Executive summary

Ireland’s new Country-by-Country (CbC) reporting requirements took effect on 1 January 2016. The Irish CbC requirements require certain Irish parented groups, and in specific instances, domestic subsidiaries of foreign parented groups, to report data on revenues, profits, taxes paid/accrued, employee numbers, along with other data on a country-by-country basis for the group to the Revenue Commissioners. Groups with annual consolidated revenue in the preceding accounting period of less than €750 million will be exempt from the CbC reporting requirements. The deadline to file the CbC report with the Revenue Commissioners is 12 months from the end of the relevant accounting period. In addition to CbC reporting requirements, the Irish regime also includes an obligation for Irish constituent entities to make an annual notification confirming the identity and jurisdiction of tax residence of the CbC reporting entity. Critically, Irish corporate taxpayers should be aware of the fast approaching CbC notification deadline of 31 December 2016 (for calendar year ended companies) which requires Irish companies to notify the Revenue Commissioners electronically to confirm the identity and tax residence of the CbC reporting entity.
In terms of related CbC reporting developments, on 9 December 2016 the Revenue Commissioners published updated guidance in the form of an FAQ document titled "Country-By-Country Reporting - Some Frequently Asked Questions," which details a step by step CbC notification guide for taxpayers. The updated guidance also confirms the Revenue Commissioners’ position regarding the acceptance of voluntarily filed CbC reports from other jurisdictions and the treatment of investment funds for CbC reporting purposes. Ireland’s Finance Bill 2016 (published on 20 October 2016) also included a measure to transpose a European Union (EU) Directive allowing for the mandatory exchange of CbC reports between tax authorities internationally.

On 5 December 2016, the Organisation for Economic Co-operation and Development (OECD) published further guidance on the implementation of CbC reporting in which it recognized that certain countries are at different stages in the process of implementation of the CbC reporting requirements. The updated guidance confirms that jurisdictions have flexibility as to the due date for the submission of CbC reporting notifications. This is particularly relevant during the transition period where jurisdictions are still completing their implementation of CbC reporting, as Groups may not yet have the necessary information to submit their notifications. In light of this further guidance, many jurisdictions have offered extensions to the deadline for submission of the CbC reporting notifications. This is particularly relevant during the transition period where jurisdictions are still completing their implementation of CbC reporting, as Groups may not yet have the necessary information to submit their notifications. In light of this further guidance, many jurisdictions have offered extensions to the deadline for submission of the CbC reporting notification, however the Irish Revenue Commissioners confirmed that their deadline will not change, but instead offered this clarification:

... as a transitional arrangement, domestic constituent entities should provide a notification based on a preliminary assessment of the identity and tax residence of the reporting entity. If this proves not to be correct, that entity should submit a second correct notification based on new information to Revenue as soon as possible.

Detailed discussion

CbC Notification Requirement

The Irish regulations require an annual notification to be made to the Revenue Commissioners by the last day of the fiscal year to which the CbC report relates as follows:

- For ultimate parent entities or surrogate parent entities resident in Ireland, the entities must notify the Revenue Commissioners electronically to confirm they are the CbC reporting entity for the Group
- For calendar year ended companies, the first CbC reporting notifications are due no later than 31 December 2016
- For domestic constituent entities resident in Ireland, the entities must notify the Revenue Commissioners electronically to confirm the identity and tax residence of the CbC reporting entity for the Group
- For calendar year ended companies, the first CbC reporting notifications are due no later than 31 December 2016

Where a multinational enterprise (MNE) Group has multiple domestic constituent entities in Ireland, one domestic entity may be nominated to notify Revenue Commissioners on behalf of other domestic entities. Notifications must be submitted electronically via the Revenue On-Line Service (ROS) to the Revenue Commissioners. A detailed step by step guidance on how to make the electronic notification is included in the CbC reporting FAQ published by the Revenue Commissioners on 9 December 2016.

MNE Groups should also be aware that similar CbC reporting and notification requirements have been implemented in many OECD jurisdictions and MNE Groups should carefully consider country specific CbC reporting requirements in all jurisdictions in which they operate.

Voluntary (Parent Surrogate) Filing

The Revenue Commissioners have confirmed that if an ultimate parent entity of an MNE Group files a voluntary CbC report for its 2016 fiscal year in its country of residence (known as parent surrogate filing), and provided a number of other conditions are met (described in greater detail below), constituent entities resident in Ireland will not be required to file an equivalent CbC report under the secondary reporting mechanism for that year. This is particularly relevant to MNE Groups with parent entities in countries where voluntary filing is an option, such as the United States, Russia, Switzerland and Japan.

The conditions that a parent entity must meet for the Revenue Commissioners to accept a voluntary filing under the secondary reporting mechanism for its 2016 fiscal year include:

- The ultimate parent entity of the MNE Group makes available a CbC report conforming to the requirements of the Base Erosion and Profit Shifting (BEPS) Action 13 Final Report to the tax authority of its jurisdiction of tax residence by the filing deadline, i.e., 12 months after the last day of the 2016 fiscal year of the MNE Group
By the first filing deadline of the CbC report, the jurisdiction of tax residence of the ultimate parent entity must have its laws in place to require CbC reporting (even if the filing of a CbC report for the 2016 fiscal year is not required under those laws).

By the first filing deadline of the CbC report for the fiscal year 2016, a qualifying competent authority agreement must be in effect between the jurisdiction of tax residence of the ultimate parent entity and Ireland.

The jurisdiction of tax residence of the ultimate parent entity has not notified Revenue of a systemic failure.

An Irish tax resident constituent entity of the MNE Group must, by the last day of the fiscal year, notify the Revenue Commissioners of the name and jurisdiction of tax residence of the reporting entity.

Sharing of CbC reports

As part of the Finance Bill 2016, the EU Council Directive 2016/881 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (known as “DAC 4”) was introduced. DAC 4 was announced as part of the EU Commission’s Anti-Tax Avoidance Package and its aim is to transpose the OECD BEPS recommendations for CbC reporting into EU legislation and specifically allows for the mandatory exchange of CbC reports between tax authorities internationally.

Sharing of APA and Cross Border Rulings

Separate to the Irish CbC reporting developments, Section 24 of the Finance Bill 2016 allows the Revenue Commissioners to supplement the information which is required to be automatically exchanged under DAC 4, as amended by EU Council Directive 2015/2376 of 8 December 2015 as regards mandatory automatic exchange of information. The Directive provides for the automatic exchange of information relating to advance cross-border rulings and advance pricing arrangements (APAs) between Member States and to the European Commission.

Endnotes


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