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# Global Tax Alert

News from Americas Tax Center  
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## Canada: CRA releases guidance on Country-by- Country Reporting

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### Executive summary

On 2 March 2017, the Canada Revenue Agency (CRA) released [Guide RC4651](#), its guidance on Country-by-Country (CbC) Reporting in Canada, a new filing obligation for multinational enterprise (MNE) groups with consolidated revenues of €750m or more. The guidance follows the CRA's recent release of [Form RC4649](#), the prescribed CbC report that affected MNE groups will be required to file for MNE fiscal years beginning on or after 1 January 2016.

According to the Organisation for Economic Co-operation and Development (OECD), the CbC report is intended to give tax authorities around the world more visibility into an MNE group's global tax affairs with the express purpose to "ensure that profits are taxed where economic activities generating the profits are carried out and where value is created."

The CRA's Form RC4649 is based on the OECD's model CbC report. It requires MNE groups to report their revenues, profits, taxes paid, stated capital, accumulated earnings, number of employees and tangible assets relating to each constituent entity (CE) and aggregated *by jurisdiction*, as well as the main activities of each CE of the MNE group.

Guide RC4651 clarifies how MNE groups should comply with the new Canadian CbC reporting obligations. It provides guidance on the interpretation of Canada's CbC reporting legislation on a number of issues, including:

- ▶ Notification requirements
- ▶ Obligations under the secondary filing mechanism
- ▶ The effect of currency fluctuations on the €750m filing threshold
- ▶ What MNE groups must include on Form RC4649
- ▶ Rules for investment funds
- ▶ Penalties
- ▶ Fiscal years less than 12 months
- ▶ The automatic exchange of CbC reports between tax administrations

Certain of these topics are explored more fully below.

## Detailed discussion

### Entities required to file in Canada

Tax authorities around the world are implementing CbC reporting requirements. In general, the construct is that the ultimate parent entity (UPE) of the MNE group will file a CbC report in its jurisdiction of residence, and other impacted jurisdictions will receive a copy of the filed CbC report through exchange of information mechanisms.

In Canada, a Form RC4649 CbC report must be filed by the UPE of the MNE group if the UPE is a resident of Canada. If the UPE is not a resident of Canada, but there are one or more Canadian-resident CEs in the MNE, then the MNE will have obligations under the Canadian CbC reporting legislation, potentially including the filing of a Form RC4649 CbC report.

A Canadian CE does not have to file a Form RC4649 CbC report in Canada unless one of the following conditions applies:

- ▶ The UPE of the MNE group is not required to provide a CbC report in its jurisdiction of residence
- ▶ The UPE's jurisdiction of residence does not have a qualifying competent authority agreement (QCAA) in effect with Canada
- ▶ There has been a systemic failure<sup>1</sup> of the UPE's jurisdiction and the CRA has notified the CE of the systemic failure

The MNE group may also designate a surrogate parent entity (SPE) to undertake CbC reporting in the SPE's jurisdiction of residence. Such filing by an SPE on a timely basis in its jurisdiction of residence will also exempt the Canadian-resident CE from having to file a Form RC4649 CbC report in Canada unless a listed condition exists (similar to those listed for a UPE).

Where the UPE or SPE breaches one these listed conditions, Canadian CEs will be required to file the Form RC4649 CbC report in Canada. This is referred to as the "secondary reporting mechanism."

Where an MNE has more than one Canadian CE, the MNE can designate one of those CEs to file the Form RC4649 CbC report on behalf of all Canadian CEs of the MNE.

A Canadian-resident CE that is not subject to the secondary reporting mechanism is not required to provide notification to the CRA of the name and tax jurisdiction of the UPE or SPE reporting entity.

### Penalties

Guide RC4651 also provides information on penalties in the event of non-compliance with the new filing obligations. Penalties under the *Income Tax Act* for failing to furnish foreign-based information (i.e., failure to file a required return) can reach CA\$<sup>2</sup>12,000 per report, or \$24,000 in situations where the Minister has issued a demand to file the report.<sup>3</sup>

Guide RC4651 also indicates that penalties may apply where the person filing a prescribed form has not provided any information required on that form. A penalty of \$100 may apply to each such failure. This penalty might apply, for example, where a Form RC4649 CbC report is filed, but information regarding a particular CE of the MNE is not provided.

### Conversion of consolidated group revenues to euros and currency fluctuations

An MNE group needs to file a CbC report if it reported consolidated group revenues of €750m or more for the immediately preceding fiscal year. For purposes of assessing whether the €750m threshold is met or exceeded, MNE groups that prepare consolidated financial statements in a currency other than the euro must convert their consolidated group revenues from their reporting currency into euros.

