appropriate use condition will be considered "significant non-compliance". Where a competent authority determines that there is or has been significant non-compliance in another jurisdiction, it may temporarily suspend the exchange of CbC Reports by giving notice in writing. This determination may, for example, be based upon the outcomes of a jurisdiction's peer review evaluation of appropriate use, building on the objective criteria contained in this guidance. However, in any case, before suspending the exchange of CbC Reports, the competent authority should consult with the competent authority in the other jurisdiction on whether significant non-compliance has occurred.

***Risk of an incorrect tax assessment***

20. CbC Reports contain aggregated data on the location of a group's income, taxes and business activities by jurisdiction. They also list the main business activities for each constituent entity in the group. Where a group includes more than one entity in a jurisdiction, its CbC Report does not contain detailed information on a particular entity's income and expenditure or transactions it has entered into with third parties or related parties. CbC Reports do not include information on risk allocations between entities in a group and do not describe the functions performed or the assets employed by these entities. Therefore, while the information contained in a CbC Report can be valuable in indicating potential risks for further investigation, this is not sufficient by itself to allow a tax administration to draw reliable conclusions as to the precise fact pattern that gives rise to those risk indicators. Therefore, where a tax authority proposes tax adjustments based solely on information contained in a CbC Report, there is a significant risk that these

adjustments will be based on inaccurate assumptions. This could result in an incorrect tax assessment being issued, and possibly double taxation if this cannot be corrected.

### Approaches to ensure the appropriate use of CbCR information

21. This section contains guidance on the steps jurisdictions may take, if necessary, in order to effectively implement the appropriate use restriction into their domestic rules and processes. As a checklist, a jurisdiction should be able to answer yes to six basic questions, or should expect to be able to do so before the first exchange of CbC Reports takes place.

1. Do the multilateral and/or bilateral competent authority agreements concerning CbC Reporting signed by your jurisdiction include the appropriate use of information contained in CbC Reports, as a condition of obtaining and using CbC Reports?
2. Does your tax authority have a clear written policy in place governing the use of CbC Reports, including guidance on appropriate use?
3. Is this policy effectively communicated to all staff likely to have access to CbC Reports in the course of their work?
4. Is the use of CbC Reports controlled or monitored to ensure appropriate use, which may include:
  - i) imposing restrictions on access to CbC Reports, and/or
  - ii) ensuring that appropriate use is adequately evidenced?
5. Is guidance or training provided to appropriate tax authority staff in your jurisdiction that clearly sets out their commitments:
  - i) to notify the Co-ordinating Body Secretariat (for exchanges pursuant to the multilateral CAA) or other competent authority (for exchanges pursuant to the model bilateral CAAs) immediately of any cases of non-compliance with the appropriate use condition; and
  - ii) to promptly concede any competent authority proceeding that involves a tax adjustment using an income allocation formula based on CbCR information?
6. Are there measures in place to ensure controls are reviewed and updated as required, and the outcomes of these reviews documented?

22. Although all jurisdictions should be able to answer yes to these questions, or expect to be able to do so before the first exchange of CbC Reports take place, jurisdictions may differ in the specific measures and controls they implement, depending upon, among other things, the model for risk assessment adopted. For example, in terms of monitoring the use of CbCR information, a tax authority that operates a centralised model with a specialised risk assessment team may place significant reliance on controls over access to CbC Reports or may place greater emphasis on requirements for tax adjustments to be fully documented and subject to review to ensure that CbCR information has not been used inappropriately. On the other hand, controls over access to

CbCR information are less likely to provide comfort as to appropriate use where a tax authority operates a de-centralised model with risk assessments conducted within tax compliance teams. In this case, greater reliance may be placed on measures to ensure that tax adjustments are fully documented and supported. There is no restriction under Action 13 to prevent a jurisdiction from allowing tax compliance staff access to CbC Reports, so long as information contained in the reports is used appropriately and kept confidential in accordance with the applicable tax convention or TIEA.

