

Singapore tax authorities issue long-awaited Singapore Country-by-Country Reporting (CbCR) implementation guidance

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Since the Singapore’s Ministry of Finance (“MoF”) announced that “Singapore joins the Inclusive Framework for Implementing Measures against Base Erosion and Profit Shifting (“BEPS”)” on 16 June 2016, Singapore-based Multinational Corporation (“MNC”) groups have been anxious to receive more detailed guidance on the implementation requirements for CbCR in Singapore.

Late last night, the Inland Revenue Authority of Singapore (“IRAS”) released – finally - the **e-Tax Guide on Country-by-Country Reporting**. The 20-page document aims to provide practical guidance on CbCR implementation in Singapore. This comes as part of Singapore’s commitment to implement the **four minimum standards** under the inclusive framework under the Organisation for Economic Co-operation and Development (“OECD’s”) BEPS Project.

Why the big fuss over CbCR?

CbCR is of particular interest to many MNC groups. The CbCR template results in disclosures of key financial information (e.g., revenues, profit before tax, income tax paid, capital etc.) on a country-by-country basis of an MNC group. As such CbCR template will be submitted and exchanged between tax authorities, this enables tax authorities across the globe to have a deeper insight into the MNC group’s global profit allocation in relation to its various operations and activities (e.g., based on economic activity indicators such as assets and headcount) in various territories. The template also requires the identification of the main business activities performed in each jurisdiction.

CbCR not only results in additional (significant) compliance requirements but, more importantly, also for the very first time in history facilitates tax authorities’ unprecedented access to an MNC group’s global profit allocation. Many MNC groups are concerned over the potential misuse of such information by increasingly aggressive tax authorities arising from such access, despite the repeated assurance from the OECD and / or BEPS associates that the CbCR template is only intended to be used as a risk assessment tool.

All right! So what’s new with CbCR in Singapore?

Since the OECD first released the CbCR template in **February 2015** and clarified the scope of CbCR in **June 2015**, the IRAS has conducted private consultations with the business community in Singapore to gather feedback on anticipated challenges for taxpayers to interpret the CbCR guidance and complete the CbCR template in an accurate and coherent fashion.

In this detailed implementation guidance IRAS has confirmed a number of key principles, providing taxpayers some level of certainty over the scope of CbCR filing in Singapore:

Singapore's position	
<i>Coherence with OECD principles and guidance on CbCR:</i>	<ul style="list-style-type: none"> • The IRAS has emphasised that the implementation of CbCR in Singapore is aligned with the OECD principles. The IRAS' e-Tax Guide therefore broadly adopts the various definitions and guidance as provided under the OECD guidance¹. • Singapore will also be introducing legislation for CbCR. The public consultation on draft Income Tax (Amendment) (No. 3) Bill 2016 was carried out from 8 July to 29 July 2016. The Bill will be introduced in Parliament later this year.
Scope of CbCR filing in Singapore	<ul style="list-style-type: none"> • Implementation of CbCR in Singapore will only affect MNC groups (i) whose ultimate parent entities are based in Singapore; (ii) whose group turnover exceeds SGD 1,125 million (or SGD 1.125 billion); <u>and</u> (iii) has subsidiaries or operations in at least one foreign jurisdiction. • The IRAS has also clarified that the revenue threshold is assessed on a preceding year basis. As such, an MNC group is required to file a CbC report for FY 2017 if the consolidated group revenue for FY 2016 exceeds SGD 1,125 million (or SGD 1.125 billion).
Surrogate and Secondary filing	<ul style="list-style-type: none"> • The IRAS has clarified that Singapore does not intend to implement rules providing for surrogate parent filing². Further, foreign MNC groups with subsidiaries in Singapore are currently not expected to file secondary CbCR filings in Singapore.
<i>Not a substitute for proper TP analysis:</i>	<ul style="list-style-type: none"> • The information in the CbC Report should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis.
<i>Penalty regime</i>	<ul style="list-style-type: none"> • The IRAS treats CbCR as a tax compliance requirement arising from international agreements. Failure to provide CbCR template to the IRAS will result in penalties under Section 105M of the Singapore Income Tax Act, which can comprise both monetary fines and (in default of payment) imprisonment depending on the surrounding circumstances.
<i>Coherence with accounting consolidation principles:</i>	<ul style="list-style-type: none"> • The IRAS reiterated that the CbCR template should be considered in a consistent manner with accounting consolidation principles. • This should provide added assurance and guidance to taxpayers on the principles upon which one may reflect on when filing up the CbCR template.
<i>Definitional points of attention</i>	<ul style="list-style-type: none"> • The IRAS has also provided a number of useful clarifications and examples on how to interpret the definitions and guidance on the CbCR template. Of particular noteworthy attention is: <p><i>Definition of Group and Constituent Entities</i> – The IRAS has confirmed that a Group, for the purpose of CbCR filing, should reflect its constituents which form a single economic unit. In other words, entities which are not part of a Group's consolidated financial statements (e.g., JVs and associated companies who are equity accounted) should not be treated as a constituent entity and hence should be excluded from the CbCR template of such Group.</p> <p>In particular, this is a welcome clarification which undoubtedly helps address many taxpayers' questions on the scope of CbCR filing.</p>

¹ Please refer to the OECD BEPS Final Report on Action 13: Transfer Pricing Documentation and CbCR (and subsequent additional guidance issued).

