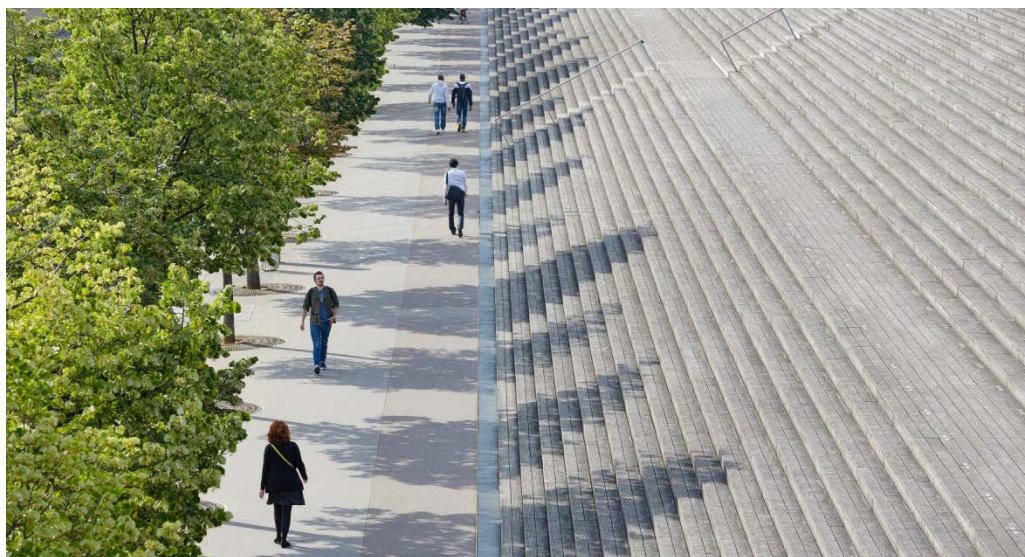


Malaysia Implements Country-by-Country Reporting Requirements



Malaysia issued the Income Tax (Country-by-Country Reporting) Rules (“CbCR Rules”) on 23 December 2016, which came into effect on 1 January 2017. The CbCR Rules are in line with the OECD’s recommendations contained in Action 13 of the Base Erosion Profit Shifting (“BEPS”) initiative.

To whom do the CbCR Rules apply?

The CbCR Rules apply to multinational corporations (“MNCs”) where the ultimate holding company is incorporated and resident in Malaysia.

Additionally, the following conditions need to be met:

- The MNC group has a total consolidated group revenue of MYR 3 billion in the financial year preceding the reporting financial year.
- The MNC group carries out cross-border transactions with constituent entities owned or controlled by the MNC group in other tax jurisdictions. (Briefly, constituent entities are defined as any separate business unit which is (a) included in the consolidated financial statements or would have been included if its shares were traded on a public securities exchange, (b) excluded from the consolidated financial statements

solely on the basis of size or materiality, or (c) a permanent establishment of any business unit of the MNC group if the permanent establishment has a separate financial statement prepared for financial reporting, regulatory, tax or internal management purposes).

- The constituent entities are incorporated or registered, and resident in Malaysia or any other jurisdiction.

Country-by-Country Report (“CbCR”)

The CbCR requires the aggregate information for each jurisdiction the MNC group operates in, as follows:

- Revenues;
- Profit (loss) before income tax;
- Income tax paid;
- Income tax accrued;
- Stated capital;
- Accumulated earnings;
- Number of employees; and
- Tangible assets other than cash or cash equivalents.

The CbCR also requires each constituent entity in the MNC group to be identified as follows:

- The jurisdiction where the entity is a tax resident;
- The tax jurisdiction of the organisation or incorporation if different from the tax jurisdiction of residence; and
- The nature of the main business activity or activities.

The financial information above is to be denominated in Malaysian Ringgit (“MYR”) and the CbCR form will have to be filed electronically.

The responsibility for filing the CbCR form will lie with the MNC group’s ultimate holding company which is resident in Malaysia.

Filing timeline

The CbCR must be filed no later than 12 months after the end of the financial year.

