

Tax Alert

Country by Country Reporting



Overview of Country by Country (CbC) Reporting

CbC reporting requires Multinational Enterprises (MNE) to file annually, a report containing data on the global allocation of the MNE's income, taxes and details of their economic activities in the various jurisdictions they have operations.

These measures are aimed at enhancing transparency through comprehensive exchange of information between revenue authorities.

The CbC requirements are part of Action 13 of the Base Erosion and Profit Shifting ("BEPS") Action Plans, that require MNEs to file CbC reports with tax authorities in countries where they have a taxable presence.

Scope of Kenya's CbC Requirements

In the Finance Act 2022, Kenya enacted the Country-by-Country Reporting (CbC Reporting) rules for multinational groups with turnover greater than KES 95B (roughly EUR 750M) including extra ordinary and investment income.

This is part of the Base Erosion and Profit Shifting (BEPS) agenda by the OECD to end the information asymmetry that arises when tax authorities do not have access to taxpayer information held in other countries.

Notification

Prior to filing the CbC Report, a notification will have to be made to the commissioner electronically via CBCR@kra.go.ke. The template to be filled and filed is available on KRA's website under downloads section.

Notification Obligations

Any Constituent Entity of an MNE Group that is resident for tax purposes in Kenya shall notify the Commissioner whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

Where a Constituent Entity of an MNE Group that is resident for tax purposes in Kenya is not the Ultimate Parent Entity nor the Surrogate Parent Entity, it shall notify the Commissioner of the identity and tax residence of the Reporting Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

Content of the CbC Report

The content of the CbC report is similar to the template provided under Action 13 of BEPS Action Plan. These include:

- Identity of each constituent entity, its jurisdiction of tax residence, if different, jurisdiction where such entity is organized, and the nature of the main business activity or activities of such entity.
- The group's aggregate information including information relating to:
 - The amount of revenue,
 - Profit or loss before income tax,
 - Income tax paid,
 - Income tax accrued,
 - Stated capital,
 - Accumulated earnings,
 - Number of employees,
 - Tangible assets other than cash or cash equivalents regarding each jurisdiction where the group has taxable presence
 - Any other information as may be required by the Commissioner

Non-compliance penalties

Any person who fails to comply with the regulations shall be subject to the penalties prescribed under the Tax Procedures Act 2015.

Our opinion

MNEs need to evaluate their global operations, assess whether they are within the scope and identify potential impact of the rules on their tax positions. MNEs also need to monitor their permanent establishment (PE) status in the jurisdictions they operate in as PEs are also covered under the pillar two scope.

MNEs that do not meet the threshold of KES 95B including extra ordinary and investment income are referred to as excluded MNEs and are not required to file a CbC Report. The excluded MNE is however expected to maintain a Masterfile and a Local file which should be presented to the commissioner upon request.

The CbC regulations will enable the KRA to have visibility of MNE financial and related information that will aid in assessing transfer pricing risks. For MNEs, this means additional transfer pricing compliance and reporting requirements.

A MNE Group that is controlled outside Kenya will not be required to file a CbC Report other than a notification indicating the jurisdiction of the parent company where the Group's CbC reports are filed. However, a subsidiary or branch of a MNE that has tax residence in Kenya can be required to file a CbC report if the jurisdiction of its parent company has not implemented CbC reporting or if there are difficulties in implementing the exchange of CbC Reports with the KRA.

Where a MNE Group has more than one entity in Kenya, the Group can designate one entity to file the CbC reports. This entity is referred to as a surrogate parent entity (SPE).

Recent Development

According to the latest update released on 22nd November 2022, Kenya became a signatory to the multilateral competent authority agreement on the exchange of country-by-country reports (CbC MCAA) on 9th September 2022.

Kenya is now a signatory to both the CbC MCAA and the Multilateral Convention on Mutual Administrative Assistance in tax matters (the convention) which Kenya signed up to in 2020. This will enable the automatic exchange of financial information in tax matters between Kenya and the other signatory members.

This means that non-residents MNEs that file the CbC report in another jurisdiction that is a signatory will not be required to file in Kenya. The Kenya Revenue Authority shall access the CbC reports from the other jurisdiction where the same has been filed. However, a notification will be done by the constituent entities indicating the entity that is responsible for the filing obligations.

Kindly reach out to us for assistance with the evaluation of your CbC status and your expected compliance requirements.

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