



**Country-by-country
reporting (CbCR):**

Emerging themes from the
G20/OECD and the UK

March 2017

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The frequently asked questions consider the G20/OECD recommendations in respect of country-by-country reporting to tax authorities, and the UK's implementation of these recommendations. Public disclosure of country-by-country information is not part of the G20/OECD BEPS requirements and is not addressed in the frequently asked questions.

Multinational businesses are working through the details to understand the information required for country-by-country reporting. The guidelines (issued by the G20/OECD and other countries participating in the BEPS process) are not prescriptive in many areas because of the varied ways in which businesses operate and report. Businesses will need to apply an element of judgement where there is not a definitive answer as to how to apply the requirements to particular facts and circumstances.

Below are a number of frequently asked questions and the factors that will need to be considered in forming such judgements. The outcome may be different for different groups depending on the specific facts.

Please note that these frequently asked questions were issued before the announcement of the latest UK CbC regulations which will come into force on 20 April 2017.

For further assistance and guidance, speak to your usual Deloitte adviser or one of the contacts listed.

01. What is country-by-country reporting and what is a *country-by-country report*?



Action 13 of the G20/OECD's Base Erosion and Profit Shifting ('BEPS') project recommended that large multinational groups should be required to prepare and file with the tax authorities a new type of annual return – a *country-by-country report*.

The *country-by-country report* will provide tax authorities with visibility over how key elements of a multinational group's financial results (revenues, profits before tax, income tax paid and accrued, employees, capital, accumulated earnings, tangible assets) breaks down by tax jurisdiction. The names and main business activities of a group's constituent entities in each jurisdiction are also included.

02. Which countries have committed to implementing country-by-country reporting?



Country-by-country reporting is a BEPS 'minimum standard' requirement. All OECD and G20 countries and all countries participating in the BEPS 'Inclusive Framework' have therefore committed to implementation of country-by-country reporting to tax authorities. 94 jurisdictions are participating members of the BEPS Inclusive Framework as at February 2017 and many of these jurisdictions have already enacted domestic legislation. See [here](#) for a full list of countries.



The UK has enacted country-by-country reporting. The key legislation is the *Taxes (Base Erosion and Profit Shifting) (Country-by Country Reporting) Regulations* SI 2016/237 ('the UK Regulations') and section 122 Finance Act 2015. An Explanatory Memorandum has also been issued which is committed to providing further details on the electronic form and submission requirements.

03. Will the information in the *country-by-country report* be publicly available?



Public reporting is not part of the G20/OECD BEPS project. Participating jurisdictions have committed to the sharing of *country-by-country reports* with tax authorities only.

All information received and exchanged by tax authorities will be subject to confidentiality rules and other safeguards.



The UK has introduced regulations for *country-by-country reporting* to tax authorities in line with the G20/OECD recommendations.

04. What are the first accounting periods for which a report could be required?



The OECD recommended that jurisdictions implement reporting requirements effective for periods beginning on or after 1 January 2016. However, the OECD recognised that some jurisdictions may need time to make necessary adjustments to their domestic law. A number of countries, including the United States and Japan, have later start dates.



Under the UK Regulations, the first *country-by-country reports* will be required in respect of periods commencing on or after 1 January 2016. For example, a UK-headed group which prepares consolidated accounts up to 31 December each year will need to file its first *country-by-country report* with HMRC in respect of the year ended 31 December 2016.

The same timetable applies for non-UK-headed groups where a local filing is required in the UK.

05. What is the deadline for filing a *country-by-country report* with tax authorities?



The OECD requirement is that a *country-by-country report* should be filed no later than 12 months after the last day of the reporting period.



The filing deadline is 12 months after the end of the accounting period to which the *country-by-country report* (or *UK country-by-country report*) relates.

06. Are there any notification requirements or other *country-by-country reporting* deadlines to be aware of?



The OECD model legislation requires the following notifications to be made by each relevant group company to the tax authority in its country of tax residence:

- Each entity should notify whether it is the Ultimate Parent Entity or the Surrogate Parent Entity; and
- A constituent Entity that is not the Ultimate Parent Entity nor the Surrogate Parent Entity should notify the identity and tax residence of the reporting entity.

Notification should be made no later than the last day of the reporting period.

Notification requirements vary significantly between countries; not all countries have finalised their requirements and there is uncertainty as to how the rules will operate in some jurisdictions. As a result, a number of countries are deferring the deadline for notification for initial *country-by-country reports*. A pragmatic approach may be required so that all requirements are met.

An overview of the requirements can be found in Deloitte's [Country-by-Country Reporting Notification Matrix](#). This matrix is provided as a guide only and it will be necessary to confirm that there have been no changes to local positions.