² Under the OECD CbCR principles, surrogate parent filing occurs in specific situations where the CbCR template is not available for exchange with other tax authorities arising from factors such as (i) the location of the parent entity does not implement CbCR rules; (ii) there is a systemic failure by the parent entity jurisdiction to exchange CbCR reports with tax authorities under the AEOI framework etc.

Whilst many of the clarifications provide added certainty to companies, a number of these points may continue to cause administrative hassle (e.g., when financial information need to be put together). We provide further details of these definitional points and some of our initial thoughts in the attached Appendix to this NewsLetter.

Whilst the IRAS has provided useful clarifications, the following **key** principle remain unanswered:

Singapore's position	
<i>Transitional year issues</i>	<ul style="list-style-type: none">• Singapore has announced that the CBCR requirement in Singapore will apply from FY 2017 (i.e., information as from 1 January 2017). This is generally speaking, one year later than many countries which have announced implementation of CbCR for financial information as from 1 January 2016.• It remains unclear as to whether Singapore will implement transitional year measures such as voluntary filing for FY 2016 information. A number of other countries (e.g., the US) which are implementing CbCR based on a different timeline from the general OECD timeline of 1 January 2016 have announced that they are considering measures such as voluntary filing to support taxpayers in their respective territories to comply with CbCR filing requirements.• From this perspective, whilst we understand that there are a number of administrative items that the IRAS needs to address prior to adoption of voluntary filing in Singapore, taxpayers would welcome its indication of the likely transitional measures. This is of particular relevance as Singapore MNC groups will need to assess whether the surrogate parent filing obligations arising from CbCR will require these Groups to file their CbCR template in another jurisdiction which has implemented CbCR.

What is IRAS doing to ensure confidentiality of information provided?

Under the CBCR framework, the ultimate parent company of an MNC group is to submit its CbCR template to the tax authorities of its jurisdiction. The tax authorities concerned will subsequently exchange the CbCR template with other tax authorities in jurisdictions in which the MNC group has operations through the automatic Exchange of Information (“EoI”) platform. To date, many OECD countries (e.g., the UK, Australia, the Netherlands, Japan, the US) and major economies (e.g., China, India) and other jurisdictions (e.g., Bermuda) have announced the implementation of CbCR regimes in their respective jurisdictions.

Firstly, on automatic exchange of CbCR templates with other jurisdictions, the Singapore government has once again sought to reassure the business and investor communities on concerns often raised in regard to safeguarding of confidentiality of taxpayers’ information. The IRAS, for example, has stated that it is currently developing e-services for receiving³ and sending CBC Reports with a sufficient level of encryption. In addition, to safeguard confidentiality of information and prevent potential misuse of any information exchanged, the IRAS will ensure the following conditions are met before it will exchange CbCR templates with jurisdictions where Singapore has entered into bilateral agreements with for automatic exchange of CbCR information:

³ Note: the submission of CBC report must be done electronically in accordance with the format specified by the IRAS in the e-Tax Guide on CBCR.

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- First, these jurisdictions have a strong rule of law and can ensure the confidentiality of the information exchanged and prevent its unauthorised use.
 - Second, there must be reciprocity in terms of the information exchanged.

As of 30 June 2016, 44 countries became signatories to the [Multilateral Competent Authority Agreement \(MCAA\) specific to CbCR](#). To date, Singapore is not yet a signatory to the CbCR MCAA. However, as part of CbCR implementation, we expect that Singapore will develop frameworks to facilitate the automatic exchange of CbCR templates through bilateral agreements to exchange such CbCR templates.

What do you need to do to prepare for Singapore's CbCR implementation?

If your group is a Singapore-headquartered MNC group, and if you have not already started doing so, you should start reviewing whether the requisite group level financial information is readily available to you.

We are aware of a few MNC groups which have commenced this process. For others, several are realising that there are significant challenges involved in collating relevant financial information and that significant lead time is required to ensure a suitable solution can be implemented. It would be prudent to consider the implications of how tax authorities may view the information reported in their respective territories. This information should be in relation to the MNC group's global activities and operations as well as functions performed, assets owned and risks assumed in the respective jurisdictions.

MNC groups may want to consider preparing a mock-up of the CbCR report based on existing data and (re)consider the robustness of its tax and transfer pricing policies, and whether its existing policies reflect the current realities of the globalized and digitized economy. In light of the broader BEPS project and the increasing transparency of tax information expected, it is important that MNC groups use this opportunity to reflect on relevant aspects such as their tax policies and approaches for their cross-border activities, legal structure and business structure (including transfer pricing aspects) and also consider the implications the CbCR information for them and their tax profile.

