



OECD releases Updated Guidance on the Implementation of Country by Country Reporting

Background

The Organisation for Economic Cooperation and Development (OECD) and G-20 countries have committed to implement Country by Country (CbC) reporting, as set out in the Action Plan 13 Report 'Transfer Pricing Documentation and Country-by-Country Reporting' of the Base Erosion and Profit Shifting (BEPS) project.

India also has introduced CbC reporting requirement in Section 286 of the Indian Income-tax Act, 1961 with effect from financial year (FY) 2016-17. The first round of CbC reports, where applicable, will have to be filed with the Indian tax authorities by 30 November 2017.

In this regard, OECD has been striving to provide guidelines that could be referred to by countries for their regulations. In continuation of the implementation guidelines¹ issued by OECD from time to time, it has released additional guidance on implementation of CbC reporting, addressing some more issues relating to (a) definition of items and (b) entities to be reported. Also the revised guidance provides an updated status on countries that have introduced transitional filing options for ultimate parent entities of MNEs resident in their jurisdiction, to accommodate voluntary filing.

Highlights of the document

A. Issues relating to the definition of items reported in the CbC report

1. Definition of revenue

Should extraordinary income and gain from investment activities be included in the column 'Revenues' in the CbC report?

Clarification – Related party, unrelated party and total revenue to include extraordinary gains and gains from investment activities.

KPMG example - Revenue to now include sale of materials, inventories and properties, sale of services, royalty income, interest income, extraordinary income, gain from investment activities and other items. It would specifically not include dividend received from constituent entities.

(Original definition of 'Revenues' as per Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, 2015 Final Report)

2. Definition of related parties

Which entities are considered to be related parties for purposes of reporting related party revenues?

¹ [OECD Guidance](#) - July 2017 & [KPMG Alert](#) on the April 2017 Guidance

Clarification - Interpretation of Table 1:

Tax jurisdiction	Revenues			Profit/ Loss before Income tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Num-ber of Empl-oyees	Tangible Assets other than Cash and Cash Equivale nts
	Unrelated Party	Related Party	Total							
Australia		ΣEntity 1 and Entity 2								

The coloured column would now be interpreted as 'Constituent Entity' which includes the entities listed in **Table 2**.

Country	Constituent entities resident in country	Activities										
		R&D	Purchasing & Procurement	Manufacturing & Production	Sales, marketing & distribution	Administrative, management & support services	External service business	Regulated financial services	Insurance	Holding company	Dormant	Others
Australia	Entity 1				Y							
	Entity 2				Y							

3. Aggregated data or consolidated data to be reported per jurisdiction

If there is more than one constituent entity in a jurisdiction, should the aggregated data be reported or should the data that is reported for the jurisdiction consist of consolidated data which eliminates intra-jurisdiction transactions between constituent entities in that jurisdiction?

Clarification – Reporting to occur on an aggregate basis, at a jurisdictional level, regardless of whether the transactions occurred cross-border or within the jurisdiction, or between related parties or unrelated parties.

The Guidance has clarified that, if a jurisdiction of the Ultimate Parent Entity has a system of taxation for corporate groups which includes consolidated reporting for tax purposes, (*whereby, intra-group transactions are eliminated at the level of individual line items*), that jurisdiction may allow taxpayers an option to complete the CbC report using consolidated data at the jurisdictional level. However, in this case consolidated data has to be reported for each jurisdiction in Table 1 of the CbC report and consolidation should be used consistently across the years.

It is further clarified that where consolidated data is used, necessary clarification (*as mentioned hereunder*) be provided in Table 3 (*as Additional information*) of the CbC Report.

"This report uses consolidated data at the jurisdictional level for reporting the data in Table 1"

This note should also specify the columns in Table 1, in which the consolidated data is different from the aggregated data.

It is pertinent to note that the Guidance has clarified that the member countries of the Inclusive Framework² are expected to implement this guidance i.e. reporting on an aggregated basis, at the earliest (*with the only exception to report consolidated revenue with a note in Table 3, as described above*).

Acknowledging that MNE groups may need more time to make necessary adjustments, to comply with aggregated reporting, the Guidance has suggested jurisdictions to allow some flexibility during the short transitional phase (viz. fiscal starting in 2016), stating that the clarification ought to be provided in Table 3 (as above).

KPMG example: The above can be explained with the help of an example as under:

² [Link](#) - Members of inclusive framework include a group of 102 countries, updated as on 6 July 2017.

Co. A is the Ultimate Parent entity with B & C as its subsidiaries. In the entire supply chain, the goods are manufactured by A and sold to B who does some customisation and sells the same to C (distributor). C in turn sells the goods to unrelated customers.

