



## BEPS Action 13 in Latam, trends and future perspectives

# **CbC Strategy and Lessons**

# BEPS Action 13 Recommendations

BEPS Action 13 proposes a new three tier global standard for transfer pricing documentation.



Master file



Local file



Country-by-country template

## Evolution of existing transfer pricing documentation requirements

- Groupwide description including supply chain, value drivers, main markets, high level functional analysis, details of business changes
- High level description of IP strategies, IP location and R&D management and location
- High level description of group financing arrangements
- Description of APAs or other rulings

### Transactional/Entity specific

- Local management structure, detailed functional analysis, economic analysis and **reconciliations of TP to accounts**
- Local documentation nuances continue

## A new requirement

- Revenue
- Profit before tax
- Cash tax paid
- Current Tax accrual
- Capital and retained earnings
- NBV of tangible assets
- Number of employees
- Complete list of entities and PE's for each country, with activity codes to be attached to template

## Objectives

Ensure consideration of transfer pricing requirements

Transfer pricing audit

Transfer pricing risk assessment

# The three tiers of documentation

## Country-by-country reporting

Information required per tax jurisdiction (aggregate for all entities including permanent establishments)

Name of the MNE group: Fiscal year concerned:										
Tax Jurisdiction	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
	Unrelated Party	Related Party	Total							

### Details

- €750m threshold (\$850 mil for U.S.)
- Automatic exchange
- First filing periods beginning on or after January 1, 2016

### Tax authority conditions

- Transparency/Consistency
- Confidentiality
- Appropriate use

### Type of expected risks associated with CbC reporting

- Misinterpretation/Misuse of data by tax authorities
- Tax audits based on most beneficial key ratios: Every jurisdiction wants more, leading to increased risk of double taxation, etc.
- Template format is too simplistic to give real insight



### MNEs need to consider

- What data to use?
- How to interpret CbC data definitions?
- How to prepare template – automation?
- What story does the output tell?
- First year is crucial
- How to manage audit process?
- How will results vary year on year?

# CbC Notifications

- Certain countries have introduced a requirement that resident entities must notify the local tax authority about which entity within their multinational group will file the CbC report
- Many countries that require notification follow the OECD recommendation of the last day of the reporting period. The reporting period is based on the ultimate parent entity's fiscal or taxable year end. Many countries have delayed implementation of the notification due date for the first reporting period (FYE 2016)
- A significant number of countries base the notification on the due date of the local entity's tax return
- Some countries do not have a notification requirement, like the U.S., but subsidiaries need to follow local notification rules

# CbC Reporting - Common Design Questions

Companies are looking to develop a repeatable process to extract the required CbC data and analyze it on an annual basis. The key areas of assessment are summarized in the diagram below.



## Efficiency of reporting

What level of effort is required by client in preparing the submission (in terms of gathering the data on an entity level and consolidating that information for reporting)?



## Interpretation of the guidelines

With only very high level guidelines supplied by the OECD, how closely does client's interpretation match those seen in the wider market?



## Accuracy and controls

What controls are in place to ensure that the specification intended by client is being followed within the current process?



## Disclosure

What level of disclosure for each country is appropriate, given the assumptions and judgments made in the interpretation of the guidelines; the view of the group as a result of these interpretations; and level of desire to pre-empt tax authority queries?

# CbC and Strategic Transfer Pricing

- Have a consistent story supporting global transfer pricing policies
- Synchronize Master File and Local File with the CbC Report
- Consider a more centralized approach for preparing TP documentation
- Leverage technology to assess risk and prepared TP documentation
- Understand CbC report ratios and be prepared to explain outliers
- Document and monitor functions and risks for intercompany transactions
- Review intercompany agreements

# CbC and Strategic Transfer Pricing

- Consider changing structures to add income into jurisdictions with high employee headcount / substance
- More closely aligned returns for entities performing routine functions
- Consider conducting additional analysis to support certain transactions
  - Alternative benchmarking strategies
  - Profit Split



# **BEPS Action 13 in Latam**

# Action 13 in LATAM



# Summary

Country	Local File	Masterfile	CBC	Aplication
Argentina	X	NA	X	2017
Chile	X	NA	X	2016
Colombia	X	X	X	2017
Mexico	X	X	X	2016
Peru	X	X	X	2017
Uruguay (*)	X	X	X	2017

# Argentina

- AFIP on September 20 published a general ruling that implements a CbC reporting regime for constituent entities of multinational entity (MNE) groups and the tax jurisdictions where they operate, which applies to fiscal years beginning on or after January 1, 2017.
- The CBC report must be prepared by any of the following entities:
  - An ultimate parent entity (UPE) that is resident in Argentina for tax purposes
  - A surrogate entity resident in the country, appointed by the parent entity to file the report on its behalf
  - A constituent entity, resident in the country, that is part of the MNE group (other than entities listed above), provided at least one of the following assumptions is true:
    - The ultimate parent entity is not required to file a CBC report in its tax jurisdiction.
    - On the deadline for filing the CBC report, the tax jurisdiction of the ultimate controlling entity has not signed a qualified competent authority agreement (QCAA) with Argentina, even if both jurisdictions may be signatories to an international agreement in force.
    - In the event of a systemic failure to exchange by the tax jurisdiction of the ultimate parent entity.

