

Country-by-Country Reporting: Data Access & Usage

Part 38-03-20

This document should be read in conjunction with section 891H of the Taxes Consolidation Act 1997

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Introduction

This manual is intended for Revenue staff who use Country-by-Country (“CbC”) Reports in their day-to-day work. It outlines:

- The context and legal underpinning of CbC Reporting requirements;
- The details of CbC Reporting requirements, including the exact information to be exchanged, filing obligations, etc.;
- Procedures for securing access to CbC Reporting information in IBI;
- Important restrictions on how CbC Reports can be used;
- Details IBI tools relating to CbC Reports;
- Guidance on how to use CbC Reports to identify and assess transfer-pricing risks.

1. Context

1.1 Country-by-Country (“CbC”) Reporting

CbC Reporting is part of Action 13 of the OECD/G20 Base Erosion and Profit Shifting (“BEPS”) Action Plan and the EU Commission’s Anti Tax Avoidance Package. The BEPS Action 13 Final Report¹ recognised that enhancing transparency for tax administrations by providing them with adequate information to conduct transfer-pricing risk assessments is an essential part of tackling the BEPS problem. CbC Reporting will give tax administrations, including Revenue, a global picture of the operations of large multinational enterprises (“MNEs”). Tax authorities can then use this information to perform high-level transfer pricing risk assessments and to evaluate other BEPS-related risks.

CbC Reporting requires large MNEs to provide a breakdown of the amount of revenue, profits, taxes and other indicators of economic activity for each tax jurisdiction in which the MNE group does business. CbC Reporting only applies to MNE groups with annual consolidated group revenue of €750 million (or a near equivalent amount in domestic currency as of January 2015) or more in the preceding fiscal year (“MNE Groups”).

The framework for CbC Reporting will generally operate as follows: the Ultimate Parent Entity (“UPE”) of the MNE Group will prepare and file its CbC Report with the tax administration in its jurisdiction of tax residence. The tax administration will automatically exchange the CbC Report with the tax administrations in the jurisdictions listed in the CbC Report as being a place in which the MNE Group has a constituent entity² resident for tax purposes or a permanent establishment. This

¹ OECD/G20 Base Erosion and Profits Shifting Project: [Transfer Pricing Documentation and Country-by-Country Reporting Action 13 Final Report](#) (October 2015).

² “Constituent entity” means (i) any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes or would be so included if equity interests in such business unit were traded on a public securities exchange; (ii) any such business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on

exchange is carried out subject to the terms of an International Agreement (such as the multilateral Convention on Mutual Administrative Assistance in Tax Matters or a Double Tax Convention or a Tax Information Exchange Agreement) permitting automatic exchange of information, as well as a Qualifying Competent Authority Agreement which sets out the operational details of the exchange of CbC Reports. Other filing mechanisms, known as surrogate parent filing and local filing can be used in specific cases as an alternative to this general mechanism.

1.2 Irish legislation governing CbC Reporting

The legislation that implements CbC Reporting in Ireland is contained in:

1. Section 891H of the Taxes Consolidation Act 1997 (“TCA 1997”) (as inserted by Section 33 of Finance Act 2015 and as amended by Section 24 of Finance Act 2016); and
2. Taxes (Country-by-Country Reporting) Regulations 2016.

This legislation implements the OECD BEPS recommendations for CbC Reporting as well as transposing DAC 4³ which contains the EU CbC Reporting legislation.

1.3 CbC Reporting guidance

The primary OECD guidance on CbC Reporting is published in the [Transfer Pricing Documentation and Country-by-Country Reporting Action 13 Final Report](#) released in October 2015. The report contains detailed instructions and guidance on how to complete CbC Reports / Equivalent CbC Reports.

In addition, the OECD has released [Guidance on Country-by-Country Reporting](#) to give certainty to tax administrations and taxpayers on the implementation of CbC Reporting.

Finally, Revenue’s [CbC Reporting FAQs](#) document (“the FAQs”) provides technical guidelines on CbC Reporting. The purpose of the FAQs is to provide guidance on the Irish CbC Reporting legislation and to provide practical assistance to taxpayers in relation to their CbC Reporting obligations. This is a ‘living document’ and is being updated on a regular basis to reflect ongoing developments and guidance from the OECD and the EU, as well as practical issues experienced by taxpayers in relation to CbC Reporting.

size or materiality grounds; and (iii) any permanent establishment of any separate business unit of the MNE Group that is included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

³ Council Directive (EU) 2016/881, which amends Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (known as “DAC 4”), was adopted on 25 May 2016. DAC 4 aims to transpose the OECD BEPS recommendations for CbC Reporting into EU legislation

1.4 Sources of CbC Reports / Equivalent CbC Reports

The following constituent entities are required to file CbC Reports in Ireland with effect from 1 January 2016:

- An Irish tax resident ultimate parent entity (UPE) of an MNE Group;
- An Irish tax resident surrogate parent entity of an MNE Group; and
- An Irish tax resident EU designated entity of an MNE Group.

