



BEPS TRANSFER PRICING WORKSHOP
TRANSFER PRICING DOCUMENTATION –
RISK ASSESSMENT AND SAFE HARBOURS

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26 – 30 OCTOBER 2015

**6. New Guidance on Transfer Pricing Documentation and
Country-by-Country Reporting**



Background

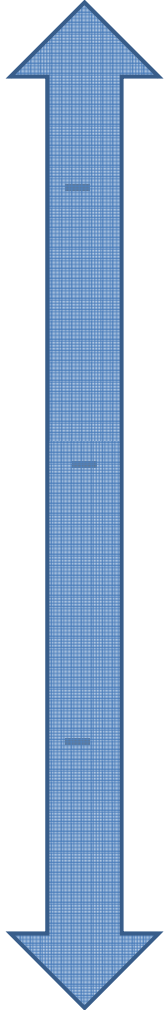
- Base Erosion and Profit Shifting (**BEPS**)
Action 13 required the OECD to :

*“Develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business. The rules to be developed will **include a requirement that MNE’s provide all governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template.**”*





Background



- **September 2014:** Guidance on a three-tiered approach on transfer pricing documentation (master file, local file, and country-by-country report)

- **February 2015:** Guidance on the implementation of the TP documentation and country-by-country reporting

- **June 2015:** Country-by-Country Reporting Implementation package.



Background

Objectives of the Revision of Chapter V on Documentation – OECD TPG

- Provide tax administrations with the **information necessary to conduct an informed TP risk assessment**
- Ensure that taxpayers give **appropriate consideration to TP requirements**
- Provide tax administrations with the **required information** in order to conduct an appropriately thorough audit



Three-Tiered Approach

New transfer pricing documentation guidance includes three types of documents:

- **Master file** containing standardised background information regarding the MNE group
- **Local file** analysing specific transfer pricing compliance for material transactions of the local taxpayer
- **Country-by-Country (CbC) report** containing specific information relating to the global allocation of the MNE's income, taxes paid and certain indicators of the geographic location of economic activity within the MNE group.



Three-Tiered Approach

- **Master file:**
 - provides a high level overview
 - common standardised information relevant for all MNE group members:
 - organisational structure;
 - description of MNE business;
 - intangibles;
 - intercompany financial activities and
 - Financial and tax positions
 - Flexibility as to whether master file should be prepared on a group-wide basis or by line of business
 - Annex I to Chapter V of OECD TPG sets out the information to be included in the master file.



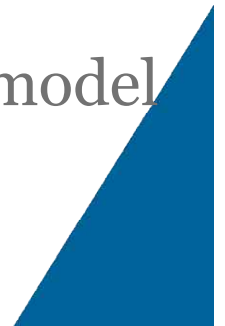
Three-Tiered Approach

- **Local file:**
 - provides more detailed information relating to specific intercompany transactions
 - supplements the master file
 - information relevant to TP analysis involving a local affiliate and associated enterprises in different countries
 - includes financial information, comparability analysis, selection and application of the most appropriate TP method
 - Annex II to Chapter V of OECD TPG sets out the information to be included in the local file.



Three-Tiered Approach

- **Country-by-Country Report**
 - High level risk assessment tool
 - Requires country level financial data for all countries but not entity-by-entity reporting
 - Includes a list of entities and PE's included in each country with numbers / activity codes for each
 - Provides flexibility regarding sources financial data provided a consistent approach followed for entire group and from year to year
 - Annex III to Chapter V of OECD TPG contains a model template and accompanying instructions.





Model Template of CbC report

A model template for the Country-by-Country Report

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group: Fiscal year concerned:										
Tax Jurisdiction	Revenues			Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							



Model Template of CbC report

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:														
Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity(ies)											
			Research and Development	Holding or Managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant
	1.													
	2.													
	3.													
	1.													
	2.													
	3.													

² Please specify the nature of the activity of the Constituent Entity in the “Additional Information” section.



Model Template of CbC report

Table 3. Additional Information

Name of the MNE group:
Fiscal year concerned:

Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report.



Time Frame

- Practices differ among countries
- Best practice for preparation of the file: no later than due date for filing of the tax return
- Some information might not be finalised at that date (in particular the CbC report)



Materiality

- Only interest in seeing the most important information
- Not overwhelmed by compliance demands
- Include **specific materiality thresholds** considering
 - Overall size and nature of the group
 - Size and nature of local economy
 - Importance of the group in the economy
 - Size and nature of local operating entities
 - Consider specific measures for SMEs



Documentation updates

- Master file and local file should be **updated annually**
- However, business descriptions, functional analyses and descriptions of comparables may not change significantly from year to year
- Simplify compliance burden: consider database searches every 3 years.