## Argentina (cont.)

- The constituent entities of the MNE group that reside in Argentina are required to provide information regarding the Ultimate Parent Entity:
  - Data (name, address, tax jurisdiction, date and place of organization, total consolidated turnover, etc.)
  - Whether the MNE group is subject to the CBC reporting requirement because it exceeds the EUR 750 million threshold
  - Whether it is required to act as reporting entity under the CBC reporting scheme
- The information included in the CBC report may be used by AFIP for several purposes, including the assessment of risks associated with transfer prices, base erosion and profit shifting, and the development of economic and statistical analysis, when applicable.
- Notwithstanding the above, this reporting scheme does not repeal the transfer-pricing regime established by General Ruling 1122/2001.

# Brazil

- **The Brazilian government has been actively proposing new legislation related to the BEPS initiatives. Recently, the Brazilian government has also entered into the Convention on Mutual Administrative Assistance which should give Brazil more visibility on international tax matters.**
- **CbC and CRS reporting**
  - Applicable when the total annual consolidated revenue of a multinational group, as reported on the controlling party's financial statement for the previous calendar year is more than: (i) BRL 2.3 billion for the Brazilian tax resident controlling party, or (ii) EUR 750 million in certain cases (e.g. when the controlling entity is non-Brazilian tax resident, but the responsibility to file the CBC report is attributed to a Brazilian tax resident entity, the party responsible for reporting the report would be released from the filing requirement).
  - Brazilian financial institutions will be required to identify, classify and report information that may be subject to the automatic exchange agreements. For the first half of FY2017, taxpayers may report relevant data along with the information from the second half of 2017 that will be due by the last business day of February 2018.

# Chile

- SII introduced CbC reporting obligations in 2016 for FY 2016
- The CBC report must be prepared by any of the following entities:
  - An ultimate parent entity (UPE) that is resident in Chile for tax purposes
  - A surrogate entity resident in the country, appointed by the parent entity to file the report on its behalf.
- The Chilean IRS authority has become more active since 2012, and several cases of transfer pricing audits have already reached court. In this context, taxpayers have received massive information requirements from tax authorities regarding information transactions and compliance with transfer pricing regulations.
- New substance over form rules were enacted that give the Chilean IRS the right to determine whether an abuse or simulation has taken place

# Colombia

- Colombia enacted Law 1819 on 29 December 2016, adopting a tax reform that makes substantial changes to the current tax legal framework, including changes in the levels of transfer pricing documentation.
- According to Law 1819, the three different levels of transfer pricing supporting documentation established by Action 13: the country-by-country report, master file and local file.
- **Country-by-Country (CbC) Report**
  - Applicable to FY 2017, the Colombian parent of a multinational group to submit a CbC if the parent has reported annual consolidated group revenue equal to or exceeding COP2.3 billion (approx. US\$766 million).
  - Law 1819 allows a foreign controlling entity to appoint a Colombian resident, or foreign resident with a permanent establishment in Colombia, as the responsible party for filing the CbC report.
  - The revenue threshold established by Law 1819 is very close to the limit provided in BEPS Action 13 (€750 million).



## Colombia (cont.)

- **Master file and local file**

- Besides the CbC report, Law 1819 also requires taxpayers to include the master file and local file in their transfer pricing documentation as set forth in BEPS Action 13.
- The master file must contain all relevant multinational group information. The local file is the equivalent of the transfer pricing report that has been usually filed by the taxpayer.
  
- The contents of the Master File and the CBCR are currently being regulated by secondary law. The draft of this secondary law (TP Decree) is in the stage of revision and approval from Dian's Legal Division
  
- Colombia implemented the results of BEPS action 10 in relation to transactions involving commodities by introducing into its primary law a specific rule to establish the Arm's Length Price in commodity transactions.

# Mexico

## **Country-by-country reporting**

- Applies to MNEs with annual consolidated group revenue equal to or exceeding MXN 12,000 million in the previous year. Regulations extend to subsidiary entities.
- Applies for fiscal years beginning on or after 1 January 2016.
- Must be filed annually by December 31 of the following year of the fiscal year under analysis. There are different due dates to file the CbC for Mexican subsidiaries of foreign multinational groups whose fiscal year is not a calendar year.
- CbC will need to be provided in Spanish and Mexico has not adopted the OECD's XML Schema standardized electronic format yet.
- Mexican entities are allowed to act as a surrogate.
- Notification to the SAT only takes place if a Mexican subsidiary has been appointed to file CbC.
- Penalties ranging between MXN 140,540 to MXN 200,090 will apply for noncompliance. The extended statute of limitations for tax audits may be extended to 10 years. Other penalties include a ban to be a supplier of the public sector and withdrawal of the importer permit.

