OECD releases draft country-by-country reporting template for comment

Executive summary

On 30 January 2014, the Organisation for Economic Cooperation and Development (OECD) released the much-anticipated draft of its proposed template for country-by-country reporting to tax authorities in its Discussion Draft on Transfer Pricing Documentation and CbC Reporting (Discussion Draft). The OECD Discussion Draft also elaborates on the OECD’s White Paper on Transfer Pricing Documentation which was released on 30 July 2013. (See EY Global Tax Alert, OECD invites public comments on the White Paper on Transfer Pricing Documentation, dated 1 August 2013.)

The proposals described in the Discussion Draft are being developed pursuant to the OECD Base Erosion and Profit Shifting (BEPS) Action Plan, which was issued 19 July 2013. (See EY Global Tax Alert, OECD releases Action Plan on Base Erosion and Profit Shifting (BEPS), dated 19 July 2013.) These proposals are being released in draft form to provide an opportunity for stakeholders to comment.

The Discussion Draft sets forth proposed revisions to the OECD Transfer Pricing Guidelines that describe a common approach to transfer pricing documentation to be adopted by countries. The proposed two-tier approach would involve a global master file together with local country files.

The Discussion Draft includes a proposed country-by-country reporting template which would require multinational company (MNC) groups to provide extensive information for each entity in the group.

This Alert focuses in particular on the details of the draft country-by-country reporting template.
Detailed discussion

The Discussion Draft is in the form of a proposed revision to the documentation chapter of the OECD Transfer Pricing Guidelines. As reflected in the July White Paper, the OECD is proposing a common approach to transfer pricing documentation that would involve two tiers of information: a master file with comprehensive information about the global operations of a MNC group and local country files with transactional information relevant to each country. The Discussion Draft contemplates that the new country-by-country reporting template would be included in the transfer pricing master file. However, the OECD specifically requests comments on whether the template should instead be provided to tax authorities as a separate document.

The Discussion Draft notes that the information in the country-by-country reporting template “may be helpful in risk assessment processes.” However, it further notes that such information “should not be used as a substitute for a detailed transfer pricing analysis” and that such information “would not constitute conclusive evidence that transfer prices are or are not appropriate.”

The Discussion Draft includes a form of template and descriptions of the data sources to be used for the template. The Discussion Draft further notes that the OECD will consider “whether information relevant to other aspects of tax administration and the BEPS Action Plan should also be included in the common template.”

Importantly, the OECD describes the proposed country-by-country reporting template and transfer pricing documentation guidance as an initial draft that does not necessarily reflect consensus views of the OECD working groups. It is noted that the draft reflects limited consideration of the issues since the July release of the BEPS Action Plan and that “stakeholder comments are essential.”

Form of template

The draft country-by-country reporting template would require information with respect to each entity in a MNC group, arranged by the entity’s country of organization. The entities covered would include the ultimate parent and all entities that are considered to be “associated enterprises” of the parent under the OECD Transfer Pricing Guidelines. Each permanent establishment that has a separate income statement for regulatory, financial reporting, internal management, or tax purposes would be considered to be an entity and would be reported under the country in which it is situated.

The template generally would cover the fiscal year of the parent and the fiscal year of each entity that either is the same as the parent’s year or ends within the 12-month period ending on the last day of the parent’s fiscal year.

The Discussion Draft notes that the financial statements and other financial information relevant for the country-by-country reporting may not be available until after the due date for tax returns for a given fiscal year. Accordingly, it recommends that the due date for the template be one year following the last day of the parent’s fiscal year.

The template would require the following information with respect to each entity (including permanent establishments) in the MNC group:

**Place of effective management**

The place of effective management of the entity would be determined based on Article 4 of the OECD Model Tax Convention and its Commentary.

**Important business activity code(s)**

A list of codes intended to identify the important business activity or activities of an entity is provided: (A) research and development (R&D), (B) holding intellectual property, (C) purchasing and procurement, (D) manufacturing and production, (E) sales, marketing and distribution, (F) administrative and support service, (G) finance, (H) insurance, (I) holding company, and (J) other. For the “other” category, a description of the activity would be required to be provided in the additional information section of the template.
**Revenues**
Revenues of the entity from sales of inventory and properties, services, royalties, premiums and any other amounts received from both related and unrelated parties would be reported.

