International Tax Services

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Base erosion and profit shifting (BEPS)

Recommendations to plan for new international transfer pricing rules

OECD's overall goals for BEPS

- **Increase** transparency and cooperation on tax issues by member countries.
- **Restrict** aggressive international tax planning by multinationals.
- **Standardize** transfer pricing documentation requirements.
- **Align** local country profits with functions and value creation.

Transfer pricing

BEPS, a multilateral effort by the OECD and G20 nations, has resulted in 15 policy recommendations (action plans) to address certain tax strategies used by multinational companies to reduce their tax burdens. Actions 8-10 and 13 address transfer pricing.

Actions 8 through 10 aim to update the current publication of the OECD guidelines on transfer pricing governing risk, intangibles, and other issues such as intragroup services.

Action 13 proposes a three-tiered approach to contemporaneous transfer pricing documentation: the Master File, the Local File, and the Country-by-Country (CBC) Report.

While the OECD is not a legislative body and the BEPS action plans are only recommendations, many countries have already begun to adopt the recommendations for transfer pricing documentation for the 2016 tax year and agreed to share the information collected with other treaty partners.

Action 13: Documentation

The **Master File** will require multinationals to prepare a global overview of the business, including an analysis of the functions performed, risks assumed, and assets employed by the various group entities, details on the global supply chain, allocation of income, and transfer pricing policies.

The **Local File** will be prepared by each local affiliate and contain detailed functional analyses, financial information, and economic analyses of the material related-party transactions of the local taxpayer.

The **CBC Report** will be prepared by the ultimate parent entity of the multinational group. The information will be shared between tax authorities through automatic information sharing provisions (see below).

The report will require the disclosure of the following information for the relevant accounting period in each tax jurisdiction where the group operates:

- Revenues, including intercompany
- Profit or loss before income tax
- Income tax paid on a cash basis
- Accrued income tax expense
- Stated capital
- Accumulated earnings
- Number of full-time-equivalent employees
- Net book value of tangible assets

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If the ultimate parent entity is in a country that does not require the CBC Report, tax authorities in other jurisdictions may request the report directly from the relevant local affiliate of the multinational group.

CBC developments

More than 20 nations will require the filing of the CBC Report for tax years starting on or after Jan. 1, 2016. The U.S. will require companies with tax years starting on or after June 30, 2016, to file the CBC Report.

On April 12, 2016, the European Commission issued a proposal that would require multinational enterprises located in EU member states to publish certain CBC Report information on their public websites. The proposal has broad support among EU officials, but has been met with resistance from local governments and corporations.

In June, a proposal to lower the CBC reporting threshold from €750 million to €40 million in revenue was rejected by the European Parliament, although the effort has shown a willingness of some officials to draft regulations that go beyond the OECD's BEPS recommendations.

Multilateral Competent Authority Agreement (MCAA)

Monitoring the CBC reporting is especially important for companies that operate in countries that have signed the MCAA. The agreement will govern the automatic exchange of CBC Report information among tax authorities of signatory nations.

To date, 31 countries (not including the U.S. or Canada) have signed the MCAA. The U.S. and Canada have both signaled a preference for implementing information sharing through bilateral treaties on a case-by-case basis.

The first information exchanges will start in 2017-2018 to govern the sharing of information collected for the 2016 tax year.

Preparing for BEPS

BEPS will require companies to gather and report substantially more information than previously. As more countries adopt the BEPS recommendations, this will significantly increase the burden on multinationals to comply with global transfer pricing requirements.

Establishing a consistent internal process will help companies to minimize the administrative burden, increase the efficiency of data gathering, and ensure a high level of accuracy for new requirements, such as the CBC Report. Planning ahead may lower the risk of examination by tax authorities and reduce the burden of responding to inquiries.

Companies should begin preparing immediately to confirm that their reporting systems are capable of gathering, segmenting, and processing the required information. Technologies that automate the collecting, sorting, and storage of data will allow for more timely and accurate monitoring of transfer pricing results.

Finally, the Master File and CBC Report may reveal local inconsistencies in how a group's transfer pricing policies are carried out. The reports may also highlight disparities between the functions, assets, and risks and where profits are recorded among different entities. Companies must carefully review these results to verify that the profits reported on a local level match the value created by the local entities.