Table A

	Consolidated basis				Aggregated basis			
	A (Ultimate Parent)	B	C	Consolidated (as a group)	A (Ultimate Parent)	B	C	Aggregated
Sales	200	300	350*	350	200	300	350*	850
Mfg. Purchase cost	150	200	300	150	150	200	300	650
Other costs		50	15	65		50	15	65
Total costs				215				715
Net Profit				135				135

(* Sale of 350 by C to unrelated customers)

As per the above New guidance by OECD, the reporting in Table 1 would be done on an aggregated basis (as explained in Table B below) i.e. Revenue in Column 2 (unrelated party revenue) would be 350 and in Column 3 (related party revenue) would be 500.

Table B: Aggregated basis

Tax jurisdiction	Revenues			Profit/ Loss before Income tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Num-ber of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							
XYZ	350	500	850							

However, in case the jurisdiction of A allows consolidated basis of reporting for tax purposes i.e. if only one tax return is filed in Jurisdiction A for all the group entities (A, B & C), then, consolidated reporting may be allowed in jurisdiction A i.e. In Table 1, Revenue in Column 2 would be 350 and Revenue in column 3 would be zero (0) (as explained in Table C below), along with a note in Table 3, which brings out and specifies column with the difference in consolidated data and aggregated data.

Table C: Consolidated basis

Tax jurisdiction	Revenues			Profit/ Loss before Income tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Num-ber of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							
Australia	350	0	350							

It is pertinent to note that Action plan 13 requires reporting on aggregate basis and the flexibility to report on a consolidated basis is a transitional provision provided in case of tax jurisdictions which has already issued guidance permitting reporting on a consolidated basis. This flexibility as per the guidance may be allowed for a short transitional period, i.e Fiscal years starting in 2016.

B. Issues relating to the entities to be reported in the CbC report

1. Application of CbC report to investment funds

How should the CbC reporting rules be applied to investment funds?

Clarification -

Para 55 of the Action 13 Final Report, Transfer Pricing Documentation and Country-by-Country Reporting states that “In particular, no special industry exemptions should be provided, **no general exemption for investment funds should be provided**, and no exemption for non-corporate entities or non-public corporate entities should be provided” from filing the country-by-country report.

Governing principle would be → accounting consolidation rules.

OECD examples –

Investment Co & Investee Co:

- If Investment Co would not consolidate with Investee Co as per accounting consolidation rules → Investee Co not a Constituent Entity and not part of MNE Group

Investment Co & Subsidiary:

- If Investment Co consolidates with Subsidiary; → subsidiary company a Constituent Entity and part of MNE Group

Investee Co & X Co:

- If Investee Co controls X Co and in combination forms an MNE group → if revenue threshold breached (currently Euro 750 million) → CbC Report to be filed

2. Application of CbC reporting to partnerships

How should a partnership which is tax transparent and thus has no tax residency anywhere be included in the CbC report? How should a reverse hybrid partnership, which is tax transparent in its jurisdiction of organisation but considered by a partner’s jurisdiction to be tax resident in its jurisdiction of organisation, be treated?

Clarification -

Governing principle → accounting consolidation rules. If the partnership firm is consolidated by way of accounting consolidation rules then it would form part of the MNE Group for CbC Reporting purposes.

OECD examples -

Situation A:

In case partnership is not tax resident:

- Table 1 of CbC Report → to include a line for “stateless entities”
- Table 2 of CbC Report → to include a line for “stateless entities” and a sub-row for all stateless entities
- Table 2 of CbC Report → in the field “Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence” to indicate jurisdiction under whose laws the partnership is formed

Situation B:

In case a partner of a partnership firm is a constituent entity → include their share of the partnership’s items in Table 1 in their jurisdiction of tax residence

Situation C:

A partnership may also be an ultimate parent entity → in case a stateless partnership → jurisdiction under whose laws the partnership is formed is the governing jurisdiction

3. Accounting principle/standards for determining the existence of and membership of group

To determine the existence of a ‘Group’ and the membership of the Group under Article 1.1 of the model legislation in the Action 13 report:

a) If the equity interests of the relevant enterprise* are traded on a public securities exchange, should the applicable accounting standards be the accounting standards that currently apply to that enterprise for consolidated financial statement purposes?

b) If the equity interests of the relevant enterprise* are not traded on a public securities exchange, can the applicable accounting standards be chosen provided that the choice is either (i) local GAAP in the jurisdiction of the enterprise assumed to be listed or (ii) International Financial Reporting Standards (IFRS), and provided the method chosen is used consistently?

