



China Tax Alert

Issue 18, February 2020

OECD issued Public consultation document: Review of Country-by-Country Reporting (BEPS Action 13)

Regulations discussed in this issue:

- In February 2020, the Organisation for Economic Co-operation and Development issued the "Public consultation document: Review of Country-by-Country Reporting (BEPS Action 13)", to invite comments on whether to modify the current standard for country-by-country report from all stakeholders.

Background

The Organisation for Economic Cooperation and Development ("OECD") Base Erosion and Profit Shifting Project ("BEPS") publish the report in 2015. Action 13 of the BEPS project established a three-tiered standardised approach to transfer pricing documentation, including a local file, a master file and a country-by-country ("CbC") report, among which the CbC reporting is one of the four BEPS minimum standards which all members of the Inclusive Framework are committed to implementing. The CbC report provides details of a multinational entity (MNE) group's aggregated data such as revenues, profit before tax, tax accrued, headcount, tangible assets as well as main businesses activities of constituent entities and other information relevant to a high-level risk assessment for each jurisdiction.

The BEPS Action 13 report also included a mandate for a review of the minimum standard, to be completed by the end of 2020 (the 2020 review). Accordingly, as directed by the Inclusive Framework, OECD has been conducting this 2020 review. This public consultation document issued by OECD in early February forms an intrinsic and essential part of this review, as a mechanism to obtain feedback from all stakeholders. Specific questions concerning the standard CbC report upon which comments are sought are set out in the document.

This public consultation document comprises three chapters. Chapter 1 contains general topics concerning the implementation and operation of BEPS Action 13, including the MNE group experience of CbC reporting implementation by jurisdictions, the use of CbC reports by tax administrations and other aspects of BEPS Action 13, being the master file and local file. Chapter 2 contains topics concerning the scope of CbC reporting, including the definition of an MNE group, and the level and operation of the consolidated group revenue threshold. Chapter 3 contains topics concerning the content of a CbC report, including whether aggregate or consolidated information should be provided in Table 1, whether information in Table 1 should be presented by entity rather than by tax jurisdiction, and whether additional or different information is needed. The topics discussed throughout this document reflect issues that are specifically included in the mandate for a 2020 review set out in the

BEPS Action 13 report, issues where interpretative guidance issued since 2016 has been unable to result in a consistent approach to be applied by all jurisdictions, and issues that have been raised by jurisdictions or stakeholders and that can only be addressed through a change to the minimum standard, which must be agreed by the Inclusive Framework. The specific content of these three documents reflects an effort to balance the needs of tax administrations to have access to robust, relevant information for use in risk assessment and enforcing transfer pricing rules, against concerns from business surrounding the burden placed on MNE groups and the potential use of the information provided.

KPMG Observation

Implementation of CbC reporting and transfer pricing audits triggered

In 2016, the State Taxation Administration of the People's Republic of China ("STA") issued the "Announcement on Transfer Pricing Contemporaneous Documentation (STA Announcement 2016 No. 42)", which formally introduced the requirements for CbC reports since 2016 with reference to the work of BEPS Action 13. In 2017 the "Announcement on matters concerning CbC Reporting" (SAT Announcement 2017 No. 46) indicates that the information exchange of CbC reports with other nations would be initiated starting from fiscal year 2017 and onwards. According to KPMG China's observations on the implementation status of the CbC reports of many Chinese multinational enterprises ("MNEs"), most of the Chinese MNEs are able to complete the minimum requirements for CbC reporting at this stage, however the risk management and control of the transfer pricing risks unveiled by the CbC need to be further strengthened and improved.

Furthermore, KPMG China noted that there have been cases of transfer pricing audits triggered by CbC reports in European countries, which has brought challenges to the cross-border transfer pricing risk management of MNEs. One typical example of transfer pricing audit case was in Austria. Based on the data disclosed in the CbC report and other information obtained from other channels, the Austrian tax authorities perform a high-level tax risk assessment and decided to start a transfer pricing audit on an Austrian subsidiary of a Swiss MNE. Based on their investigation, they concluded that the key value-creating activities actually took place in Austria, rather than what is being claimed by the MNE that activities had been performed by the Swiss principal. Another example of typical case triggered by CbC reporting occurred in France. Based on a high-level tax risk analysis of the CbC report, the tax authorities in France launched a transfer pricing audit on a MNE and issued information requests to the constituent entities of the MNE located in more than 80 countries, further requesting them to provide detailed information on marketing spending, headcount, operating income, etc.