UK

For years starting on or after 1 January 2016, notification is due 12 months after the end of the reporting period of the multinational group. Where the reporting entity is in the UK, the notification must indicate the name of the reporting entity and the date of filing. Where the reporting entity is not in the UK, the notification must indicate the name and tax residence of the reporting entity, the country where the *country-by-country report* is filed and the date of filing. Separate notification is required if an entity is to be a substitute reporting entity (surrogate) filing with the UK authorities on behalf of the ultimate parent.

The form of the notification is undetermined but is likely to be by electronic means.

07. What is the definition of a group?

G20/
OECD

A 'Group' is defined as a 'collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange'.

The term 'MNE Group' means any Group that includes two or more enterprises, the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction. There is an exemption for groups that do not meet a size threshold.

A detailed review of the group structure and consideration of the application of the relevant accounting principles may be required. In particular, consideration will need to be given to the impact of non-corporate entities and tax-transparent entities such as partnerships, trusts and investment funds.

UK

The UK Regulations follow the OECD approach.

08. What is the threshold for country-by-country reporting?

G20/
OECD

Multinational groups with annual consolidated group revenue in the immediately preceding period of less than EUR 750 million (or an equivalent amount in domestic currency) are not required to prepare a *country-by-country report*.

UK

The OECD threshold of consolidated group revenue of EUR 750 million or more has been adopted. This is reduced proportionately for accounting periods of less than 12 months.

If the consolidated financial statements are prepared in a currency other than the Euro, the threshold is determined by calculating the local currency equivalent based on the average exchange rate for the accounting period.

There is no definition of 'group revenue' for the purposes of the threshold. It is assumed that it means the financial accounting determination of revenue (i.e. the consolidated revenue in a group's financial statements) rather than the definition of revenue used for Table 1 of the *country-by-country report* which is specifically defined for the purposes of collating data useful for risk assessment.

09. How do the rules apply to partnerships?



The OECD's [Guidance on Implementation of Country-by-country Reporting](#) was updated on 5 December 2016 to clarify that partnerships are within scope as reporting entities.



HMRC confirmed on 2 August 2016 that the UK government is committed to implementing the OECD recommendations on country-by-country reporting and that amendments would be proposed to the UK Regulations to include partnerships.

10. How is the jurisdiction in which a group must file its report determined?



The 'Ultimate Parent Entity' of a large multinational group is required to file a *country-by-country report* in the jurisdiction in which it is resident for tax purposes.

The definition of Ultimate Parent Entity is based on the requirement to prepare consolidated financial statements under accounting principles generally applied in the jurisdiction of tax residence (or if there would be a requirement to produce such accounts if its equity interests were traded on a public securities exchange). For example, a publicly listed company at the head of a group would generally be an Ultimate Parent Entity in its jurisdiction of tax residence.

A detailed review of the group structure may be required, including consideration of the application of the relevant accounting principles. In particular, consideration will need to be given to the impact of non-corporate entities and tax-transparent entities such as partnerships, trusts and investment funds.



The UK Regulations follow the model OECD recommendation with the specification that the Ultimate Parent Entity must be UK resident for tax purposes.

11. Are any group entities, other than Ultimate Parent Entities, required to file *country-by-country reports*?



Yes, potentially. A group entity may be required to file a *country-by-country report* in its jurisdiction of tax residence in circumstances where the Ultimate Parent Entity of the group is not required to file a *country-by-country report* in its home jurisdiction, or if the tax authority of the jurisdiction of tax residence is unable to obtain a copy of the *country-by-country report* from the overseas tax authorities through information sharing arrangements. Where jurisdictions are implementing country-by-country reporting but will not be able to implement in line with the OECD recommendation for periods commencing from 1 January 2016, a transition issue can arise. The OECD's [Guidance on Implementation of Country-by-country Reporting](#) confirms that jurisdictions can address this through 'parent surrogate' filing provisions in their domestic legislation to allow the Ultimate Parent Entity to voluntarily file a *country-by-country report*.

The OECD supports the use of 'parent surrogate filing' to prevent local filing

obligations arising for the group during the transitional period. A detailed review of the final local law implementation will be required to confirm that the necessary filing (and consequent notification) deadlines are met for all relevant jurisdictions.

UK

The UK Regulations follow the OECD guidelines as set out above.

The UK Regulations can require UK entities and entities with a UK permanent establishment to file a 'UK *country-by-country report*' with HMRC in certain circumstances. The local report required under these circumstances is limited to the results of the entity and its subsidiaries and permanent establishments only.