***Relevant enterprise would be the Ultimate Parent Entity under Article 1.6 of the model legislation in the Action 13 report.**

Clarification – Governing principle → consistency of application of accounting standards

KPMG examples -

Situation A:

Company X is a listed company → uses accounting standards as prescribed in local regulations → same accounting standards to be used

Situation B:

Company X is an unlisted company → uses accounting standards as prescribed in local regulations → plans to use IFRS for CbC Report purposes → not permitted, accounting standards to be used consistently across the years

Situation C:

Company X is an unlisted company → uses accounting standards as prescribed in local regulations for listed entities → plans to use same accounting standards for CbC Report purposes → permitted (mandatory to use prescribed standard)

Situation D:

Company X is an investee company, Company Y is the investment company → the jurisdiction's consolidation rules require Company Y to be consolidated with Company X → the jurisdiction may mandate the use of IFRS consolidation rules for the purpose of determining the membership of the Group

4. Treatment of major shareholding

Where there are minority interests held by unrelated parties in a Constituent Entity, should the previous year's consolidated group revenue include 100 per cent of the Constituent Entity's revenue for the purpose of applying the EUR750 million threshold (or near equivalent amount in local currency as of January 2015) to identify an Excluded MNE Group, or should the revenue be pro-rated? Further, should the entity's financial data that is included in the CbC report represent the full 100 per cent or should it be pro-rated?

Clarification –

- In presence of minority interests, if the local accounting regulations require full consolidation of an entity → 100 per cent of entity's revenue to be included.
- In presence of minority interests, if the local accounting regulations require proportionate consolidation of an entity → entity's revenue can be taken at proportionate levels.

It may be interpreted that an entity would be considered as a Constituent Entity only when line by line consolidation is done i.e. in situations highlighted in blue in **Table E** below.

5. Treatment of an entity owned and/or operated by more than one unrelated MNE groups

Where an entity owned and/or operated by more than one unrelated MNE Groups (e.g. a joint venture entity) is consolidated in the consolidated financial statements of one or more of these MNE Groups, including under a pro rata consolidation rule, is such an entity considered a Constituent Entity of those unrelated MNE Groups (i.e. should it be included in Table 2)? If so, where a pro rata consolidation rule is applied to the entity under the applicable accounting rules, should Table 1 include the pro rata data of the entity, and should the entity's revenue be included pro rata for the purpose of applying the EUR750 million threshold?

Clarification – The Guidance clarifies that the treatment of an entity for CbC reporting purposes shall follow the **accounting treatment**. In case of joint ownership/operation of an entity by more than one **unrelated** MNE Groups, treatment of the entity for CbC reporting purposes shall be determined under the accounting rules applicable to each of the unrelated MNE Groups separately.

KPMG example:

Say, Company Z is jointly owned/operated by MNE Group X and MNE Group Y.

