



## Issue 74: An online public consultation on the draft CbCR regulation

The Thai Revenue Department (“TRD”) has opened an on-line public consultation on the draft regulation regarding Country-by-Country Reporting (“CbCR”) in accordance with the Minimum Inclusive Framework of the Base Erosion and Profit Shifting (“BEPS”) Action Plan 13 of the Organization for Economic Co-operation and Development (“OECD”). The public consultation is open from 13 April 2020 to 24 April 2020. Please refer to the [LINK here](#) for more detail.

This draft regulation will become one of transfer pricing regulations. The key points in this draft regulation are as follows:

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| <p><b>Reporting entities subject to CbCR</b></p> | <p>Companies that meet one of the conditions below and their Multinational Enterprises (“MNEs”) with revenue of THB 28 billion and above in the previous fiscal year (pro-rated by days if operating less than a full year). The relevant conditions are:</p> <p><u>General case:</u></p> <ol style="list-style-type: none"> <li>1) A company incorporated under Thai laws that is an ultimate parent entity; or</li> <li>2) A surrogate entity appointed by the ultimate parent entity incorporated under Thai laws.</li> </ol> <p><u>Specific case:</u></p> <ol style="list-style-type: none"> <li>3) A company (not meeting the conditions in general case above) but carrying on business in Thailand that meets one of the following criteria:             <ol style="list-style-type: none"> <li>a. The ultimate parent entity of the MNE group is not obligated to file a CbCR in its tax residence jurisdiction and the ultimate parent entity does not appoint a surrogate entity to file a CbCR;</li> <li>b. The jurisdiction in which the ultimate parent entity is a tax resident does not have an international agreement on competent authority or economic zone with Thailand, or has one but it is not effective by the due date for filing of the CbCR; or</li> <li>c. The TRD has been notified of a systemic failure of the tax residence jurisdiction of the ultimate parent entity or the surrogate entity.</li> </ol> </li> </ol> |
| <p><b>Items to be reported</b></p>               | <p>Information according to CbCR XML Schema which is determined by the OECD</p>   |
| <p><b>Format of reporting</b></p>                | <p>E-filing in XML format</p>   |
| <p><b>Deadline for submission</b></p>            | <p><u>General case:</u> must be filed within 12 months after the last day of the fiscal year<br/> <u>Specific case:</u> must be filed within 60 days after receiving a letter from the TRD requesting CbCR submission</p>   |

## Key contacts

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| <b>Exemption from the requirement to submit CbCR</b> | The ultimate parent entity incorporated under Thai laws that appointed a surrogate entity to file the CbCR in the tax residence jurisdiction of the surrogate entity and the following conditions apply: <ul style="list-style-type: none"> <li>— The surrogate entity is obligated to file the CbCR;</li> <li>— If the tax residence jurisdiction of the surrogate entity is not Thailand, such jurisdiction has an international agreement on competent authority or economic zone with Thailand, which is effective by the due date for filing of the CbCR; and</li> <li>— The TRD has not been notified of any systemic failure from the tax residence jurisdiction of the surrogate entity.</li> </ul> |
| <b>Language</b>                                      | English   |
| <b>Currency</b>                                      | Reporting currency of the ultimate parent entity  |
| <b>Start of application</b>                          | Fiscal years beginning on or after 1 January 2020   |

### KPMG's Observation

The key aspects of the draft CbCR regulation are largely based on the Guidelines provided by the OECD BEPS Action 13.

It is important to highlight that while under the draft regulation CbCR will have to be submitted by relevant taxpayers to the TRD, the TRD may then provide it to tax authorities in jurisdictions that have an international agreement for automatic exchange of information with Thailand. It is strongly recommended that Thai MNE groups that are subject to this regulation invest time in carefully preparing the CbCR of the group. A detailed review and analysis of domestic and international transfer pricing and associated tax risks should be conducted in advance.

Based on our international transfer pricing experience with global MNEs, some overseas tax authorities require taxpayers, whose ultimate parent entities meet the threshold requirement, to submit a notification of CbCR to inform such tax authorities as to which country the CbCR of such MNEs is submitted to and/or which entity is the surrogate entity of the MNEs. It appears that the current draft notification issued by the TRD does not contain a similar notification requirement.

KPMG will continue to monitor any subsequent announcements and developments relating to CbCR regulations and keep you updated. If you have any questions in respect of this draft regulation or require assistance in preparing a submission as part of the public consultation to the TRD, KPMG Transfer Pricing team will be pleased to assist.

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