Guide 4651 indicates that this conversion should occur using the prevailing exchange rate (i.e., the spot rate) at the dates of the transactions (although using an average exchange rate for the period is acceptable).

Further, some UPE jurisdictions of residence may set a local threshold in a currency other than the euro. Where that threshold in local currency was a near equivalent of €750m at January 2015, an MNE group that complies with the local currency threshold will not be subject to obligations to file a CbC report in Canada pursuant to the secondary reporting mechanism.

### Exchange of information

Form 4649 CbC reports filed with the CRA will automatically be shared with other jurisdictions in which the MNE group operates, subject to Canada having a valid exchange mechanism with each of those jurisdictions. Likewise, the CRA will receive CbC reports from the jurisdictions in which non-Canadian UPEs file a CbC report. The first exchanges of CbC reports between jurisdictions are expected to happen by June 2018.

As of 26 January 2017, nearly 60 jurisdictions, including Canada, are signatories of the *Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports*, and more jurisdictions are expected to sign. For Canadian purposes, signatory jurisdictions are considered to have a QCAA. Although the United States is not a signatory, it has indicated that it will enter into bilateral competent authority arrangements to exchange CbC reports. The CRA indicates that such a bilateral agreement will constitute a QCAA for Canadian tax purposes.

### Completing Form RC4649

Whether the entity is the UPE of an MNE group, or a Canadian CE thereof, the CRA indicates that reporting entities should “adopt a reasonable, consistent and practical approach to completing” the CbC report, including stating any assumptions made in completing the form. The CRA says it is up to the reporting entity to ensure that the information provided is “complete and accurate, and that a reasonable effort was made by the reporting entity to obtain the necessary information from other members of the MNE group.”

Canadian UPEs or CEs filing a Form 4649 CbC report may use data from consolidation reporting packages, separate entity statutory financial instruments, or internal management accounts. However, recognizing the complexities involved, the CRA indicates that the revenue, profit and tax reported on Form RC4649 need not reconcile with the MNE group’s consolidated financial statements.

Table 1 of RC4649 requires the reporting entity to include aggregated results on a CbC basis. Table 2 requires the reporting entity to list all CEs of the MNE group. Table 3 allows the reporting entity to provide additional information or explanations.

Form 4649 CbC reports, where required to be filed in Canada, are due 12 months after the end of the MNE’s reporting fiscal year.

## Implications

CbC reporting is a key component of the global trend towards greater tax transparency by MNEs.

Canadian UPEs should consider the local requirements for CbC reporting in the various jurisdictions in which the MNE operates. Canadian CEs of MNEs should confirm that their UPE is located in a jurisdiction that requires the UPE to file a CbC report in its home jurisdiction, and whether the home jurisdiction has an effective mechanism for exchange of information with the CRA. If this is not so, the Canadian MNE member should identify which entity in the MNE group will act as the SPE for the group.

From a compliance perspective, Canadian CEs must take steps to ensure the MNE UPE is aware of the Canadian requirements and be prepared to ensure that the required data is gathered and available for reporting on a timely basis. Since the Canadian reporting requirements will apply to 2016 fiscal years, and given the challenges many corporate tax departments may face collecting data in legal entity format, this preparation should be commenced as soon as possible.

From a risk management perspective, taxpayers must bear in mind that CbC reporting will be used by tax authorities to assess transfer pricing risk. (The CRA has said it will not be using CbC reporting information “by itself” to reassess taxpayers in Canada.) There are a number of strategic decisions to be made when completing the CbC report. These decisions should be considered in light of how the tax authorities are likely to interpret the data. Accordingly, companies should consider performing a “dry run” of a CbC report (whether in Canada or another jurisdiction) using the most recent data available (which could be 2015 fiscal year data). This will allow management to identify and resolve information-gathering issues and identify potential risks raised by the CbC report results.

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## Endnotes

1. A systemic failure arises when a jurisdiction that has a QCAA with Canada has suspended automatic exchange for reasons other than those that are in accordance with the terms of the agreement, or when the jurisdiction has persistently failed to provide CbC reports in its possession. When the CRA notifies a Canadian CE of a systemic failure, the deadline to provide a Form 4649 CbC report is 30 days after receipt of the notification of systemic failure.
2. Currency references in this Alert are to CA\$ unless otherwise noted.
3. See EY Global Tax Alert, [Canada introduces country-by-country reporting legislation](#), dated 9 August 2016.

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