

BEPS Project - Country-by-Country Reporting – some concerns

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In February 2014, the OECD published a draft template for country-by-country (CBC) reporting of the allocation of income, taxes and business by multinational companies under the BEPS initiative. This is in response to an Action Plan released in July 2013 calling for a review of existing transfer pricing documentation rules and the development of a template for CBC reporting of income, taxes and business activity for tax administrations.

The draft template requires a company for each country in which it operates to list its “constituent entities”, effective place of management, and important business activities. It also looks for detailed information including revenue, tax payments, payment and receipt of royalties, interest and service fees, along with details of assets and employee expenses.

One of the specific actions listed with the Action Plan was the re-examination of transfer pricing documentation. The objective of the re-examination is to improve transparency and to include a requirement to provide all relevant governments with information on global allocation of the income, economic activity and taxes paid among countries according to a common template - hence, the concept of CBC reporting.

The following are some comments on, and concerns relating to, the Action Plan.

A re-examination of transfer pricing (TP) documentation has been proposed to ensure transparency for the tax administration, having regard to the significant costs for business. The rules to be developed should specifically include a requirement that MNCs provide all relevant governments with necessary information on their global allocation of the income and economic activity.

Information to be stipulated by the OECD for the foregoing purposes will involve the provision of data, on a CBC basis, on global income and taxes paid, according to a common template, although, to avoid undue complexity in compiling the necessary data, a more narrowly focussed requirement on particular risks might be a more practical approach. There is also a concern that the information to be compiled could be used inappropriately by tax authorities and might even become accessible by the public, where it could be misinterpreted or used in an anti-competitive manner.

The OECD memorandum of 3 October 2013 on TP documentation and CBC reporting as part of Action 13 forms another key part of the risk assessment process. The key themes of substance, transparency and risk are consistent with other recent OECD publications and areas of the BEPS Action Plan. Interestingly, the memorandum acknowledges that including information on other measures of economic activity may encourage “unwarranted reliance on formula-based income allocations”.

The memorandum could result in taxing authorities advancing arguments based on abstract notions of comparability where, for example, there might be an inadequate understanding of an industry. On the whole, the memorandum does provide a clear indication of the type of information that is likely to be required in the CBC reporting template and raises key topics for discussion through the consultation process that should be considered as part of the broader BEPS question.

The primary objective of BEPS in requiring reporting information on a CBC basis is to enhance transparency for tax administrations alone. Balancing compliance costs for business is critical. Business generally will be in favour of a standardised approach, with better rather than just more information. Template information should therefore be focused on the bigger picture using information which is readily available, and materiality should be taken into account.



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