

Transfer Pricing Update: FIRS Issues

Country by Country Reporting Regulations



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Perversely, a tax avoidance scheme involving artificial or fictitious tax base in tax havens, is not any less from tax evasion.

Dr. Kriz David

The Federal Government of Nigeria has formally released the Income Tax (Country-by-Country Reporting) Regulations, 2018. The Regulations set the framework for the automatic exchange of Country-by-Country Reports (CbCR) in accordance with the Multilateral Competent Authority Agreement (MCAA) signed by Nigeria in January 2016 and ratified by the Federal Executive Council in August 2016.

The effective date for CbCR is reporting accounting period beginning from 1 January 2018.

Objectives of CbCR

The Regulation primarily seeks to provide guidance to Multinational Enterprises (MNEs) on their reporting obligations to the Federal Inland Revenue Service (FIRS) in relation to their global activities, profits, taxes, accumulated earnings and other indicators of the MNE group's economic activity. It is expected that the relevant information, when provided by the MNEs will enable the FIRS to conduct improved transfer pricing risk assessments and ultimately prevent tax evasion or avoidance through base erosion and profit shifting (BEPS). Specifically, the Regulation would:

- Provide Tax Authorities with information about multinational enterprises' ("MNEs") global activities, profits and taxes;
- Provide Tax Authorities with information to better assess international tax avoidance risks;
- Improve Transparency of MNEs in their tax practices.
- Prevent Tax evasion or avoidance through base erosion and profit shifting.

Key Terms to Note

- **The Ultimate Parent Entity**— means the highest entity in the MNE Group which is not control by any other entity. Each Ultimate Parent Entity is to file a country-by-country report for the MNE Group with respect to its reporting accounting year. Where the Ultimate Parent Entity is not obligated to file, a Constituent Entity can do so on or before the due date for filing, and where there are more than one Constituent Entities of the same MNE Group resident in Nigeria, the MNE Group may designate one of them to file the country-by-country report.
- **Constituent Entity**— means any separate business unit of an MNE Group that is included in the Consolidated Financial Statement of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange.
- **Surrogate Parent Entity**— means one Constituent Entity of the MNE Group that has appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the county-by-country Report in that Constituent Entity's jurisdiction of tax residence, on behalf of such MNE Group.
- **Reporting Entity**— means the Constituent Entity that is required to file a Country-by-County report conforming to the requirements in the regulations in its jurisdiction of tax residence on behalf of the MNE Group. The Reporting Entity may be the Ultimate Parent Entity or the Surrogate Parent Entity.

- **Reporting Accounting Year**— means the accounting year of which the financial and operational results are reflected in the Country-by-Country Report.

Filing Requirements

- **Headquarter in Nigeria:** MNE with headquarter in Nigeria must file a notification of their filing obligation with the FIRS, no later than the last day of the MNE group's accounting year end and prepare and file the annual Cbc report based on the prescribed template, within 12 months after the last date of the group's accounting year end.
- **Subsidiaries in Nigeria:** Subsidiaries of an MNE group resident in Nigeria for tax purpose and permanent establishments with financial statements will be required to notify the FIRS of the identity and tax residence of the entity within the group who has the responsibility to file the Cbc report on behalf of the group. Where there is more than one subsidiaries of the same MNE group resident for tax in Nigeria, one of them is to file the Cbc report on behalf of the group.

Exemptions

- MNE groups with total consolidated group revenue of less than **NGN160 billion** in the immediately preceding accounting year are exempted from Cbc.
- An Ultimate Parent Entity (UPE) will not be required to file a Cbc report with the FIRS if the MNE group has elected a constituent entity to act as a Surrogate Parent Entity (SPE) to file the Cbc report with the FIRS. The FIRS shall be notified by the constituent entity no later than the last day of the reporting accounting year of such MNE Group, the identity and tax residence of the reporting entity either UPE or SPE.

Content of CbCR

This should include the aggregate information of the MNE Group relating to the following:

- Revenue,
- Profit or loss before income tax,
- Income tax paid,
- Income tax accrued,
- Stated capital,
- Accumulated earnings,
- Number of employees, and
- Tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE group operates.
- An identification of each constituent entity of the MNE group setting out the jurisdiction of tax residence of such constituent entity and, where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such constituent entity is organized, and

- The nature of the main business activity or activities of such constituent entity

Due Date for Filing

The Cbc report is required to be filed no later than 12 months after the last day of the MNE group's accounting year end while the notification requirement should be made to the FIRS no later than the last day of the MNE's accounting year end.

Penalties

- Failure to file the Cbc report to the FIRS by the filing deadline is NGN10 million in the first instance and NGN1 million for every month the failure continues.
- A penalty of NGN10 million where a reporting entity files an incorrect or false report.
- Failure to provide notification attracts a penalty of NGN5 million in the first instance and NGN10,000 for every day in which the default continues.

Final Thought

The CbcCR will bring about transparency in financial and tax reporting. Companies in Nigeria are advised to comply with the provision of the Regulation.

Contact us:

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