



The OECD Base Erosion and Profit Shifting (BEPS) Project, Multinational Enterprises and CbC Reporting

By Stephanie Paiva Sanderson, Corporate Attorney

Stephanie Paiva Sanderson, Corporate Attorney and Chair of the Bermuda Industry/Government Joint Committee on FATCA and CRS provides a useful overview of BEPS and CbC reporting as well as how Bermuda has participated in these regimes.

What is the BEPS Project?

The Base Erosion and Profit Shifting (**BEPS**) Project has been a major project for the OECD which has been working hard for the past couple of years to progress and promote it globally. The BEPS Project is extensive and comprises 15 Action Points that provide proposals and plans to deter tax planning strategies that shift profits (and intellectual property) or take advantage of loopholes in tax regulations.

The BEPS Project takes aim at various technical issues such as double non-taxation, hybrid mismatches, treaty shopping, and transfer pricing.

What is country-by-country reporting?

One key element of the BEPS Project is a reporting regime called 'country-by-country reporting' (**CbC reporting**). CbC reporting is detailed in Action 13 and requires information to be provided to tax authorities for scrutiny. Information required to be submitted under the regime includes details of global business operations, revenue, profits and tax as well as information on management and organisational matters.

Who needs to comply with CbC reporting?

CbC reporting is applicable to multinational enterprises that earn over €750million per annum.

What is the CbC reporting regime trying to achieve?

The CbC reporting regime is principally aimed at transfer pricing which concerns the pricing of goods or services traded within the same multinational group.

What will the information contained in CbC reports be used for?

The information submitted to the relevant tax authorities is mainly intended to be interpreted by tax authorities to allow them to assess transfer pricing risk.

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Is the information submitted by multinational groups under the CbC reporting regime going to be made public?

CbC reporting is currently not intended by the international community to be public, although this may be dictated by jurisdictional laws or may change in future given that there is some support in the EU for public CbC reports.

How has Bermuda participated so far?

In April 2016, Bermuda became the 33rd signatory of the agreement for CbC reporting known as the 'Multilateral Competent Authority Agreement for the automatic exchange of Country-by-Country reports'. Pursuant to that agreement, multinational groups based in Bermuda which satisfy the criteria requiring submission of a CbC report will need to collect and submit information for fiscal years starting on or after 1 January, 2016.

Bermuda continues to keep ahead of competing jurisdictions in relation to international transparency standards and the maintenance of its reputation as a forward-thinking blue chip jurisdiction.

When will CbC reports need to be filed?

CbC reports should be filed within 12 months after each fiscal year has ended beginning with the first fiscal year starting on or after 1 January, 2016.

Is CbC Reporting globally significant?

The CbC reporting regime has continued to see increased global adoption and implementation - it was recently adopted in the US through Treasury and IRS regulations¹. Despite the steady increase, several questions remain for the multinational groups who are required to comply with the regime which, for most, will require infrastructure changes and new procedures to be put in place. Many will no doubt be faced with significant operational and technical challenges in order to comply with the data aggregation aspect and to ensure the reports tell an accurate story.

In today's 'post-FATCA' world, the transparency and regulatory landscape continues to become more and more complex. There is increased exchange of information between governments and authorities. It is important for multinational companies and those engaged in international business to keep on top of latest developments in the jurisdictions in which they operate.

As originally published on IFLR1000.com on 2 August, 2016. This article is intended for informational purposes only and is not a substitute for legal advice.

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¹ Although, as of the date of this document, the US has not yet become a signatory to the OECD Multilateral Competent Authority Agreement for Country-by-Country reports