

# Action 13: Objectives and approach

On 5 October 2015, the OECD released final guidance on Transfer Pricing Documentation and Country-by-Country Reporting. The OECD has developed a three-tiered approach to enable tax authorities to have sufficient information to risk assess.

Whilst Action 13 refers to a transfer pricing risk assessment, the preface acknowledges this can be used for a BEPS risk analysis and the CbCR goes beyond what is required for a transfer pricing risk analysis. **Action 13 Objectives** 

Aid tax authorities perform a transfer pricing risk assessment.

Ensure taxpayers give appropriate consideration to setting prices consistent with the arm's-length principle.

Provide information needed for tax authority audit.

**Action 13 Approach** 

Country by Country Report (CbCR)

Master File (MF)

Local File (LF)

These three documents together are a taxpayer's key tools for managing transfer pricing risk. They must be consistent.



## Interaction between the three elements

There is now a three tiered approach to transfer pricing documentation. The documentation is a tool taxpayers can use to manage tax and transfer pricing risk.

## **Master File**

- The Master File should provide a high-level overview of the MNE group business, including the nature of its global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity in order to assist tax administrations in evaluating the presence of significant transfer pricing risk.
- Should contain information for the MNE group as a whole but may be presented by line of business. All information should be available to all tax authorities.
- Content: organisational structure, description of MNE's business, intangibles, intra-group financing activities and financial and tax positions.

Strategic split of information based on local or global audience

## **Local File**

- Detailed information relating to specific intra-group transactions.
- Assuring the tax authority that the local entity has complied with the arm's length principle for its material intra-group transactions in that jurisdiction.
- Focuses on information relevant to the transfer pricing analysis of a local entity.
- Similar to the transfer pricing documentation currently prepared.
- Similar details required for each legal entity (subject to local law).

MF puts CbCR in global context

LF puts CbCR in local context

## **CbCR**

- Aggregate tax jurisdiction wide information relating to the global allocation of income, taxes paid, and certain indicators of economic activity among the tax jurisdictions in which the MNE operates.
- Country by country breakdown of financial and tax data.
- List of all entities, branches and PEs, with relevant activity from a tick list.
- Assumptions and narrative to support and explain the data.



# CbCR Requirements

While the primary purpose of the CbCR is to provide information to a tax authority to enable it to undertake a transfer pricing risk assessment, it is acknowledged that the data will be used to assess wider BEPS related risks.

Tax Jurisdiction	Unrelated Party Revenue	Related Party Revenue	Total Revenue	Profit (loss) before income tax	Income tax paid (on a cash basis)	Income tax accrued – current year	Stated Capital	Accumulated Earnings	Number of employees	Tangible Assets other than Cash and Cash Equivalents
Country A	3C	3C	3C	3C	3c	3c	JC .	JC .	JC .	sc
Country B	×	se	×	×	sc	sc	sc	sc	sc	æ
Not resident in any tax jurisdiction	×	3¢	3C	3C	se	se	se	se	3¢	×

			Activities												
entities in the	Constituent entities resident in the tax jurisdiction	Tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence	Research and development	Holding or Managing intellectual property	Purchasing or procurement	Manufacturing or production	Sales, marketing or distribution	Admin, management or support services	Provision of services to unrelated parties	Internal group finance	Regulated financial services	Insurance	Holding shares or other equity instruments	Dormant	Other
Country A	Entity A	Country B		1											
	Entity B				1	1			1						1
Country B	Entity C		1									1			
	PE 1						1								

Table 1 – data or information?

Aggregation vs consolidation of accounts

Consider technology as enabler, not as the solution.

When and what to disclose in table 3?



## Master file requirements

The objective of the Master File is to explain an MNE's transfer pricing policies in the context of its global economic, legal, financial and tax profile.

The Master File should include a high level overview of the MNE, covering the following topics:

- A description of the business
- Intangibles
- Intra-group financial activity
- Financial and tax positions

Find the right balance; what should be included, what should be left out?

How to explain a complex business



## Local file requirements

The content of the Local File helps to demonstrate that the taxpayer has complied with the arm's length principle in its material intra-group transactions.

## For each jurisdiction, the Local File should contain:

- A description of the management structure, business strategy, business restructurings, key competitors;
- Detailed information for each material category of controlled transactions; and
- Financial information for local entities, including local financial accounts and reconciliation between information used for transfer pricing, financial statements and financial data for comparables.

Develop a risk based approach

Think of transfer pricing documentation as a process

BEPS Action 13: Country implementation CbCR / MF / LF CbCR / MF / LF CbCR / MF / LF + **Draft Legislation** CbCR / MF /LF Norway **Draft Legislation** Final Legislation Final Legislation Russia **CbCR Netherlands** N N CbCR / MF / LF United Kingdom **Poland** CbCR / MF / LF **Draft Legislation CbCR** Final Legislation MF / LF CbCR / MF / LF Final Final Legislation Japan Romania Ireland Austria CbCR / MF /LF 0 MF / LF **CbCR** Iceland CbCR / MF /LF Final Legislation Canada Final Final Legislation Final Legislation **CbCR CbCR** Final China **Draft legislation** . South Korea CbCR / MF /LF Luxemboura MF / LF Final Legislation **CbCR** CbCR/MF CbCR Draft Final Draft Draft legislation Spain **United States** ٠ witzerland Hong Kong **France** CbCR / MF / LF **CbCR** MF / LF Final Legislation CbCR CbCR / MF / LF **CbCR** Final Legislation Draft **Public Consultation** Final Legislation Portugal Italy India Vietnam Mexico Bermuda **CbCR** MF / LF CbCR **CbCR** MF / LF CbCR / MF / LF Final CbCR / MF / LF **Draft Legislation** Final Draft **Draft legislation** Final Legislation **Singapore** ψ Israel 0 Nigeria 2 CbCR/LF CbCR \* **Indonesia** Peru Draft legislation Draft CbCR / MF / LF CbCR / MF/LF (•≣ Malaysia Chile CbCR / MF / LF **Australia** Uruguay CbCR / MF / LF CbCR / MF South Africa 0 Final Legislation Draft legislation Implemented **CbCR** MF / LF Draft bills/Public discussion draft Draft **New Zealand** Intention to Implement



