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Denmark publishes proposal to introduce Country-by-Country Reporting

On 18 September 2015, the Danish Minister of Taxation published a draft bill that introduces Country-by-Country (CbC) Reporting based on the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Action 13.

The Danish draft legislation is largely based on the model legislation outlined in the OECD's Country-by-Country Reporting Implementation Package of 8 June 2015.[1] On this basis the following categories of companies will be required to submit a CbC report to the Danish tax authorities:

- Ultimate parent companies of multinational groups that are tax resident in Denmark provided that consolidated turnover exceeded DKK5.6b (approx. €750m) in the previous income year
- Group companies of multinational groups that are tax resident in Denmark provided that consolidated turnover exceeded DKK5.6b in the previous income year and that one of the following conditions is met:
  - The ultimate parent company of the group is not obliged to submit a CbC report in its country of residence
  - There is no automatic exchange of CbC reports between Denmark and the country of residence of the ultimate parent company
  - There is a "systemic failure" regarding the country of residence of the ultimate parent company and the Danish tax authorities have notified this to the Danish group company (systemic failure means that the other country has suspended automatic exchange of information in breach of the agreement or otherwise persistently failed to automatically provide CbC reports in its possession to the Danish tax authorities)

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A Danish group company (under #2 above) is not required to submit a CbC report if the multinational group submits such a report through a "surrogate parent company" to the tax authorities of its country of residence and all of the following conditions are met:

- The country of residence of the surrogate parent company requires CbC reporting
- The country of residence of the surrogate parent company has concluded an agreement with Denmark regarding exchange of information and exchange of CbC reports is made according to an agreement between the competent authorities
- There is no systemic failure regarding the country of residence of the surrogate parent company, or the Danish tax authorities have not notified this to the group company
- The country of residence of the surrogate parent company has received notification that the company is a surrogate parent company
- The Danish group company has notified the Danish tax authorities which company is required to submit a CbC report and the country of tax residence of this company

The Minister of Taxation intends to issue new transfer pricing documentation regulations which will outline the required content of the documentation. The new regulations will be based on the new three-tiered OECD approach of a (1) master file, (2) a local file, and (3) a country-by-country report. The new rules will contain changes that also will be of relevance for groups that are not required to file CbC reports. Accordingly, all groups will be required to provide more detailed information regarding tax rulings, intangibles and financing activities. Non-compliance with the new CbC rules will be subject to the existing sanctions including penalties.

The CbC report must be submitted no later than 12 months after the end of the income year. The new rules will be effective for income years beginning 1 January 2016 or thereafter. For groups using the calendar year as their financial year this means that the first year to produce a CbC report, and to prepare documentation under the new rules, will be 2016, and that the CbC report for 2016 must be filed no later than 31 December 2017.

Endnote

1. See EY Global Tax Alert, *OECD issues implementation package for country-by-country reporting under BEPS Action 13*, dated 23 June 2015.

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