ALSTON & BIRD

WWW.ALSTON.COM

International Tax ADVISORY ■

JUNE 15, 2016

Taking a Gap Year: Delayed U.S. CbC Reporting Creates Hassle for U.S. Multinationals

Action 13 of the Organisation for Economic Co-operation and Development's (OECD) final base erosion and profit-shifting (BEPS) report suggested the adoption of a standardized mechanism for transfer-pricing reporting. Per the BEPS report, large multinationals should be required to produce (1) a master file about global business operations and pricing policies available to relevant jurisdictions; (2) a local file, specific to each country, disclosing materially related party transactions and transfer-pricing analyses; and (3) an annual country-by-country (CbC) report of financial results in each jurisdiction with a rundown of group entities and their activities.

While the master and local files would be filed directly with relevant local jurisdictions, the CbC report would be filed in the tax residence jurisdiction of the ultimate parent and subsequently shared via tax information exchange or similar agreements. The OECD recommended that jurisdictions implement these reporting requirements for fiscal years beginning on or after January 1, 2016.

The U.S., though broadly encouraging of the BEPS project, has been cautious in adopting specific recommendations. The IRS and Treasury issued proposed regulations on CbC reporting on December 21, 2015. While the proposed rules generally conformed to the OECD recommendations, there were some key differences—including timing. Under the proposed regulations, CbC reporting for parents of U.S. multinationals would not begin until after the date the regulations are finalized. Assuming the rules are finalized by June 30 as expected, calendar year U.S. multinationals would not be required to file the CbC report until sometime in 2018 for the 2017 tax year. Thus, 2016 becomes a "gap year" for CbC reporting.

This gap year causes administrative headaches for U.S. multinationals because foreign jurisdictions may be empowered to obtain CbC reports from local affiliates (the "secondary mechanism") rather than through information exchange with the parent's jurisdiction (the "primary mechanism"). In other words, U.S. multinationals may effectively be required to file CbC reports directly with various foreign countries.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

Commentators have expressed concerns that information that U.S. entities report directly to foreign jurisdictions may not receive the same level of confidentiality protection as if the filings were made to the U.S. tax authorities (and then exchanged pursuant to bilateral agreements). Moreover, filing various CbC reports directly with foreign authorities means complying with a web of distinct obligations under the applicable foreign laws. The secondary mechanism for CbC reporting therefore increases compliance costs and seemingly undermines the consistency and transparency the CbC regime is intended to foster.

So far, the IRS and Treasury have indicated that the finalized CbC regulations would maintain the same timeline as described in the proposed regulations, including tying CbC reporting to the tax return due date (and not end of the following year as the OECD had suggested). In addition, Treasury officials have said the final rules are not expected to incorporate provisions for optional, earlier CbC reporting by U.S. multinationals. Even if optional reporting were permitted, it is not clear that such reporting would satisfy foreign laws implementing BEPS Action 13. Nevertheless, the U.S. tax authorities have supposedly been asking other jurisdictions if they would accept such early, optional reports. However the issue is ultimately resolved, the smart U.S. multinational will prepare a CbC report for 2016 anyway, if only to facilitate any reporting under foreign law by local affiliates.

For more information, contact Edward Tanenbaum at 212.210.9425 or Heather Ripley at 212.210.9549.

If you would like to receive future *International Tax Advisories* electronically, please forward your contact information to **InternationalTax.Advisory@alston.com**. Be sure to put "**subscribe**" in the subject line.

Click **here** for Alston & Bird's Tax Blog.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Sam K. Kaywood, Jr.
Co-Chair
404.881.7481
sam.kaywood@alston.com

Edward Tanenbaum
Co-Chair
212.210.9425
edward.tanenbaum@alston.com

George B. Abney
404.881.7980
george.abney@alston.com

John F. Baron
704.444.1434
john.baron@alston.com

Henry J. Birnkrant
202.239.3319
henry.birnkrant@alston.com

James E. Croker, Jr.
202.239.3309
jim.croker@alston.com

Jasper L. Cummings, Jr.
919.862.2302
jack.cummings@alston.com

Scott Harty
404.881.7867
scott.harty@alston.com

Brian D. Harvel
404.881.4491
brian.harvel@alston.com

L. Andrew Immerman
404.881.7532
andy.immerman@alston.com

Stefanie Kavanagh
202.239.3914
stefanie.kavanagh@alston.com

Brian E. Lebowitz
202.239.3394
brian.lebowitz@alston.com

Clay A. Littlefield
704.444.1440
clay.littlefield@alston.com

Ashley B. Menser
919.862.2209
ashley.menser@alston.com

Matthew P. Moseley
202.239.3828
matthew.moseley@alston.com

Daniel M. Reach
704.444.1272
danny.reach@alston.com

Heather Ripley
212.210.9549
heather.ripley@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2016

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260
SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, CA 94303-2282 ■ 650-838-2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333