Language

- Language in which TP documentation should be submitted is established **under local laws**
- Countries are encouraged to permit filing of TP documentation in **commonly used languages**
- Specific requests for translation and sufficient time to make such translation.





Penalties

- Country practices vary **widely**
- Make non-compliance **more costly** than compliance
- Based on a **fixed amount** or calculated as a **percentage** of the related adjustment to the income or as a **percentage** of the amount of the cross-border transactions not documented.



Implementation

- **Master file and Local file :**
 - should be filed directly with the tax administrations in each relevant jurisdiction.





Implementation

- **Country-by-Country Report:**
 - Timing of preparation and filing of CbC Report by MNEs?
 - Which MNE groups are covered?
 - Conditions underpinning the obtaining and the use of CbC Reports
 - Framework for government-to-government exchanges of the CbC Reports.



When CbC reporting requirement start?

- CbC reports are required to be filed for MNE **fiscal years beginning on or after 1 January 2016**
- In practice
 - FY ending 31 December: First CbC reports filed by 31 December 2017
 - FY not ending 31 December: First CbC reports filed in 2018 => 12 months after close of first FY beginning after 1 January 2016
- No CbC reporting requirement for fiscal years beginning **before 1 January 2016**.



Which MNEs are required to file the CbC Report?

- All MNE groups are required to file a CbC Report
- **Exemption** for MNE groups with annual consolidated group revenue of **less than € 750 million**
- Appropriateness of the revenue threshold to be reviewed in **2020**.
- No exemption for specific industries, investment funds, non-corporate entities and non-public corporate entities.



Conditions underpinning the obtaining and use of CbC Reports

- **Confidentiality:** Legal protections of the confidentiality of the reported information
- **Consistency:** Domestic requirement that MNE group's ultimate parent entities resident in the jurisdiction file the CbC Report, using the standard template contained in Annex III of Chapter V of OECD TPG
- **Appropriate use:** Use of the reported information for high-level transfer pricing risk assessment.



Framework for government-to-government exchanges

Main rule:

- The ultimate parent company of an MNE Group will be required to file the CbC Report in its jurisdiction of residence.
- CbC Reports automatically exchanged under international agreements (such as bilateral tax treaties, the multilateral Convention on Mutual Administrative Assistance in Tax Matters, or tax information exchange agreements which allow for automatic exchange), combined with implementing Competent Authority Agreements

Exception:

- Where conditions for exchange are met but there is a failure to provide the information (filing of the CbC Report has not been required, no CAA has been agreed, the exchange has not happened as agreed under treaty or other instrument), secondary mechanisms will apply.





CbC Reporting Implementation Package

Two elements

**Model domestic
legislation**

Competent Authority Agreements

- Based on the Convention on Mutual Administrative Assistance in Tax Matters
- Based on Double Tax Conventions
- Based on TIEAs



Model Domestic Legislation

- Key features of model domestic legislation
- Primary mechanism: Filing obligation on resident ultimate parent company
- Back-up local filing obligation on resident subsidiary, but only when:
 - Ultimate parent company is not obliged to file the CbC report in its jurisdiction of tax residence, or
 - There is no competent authority agreement under existing exchange instrument with that jurisdiction, or
 - There is a systemic failure to exchange after agreeing to do so.
- Where there are multiple subsidiaries in a jurisdiction, the MNE group can designate one to file on behalf of all
- MNE groups can elect a surrogate parent entity to file the CbC report on behalf of ultimate parent company (providing option to reduce scope of local filing).



Outline of the Model Legislation

- **Article 1** – Definitions
- **Article 2** – Filing Obligation
- **Article 3** – Notification
- **Article 4** – Country-by-Country Report
- **Article 5** – Time for filing
- **Article 6** – Use and Confidentiality of Country-by-Country Report Information
- **Article 7** – Penalties
- **Article 8** – Effective date





Competent Authority Agreements

Multilateral Competent Authority Agreement, based on Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters

Model Competent Authority Agreement on the basis of Article 26 of a Double Tax Convention

Model Competent Authority Agreement on the basis of a TIEA



CbC MCAA

- The purpose of the CbC MCAA is to set forth rules and procedures to automatically exchange CbC reports with the jurisdictions in which the MNE group operates.
- The structure and content of the CbC Multilateral Competent Authority Agreement (“CbC MCAA”) is closely inspired by the CRS MCAA
- While a multilateral agreement, the activation of exchange relationships is bilateral (see Section 8 CbC MCAA).