23. This section includes a description of some of the measures jurisdictions may implement in order to be able to answer yes to each of the above questions, as examples. In practice, jurisdictions may be able to rely on existing policies and procedures (such as those concerning current tax risk assessment processes, the handling of information exchanged under tax conventions and TIEAs, or the management of transfer pricing cases), and it will simply be a case of ensuring that CbCR information is covered by these. In general, where a tax authority currently has robust processes in place to ensure that tax adjustments are supported by a thorough tax audit including consideration of all available data, it is expected that the additional steps required to ensure compliance with the appropriate use condition (e.g. to put in place written procedures on the use of CbCR information and to ensure CbC Reports are covered by existing security measures) should be reasonably modest. A policy to ensure the appropriate use of CbCR information may be further supported where the tax authority ensures that relevant taxpayers in the jurisdiction (i.e. entities in large corporate groups) are aware of this policy, enabling them to recognise and report cases of possible non-compliance. Nothing in this section is intended to prevent tax authorities using intelligence obtained from CbC Reports for the purposes of planning tax audits or other compliance actions, or as a basis for making further enquiries to taxpayers or to other tax authorities. Further enquiries directed to another tax authority must meet the foreseeable relevance standard.

***Do the multilateral and/or bilateral competent authority agreements concerning CbC Reporting signed by your jurisdiction include the appropriate use of information contained in CbC Reports, as a condition of obtaining and using CbC Reports?***

24. Although the Action 13 Report (OECD, 2015) contains a description of the commitment by jurisdictions to use CbCR information appropriately, in practice the commitment and the consequences of non-compliance will be contained in the multilateral and bilateral CAAs used by a jurisdiction for exchanging CbC Reports. For example, the commitment that use of information will be limited to "assessing high-level transfer pricing risk, base erosion and profit shifting risks and, where appropriate, for economic and statistical analysis" is set out in paragraph 2 of Section 5 of the model bilateral CAAs in the implementation package.

25. In order to ensure that the appropriate use condition is implemented effectively, it is important that jurisdictions include this condition within the CAAs they use for CbC Reporting. This condition is included in the multilateral CAA now signed by many jurisdictions. Where a jurisdiction uses bilateral CAAs, it should include in the CAAs it negotiates the same condition on appropriate use, as well as the same consequences from non-compliance. This may be supported by operational and administrative measures such as those detailed elsewhere in this guidance.

***Does your tax authority have a clear written policy in place governing the use of CbC Reports, including guidance on appropriate use?***

26. A jurisdiction's tax authority should have a written policy in place setting out clearly that CbCR information must only be used for appropriate purposes, including a description of what is meant by appropriate use. This could be set out in a separate policy document or, for example, added to existing guidance on the use of transfer pricing documentation.

27. To help staff in understanding and interpreting this policy, tax authorities should consider including more detailed explanations and examples as to what would be considered appropriate use and/or what would not be considered appropriate. The policy may also include guidance as to what staff should do if they have questions regarding appropriate use or if they suspect CbCR information has been used inappropriately.

***Is this policy effectively communicated to all staff likely to have access to CbC Reports in the course of their work?***

28. Tax authority staff likely to have access to CbC Reports in the course of their work should be aware of the restrictions on use of CbCR information under domestic law and commitments under CAAs, while being positively encouraged to use information contained in CbC Reports within the scope of these restrictions. This may be done for example by including the tax authority's written policy in a manual which is provided to staff when they first have access to CbC Reports, but which is also readily available to all staff, as well as on a relevant page of the tax authority's intranet site. A reminder of this policy could also be given when staff access electronic copies of CbC Reports. This policy should be translated into all official languages in the jurisdiction, and other languages commonly used by members of staff.

29. The effectiveness of controls to ensure awareness of this policy can be improved by providing training to assist staff in understanding the commitment concerning appropriate use, including the consequences of non-compliance, which could be in the form of seminars, written materials or online tools. This could be specific to the topic of appropriate use, or built into wider staff training. For example, where staff members receive training on the effective use of CbCR information for risk assessment, this could include a section on appropriate use. All tax authorities should consider using training tools to ensure staff understand the limits on the use of CbCR information, but this is particularly important where CbC Reports are made available to staff involved in compliance activity such as tax audits, as in this case the potential for inappropriate use is increased if staff are not adequately aware of their commitments.

30. Tax authorities may also introduce physical reminders of the limits on use of CbCR information, for example by applying a stamp or other mark to each page of a group's CbC Report and also to any reports or analyses prepared using CbCR information. Similar 'digital stamps' could be applied to electronic versions of CbC Reports and analyses. This would reduce the risk that CbCR information is accidentally used inappropriately, if a member of staff is not aware that an analysis is based on information taken from a CbC Report.

*Is the use of CbC Reports controlled or monitored to ensure appropriate use?*

31. Jurisdictions may apply different approaches to ensure that staff is supported in using CbCR information appropriately, while including measures to control or monitor the use of CbC Reports to minimise the risk of inappropriate use. In particular, these may include measures to restrict access to CbC Reports and/or measures to ensure that appropriate use is adequately evidenced. In many cases, this may be done through processes that are already in place and it will not be necessary for jurisdictions to introduce additional measures specific to CbC Reports.