# Mexico (cont.)

## Master File

- MF applies to taxpayer with revenues equal to or exceeding MXN 671,414,320 (to be annually updated); Corporate taxpayers whose shares are listed and quoted on public stock exchanges; Taxpayers subject to the “Optional regime for groups of corporate taxpayers that are subject to certain provisions”; Government entities; and, Foreign taxpayers with PE in Mexico, but only with respect to the activities conducted by that PE.
- MF first fiscal year and penalties are the same as for CbC.
- MF is required to be submitted annually by December 31 of the following year for which the report is required. There are different due dates to file the MF for Mexican subsidiaries of foreign multinational groups whose fiscal year is not a calendar year.
- MF might be submitted in English.

## Local File

- LF first fiscal year and penalties are the same as for MF. The LF must be prepared in Spanish except for the intercompany agreements to be included as part of the LF that can be in English.
- LF must be submitted by December 31, 2017 with regard to the information of fiscal year ending December 31, 2016, but Mexican transfer pricing documentation must be contemporaneous with the 2016 income tax return.
- There are some formal documentation requirements included in the documentation report that are not part of the LF and vice versa.

# Peru

- On 17 November 2017, the Peruvian Government issued much-anticipated transfer pricing (TP) regulations (Supreme Decree N° 333-2007-EF), which contain guidance on the preparation and submission of the local file, master file and country-by country (CbC) report.
- The new rules implement the TP documentation structure introduced in Peru in December 2016 through Legislative Decree N° 1312, which follows the structure set out in the final report under Action 13.
- The new reporting requirements entail a three-tiered approach for TP documentation and the CbC reporting, in line with the OECD BEPS Action 13 final report.

## **Master file**

- Taxpayers that are constituents of a group whose annual revenue for the fiscal year exceeds 20,000 Tax Units (approximately US\$25 million) will also be required to submit a master file with high-level information on the group's business operations, their transfer pricing policies and their global allocation of income and economic activity. The master file requirements in Peru are largely consistent with those under Action 13 of the BEPS Action Plan.

# Peru (cont.)

## **CbC report**

- Under Action 13 of the BEPS Action Plan, the CbC report should be: (1) filed in the jurisdiction of tax residence of the ultimate parent entity of a multinational enterprise (MNE) group; and (2) shared between jurisdictions through the automatic exchange of information, pursuant to government-to-government mechanisms under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties or tax information exchange agreements.

## **Filing requirements applicable to local file, master file and CbC report**

- Although the TP regulations require the master file and CbC report for the fiscal year beginning on 1 January 2017, to be filed no later than 31 December 2018, SUNAT has not determined the exact due date. SUNAT will issue regulations in the future with the exact due date for the master file and CbC report.
- **Benefit Test.** For intra-group services, information regarding the benefit test, the value of the consideration and, if applicable, the reasons why they do not qualify as low value-added
- In general, the master file, local file and CbC report should be translated into Spanish. Taxpayers should retain supporting documentation for five years or for the duration of the statute-of-limitations period established by the Tax Code, whichever is longer.

# Uruguay

- Country-by-country reporting
- CbC revenue threshold has not been determined yet. Regulations likely extend to subsidiary entities.
- Applies for fiscal years beginning on or after 1 January 2017.
- Filing dates are not available yet.
- Filing language has not been determined yet and adoption of OECD's XML Schema standardized electronic format is anticipated. -Uruguay entities are allowed to act as a surrogate.
- Notification requirements have not been determined yet.
- Penalties up to \$250,000 will apply. Master File -First fiscal year and penalties are the same as for CbC.

# Trends in the Marketplace

# Trends in the marketplace

## Reducing compliance costs

- Centralize documentation
- Modularize local file
- Devise a flexible global framework by assessing the level of risk and sign-off needed for each country
- Utilize efficient technology and project management tools
- Increase coordination with CIT compliance teams

## Planning for potential exposures

- Conduct analysis to validate or remediate current TP positions
- Tiered risk assessment approaches
  - Tier 1: Review I/C agreements and ensure all information needed to be compliant are available
  - Tier 2: Provide additional narrative to support current position
  - Tier 3: Perform corroborative analyses to support current position



# Approaches to global documentation



- Prioritize using a risk matrix
- Define TP documentation requirements
- Create flexible work plan customized to the business and that maintains global consistency



- Complete online questionnaires detailing both sides of transactions
- Map output to tailored master and local file templates
- Delegate information gathering using centralized interface
- Interview as needed



- Review information to confirm full two-sided analysis of transaction and development of appropriate economic support for transactions
- Test transactions



- Prepare customized master file and local file reports with consistent module write-ups using technology tool
- Augment files with appropriate local input without diminishing consistency



- Finalize master file and local file reports
- Establish protocol for how reports should be used



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