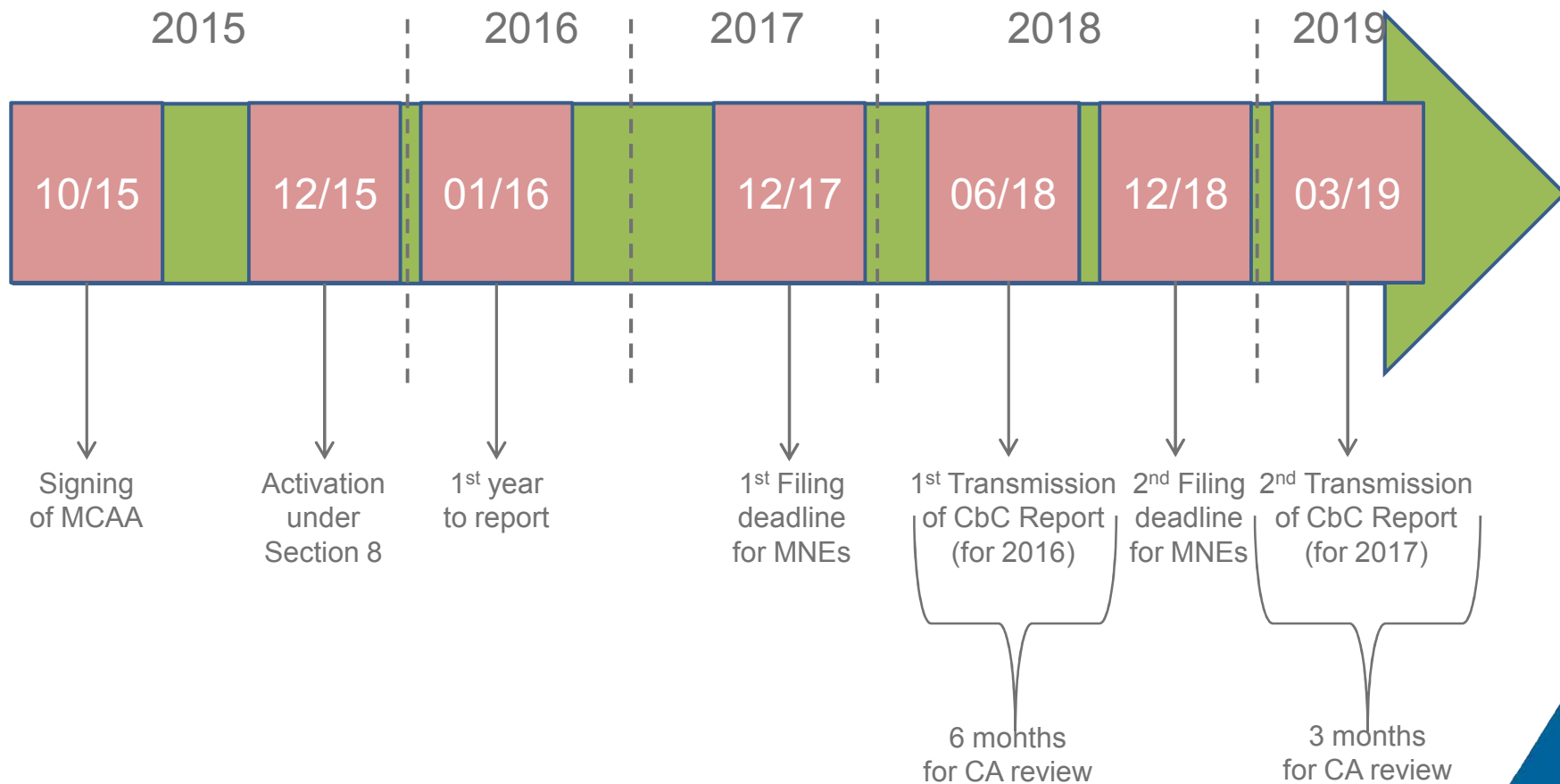
Outline of the CbC MCAA

- Section 1 – Definitions
- Section 2 – Exchange of information with respect to MNE Groups
- Section 3 – Timing and manner of the exchange
- Section 4 – Collaboration on compliance and enforcement
- Section 5 – Confidentiality, data safeguards and appropriate use
- Section 6 – Consultations
- Section 7 – Amendments
- Section 8 – Term of agreement
- Section 9 – Co-ordinating Body Secretariat



Timing of the exchange of CbC Reports

Example of the timing of the exchange (Section 3 CbC MCAA):





Q & A

