
Exchange of Information (including on Beneficial Ownership) under Action 13

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Agenda

- Exchange of Information under Action 13
- Beneficial ownership vis-à-vis Exchange of Information

Exchange of Information

- Objective: achieving global tax co-operation through the implementation of international tax standards and other instruments to put an end to bank secrecy and tackle tax evasion*
- Age old concept of information on request - Article 26 of OECD and UN Model Tax Conventions
- In 2013, Global Forum moved towards automatic exchange of information
- Increasing awareness amongst all countries to focus on effective exchange of information:
 - Obligation to comply with the request by countries in a timely manner
 - Readiness of the information
 - Standardized manner and mechanism of providing information
- Culmination in OECD BEPS Action 13, amongst other BEPS initiatives

[*https://www.oecd.org/ctp/exchange-of-tax-information/](https://www.oecd.org/ctp/exchange-of-tax-information/)

Action 13

- Draft report in September 2014 and final report published in October 2015
 - Guidance on the Implementation of Transfer Pricing ('TP') Documentation and Country by Country Reporting ('CbCR')
- Three-tiered approach to TP documentation –
 - Master file
 - Local file
 - CbCR
- CbCR:
 - Threshold: Annual consolidated group revenue of more than or equal to Euro 750 Mn or an equivalent amount in domestic currency
 - Reporting template in three tables
 - To be filed in the jurisdiction of the tax residence of the ultimate parent entity; Secondary reporting mechanism in limited circumstances
 - To be shared between jurisdictions through automatic exchange of information (MCAA)
 - To be filed within one year from the close of fiscal year to which CbCR relates

CbC Report

Part A

Revenues (related and unrelated party)

Profit / loss before tax

Income tax paid & accrued

Number of employees

Stated capital; Accumulated earnings

Tangible assets other than cash and cash equivalents

Part B

Name of MNE group and relevant fiscal year

Constituent entities resident in the tax jurisdiction

Tax jurisdiction of Incorporation of constituent entities if different from tax jurisdiction of residence

Main business activities

E.g.: R&D, holding / managing intellectual property, purchasing or procurement, sales / marketing / distribution, administrative, management and support services, provision of services to unrelated parties, internal group finance, regulated financial services, insurance, holding shares or other equity instruments, dormant

Part C

Any further brief information or explanation that would facilitate understanding Part A and Part B information

EOI & CbCR

- Domestic provisions to include filing of CbCR on annual basis in a timebound manner
- Model Competent Authority Agreements to be used for exchange of CbCR:
 - Convention on Mutual Administrative Assistance in Tax Matters ('MCAA')
 - Bilateral Tax Conventions
 - Tax Information Exchange Agreements
- Address tax-payers' key concerns on secrecy, use of CbCR for audit purposes, etc. – specific provisions on appropriate & inappropriate use along with safeguards & remedial measures

CbCR Additional Guidance (Illustrative)

- Treatment of dividends received from Constituent Entities
- Amount reportable in full whole units in Part A
- Proportionate number of employees in case of proportionate consolidation; Disclosure in Part C
- Provides a detailed summary of reporting requirements in various scenarios of merger, demerger or acquisition

CbCR in India

Special provisions & related rules introduced in the domestic law

Threshold & Applicability

- Action 13 recommended Euro 750 Mn; adopted by India
- Consolidated group revenue exceeds INR 5,500 crores (approx. USD 770 Mn)
- Parent entity or alternate reporting entity resident in India

Contents & Timelines

- Definitions (MNE group, reporting entity, etc.) similar to those provided in Action 13 adopted
- Format prescribed in line with Action 13 – to be filed electronically
- Within a period of 12 months from the end of the reporting accounting year

CbCR in India (Cont...)

Instruction No. 2 / 2018:

- Deals with appropriate use & confidentiality of CbCR consistent with OECD guidelines
- Recognition to maintain confidentiality not only a legal requirement under treaties but also an international obligation as any leakage will impact India's ability to obtain information from other jurisdictions
- Review and reporting mechanism at senior level set in place for maintaining confidentiality
- Commitment to exchange reemphasized under MCAA and endeavor to enter into bilateral agreements
- Taxpayer empowered to raise concerns over breach of appropriate use including before Competent Authority
- In case of any adjustments made by inappropriate use, the Competent Authority is committed to concede such adjustments under the MAP proceedings

Effective EOI | Key takeaways

Unified approach by tax jurisdictions:

- Collating and appropriate use of data
- Manner and mechanism of data exchange
- Risk assessment tools
- Taxpayers' right to raise concerns and an effective dispute resolution mechanism
- Encourage peer reviews for adherence to OECD guidelines (Third annual peer review launched in July 2019; expected to be completed in the third quarter of 2020)

Beneficial Ownership



Relevance

- Key to taxing rights of jurisdictions:
 - Source & Residence
 - Imperative to identify Beneficial Owner ('BO') & the residence jurisdiction
 - Applicability of treaty benefits *qua* the income recipient
- Key challenges in identifying the BO & its residence thereof:
 - Economic activity carried out through cross border multi-layered structures comprising of varied entities
 - Limited access to single jurisdiction of the relevant information

Beneficial Ownership

- FATF's definition of BO (accepted by Global Forum):
 - "Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement."
- Only a natural person can be the BO - BO of legal entities (say company B) can be determined by examining its direct and indirect control and ownership, e.g. ownership of shares, voting rights, management control, contractual association, etc.
- FATF's recommendation on documentation maintenance (illustratively) for BO determination
 - Identifying transactions above certain limits, suspicious activity transactions, maintenance of records for at least 5 years, maintenance of records by third party subject to conditions;
 - Transparency of legal person and legal arrangement and their information.
- Effective mechanism for sourcing not publicly available information (including for unregulated entities such as private trust, fiscally transparent entities, etc.)

Collection, storage & access of BO information



Thank you
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