OECD HAS PUBLISHED GUIDANCE ON THE IMPLEMENTATION OF COUNTRY-BY-COUNTRY REPORTING FRAMEWORK

On 29 June 2016, OECD released an on-line publication of guidance for tax jursidictions on the legislative implementation of BEPS Action 13 (*Action 13. Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*).

The guidance focuses on issues related to country-by-country reporting, including:

- voluntary filing ("parent surrogate filing") and local filing obligation,
- the application of CbC reporting to investment funds and partnerships,
- the currency translation of the CbC-R filing threshold.

As the country-by-country reporting rules are not implemented in all the member states at the same time, it may happen that the ultimate parent entity of a multinational group is not required to make a CbC filing while the other entities of the group (in other tax jurisdictions) are already under an obligation to do so. In such a case, the subsidiaries may be subject to what is called *local filing obligation*, i.e. they will have to provide CbC reporting in lieu of the parent. Alternatively, OECD proposes *parent surrogate filing*, which is an option for the ultimate parent entity to voluntarily file a CbC report in its tax jurisdiction despite not being formally required to (in which case the subsidiaries are exempt from the country-by-country reporting obligation).

According to OECD, the reporting obligation should cover also those multinational groups whose ultimate parent entities are investment funds as long as they are required to consolidate with their investees (subsidiaries) for accounting purposes. Moreover, the CbC report for a group should include also partnerships that belong to the group.

The OECD threshold triggering the CbC reporting obligation is EUR 750 million of consolidated revenue, as in Polish law. According to OECD, currency fluctuations cannot affect the reporting obligation. Therefore, where the consolidated revenue as translated in the jurisdiction of the ultimate parent entity does not exceed the threshold applicable in this jurisdiction but, owing to exchange differences, does exceed the threshold applicable in the local jurisdiction of any of its subsidiaries, the ultimate parent will still not be required to make a CbC filing.

Even though the rules imposing the CbC reporting obligation on Polish taxpayers entered into force on 1 January 2016, no regulation prescribing a CbC report template has been published in the Journal of Laws yet. As the amended transfer pricing legislation largely reflects OECD's BEPS rules, the Ministry of Finance may be expected to ensure that such regulation, as well as any CbC reporting guidance, will be based on the newest CbC reporting recommendations from OECD.
If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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