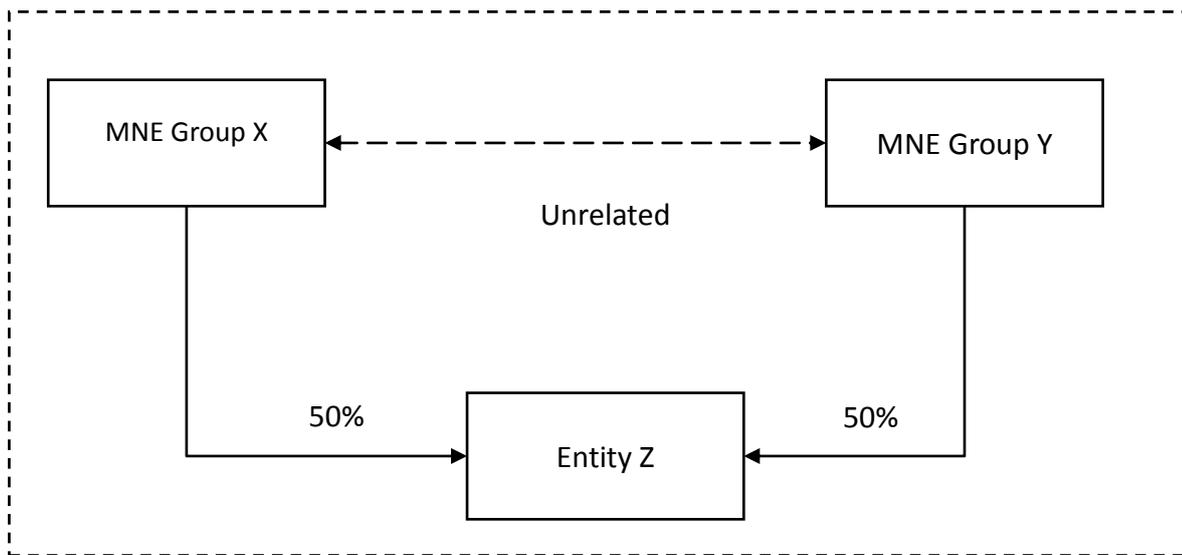


Table D

Particulars	MNE Group X	MNE Group Y
Whether Z's financial data consolidated as per accounting rules	Yes	No
Financial data of Z – to reported in CbC report	Yes	No
Consolidation scenarios		
A. Pro-rata consolidation	i. Pro-rata share of Z's total revenue to be considered for EUR750 million threshold ii. Pro-rata financial information of Z to be disclosed in CbC	--
B. Full consolidation	i. Z's total revenue to be considered for the €750 million threshold <i>(refer Issue discussed in Para B(5) above)</i> ii. Total financial information of Z to be disclosed in CbC	

The Guidance suggests that in case of pro-rata consolidation, jurisdictions may allow an MNE group to include a pro rata share of the entity's (in this case, Z) financial data in its CbC report, instead of the full amount.

Table E

Nature of relationship	Indian GAAP	IndAS	Financial data (of Z) to be included in CbC Report (of X)
Subsidiary	> 50% equity ownership or > 50% control of the Board → Full line by line consolidation	If entity is under control → Full line by line consolidation	Indian GAAP & IndAS - Full amounts
Joint Arrangements	Joint Control by Equity → Proportionate line by line consolidation	Joint Control by Equity → no line by line consolidation	Indian GAAP - Pro-rata IndAS – No financial data to be included
	Joint Control by Operations → Proportionate line by line consolidation	Joint Control by Operations → Proportionate line by line consolidation	Indian GAAP & IndAS – Pro-rata
Associates	Significant influence → no line by line consolidation	Significant influence → no line by line consolidation	Indian GAAP & IndAS – No financial data to be included

Thus, the Guidance clarifies that an entity included in the MNE Group's consolidated financial statements under equity accounting rules would not be a constituent entity for CbC reporting purposes.

C. Issues relating to the filing obligation for the CbC report

1. Impact of currency fluctuation on the agreed EUR750 million filing threshold

If Country A is using a domestic currency equivalent of EUR750 million for its filing threshold, Country B is using EUR750 million for its filing threshold, and as a result of currency fluctuations Country A's threshold is in excess of EUR750 million, can Country B impose its local filing requirement on a Constituent Entity of an MNE Group headquartered in Country A which is not filing a CbC report in Country A because its revenues, while in excess of EUR750 million, are below the threshold in Country A?

Clarification -

- As per Action 13 Report, the threshold would be at EUR750 million or a near **equivalent amount in domestic currency as of January 2015**
- An MNE Group that complies with the local threshold (near equivalent amount in domestic currency as of Jan 2015) of the Ultimate Parent tax jurisdiction, **should not be exposed to the local filing** in any other jurisdiction that is using a threshold denominated in a different currency
- Periodic revision in order to reflect the currency fluctuation if threshold denominated other than in EUR is not required
- The current EUR750 million (near equivalent amount in domestic currency as of January 2015) threshold **may be included in the review of the CbC Report minimum standard to occur in 2020 (i.e hold good till 2020)**

KPMG example –

In January 2015:

Threshold as prescribed by OECD = EUR750 million

Prevailing fx rate (INR – EUR) = 70

Near equivalent threshold in INR = INR5250 crore (assume to be the threshold prescribed by India)

While evaluation for FY 1617:

Interpretation 1:

Revenue of X Ltd = INR6000 crore

Prevailing fx rate (INR – EUR) = 82

Revenue of X Ltd = EUR731 million

Since X Ltd does not cross the threshold of EUR750 million = no preparation and filing obligations for X Ltd.

Interpretation 2:

Revenue of X Ltd = INR6000 crore

Prevailing fx rate (INR – EUR) = 82

Near equivalent threshold in INR (750*82) = INR6150 crore

Since X Ltd does not cross the above near equivalent threshold of INR6150 crore = no preparation and filing obligations for X Ltd.

Interpretation 3:

Revenue of X Ltd = INR6000 crore

Near equivalent threshold in INR (as determined in January 2015) = INR5250 crore

Since X Ltd crosses the near equivalent threshold in domestic currency as on January 2015 = preparation and filing obligations for X Ltd.

