



UAE issues Country by Country reporting regulations

Summary

The UAE Cabinet has issued Country-by-Country ('CbC') reporting requirements vide Cabinet Resolution no. 32 of 2019 dated 30 April 2019. This is in line with the UAE's intent to participate increasingly in the global BEPS initiative on account of being an inclusive framework member and to facilitate transparency and information exchange with other countries.

While this requirement is not new for large MNEs (meeting CbC reporting threshold and hereinafter referred to as the qualifying MNE group) operating in UAE as they would have already been filing CbC reports and notifications in overseas jurisdictions, UAE parented groups will now be required to file their CbC reports in the UAE and UAE constituent entities of qualifying MNE groups would be required to notify the competent authority (i.e. the Ministry of Finance or MoF) regarding the identity and residence of the reporting entity.

The CbC reporting regulations are effective for financial years beginning on 1 January 2019 (first reports due on 31 December 2020 and first notifications due on 31 December 2019). We have outlined below details of the regulations and their impact on UAE entities.

Introduction

The BEPS project of the OECD and the G20 recognised Transfer Pricing Documentation and Country-by-Country Reporting (Action 13) as one of the minimum BEPS standards (to be adopted by all members of the inclusive framework) in order to encourage transparency and exchange of information between tax authorities globally to facilitate transfer pricing risk-based assessments.

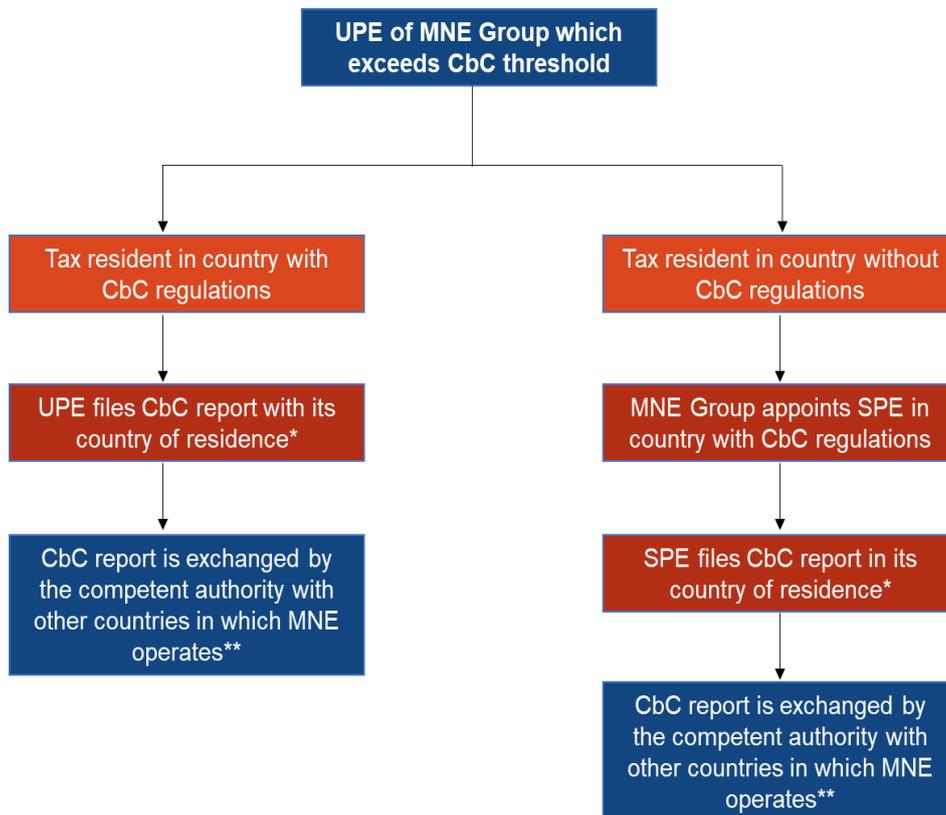
A CbC report of an MNE provides jurisdiction-wise amount of revenue, profit before income tax and income tax paid and accrued, number of employees, stated capital, retained earnings



and tangible assets. It also requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities that each entity engages in.

This facilitates information gathering by tax authorities in different countries on large MNEs' global allocation of income, economic activity and taxes paid among countries in a commonly understood template. The report is to be filed by an Ultimate Parent Entity ('UPE') of an MNE group or a Surrogate Parent Entity ('SPE') which is typically appointed by the group if the UPE is in a jurisdiction which does not have CbC provisions.

