

UK amends country-by-country reporting rules

The UK's Statutory Instrument 2017 (No. 497), published on 30 March, amends SI 2016 No. 237, which gives effect in the UK to the G20/OECD's minimum standard for country-by-country (CbC) information to be provided to tax authorities. These amendments follow additional guidance on the Implementation of Country-by-Country Reporting released by the G20/OECD in June 2016 and updated in December 2016. In addition, the regulations ensure compliance with the amended EU Council Directive on Administrative Cooperation 2011/15/EU (DAC4).

Summary of the changes

The amendments enter into force on 20 April 2017, and affect all multinational enterprise (MNE) groups that meet the CbC threshold requirement and include at least one UK tax resident entity and/or an entity resident elsewhere with a permanent establishment in the UK. The key changes are as follows:

- The application of the rules has been amended to include MNE groups whose ultimate parent entities are partnerships governed under UK law, including LLPs. The regulations will require the reporting partner of such partnerships to ensure compliance;
- There are new annual notification requirements for UK entities, with the first notifications due on 1 September 2017 (and then by the end of the CbC reporting period thereafter); and
- There is an additional information request requirement for UK entities whose ultimate parent does not file a CbC report that is adequate for UK reporting.

HMRC now estimate that about 300 UK-parented groups will need to file, together with up to 200 UK subsidiaries or branches of overseas groups (about half for just one year until the overseas parent files in its own jurisdiction).

Comments

The main change that will affect most groups is the requirement for notifications by UK entities in advance of the filing of CbC returns.

The amended regulations require notification by the end of the period of the CbC report. There is a deferral for notifications until 1 September 2017 for those that would have been required before then (for example, for CbC reports for years ended 31 December 2016, 31 March 2017, and 30 June 2017).

The change to notifications is in line with G20/OECD guidance and the EU Directive, and it appears the UK government has felt it necessary to introduce this administrative requirement. This will not be welcomed by multinationals, as it creates a new deadline and compliance obligation outside of the annual UK self-assessment return process. In many cases, this notification will be the same year on year. It's not clear what benefit will be achieved from the early notification at the UK or international level, as presumably tax authorities will await the filing (or subsequent sharing) of CbC reports before taking any action.

The UK rules propose that notification can be made by one UK group entity required to notify on behalf of others to avoid duplication, but there remains an obligation to provide a notification or details of another entity providing notification to HMRC.

HMRC have issued additional guidance on their website indicating an email mailbox for sending notifications and suggesting that a spreadsheet would be the preferred format for a group to set out the details specified in the regulations.

The government announced that the rules would be amended to include partnerships in August 2017, in line with the international consensus at the G20/OECD, and partnerships that meet the EUR 750 million threshold requirement have been preparing in advance of the amended regulations.

The changes to the UK regulations do not affect the content of the CbC reports to be filed, which remains as set out by the G20/OECD in the final report on BEPS Action 13 Transfer Pricing Documentation and Country-by-Country Reporting published on 5 October 2015.

Partnerships that are ultimate parent entities

The amendments clarify the CbC filing and notification obligations in situations where a UK partnership (a partnership governed under UK partnership law, or a UK LLP) meets the definition for CbC purposes of ultimate parent entity. The partner of the partnership that is required to file the income tax return will also be responsible for filing the MNE group's CbC report by the relevant filing deadline, and for complying with the UK notification requirement discussed below.

Notification requirements – UK ultimate parent entity

If an MNE group subject to the CbC rules has a UK tax resident entity (or an overseas tax resident entity that has a UK permanent establishment or UK partnerships (including limited partnerships and LLPs)) as its ultimate parent entity, that entity must notify HMRC that it is responsible for filing a CbC report in respect of a particular period, and provide the names and taxpayer references of all of the group's constituent entities that are UK tax resident companies, have a permanent establishment in the UK, are UK-governed partnerships, or are UK LLPs.

Notification requirements – non-UK ultimate parent entity

If an MNE group subject to the CbC rules has an overseas entity as its ultimate parent entity, a UK entity must notify HMRC of the name and taxpayer reference number of the entity that will file the report and the jurisdiction in which it will be filed, and the names and taxpayer references of all of the MNE group's constituent entities that are UK tax resident, have a permanent establishment in the UK, or are UK partnerships (including limited partnerships and LLPs). When multiple UK entities are required to make notifications in respect of the same MNE group, it is possible to avoid duplication of details.

Timing and format of notifications

All notifications must be made by the later of the last day of the CbC reporting period or 1 September 2017. The notification must be made annually, even if there is no change to the constituent entities in the UK.

HMRC has issued brief new guidance on their website stating that they would prefer notifications in spreadsheet format to be sent to a dedicated mailbox at notification.cbcfiling@hmrc.gsi.gov.uk. It is recommended that a copy of the notification be provided to an MNE group's HMRC Customer Relationship Manager when there is one.

Information request requirement

The regulations have been amended to allow the filing of a UK CbC report (for UK entities and those entities that they control) only when the relevant information to prepare a full CbC report has been requested from the overseas ultimate parent entity but has not been provided, and HMRC have been notified of this. If this is not done, the consequences are that a full CbC report for the global MNE is due in the UK, and failure will lead to the imposition of UK penalties.

Other changes

- There are penalties for failure to notify as well as for failure to file a CbC report.
- The new legislation amends the filing deadline to 12 months after the end of the *period* to which the CbC report relates (that is, the period for which the ultimate parent entity's statutory accounts are drawn up to) rather than the UK corporation tax *accounting period*. This aligns with the position for partnerships and may assist with long periods for statutory accounts purposes.
- The threshold requirement definition is amended slightly as a consequence of the removal of references to accounting periods. An MNE group that has a consolidated group turnover of EUR 750 million or more in the previous period will be required to prepare a CbC report on a global basis. If the previous period is shorter or longer than 12 months, the EUR 750 million threshold should be reduced or increased proportionately.

There is an adjustment to align the UK's local filing requirements with the G20/OECD model. Local filing is required only when the MNE's parent jurisdiction has entered into agreement with HMRC that allows for exchange of information, but has not entered into specific arrangements to exchange CbC reports.

— Bill Dodwell (London)
Partner
Deloitte United Kingdom
bdodwell@deloitte.co.uk

Lisa Shipley (London)
Associate Director
Deloitte United Kingdom
lshipley@deloitte.co.uk

Alison Lobb (London)
Partner
Deloitte United Kingdom
alobb@deloitte.co.uk

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