With increased tax transparency, it is clear that tax information provided in the CbCR template will need to be consistent and coherent across the MNC group. MNC groups may also like to consider the use of tax technology to make such information collection and analysis more effective and accurate.

Anything else?

For more information on how the broader BEPS initiative will affect businesses in Singapore, please refer to our earlier communications:

- [Summary of impact of OECD BEPS Action Points on Singapore](#) [16 Oct 2014]
- [Observations on the finalization of the OECD BEPS project](#) [3 Nov 2015]
- [A new chapter in Singapore's Transfer Pricing regime](#) [12 Jan 2015]

Appendix – Details on clarification on definitional points

As discussed previously, the IRAS has provided a number of clarifications on definitional issues. Please find the key points highlighted herein.

- *Coherence with accounting consolidation principles:* The IRAS reiterated that the CbCR template should be considered in a consistent manner with accounting consolidation principles. A number of notable examples include:

- (i) *Definition of Group and Constituent Entities* – The IRAS has confirmed that a Group, for the purpose of CbCR filing, should reflect its constituents which form a single economic unit. In other words, entities which are not part of a Group’s consolidated financial statements (e.g., JVs and associated companies who are equity accounted) should not be treated as a constituent entity and hence should be excluded from the CbCR template of such Group.
- (ii) *Treatment of permanent establishment (PEs) and branches* – The IRAS has confirmed that PEs and/or branches are to be considered Constituent Entities to the extent that separate financial accounts are prepared for such branch or PE. From a practical perspective, this is expected to relate to registered branches or situations where Groups file a PE tax return.

Further, the PE data should be reported by reference to the tax jurisdiction in which it is situated and not by reference to the tax jurisdiction of residence of the business unit of which the PE is a part. Residence tax jurisdiction reporting for the business unit of which the PE is a part should therefore exclude financial data related to the PE.

- *Source of data:* The reporting MNC entity should consistently use the same sources of data from year to year in completing the CbCR template. However, it may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or even internal management accounts. The IRAS has stressed that the MNC group need not seek to reconcile the data reported in the template to the group’s consolidated financial statements among other considerations.
- *Definitions:* The IRAS has provided a number of clarifications on definitional items including:

- (i) *Revenues* – The IRAS has restated that revenues include all income sources, including extraordinary income or notional/ unrealised / one-off gains (e.g., arising from revaluation of assets).

Further, the IRAS has clarified that in computing related party revenues, intra-jurisdiction intercompany transactions should not be eliminated. Finally, while dividends received from other Constituent Entities are to be excluded, dividends received from *non-Constituent Entities* (e.g., Associated Companies or Joint Ventures) will need to be included.

- (ii) *Profit (loss) before Income Tax* – The IRAS has clarified that the share of profits of associated companies should not be included in the CbCR template.
- (iii) *Taxes paid* – The IRAS has clarified that taxes paid should predominantly reflect corporate income tax paid (including withholding taxes paid). Indirect taxes or other business taxes (e.g., VAT, Fringe benefit taxes) should generally be excluded.

(iv) *Income tax accrued* – The IRAS confirmed that Groups should reflect the accrued current tax expense relating to the year of reporting. Such current tax expense should only reflect operations in the current year and should not include deferred taxes or provisions for uncertain tax liabilities.

(v) *Tangible assets* – The IRAS has clarified that tangible assets refer to physical hard assets. Cash or cash equivalents, intangibles and financial assets (including trade receivables, investments etc.) should be excluded.

A number of the definitions clarified above by the IRAS may cause administrative burden for Groups as some information may not always be readily available (e.g., withholding taxes paid abroad) or need significant rework (e.g., dividends received from Constituent Entities vs. non-Constituent Entities) to ensure accuracy.

The IRAS has also clarified the following:

- *Stated Capital*: This should be capital as reflected in the financial statements. It usually refers to ordinary share capital but can also include preference share capital and perpetual securities.

The IRAS has also used a number of examples to illustrate the application as it relates to PEs (the share capital should be reported by the legal entity of which a PE belongs unless there is a defined capital requirement in the PE tax jurisdiction for regulatory purposes) and multi-tiered groups.

- *Employees*: The IRAS provided a number of scenarios upon which sub-contractors, part-timers, contract staff, consultants should be considered full-time equivalent employees. In particular, reference is made to time period (“fairly long term” and “permanent”) and the value of the individual to a Group’s value chain.
- Treatment of different year ends and exchange rates to be applied: IRAS has given a specific example on how Groups may report financial information of entities which have different fiscal year ends.

Your PwC contacts

If you would like to discuss the impact of these developments on your group’s affairs, please feel free to reach out to any of the facilitators or your local PwC Contact.

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