

Country-by-country reporting

The Action 13 of the Base Erosion and Profit Shifting (BEPS) report which was published on 5 October 2015 contains revised standards for transfer pricing documentation and a template for country-by-country reporting of income, taxes paid and certain measures of economic activity, both of which will be included in the OECD transfer pricing guidelines.

In brief, it is aimed to develop “rules regarding transfer pricing documentation and to enhance transparency for tax administration, taking into consideration the compliance costs for business.”

Multinational Enterprises (MNEs) will be required to provide all relevant governments with the information on their global allocation of the income, economic activities and taxes paid among countries according to a common template.

A three-tiered standardised approach to transfer pricing documentation has been developed and consists of a:

1. “master file” that is to be available to all relevant tax administrations with a high-level information regarding the global business operations and transfer pricing policies of MNEs;
2. “local file” specific to each country with the detailed transactional transfer pricing documentation identifying material related party transactions, the amounts involved in those transactions, and the company’s analysis of the transfer pricing determinations they have made with regard to those transactions; and
3. country-by-country report which is to be prepared on an annual basis and includes each entity within the MNE group doing business in a particular tax jurisdiction and provides an indication of the business activities each entity engages in. The following specific details should be contained in the report:

- a. amount of revenue earned from related and unrelated parties;
- b. profit/loss before tax;
- c. income taxes paid and accrued;
- d. the number of employees;
- e. stated capital;
- f. retained earnings; and
- g. tangible assets.

The new country-by-country reporting requirements are to be implemented for fiscal years beginning **on or after 1 January 2016** and apply to MNEs with annual consolidated group revenue equal to or exceeding €750 million. It is mandated that countries participating in the BEPS project will carefully review the implementation of these new standards and will reassess no later than the end of 2020 whether modifications to the content of these reports should be made to require reporting of additional or different data.

In detail, the master file should provide an overview of the MNE group business, its overall transfer pricing policies, and its global allocation of income and economic activity in order to place the MNE group’s transfer pricing practices in their global economic, legal, financial and tax contexts. The taxpayers should use the prudent approach in determining the appropriate level of detail for the information supplied for producing the master file.

The information required in the MNE master file can be grouped to five categories:

- a. the group’s organisational structure;
- b. a description of the MNE’s business or businesses;
- c. the intangibles;
- d. the intercompany financial activities; and
- e. the financial and tax positions.

The local file should provide more detailed information relating to specific material inter-company transactions. Its purpose is to supplement the master file and assist in assessing whether the taxpayer has complied with the arm's length principle in its material transfer pricing positions affecting a specific jurisdiction. The intra-group transactions should be broken down by tax jurisdiction of the foreign payer or recipient.

The master file and the local file will have to be implemented through local country legislation or administrative procedures and should be delivered by MNEs directly to local tax administrations.

The MNEs should try to determine transfer prices based upon information reasonably available at the time of the transaction and should confirm the arm's length nature of the transactions at the time of filing the tax returns.

The country-by-country report should be filed in the jurisdiction of tax residence of the ultimate parent entity and shared between jurisdictions through automatic exchange of information, pursuant to government-to-government mechanisms such as the multilateral convention on mutual administrative assistance in tax matters, bilateral tax treaties or tax information exchange agreements. In limited circumstances, secondary mechanisms, including local filing can be used as a backup.

The master file, local file and country-by-country report will require taxpayers to articulate consistent transfer pricing position and will provide tax administrations with useful information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries.

This information should make it easier for tax administrations to identify whether companies have engaged in transfer pricing and other practices that have the effect of artificially shifting substantial amounts of income into tax-advantaged environments.

The countries participating in the BEPS project agree that these new reporting measures and the transparency which they encourage will contribute to the objective of understanding, controlling and tackling BEPS behaviours.

The guidance provided in respect of the master and local files differs from current documentation requirements. These differences will require companies to review their existing documentation and the process used to produce it.

The country-by-country template is an entirely new reporting requirement. Companies should review the requirements carefully in order to understand the most appropriate application of the guidelines to their particular operating structure. For annual compliance, companies need to plan the necessary steps to ensure their ability to collect the required information as efficiently as possible, including developing sustainable processes and responsibilities with regard to the new reporting.

Ireland will be an early adaptor of country-by-country reporting which has been included in Finance Act 2015.

How Grant Thornton can help your business

We can help your business to comply with the revised standards by reviewing risks across the group, preparing or reviewing transfer pricing documentation in the master file and local file format and advising on the preparation and presentation of the country-by-country report. For a further discussion of how the transfer pricing and country-by-country latest updates might affect your business, please contact a member of our team.

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