Following flowchart illustrates the CbC report exchange mechanism:



**The other group entities file notifications with tax authorities in their jurisdictions regarding the identity and jurisdiction of the UPE/ SPE filing the CbC report, as the case may be.*

***Subject to existence of CbC report exchange mechanisms in place¹*

Currently, there are over 2100 bilateral exchange relationships activated with respect to jurisdictions committed to exchanging CbC reports, and the first automatic exchanges of CbC reports took place in June 2018. UAE is already a signatory to the CbC MCAA (since June 2018) and accordingly, would now be able to exchange CbC reports with most of the other countries having CbC legislations.

¹ by being a signatory to CbC Multilateral Competent Authority Agreement ('CbC MCAA') or between EU Member States under the EU Council Directive 2016/881/EU or between signatories to bilateral competent authority agreements for exchanges under Double Tax Conventions or Tax Information Exchange Agreements



A summary of UAE CbC regulations

The UAE CbC reporting requirements are in line with the CbC legislations introduced by most countries and the BEPS report on Action 13.

Following are some of the key features of the regulations:

Threshold for applicability

The regulations apply to an MNE group having consolidated turnover of at least AED 3.15 billion in the preceding year (in line with the OECD threshold of Euro 750 mn).

Due date and form for submitting CbC report/ notification to MoF

Following are the prescribed due dates:

Entity Type	Requirement	Due Date
UPE/ SPE in UAE	Filing CbC report	Within 12 months after the end of the reporting fiscal year of the MNE group
UPE/ SPE in UAE	Notification that the UPE/ SPE is going to file the CbC report in UAE	By the end of the reporting fiscal year of the MNE group
Other constituent entity of the MNE group in UAE	Notification regarding the identity and tax residence of the Reporting Entity	By the end of the reporting fiscal year of the MNE group

Date of applicability of CbC provisions

Based on current drafting of the provisions (Article 5), it seems that the requirements apply for the years beginning on or after 1 Jan 2019. Accordingly, UAE entities being part of an MNE group having consolidated group revenues of at least AED 3.15 bn would need to comply with the provisions i.e. notification and reporting (wherever applicable) for the years beginning on or after 1 January 2019.

Prior to the regulations, UAE headquartered MNE groups had to appoint an SPE for filing CbC report. However, now the same will mandatorily need to file such CbC report with UAE.

Penalties for non-compliance

Administrative penalties have been prescribed for non-compliance by the **reporting entity** as follows:

- AED 100,000 for failure to retain documentation and information required for a minimum period of five (5) years after the date of reporting to the Competent Authority
- AED 100,000 for failure to furnish information to the Competent Authority in case of any inquiries



- AED 50,000 to AED 500,000 on failure to report information in a complete and accurate manner
- AED 1,000,000 + AED 10,000 per day of failure (upto a maximum of AED 250,000) for not filing CbC report/ notification on or before the prescribed due date

The regulations also provide for an appeal procedure for reporting entities against levy of penalties.

Guidance/ details awaited

Following are some of the areas in which further guidance and details are awaited:

- The manner of making a CbC notification (i.e. plain letter, prescribed form, online, etc.)
- Whether in case of multiple group entities in UAE, a single CbC notification would suffice or each entity would need to file a separate notification
- Details regarding the manner of filing CbC report (usually an online portal for facilitating information exchange)

Next steps

For UAE based UPE of a qualifying MNE group

UAE headquartered MNE groups already filing CbC reports in overseas jurisdictions through SPEs would be required to file CbC reports in the UAE from financial years beginning on/ after 1 January 2019.

Where such reports were not prepared in the past on account of not having presence in a country with CbC regulations, qualifying MNE groups will now need to prepare and file CbC reports with the UAE MoF. Further, a constituent entity in UAE may also now be appointed as the SPE for the group for filing of the CbC report.

Such UPEs would also need to notify the MoF of the fact that it shall file the CbC report for the MNE group.

For UAE based non UPE/ SPE constituent entities of a qualifying MNE group

All UAE constituent entities of a qualifying MNE group would need to notify the MoF regarding the identity and jurisdiction of group entity filing the CbC report.

Secondary filing obligations

A CbC report filed in UAE would be able to be exchanged with other countries (and vice-versa) only if the CbC automatic exchange of reports is activated by the date of filing of the report. While UAE has signed the CbC MCAA, it has not yet activated any exchange relationships with other countries. Thus, a secondary filing obligation may arise outside UAE for UAE parented MNEs filing CbC report in UAE and in UAE for constituent entities of foreign parented



MNEs filing notification in UAE, if such CbC exchange mechanism is not activated by the due date of filing of CbC report (first date being 31 December 2020). This development should be monitored closely to avoid any non-compliances.

Given that the CbC report provides an overview of the global allocation of income, economic activity and taxes paid among countries, its use as a risk assessment tool by tax authorities to scrutinize the transfer pricing arrangements of MNEs cannot be undermined.

If you would like to discuss the above in more detail and understanding the specific implications of the developments to your business, please feel free to get in touch with:

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