With the development of the BEPS Action 13 project, it is envisioned that number of tax queries or even transfer pricing audit cases triggered by CbC reporting will further increase. In response to the challenges, MNEs need to carefully review the quality of relevant information disclosed in the CbC reports and reduce chance of being audited for erroneous or improper disclosure. In addition, if the tax authorities had imposed a TP adjustment, MNEs should consider exploiting available bilateral tools such as Multilateral Agreement Procedures ("MAP") and Advance Pricing Agreement ("APA") to mitigate international double taxation.

MNEs incorporated in Hong Kong SAR and other regions with its principal place of business in Mainland China

So far, Hong Kong SAR, the British Virgin Islands, the Cayman Islands and some other jurisdictions that the Chinese “going-out” entities would like to establish overseas investment structures have issued relevant regulations, requiring local tax residents of MNEs to either notify or submit CbC reports locally. As such, it is advised that MNEs whose principal place of business is in Mainland China but have incorporated in the above-mentioned regions (including intermediate holding companies and ultimate holding companies) should pay close attention to the development of local tax legislation and fulfil the corresponding CbC reporting notifications and filing obligations on time.

It is worth noting that the Hong Kong tax authorities have issued a notice in the end of 2019 that the deadline for local filing CbC reports in Hong Kong SAR for the 2018 can be extended. Accordingly, the deadline for qualified taxpayers to submit the 2018 CbC reports extends to 31 March 2020. If the Chinese and Hong Kong tax authorities can reach an agreement before that date on the automatically exchange CbC reports, MNEs that have submitted CbC reports in Mainland China can be exempted from submitting the report in Hong Kong SAR. At present, it is unclear whether the tax authorities in Mainland China and Hong Kong SAR can reach an agreement on automatic exchange of the CbC report in time. If the agreement cannot be signed within the timeline, the MNEs located in Mainland China are obliged to submit the CbC report locally in Hong Kong SAR through its Hong Kong affiliate. As the deadline for the extension of 31 March, 2020 is approaching, we recommend that MNEs pay close attention to the development of the arrangement between Mainland China and Hong Kong SAR on automatic information exchange and be prepared for either outcome. KPMG China will continue to keep you informed of the latest progress.

Data Measures and Report Submission Format

In the process of assisting clients in completing their CbC reports, KPMG China found that taxpayers often encounter various problems when filling in data. For example, according to the current standards of CbC report, the financial data involved in Table 1 of the CbC report should be the aggregation of financial data of constituent entities in each jurisdiction, rather than consolidated financial data. Nonetheless, whether to change the aggregated data to consolidated data is also one of the topics discussed in the public consultation document released by OECD. OECD discussed the feasibility and practical challenges that may be encountered under each option and sought comments from stakeholders. In addition, KPMG China also noticed that data measure of some items in the CbC report is still vague. For example, in the Table 1 of the CbC report, what should be included in the income, tangible assets and other items is still not clear. There could also be different views on appropriate measures of the items in practice.

In terms of the report submission format of the CbC report, most overseas tax authorities require MNEs to submit CbC reports in XML format. The report format conversion also imposed additional compliance burden to MNEs. Moreover, during the report format conversion process, some basic information beyond the scope of the current standard CbC report template is required. The public consultation document by OECD had a discussion on whether to include the necessary information for converting to XML format in the standard CbC report template, and invited comments from the public.

At present, this document is open for comments through the official email address till 6 March. OECD will also hold a public consultation meeting on 17 March to further discuss. KPMG will be fully involved and will keep you informed of any latest development. Please stay tuned. If you have any suggestions, you are welcome to submit your comments directly or send them to us for consolidation.

KPMG China has extensive experience in CbC reporting related projects and can provide companies with professional advice and insights. If you would like to discuss any relevant topics, please feel free to contact our professional service team.

Contact us

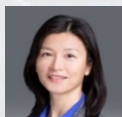
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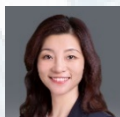
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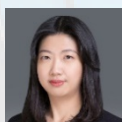
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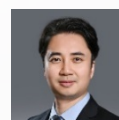
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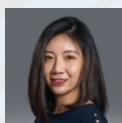
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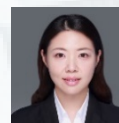
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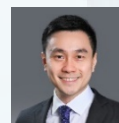
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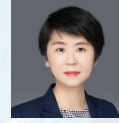
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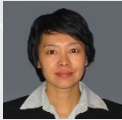
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