By way of example, as the CbCR Rules take effect on 1 January 2017, a MNC group which has a financial year ending 31 December 2017, will be required to file the CbCR no later than 31 December 2018. A MNC group with a financial year ending in March (i.e. 1 April 2017 to 31 March 2018) will be required to file the CbCR no later than 31 March 2019.

Impact on foreign MNC groups with constituent entities in Malaysia

Malaysian entities of foreign MNC groups will generally not be required to prepare and file the CbCR, as the obligation to file will be with the ultimate holding company in the jurisdiction it is tax resident in. However, the Malaysian entities of the foreign MNC group will have an obligation to inform the Inland Revenue Board of Malaysia ("IRBM"), by the end of its financial year, if it is the holding company or if it has been appointed as the surrogate holding company. If it is neither the holding company or been appointed as the surrogate holding company, the Malaysian entities must notify the IRBM of the identity and tax residence of the entity responsible for preparing the CbCR.

In situations where the MNC group's ultimate holding company is resident in a jurisdiction:

- which has not introduced similar CbCR legislation;
- which has no agreement for the exchange of information with Malaysia; or
- where there is a systematic negligence in the exchange of CbCR with Malaysia, the ultimate holding company may appoint its Malaysian entity as a surrogate holding company for the purpose of filing the CbCR.

Consequences of not complying with the requirements

The Finance Bill 2016 which was released in November 2016 includes a provision to impose sanctions on taxpayers who do not comply with the CbCR rules. The sanctions proposed are a fine of not less than MYR20,000 and not more than MYR100,000, or, to a jail term of not more than 6 months, or, to both.

The above sanctions also apply to the filing of incorrect returns, information returns or reports, as well as on any failure to comply with the rules on mutual administrative assistance.

How will the IRBM use the CbCR information?

The information contained in the CbCR is to be used only for assessing high-level transfer pricing risks, other BEPS-related risks and where appropriate, for economic and statistical analysis. The information is not intended to be used as a substitute for a detailed transfer pricing analysis or for making transfer pricing adjustments.

Mechanism in which the CbCR is shared with other tax authorities

Malaysia has signed the *Convention on Mutual Administrative Assistance in Tax Matters* ("Convention") as well as the *Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports* ("Agreement"). Additionally, the Income Tax (*Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports*) Order was also issued on 23 December 2016.

The Convention authorises the tax authorities to annually exchange CbCRs on an automatic basis. Additionally, the Agreement requires the authorities to keep the information received confidential.

Masterfile and local file

To date, the IRBM has not released any rules on the Masterfile and local file reporting requirements. These rules are expected to be released in 2017 by way of amendments to the existing transfer pricing rules and are generally expected to conform to the OECD recommendations as contained in Action 13 of the BEPS Action Plan.

Key takeaways

The new CbCR requirements are part of a global move to counter tax strategies which are perceived to be used by MNC groups to lower their effective tax rate. Though Malaysia is neither a member of the OECD or G-20, the IRBM has participated in many of the BEPS discussions and this can be seen from the Malaysian CbCR Rules which are in line with Action 13 of the OECD's BEPS Action Plan.

MNC groups resident in Malaysia, who are impacted by these changes, will have to consider these new compliance measures and ensure adequate resources are allocated to meet the reporting requirements. Additionally, as the CbCR provides the IRBM and other tax authorities with a global overview of the MNC group's business operations, risk assessments will need to be conducted to identify issues such as transfer pricing practices, substance, etc., which may be highlighted by the information contained in the CbCR.

Subsidiaries of foreign MNC groups resident in Malaysia should alert their ultimate holding company as to the introduction of CbCR in Malaysia and identify as to whom, within the MNC group, is responsible for preparing the CbCR. Furthermore, if the ultimate holding company is resident in a jurisdiction which has not introduced CbCR or does not have an effective exchange of information regime with Malaysia, the subsidiary in Malaysia should be prepared for the possibility of being appointed a surrogate for the purposes of preparing and filing the CbCR.

The CbCR Rules represent the beginning of a stricter reporting framework and one can expect to see more BEPS-related developments in Malaysia in the near future.

Let's talk

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