In addition an Irish tax resident constituent entity of an MNE Group may be required to file under the secondary reporting mechanism. For further information on secondary reporting mechanism please refer to Q12 – 16 of the FAQs.

In general, it is the UPE of an MNE group which is the reporting entity and which is obliged to file the CbC Report. However, in certain circumstances the group may nominate a “surrogate parent entity” or an “EU designated entity” which will then be the group’s reporting entity. For further information on surrogate parent entities and EU designated entities please refer to Q9 and Q17 of the FAQs.

Revenue will, therefore, receive CbC Reporting data from three sources:

1. Reporting entities with a filing requirement in Ireland:
 - Irish tax resident UPEs of MNE Groups,
 - Irish tax resident surrogate parent entities of MNE Groups,
 - Irish tax resident EU designated entities of MNE Groups

These reports will be filed through ROS (details available in Q22 and Appendix V of the FAQs).

2. Where there are constituent entities of an MNE Group in Ireland, such as subsidiaries or permanent establishments, but the reporting entity of the group is tax-resident elsewhere, Revenue will receive the CbC Report from the competent authority in the jurisdiction in which the reporting entity is tax-resident under automatic exchange of information provisions. This assumes the secondary reporting mechanism does not apply (see below).
3. Another possible source of CbC Reporting data is through local filing, known as the “secondary reporting mechanism”. The secondary reporting mechanism arises where the UPE of an MNE group is not obliged to file a report in its country of tax residence and no surrogate parent entity or EU designated entity has been appointed or where there has been a breakdown in the exchange of information process. In Ireland, where the secondary reporting mechanism applies, an Irish

tax resident “domestic constituent entity” of an MNE group must file with Revenue a CbC Report or an Equivalent CbC Report. These Reports will be filed through ROS (details available in Q22 and Appendix V of the FAQs).

Note on Equivalent CbC Reports: The Irish CbC Reporting Legislation requires that, where the conditions for the secondary reporting mechanism apply, the domestic constituent entity must request its UPE to provide it with all the information required to enable it to prepare a CbC Report with information on the whole MNE Group. Where the UPE complies with this request, the domestic constituent entity must provide a full CbC Report to the Revenue Commissioners for the MNE Group. However, where the ultimate parent entity refuses to comply with the request, the domestic constituent entity must notify the Revenue Commissioners of this refusal and provide an Equivalent CbC Report to the Revenue Commissioners. Upon being notified of the refusal Revenue will inform other EU Member States of the refusal. For further information please refer to Q12-17 of the FAQs.

1.5 CbC Reporting notifications

Prior to the receipt of CbC Reports/Equivalent CbC Reports themselves, Revenue will receive certain notifications that are required under the CbC Reporting legislation. These are:

1. Where the UPE of the MNE Group is tax resident in Ireland, then the UPE must notify Revenue that it is the reporting entity.
2. Where a surrogate parent entity has been appointed and that surrogate parent entity is tax resident in Ireland, then that surrogate parent entity must notify Revenue that it is the reporting entity.
3. Where an EU designated entity has been appointed and that EU designated entity is tax resident in Ireland, then that EU designated entity must notify Revenue that it is the reporting entity.
4. All domestic constituent entities must notify Revenue of the name and jurisdiction of tax residence of the reporting entity as well as whether that reporting entity is an ultimate parent entity, surrogate parent entity, EU designated entity or a domestic constituent entity.

All notifications must be made no later than the last day of the fiscal year to which the CbC Report / Equivalent CbC Report relates. For example, for CbC Reports / Equivalent CbC Reports relating to the fiscal year ended 31 December 2017, notifications must be made to Revenue no later than 31 December 2017. For further details on CbC Reporting notification obligations and procedures please refer to Q31-34 and Appendix III of the FAQs.