For revenues and other financial data required in the template, the Discussion Draft indicates that it is intended that the amounts reported would be taken directly from the entity's statutory financial statement. If a statutory financial statement is not prepared, an audited financial statement prepared for any other purpose (e.g., financing, regulatory, tax, etc.) should be used. If audited financial statements do not exist, the entity’s internal management accounts should be used.

Amounts generally would be reported in the entity’s functional currency and under the accounting standard used by the entity (e.g., IFRS, local GAAP). The MNC group may elect instead to report all amounts determined under consistent accounting principles and translated on a consistent basis to a single currency.

**Earnings before income tax**
The entity’s earnings would be reported based on the same data source described in connection with revenues above.

**Cash basis income tax paid to the country of organization of each entity**
The amount of income tax actually paid to the country of organization by the entity during the relevant fiscal year would be reported, using the same currency as is used in reporting earnings before income tax.

If tax of a combined group is paid by one entity, the tax should be allocated among members of such group in proportion to their shares of the EBIT (earnings before interest, taxes) of the combined group.

**Cash basis income tax paid to all other countries**
The amount of income tax paid by the entity to all other countries for the relevant fiscal year would be reported in aggregate, using the same currency as is used in reporting earnings.

**Total withholding tax paid**
The total amount of withholding taxes paid with respect to payments received from other entities would be reported. This would not include employment related withholding taxes or any other withholding taxes other than taxes in lieu of income tax on payments of dividends, royalties, interest, service fees and similar items received.

**Stated capital and accumulated earnings**
The stated capital and accumulated earnings reflected on the year-end balance sheet of the entity would be reported.

**Number of employees**
The total number of employees on the payroll of the entity on the last day of the relevant fiscal year would be reported, regardless of the employee’s location. Employees seconded from other group members should be included with respect to the entity to which they are seconded.

**Total employee expense**
The total employee expense of the entity, including all non-cash payments or benefits such as employee option schemes, would be reported.

**Tangible assets other than cash or cash equivalents**
The book value of tangible assets, excluding cash and cash equivalents, intangibles, and financial assets, reflected on the year-end balance sheet of the entity would be reported.

**Intercompany payments**
The total amount of royalties, interest, and service fees paid by the entity to other group entities and received by the entity from other group entities would be reported separately in the final six columns of the template.

**Additional information**
The template also includes an “additional information” box, for reporting any information or explanation the taxpayer considers necessary or that would facilitate the understanding of the information required to be reported in the template.

**Comments requested on template**
The Discussion Draft identifies several areas where comments are specifically requested with respect to the content and data sources for the country-by-country reporting template:

- Whether the template should be compiled using a “bottom-up” approach from local statutory accounts, as is reflected in the
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The OECD also requests comments regarding the most appropriate mechanism for delivery of the country-by-country reporting template to tax authorities. The OECD identifies the possible avenues as including (i) direct local filing by group members subject to tax in the country, (ii) filing in the parent’s country with sharing under treaty information exchange provisions, or (iii) some combination of these two approaches. Comments should be submitted to the OECD on or before 23 February 2014.

Implications

The G8 leaders in their June 2013 communique explicitly committed to the development of a template for reporting to tax authorities of country-by-country information. Moreover, increased transparency is a key objective of the OECD BEPS Action Plan. It is expected that many countries would act on OECD recommendations that are issued in this area. Therefore, companies should closely monitor developments with respect to the draft country-by-country reporting template.

While the OECD has indicated that the template is intended to be used for high-level risk assessment purposes, the draft contemplates very detailed reporting. Given the complexities that would be involved in producing the information reflected in the draft, it is important that the OECD has requested comments both on the content of the template and on the data sources to be used in filling out the template. Companies should consider participating in this policy discussion to provide input on these technical questions.

Moreover, although the template is in draft form, companies should begin to consider how to prepare for a new reporting requirement of this type. Consideration should be given to existing financial reporting systems and the availability of data sources that could be used to provide information of the type and in the form contemplated in the draft template.
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