

# Department of finance releases draft legislation for country-by-country reporting

## August 2016

In October 2015, the Organization for Economic Co-operation and Development (OECD) released its Base Erosion and Profit Shifting (BEPS) Action 13, focused on new country-by-country (CbC) reporting requirements for large multinational enterprises (MNEs). On July 29, 2016, the Department of Finance released draft legislation focused on aligning Canadian reporting requirements with those recommended by the OECD.

Key highlights and our insight regarding the importance of this draft legislation as it relates to Canadian MNEs follows.

### Filing obligations

The draft legislation introduces Section 233.8 to the Income Tax Act, which will require the ultimate parent entity of a MNE resident in Canada to file a CbC report. In instances where the ultimate parent entity does not have a requirement to file a CbC report in its jurisdiction of residence or the jurisdiction of residence of the ultimate parent entity is not party to the multilateral

competent authority agreement to exchange information with Canada, a constituent entity resident in Canada will be required to file. Surrogate filing provisions have also been introduced, allowing for a surrogate parent entity to file in its respective jurisdiction and meet Canadian reporting requirements as long as an information exchange agreement is in effect with Canada. This filing requirement is not applicable to MNEs with consolidated group revenues less than EUR 750 million in the immediately preceding fiscal year.

### Timing for filing

The reporting requirements will come into effect for fiscal years that begin after 2015. The CbC report must be filed in the prescribed manner to the Minister within 12 months after the last day of the reporting fiscal year.

## Penalties

The penalties that apply for failure to furnish foreign-based information will apply to CbC reporting. These penalties can range from CAD \$12,000 to \$24,000, depending on situations where the taxpayer has failed to file or comply with a demand to file by the Minister.

## Our insight

The draft legislation mirrors the recommendations made by the OECD in Action 13 of its BEPS initiative and has been expected since the release of the 2016 Budget, where Canada's Finance Minister announced the government's intention to strengthen transfer pricing documentation by legislating CbC reporting requirements for large MNEs.

The draft legislation has not provided certainty regarding the prescribed form of the CbC report; however, we expect a similar information reporting standard as presented in Action 13, which recommended an overview of the global operations of the MNE. It included information related to activities, revenue, profit, taxes paid, stated capital, accumulated earnings, employee counts and tangible asset values for each jurisdiction in which the MNE maintains a taxable presence.

The first exchanges between tax jurisdictions of CbC reports are expected to occur by June 2018. Before any exchange of information with another tax jurisdiction occurs, the Canada Revenue Agency will formalize an exchange arrangement with the other jurisdiction and will ensure that it has appropriate safeguards in place to protect the confidentiality of the reports.

Going forward, Canadian members of MNEs will need to assess the applicability of CbC reporting requirements in Canada. MNEs will need to determine the existence of a filing requirement, which entity is the ultimate parent entity of the MNE and whether surrogate parent entity rules can or should be applied. Given the amount of information disclosure under this new reporting requirement, we encourage MNEs to start their

information gathering now and assess the availability of data to avoid unanticipated difficulties with filing deadlines.

In conjunction with current T106 filing requirements in Canada for disclosing non-arm's length transactions with non-residents, the CbC report will provide the Canada Revenue Agency and other tax authorities with another information source to assess transfer pricing risk among MNEs.

No commentary has yet been provided by the Canada Revenue Agency regarding the master file/local file transfer pricing documentation standard as recommended by the OECD. MNEs should be mindful of the increased information disclosures necessary in transfer pricing documentation and how this information integrates with CbC reporting requirements.

## How we can help

Grant Thornton has established an approach to comply with CbC reporting that allows for efficient information gathering, data processing and filing applicability.

For more information, please contact one of our advisors:

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