# Implementation of BEPS Action 13 in Sweden

- The Swedish government submitted a council on legislation in October 2016.
- CbCR must be filed by December 31, 2017, but relate to FY2016.
- Notification requirement applies for Swedish group companies. Need to notify STA:
  - if it is the ultimate parent entity or the surrogate parent entity; or
  - The identity and tax residence of the reporting entity

- The new documentation requirements for Master file and Local file would apply for the fiscal years beginning on or after April 1, 2017
- Exemption from documentation requirements:
   Groups with less than 250 employees, and either
   having revenues not exceeding SEK 450 million or
   total assets of not more than SEK 400 million
   (during the preceding fiscal year).

	CbCR – effective date of implementation	MF/LF – effective date of implementation	MCAA signatory	Comments	
Sweden	✓ January 1, 2016	✓ April 1, 2017	✓	<ul> <li>CbCR Notif</li> </ul>	ation/Legislation based on the OECD Action 13. ication requirement before end of fiscal year (First 2017 for FY2016)
✓ Implemer	nted	✓ Intentio	n to implemen	t	MF - Master file
✓ Draft bill	s/Public discussion dra	No anno not requ	uncements ma uired	de to date /	LF - Local file CbCR - Country-by-country reporting



# Key country implementation

Country	CbCR – effective date of implementation	MF/LF – effective date of implementation	MCAA signatory	Comments
Brazil	×	×	<b>√</b>	<ul> <li>Brazil has not yet enacted legislation related to BEPS Action 13 CbyC reporting</li> <li>Brazilian based multinationals are already required to report the profits before tax and the taxes paid of its foreign direct and indirect subsidiaries. Such requirements are not as broad as the ones provided under Action 13.</li> </ul>
China	<b>√</b> January 1, 2016	✓ January 1, 2016	✓	<ul> <li>Final Regulation/Legislation implemented based on the OECD Action 13.</li> <li>The Chinese Local File rules include elements in addition to what the BEPS Local File requires</li> <li>No notification requirement</li> </ul>
Denmark	✓ January 1, 2017 (For DK HQ: Jan 1, 2016)	✓ January 1, 2017	<b>√</b>	<ul> <li>Final Regulation/Legislation based on the OECD Action 13.</li> <li>CbCR Notification requirement to local tax authority before the end of 2016.</li> </ul>
Finland	✓ January 1, 2016	✓ January 1, 2017	✓	<ul> <li>Draft Regulation/Legislation based on the OECD Action 13</li> <li>CbCR Notification requirement to local tax authority before the end of 2016. Further guidance expected.</li> </ul>
<ul> <li>✓ Implemented</li> <li>✓ Intention to i</li> <li>✓ Draft bills/Public discussion draft</li> <li>X No announcer not required</li> </ul>				LF - Local file



# Key country implementation

Country	CbCR – effective date of implementation	MF/LF – effective da implementa	Signatory	Comments
Germany	✓ January 1, 2016	✓ January 1,	2017 ✓	<ul> <li>Draft Regulation/Legislation based on the OECD Action 13.</li> <li>The Local file rules require supplemental information to Action 13.</li> <li>CbCR Notification requirement in tax return for FY2016 in tax return</li> </ul>
Hong Kong	✓ January 1, 2018	✓	×	<ul> <li>Anticipate adoption based on the OECD Action 13.</li> <li>Comprehensive Double Taxation Agreements ("CDTAs") or Tax Information Exchange Agreements ("TIEAs") as the basis for conducting automatic exchange of CbC reports, otherwise secondary filing.</li> </ul>
Norway	✓ January 1, 2016	✓	✓	<ul> <li>CbCR: Draft Regulation/Legislation based on the OECD Action 13.</li> <li>MF/LF: Anticipated adoption based on the OECD Action 13.</li> <li>CbCR Notification requirement in tax return for FY2016 in tax return</li> </ul>
United States	<b>√</b> July 1, 2016	×	×	<ul> <li>Final CbCR legislation implemented based on the OECD Action 13.</li> <li>CbCR regulations only imposed on multinationals hedquartered in the U.S. Hence, no CbCR notification requirement for Swedish headquartered MNEs.</li> <li>The IRS has <u>not</u> ruled out the OECD's Master File and Local File approach to transfer pricing documentation.</li> </ul>
✓ Implemen	nted	✓ Ir	ntention to implemen	aster inte
✓ Draft bills/Public discussion draft			lo announcements ma ot required	LF - Local file CbCR - Country-by-country reporting



## Five key take aways

Give an appropriate consideration to setting prices

between the three elements

Interaction

Local documentation requirements

Beware of local CbCR notification requirements

Beware of CbCR secondary filing requirements





# Thank you!



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