1.6 Information included in a CbC Report

A CbC Report for an MNE Group must contain the following information in respect of each jurisdiction in which the MNE Group operates:

- (a) on an aggregate basis, —
- (i) amount of unrelated party revenue, related party revenue and total revenue;
 - (ii) amount of profit or loss before income tax;
 - (iii) amount of income tax paid;
 - (iv) amount of income tax accrued;
 - (v) amount of stated capital,
 - (vi) amount of accumulated earnings,
 - (vii) number of employees, and
 - (viii) value of tangible assets other than cash or cash equivalents; and
- (b) the name and the tax identifier number (“TIN”) of each constituent entity carrying on a business, or tax resident, in each jurisdiction and, where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such constituent entity is organised, and the nature of the main business activity or activities of each constituent entity.

Appendix I contains the OECD’s model template for a CbC Report.

An Equivalent CbC Report filed in Ireland by a domestic constituent entity will contain the same information as required in a CbC Report but only to the extent the information ordinarily required in that report is within the possession of, or is obtained or acquired by, that domestic constituent entity. This is in acknowledgement of the legal difficulties with obligating an Irish company to provide information relating to its parent company or other companies in the group.

1.7 Exchange of CbC Reports / Equivalent CbC Reports

CbC Reports

In order to exchange the CbC Report with the tax administration of the jurisdictions listed in the CbC Report as being a place in which the MNE Group has a permanent establishment or tax-resident Constituent Entity, two agreements must be in place: a legal arrangement and a competent authority agreement.

There are four legal instruments which can be used for the exchange of CbC Reports:

- Council Directive 2016/881 (DAC4) which amends **Council Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation** and governs exchanges between EU Member States only,

- the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (The Convention),
- a Double Tax Convention, or
- a Tax Information Exchange Agreement (TIEA where automatic exchange is permitted).

In the case of exchanges with non-EU Member States, in most cases, the exchange of CbC Reports will take place pursuant to The Convention. However in the case of the exchange of CbC Reports with the United States, the exchanges will take place pursuant to Article 27 of the Double Taxation Treaty between Ireland and the USA.

In conjunction with the legal basis for exchange, tax administrations participating in an exchange of a CbC Report must also be signatories to a Competent Authority Agreement. The Competent Authority Agreement sets out the operational details pertaining to exchanges such as the time and manner in which the information will be exchanged. Competent Authority Agreements can be entered into on a multilateral or bi-lateral basis and Ireland signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) in January 2016. The CbC MCAA eliminates the need for tax administrations to enter into bi-lateral agreements and facilitates exchanges between all its signatories (subject to certain conditions). As at December 2017, 67 jurisdictions (including Ireland) have already signed the MCAA and more may sign up at a later date; Ireland has signed one bi-lateral Competent Authority Agreement to exchange CbC Reports with the United States and a Memorandum of Understanding to receive CbC Reports from Hong Kong.

Equivalent CbC Reports

In accordance with DAC 4, Revenue is required to exchange Equivalent CbC Reports with any EU Member State in which, on the basis of the information contained in the Equivalent CbC Report, one or more of the constituent entities of the MNE Group are either resident for the purposes of tax or subject to tax with respect to business carried on through a permanent establishment. Where an Equivalent CbC Report contains only information on Irish subsidiaries and/or non-EU entities it will not be subject to exchange.

1.8 Filing deadlines and timing of data exchanges

CbC Reporting requirements apply in Ireland for fiscal years beginning on or after 1 January 2016. Ordinarily, CbC Reports / Equivalent CbC Reports must be filed with Revenue no later than 12 months after the last day of the fiscal year to which the report relates. However, due to a delay in the release of the electronic filing system, Revenue accepted CbC Reports / Equivalent CbC Reports for fiscal years ending in 2016 up to 28 February 2018, and treats reports filed by such date as filed on time.

The Competent Authority Agreement and, in the case of exchanges between EU Member States, DAC4 set out the timelines for the exchange of CbC Reports between jurisdictions. The first exchange of CbC Reports / Equivalent CbC Reports

must take place no later than 18 months after the last day of the fiscal year to which the CbC Report / Equivalent CbC Report of the MNE Group relates. For example, the CbC Report of an MNE Group whose fiscal year commences on 1 January 2016 must be exchanged no later than 30 June 2018. Subsequent exchanges of CbC Reports / Equivalent CbC Reports must take place no later than 15 months after the last day of the fiscal year to which the report relates.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:														
Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Main Business Activity(ies)											
			Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity instruments	Dormant
	1.													
	2.													
	3.													
	1.													
	2.													
	3.													

1. Please specify the nature of the activity of the Constituent Entity in the “Additional Information” section.

Table 3. Additional Information

Name of the MNE group: Fiscal year concerned:
<i>Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the Country-by-Country Report.</i>