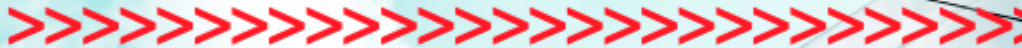


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United Kingdom

CbCR—Recent Developments in the U.K.

On March 30, 2017, the U.K. tax authority, Her Majesty's Revenue and Customs ("HMRC"), published updated guidance regarding the country-by-country reporting ("CbCR") requirements for multinational enterprises ("MNEs"). The amendments consider updated guidance from the Organisation for Economic Co-operation and Development ("OECD") and namely include:

- (i) Extending the original scope of CbCR requirements to partnerships (originally announced in August 2016);
- (ii) Requiring a U.K. entity with a local obligation to file a U.K. CbC report to ask for the information necessary to complete a full CbC report (for the whole group) and aligning the local filing requirements with the OECD model; and
- (iii) Introducing a requirement for a U.K. entity in each MNE group to communicate on an annual basis to HMRC which entity from within the MNE group will file the CbCR, in which jurisdiction they will file, and the names and unique taxpayer references of all the U.K. entities of the group.

Including Partnerships in the Scope of CbC Reports

Since the introduction of CbCR through the Taxes Regulations 2016, the OECD has made certain amendments and clarifications as to the scope of the entities included in the measure. Specifically, this new amendment now clarifies that partnerships should be included as reporting entities for the purposes of CbCR. For example, where a U.K. partnership (i.e. a partnership governed under U.K. partnership law, or a U.K. LLP) is the Ultimate Parent Entity ("UPE") for determining where it is required to file the CbC report, the partner of the partnership required to file the tax return, will also be required to file the CbC report. In other cases, where accounting consolidation rules apply to a partnership, then the partnership would be considered a constituent entity for CbCR purposes in the country where it is constituted. In the rare cases where a partnership is not a tax resident in any jurisdiction, its accounting items would be included in the "stateless entity" row in table 1 of the CbCR (to the extent they are not already reported in a permanent establishment elsewhere).

Alignment of Local Filing Requirements to the OECD Model

The amendments also make a minor adjustment to align the U.K.'s local filing requirements with the OECD model. Local filing will only be required if the parent jurisdiction of the foreign MNE has entered an international agreement that allows for exchange of information but has not entered any specific arrangements to exchange the CbC report.

In addition, the amendment introduces a requirement for the top U.K. entity caught by the local filing rules to ask its parent entity for the information it would need to be able to file a full CbC report for the whole group. If the parent entity refuses, the U.K. entity must tell HMRC of the refusal and file a CbC report covering all entities within the subgroup of which it is the head.

Annual Notification Scope and Deadlines

There is now a requirement for a U.K. entity that is part of a MNE within the scope of CbCR to communicate to HMRC on an annual basis which entity in the MNE group will file the CbCR and where. The amendments also require that the names and unique taxpayer references for all the U.K. entities of the MNE group be provided (including U.K. resident companies, permanent establishments and partnerships).

The notification should be made by the end of the period that is being reported. An exception applies for the first notification, which must be received by the later of the last day of the period covered by the report or September 1, 2017.

To avoid duplication, the UPE and the top U.K. entities ("UKE") will not have to notify if another UPE or UKE of the MNE group has provided a notification that contains all the information that is required. HMRC must be provided with the identity of the UPE or UKE that has notified and the date that took place by the deadline.

There is no specific form for the notification, but HMRC has stated it would prefer this to be done in a spreadsheet form and a dedicated mailbox has been set up for this purpose: notification.cbcrfiling@hmrc.gsi.gov.uk. Where the UKE and UPE are dealt with by HMRC Large Business, a copy of the notification should also be sent to the company's customer relationship manager ("CRM").

The measure also introduces penalties for failure to notify and for failure to file the CbC report.

Our Comments

The main change that will impact the reporting and compliance burden on U.K. companies relates to the additional notification requirement.

This change is in line with the OECD Model and the EU Directive on Administrative Cooperation (2011/16/EU, or DAC4) on mandatory exchange of information. It will possibly not be welcomed by companies as it creates an additional deadline outside the annual self-assessment return process, even though the actual notification will probably be identical for later years for most companies.

The enacted changes do not impact the actual content of the CbC reports, as previously set out by the final report on Action 13 in the BEPS Action Plan (finalized in October 2015).

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