As per the clarifications in this section, Interpretation 3 is to be followed.

2. Definition of total consolidated group revenue

For the purpose of determining whether an MNE Group is an Excluded MNE Group, are extraordinary income and gains from investment activities included in total consolidated group revenue?

Clarification -

- The definition to be followed is as per applicable accounting rules of the jurisdiction of the Ultimate Parent entity
- For financial entities, some of the items reported might be 'net amount' as per the applicable accounting rules (like interest rate swap)

D. Issues relating to the sharing mechanism for the CbC report

1. Transitional filing option

Can MNE Groups with an Ultimate Parent Entity resident in a jurisdiction whose CbC reporting legal framework is in effect for Reporting Periods later than 1 January 2016 voluntarily file the CbC report for fiscal periods commencing on or from 1 January 2016 in that jurisdiction? What is the impact of such filing on local filing obligations in other jurisdictions?

Clarification -

- Jurisdiction of the Ultimate Parent Entity has not been able to implement the CbC Report requirement as of 1 January 2016
- Other jurisdictions of the constituent entities introduce a local filing obligation with no transitional benefits
- Jurisdiction of the Ultimate Parent entity to accommodate voluntary filing for fiscal period commencing from 1 January 2016 – **'parent surrogate filing'**
- Where surrogate filing is available, it would mean that there are no local filing obligation for the MNE in any jurisdiction where its constituent entity exists and the following conditions are met:
 - i. The Ultimate parent has made the CbC report available as per the Action 13 reporting requirement deadline (12 months after the last day of the Reporting Fiscal Year of the MNE Group)
 - ii. By the first filing deadline of the CbC report, the jurisdiction of the tax residence of Ultimate Parent entity must have its laws in place to require a CbC report (though might not require to file it in the Reporting Fiscal Year under consideration)
 - iii. By the first filing deadline, Qualifying Competent Authority Agreement (QCAA) must be in effect between the tax jurisdiction of the Ultimate Parent Entity and the Local Jurisdictions
 - iv. There is no reporting of systemic failure by the jurisdiction of the tax residence of Ultimate Parent Entity to the Local Jurisdictions
 - v. Notification rules have been provided for
- Countries confirming that they will have parent surrogate filing available include Hong Kong, Japan, Liechtenstein, Nigeria, Russian Federation, Switzerland, United States, **Isle of Man and Singapore**³.

³ As updated by New Guidance issued in July 2017

2. CbC report notification requirement

Article 3 of the Action 13 model legislation for CbC reporting includes an option for jurisdictions to require notifications to be sent to the country tax administration identifying the Reporting Entity for the MNE Group. Where a Constituent Entity of an MNE Group is required to notify its tax administration of the identity and tax residence of the Reporting Entity (including the Surrogate Parent Entity) of the MNE Group by 31 December 2016 (with respect to the 2016 fiscal year), would it be consistent with the Action 13 minimum standard for jurisdictions to provide some transitional relief during the period in which domestic CbC legal frameworks and Qualifying Competent Authority Agreements are still being put in place?

Clarification -

- Many MNEs might not have identified the Reporting Entity and hence faltering on the notification requirement of some of the tax jurisdictions of its Constituent Entities
- Transitional relief option to be made available (it is expected not to be frustrating the policy intention of the Action 13 minimum standard)
- Jurisdictions are required to bring their QCAA into effect as soon as possible

Ahmedabad

Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Pralhad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala,
Bengaluru – 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh

SCO 22-23 (1st Floor)
Sector 8C, Madhya Marg
Chandigarh – 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai

No.10, Mahatma Gandhi Road
Nungambakkam
Chennai – 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Gurugram

Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurugram, Haryana – 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad

Reliance Humsafar, 4th Floor
8-2-618/2, Road No.11, Banjara Hills
Hyderabad – 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Jaipur

Regus Radiant Centres Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road
Jaipur, Rajasthan, 302018.
Tel: +91 141 - 7103224

Kochi

Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata

Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091
Tel: +91 33 4403 4000
Fax: +91 33 4403 4199

Mumbai

Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai – 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business park
Tower-B, Plot# 7, Sector 142,
Expressway Noida, Gautam Budh Nagar,
Noida – 201305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex, Mundhwa Road,
Ghorpadi, Pune – 411001
Tel: +91 20 6747 7000
Fax: +91 20 6747 7100

Vadodara

iPlex India Private Limited,
1st floor office space, No. 1004,
Vadodara Hyper, Dr. V S Marg
Alkapuri, Vadodara – 390 007
Tel: +91 0265 235 1085/232 2607/232 2672