*Measures to restrict access to CbC Reports*

32. Tax authorities operate different models for tax risk assessment, including centralised structures with a dedicated risk assessment team (which may be a single national team or a number of regional teams), and de-centralised structures where risk assessment is conducted by staff within the compliance team including tax auditors. In some cases, a tax authority may operate both models in parallel (e.g. a centralised process for the largest groups in the jurisdiction, and a de-centralised process for other groups). A number of tax authorities have revised their risk assessment models and moved towards a centralised process for the handling of CbC Reports, but different models continue to exist. Tax authorities should consider introducing controls, or expanding existing controls, to ensure that CbC Reports are available to staff involved in activities covered by the appropriate use condition, but to restrict access to other staff. Mechanisms may also be used to monitor or record which staff access CbCR information. These measures will vary depending on the risk assessment model adopted by a tax authority.

33. Where a tax authority operates a centralised risk assessment model, access to CbC Reports may in the first instance be restricted to staff involved in the risk assessment process. Controls to ensure this could include a written policy setting out the restrictions on providing access to CbCR information to other staff, the use of password protected computers to access electronic data, and physical security measures such as locating risk assessment and compliance staff separately and ensuring that physical copies of CbC Reports are stored in locked rooms or locked filing cabinets. CbCR information (including complete CbC Reports, extracts from CbC Reports or analyses based on CbC Reports) may be provided to staff in the compliance function, to the extent this is covered by the appropriate use condition. For example, compliance staff may be involved in determining whether a potential risk identified during the risk assessment process can be explained or whether compliance action is required. In this case, the risk assessment team may maintain a record of what information was shared, the reason for sharing it, and the staff with whom it was shared.

34. Where risk assessments are conducted directly by the compliance team, the controls which may be appropriate to restrict and monitor access to CbCR information vary. Where only certain members of a compliance team are involved in risk assessment, the tax authority could introduce measures similar to those described above with respect to a centralised risk assessment team (e.g. use of passwords and physical security) to limit access to those engaged in appropriate use. However, where all or most of a compliance team is involved in a group's risk assessment, these controls are unlikely to offer material comfort that CbCR information is used appropriately (although they would still be relevant for ensuring CbCR information is held confidentially). In this case, a jurisdiction may place more emphasis on monitoring the use of CbCR information and ensuring appropriate use is adequately evidenced.

35. CbCR information may also be used for the purposes of economic and statistical analysis where appropriate (e.g. to the extent this is permitted under the relevant tax treaty or TIEA, the conditions of which will protect the confidentiality of the information exchanged and prevent the information from being published). Where a tax authority proposes to use CbCR information in this way, the controls described above should also ensure that access is available to staff engaged in conducting or reviewing these analyses.

*Measures to ensure appropriate use is adequately evidenced*

36. Measures to monitor the use of CbCR information are useful in ensuring that the appropriate use condition is met. These should ensure that, as a question of fact, information contained in CbC Reports is only used for the three purposes specified in the Action 13 Report (OECD, 2015).

37. Controls to monitor the use of CbCR information could include a requirement on compliance teams to document the specific actions they take with respect to taxpayers in large groups. This could include recording a detailed tax audit trail including correspondence with the taxpayer group, review of the master file, local file and other transfer pricing documentation, as well as additional information and evidence the group has been asked to provide, and any further analyses and calculations conducted by the compliance team to support proposed tax adjustments.

38. Tax authorities should incorporate the appropriate use condition into their existing review mechanisms, or introduce such mechanisms if they do not already exist, recognising that this may be of less significance in the context of a jurisdiction that relies on the tight restriction of access to CbC Reports. These may apply at different levels of the tax administration (e.g. within the compliance team and at a more senior level). For instance, the final review of material tax adjustments could be conducted by senior staff, independent of the compliance team proposing the adjustment. In order to ensure that CbCR information has not been used inappropriately, this review would confirm that proposed adjustments have been determined by applying the jurisdiction's domestic tax law and tax treaties to evidence provided by the taxpayer or obtained as a result of compliance activity (e.g. a review should confirm that sufficient evidence is held on the audit file to objectively support the proposed adjustments). Specifically, tax authorities should have measures in place to establish that information contained in CbC Reports has not been used as conclusive evidence that transfer prices are incorrect, and the adjustment is not based on global formulary apportionment of income using CbCR information. The mere fact that CbCR information has been used as the basis for making further enquiries does not imply that CbC Reports have not been used appropriately.

