



Insights: Transfer Pricing

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BEPS: What lies within your country-by-country transfer pricing

On October 5, 2015, the OECD released its package of final reports under the OECD/G20 Base Erosion and Profit-Shifting Project (BEPS).^{1,2} Action 13 of the BEPS Action Plan contains the OECD's new guidance on a standardized three-tiered approach to transfer pricing documentation³ and introduces a requirement for large multinational enterprises (MNEs) to provide governments with information on their global allocation of income, economic activity, and taxes paid among countries according to a common template —the Country-by-Country Report (CbC Report).

The three-tiered standardized approach to transfer pricing documentation has the following elements:

1. Master File – requires an MNE to provide tax authorities with high-level information regarding its global business operations and transfer pricing policy.
2. Local File – requires detailed transactional transfer pricing documentation specific to each country, identification of material related party transactions, the amounts involved in those transactions, and transfer pricing analysis of the arm's length nature of those transactions.
3. CbC Report – requires annual provision of the following data for each tax jurisdiction in which an MNE does business: the amount of revenue; profit before income tax; income tax paid and accrued; number of employees; stated capital; retained earnings and tangible assets. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities for each entity.

Together, these documents will provide the framework for governments to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and provide information to commence and target audit enquiries.

¹ Organisation for Economic Co-operation and Development

² See <http://www.oecd.org/ctp/beeps-2015-final-reports.htm>.

³ The Final Report on Action 13 contains the text of the new Chapter V of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, dealing with transfer pricing documentation.

The CbC Report will only need to be prepared by MNEs with consolidated revenues exceeding EUR 750 million. They will be filed with the home country of the ultimate parent company and shared with other relevant countries under government information exchange mechanisms.⁴

The new CbC Report requirements take effect for fiscal years beginning on or after January 1, 2016. Tax payers do not need to file the CbC Report until one year following their year-end. For example, a tax payer with a December 31, 2016 year-end must file the CbC Report by December 31, 2017.

Transfer pricing diagnostic tool provides insight into your CbC data

To implement the new BEPS transfer pricing documentation requirements, tax authorities will, in general, need to amend their current tax laws. Various countries, including the United Kingdom, Australia, and Spain have already introduced legislation to implement regulatory requirements for CbC reporting. Denmark, Mexico, and the Netherlands have proposed bills to their legislative bodies to amend current tax laws to comply with BEPS Action 13.

The CbC Report provides tax authorities with a high-level view of how revenues, profits, and taxes paid are spread across countries within an MNE. Additionally, the CbC Report provides information on economic activity, for example, where human capital and assets are located.

In light of the new CbC Report, CRA has developed a proprietary diagnostic tool that uses CbC data to provide insight into a company's global transfer pricing position, based on BEPS concepts of value creation and risk alignment. With this tool, MNEs can identify variances within transfer prices across peer entities to review if profits diverge from transfer pricing targets. Further, CRA's diagnostic tool helps you analyze how profits are shared within an MNE and understand what lies within your CbC data before the tax administrations review the documentation. Finally, the tool generates reports that can be submitted to tax authorities for CbC compliance purposes, and be used to support the position of the audited entity.

For more information about Country-by-Country Reporting contact the authors.

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⁴ Note, US MNEs may be subject to file a CbC Report for a subsidiary operating within a country that adopts the new reporting requirements.

www.crai.com/transferpricing



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