This local filing requirement typically applies only when the Ultimate Parent Entity of the group is not required to file a *country-by-country report* in its home jurisdiction, or if HMRC is unable to obtain a copy of the *country-by-country report* from the overseas tax authorities through information sharing arrangements.

This local requirement may not apply if HMRC will receive the information that would be included on the UK *country-by-country report* e.g. if a surrogate filing has been made.

12. Which entities are covered by a *country-by-country report*?

G20/
OECD

A *country-by-country report* would include the results of the Ultimate Parent Entity together with the results of all entities that are required to be included in the consolidated financial statements of the Ultimate Parent Entity in which the assets, liabilities, income, expenses and cash flows are presented as those of a single economic entity. It is reasonable to assume that 'included in the consolidated financial statements' means consolidated on a line-by-line basis and does not mean entities shown as investments in assets or equity accounted investments.

There are specific rules for permanent establishments within groups, which broadly require them to be treated as if they were separate entities provided separate financial statements are prepared for financial reporting, regulatory, tax reporting or internal management control purposes.

A detailed review of the group structure will be required to identify all of the relevant entities. This may be a complex area for many groups and will be fact specific.

UK

The UK Regulations follow the OECD guidelines.

13. What data is included in the reports?

G20/
OECD

The OECD's template consists of three tables.

Table 1 provides data in the form of an allocation of income, taxes and employees by tax jurisdiction. The ten columns to be completed are:

- Revenues from unrelated parties;
- Revenues from related parties;
- Total revenues;
- Profit/(loss) before income tax;

- Income tax paid (on cash basis);
- Income tax accrued – current year;
- Stated capital;
- Accumulated earnings;
- Number of employees;
- Tangible assets (other than cash and cash equivalents).

Table 2 lists all Constituent Entities by tax jurisdiction, along with their main business activities as selected from a pre-defined list of 13 options. Where 'other' is selected as the main business activity, the nature of the activity should be specified in Table 3.

Table 3 provides an opportunity (but not an obligation) for a group to include any further information or explanation that would facilitate the understanding of the *country-by-country report*. There are also some required explanations. A brief description of the sources of data used in preparing the template should be provided. If a change is made in the source of data used from year to year, an explanation should be given of the reasons for the change and its consequences. If statutory financial statements are used as the basis for reporting, the average exchange rate used to translate amounts to the stated functional currency should be disclosed. Groups should consider whether there is any further optional information which may be included in order to help tax authorities understand the rest of the *country-by-country report*.

The OECD's Final Report on *BEPS Action 13: Transfer Pricing Documentation and Country-by-country reporting* provides instructions on how to complete the template.



The Explanatory Memorandum which accompanied the UK Regulations, stated that the OECD template will be followed in form and content.

14. How should the financial elements of Table 1 of the Report be interpreted?



The OECD's Final Report on BEPS Action 13: Transfer Pricing Documentation and Country-by-country reporting provides instructions on how to complete the template. This may be a complex area for many groups. General comments as to the areas that should usually be considered are provided below but specific facts should be discussed with your Deloitte engagement team if additional assistance is required.

- *Revenues*: Includes revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. It excludes payments received from other Constituent Entities that are treated as dividends in the payer's tax jurisdiction. Groups will need to interpret this definition in the context of their business with consideration given as to how the items have been accounted for in the financial statements and any relevant industry practices. For example, consideration will need to be given as to the most appropriate treatment in respect of items such as:
 - Whether government grants are more appropriately treated as revenue or as reducing expenditure;
 - Whether income should be included gross or net;
 - Whether negative adjustments relating to prior periods should be included;

- Whether to include foreign exchange gains;
- Whether to include proceeds from the sale of shares;
- Whether related parties include only cross border related parties or whether intra-country related parties should also be included.
- *Profit (Loss) before Income Tax*: Includes all extraordinary income and expense items.
- *Income Tax Paid (On Cash Basis)*: Includes cash taxes paid by the Constituent Entity to all tax jurisdictions, including withholding taxes deducted by all other entities with respect to payments to the Constituent Entity. Tax paid may relate to multiple tax periods.
- *Income Tax Accrued (Current Year)*: Only includes tax accrued for the current year and does not include deferred taxes or provisions for uncertain tax liabilities.
- *Stated Capital*: The sum of the stated capital of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital should be reported by the legal entity of which there is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes. Both ordinary and preference shares are included in stated capital.
- *Accumulated earnings*: The sum of the total accumulated earnings of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings should be reported by the legal entity of which it is a permanent establishment.
- *Number of Employees*: The number may be reported as of the year-end, on the basis of average employees for the year, or on any other consistently applied basis. Independent contractors participating in the ordinary operating activities may be reported as employees. Reasonable rounding or approximation is permissible provided it does not distort the relative allocation of employees across jurisdictions.
- *Tangible Assets other than Cash and Cash Equivalents*: The sum of the net book values of tangible assets only (excluding cash, cash equivalents, intangibles and financial assets).