39. A tax authority may also introduce a more detailed review of a specific tax audit in cases where a taxpayer challenges a tax adjustment or makes an appeal against a tax assessment, and the taxpayer claims that the adjustment is based on an inappropriate use of information contained in the group's CbC Return.

***Is guidance or training provided to appropriate tax authority staff in your jurisdiction that clearly sets out their commitments?***

40. The Action 13 Report (OECD, 2015) includes two specific commitments concerning a jurisdiction's competent authorities with respect to the use of CbCR information.

- If a tax administration adjusts the income of a taxpayer using an income allocation formula based on data from a CbC Report, the jurisdiction's competent authority will promptly concede the adjustment in any relevant competent authority proceeding.
- To the extent permitted under applicable law, a competent authority will notify the Co-ordinating Body Secretariat (where a CbC Report was exchanged pursuant to the multilateral CAA) or the other competent authority (where a CbC Report was exchanged pursuant to the model bilateral CAAs) immediately of any cases of non-compliance with the appropriate use condition, including any remedial actions as well as any measures taken in respect of the non-compliance.

41. Tax authorities should provide clear guidance or training to competent authorities to ensure they are aware of these commitments and to ensure that they are able to comply with them promptly. In addition, tax authorities and other governmental bodies should not introduce any obligations or restrictions on competent authorities that would prevent them complying with these commitments, or would unnecessarily delay them in complying.

***Are there measures in place to ensure controls are reviewed and updated as required, and the outcomes of these reviews documented?***

42. Jurisdictions should have in place procedures to ensure that any measures they introduce are complied with and operate effectively. For example, a specific official or body within the tax administration, ideally one which is independent of the tax compliance function, may be responsible for ensuring compliance with the tax authority's commitments under the appropriate use condition (possibly together with other commitments under Action 13).

43. A tax authority should consider conducting periodic checks on whether there has been a breach of its policies to ensure appropriate use. These may vary depending on the measures introduced, but could include checks on whether all staff using CbCR information have participated in suitable training; on whether controls over access to CbC Reports are effective; and reviews of tax audit files for groups where CbC Reports are available to ensure they are complete and the outcomes of audits are fully documented and evidenced.

44. Where it is found that there has been a breach of the commitment to use CbCR information appropriately, the tax authority should consider applying sanctions or administrative measures which are appropriate to the nature of the breach but which are sufficient to reduce the likelihood of further non-compliance in the future. This should be accompanied by consideration of whether the controls in place were operating effectively in detecting the breach, or if changes to procedures need to be introduced (e.g. taking into account how quickly the breach was detected and dealt with).

***Are any other measures applied to ensure appropriate use of CbC Reports?***

45. It is anticipated that, where a jurisdiction has measures in place that enable it to answer yes to each of questions 1-6, it should have comfort that it has the necessary legal framework and infrastructure in place to ensure CbC Reports are used appropriately. It should also enable the jurisdiction to satisfy the recital to the multilateral and model bilateral CAAs that refers to appropriate use and, if the multilateral CAA is being used, enable its competent authority to provide notification of this to the Co-ordinating Body Secretariat. However, jurisdictions may have measures in place that are not covered by the

above questions, which provide additional comfort. Where these measures are effective in ensuring appropriate use, they may be incorporated into future updates of this guidance.

## *Bibliography*

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# BEPS Action 13 Country-by-Country Reporting

## HANDBOOK ON EFFECTIVE IMPLEMENTATION

Country-by-Country (CbC) Reporting is one of the four minimum standards under the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project to which over 100 countries have committed, covering the tax residence jurisdictions of nearly all large MNE groups. Where CbC Reporting is implemented effectively, and in line with the conditions set out in the BEPS Action 13 Report, it will give tax authorities unprecedented access to information on the global allocation of an MNE group's revenue, profit, tax and other attributes for high level transfer pricing risk assessment and the assessment of other BEPS-related risks.

This handbook is a practical guide to assist countries in implementing CbC Reporting into their domestic law, taking into account:

- key factors that countries should consider in introducing a domestic legal framework for the filing and use of CbC Reports;
- issues concerning the implementation and operation of an international framework for the exchange of CbC Reports;
- operational aspects of CbC Reporting, including mechanisms to identify entities required to file CbC Reports in a country, the handling of CbC Reports and the importance of effective sanctions for non-compliance; and
- practical issues including the importance of guidance to taxpayers and tax authority staff, engaging with stakeholders and providing training for staff who will deal with CbC Reports.