No further specific guidance has been released by HMRC in respect to the financial data elements required. The terminology used is common with accounting and therefore it is expected that groups will look to accounting standards and common industry practice when interpreting the data points. This may be a complex area for many groups and will be fact specific.

15. How should data be gathered?



The sources of data should be consistent from year to year. These could be consolidation reporting packages, separate entity statutory financial statements, regulatory financial statements, or internal management accounts. It is not necessary to reconcile the revenue, profit and tax reporting in the template to the consolidated financial statements or make adjustments for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

If statutory financial statements are used as the basis for reporting, all amounts should be translated to the stated functional currency at the average exchange rate for the year. Table 3 of the *country-by-country report* should include details of the exchange rate used, sources of data used and, where there are changes to the data sources, the reasons for and consequences of the change.

Groups will need to consider whether ‘a top down’ or ‘bottom up’ approach is most appropriate for them. A ‘top down’ approach should start with consolidated accounting numbers but adjust for any items excluded under the OECD definitions. The final result should be an aggregation rather than a full consolidation and amendments will be needed to remove consolidation adjustments. A ‘bottom up’ approach should start with local statutory accounts. Some groups may want to test and compare both approaches, at least for the most material entities. Sufficient controls should be built into the process for data requests and collation to ensure that all data gatherers are working from the same sources and definitions.



The UK Regulations do not provide any further specific instructions or guidance on how the data should be gathered.

16. What currency should a *country-by-country report* be prepared in?



The OECD recommendation is that reports should be prepared in the functional currency of the Ultimate Parent Entity of an MNE Group. Table 1 of the report (Overview of the allocation of income, taxes and business activities by tax jurisdiction) should indicate the currency used.



The UK Regulations do not contain a specific reference to the currency of a *country-by-country report* but the OECD template will be followed in form and content.

17. How are *country-by-country reports* filed with tax authorities?



In March 2016, the OECD released an XML Schema and a related User Guide. These were developed with a view to accommodate the electronic exchange of *country-by-country reports* between tax authorities.



HMRC will require electronic filing of *country-by-country reports*. The details of the form and method of filing have yet to be issued. However it is expected to be based on the EU's XML Schema which will in turn probably be based on the OECD's XML Schema.

18. Is there a penalty regime if a *country-by-country report* is late or contains errors?



The OECD anticipates that jurisdictions will wish to extend their existing transfer pricing documentation penalty regimes to *country-by-country reporting* failures. No model penalties legislation is provided.



The UK Regulations contain penalty provisions:

- An initial penalty of GBP 300 for failure to comply with a filing obligation. Following notification of the initial penalty, additional daily penalties can accrue.
- A penalty of up to GBP 3,000 can be charged for knowingly submitting inaccurate information, or failure to take reasonable steps to inform HMRC of inaccuracies after discovering them.

19. How will tax authorities use the information provided in the *country-by-country reports*?



The OECD considers that the country-by-country reporting information, together with other transfer pricing information provided in transfer pricing documentation and tax returns, should make it easier for tax authorities to identify whether there has been base erosion and/or profit shifting. Use of the reports is restricted to high-level transfer pricing risk assessment, evaluating BEPS risks and, where appropriate, for economic and statistical analysis.

There are strict confidentiality requirements for protection of the information received. Tax authorities are not permitted to use the *country-by-country reports* in order to propose transfer pricing adjustments based on a formulary apportionment of income. Tax administrations are not precluded from using *country-by-country reports* as a basis for further tax enquiries.



The UK will follow the G20/OECD recommendations.

20. How is information shared with other tax authorities?



Automatic information exchange will take place between the tax authorities of the jurisdictions in which the group operates (where those jurisdictions have mechanisms in place to share the information and fulfil the conditions of confidentiality, consistency and appropriate use). *Country-by-country reports* will be shared where the relevant jurisdictions are party to the Multilateral Competent Authority Agreement on Automatic Exchange of Country-by-Country Reports, a Tax Information Exchange Agreement or other suitable bilateral tax treaty. Jurisdictions are encouraged to expand the coverage of their international agreements for exchange of information.



The UK has signed the Multilateral Competent Authority Agreement on Automatic Exchange of Country-by-Country Reports and has a wide network of double tax treaties and Tax Information Exchange Agreements to enable automatic exchange of information.

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