

FREQUENTLY ASKED QUESTIONS ON CbCR

1. Threshold (19 October 2018)

- a. Scenario : Paragraph 2(a) of the Income Tax (Country by Country) Rules 2016 states that the Rules shall apply to MNEs with consolidated group revenue of at least RM3 billion. For example if the Ultimate Holding Entity (UHE) is in Germany, which applies a EUR750 million threshold, will the Malaysian subsidiary of the German UHE be required to file CbCR with the Inland Revenue Board of Malaysia (IRBM), if the consolidated group revenue does not exceed EUR750 million (i.e. not required to file CbCR in Germany as per local law), but exceeds RM3 billion due to currency fluctuation, etc.

Answer:

No local filing is required.

- b. Scenario :

- (i) An MNE's consolidated group revenue for Financial Year (FY) 2016 exceeded the threshold of RM3 billion, but fell below this threshold in FY 2017. Is the MNE required to file CbCR for FY 2017?

Answer:

Yes, the MNE is required to file a CbCR for FY 2017 as the requirement to file is based on whether the MNE's consolidated group revenue exceeded the thresholds for the FY preceding the reporting FY (i.e. FY 2016).

- (ii) Is the MNE required to file CbCR for FY2018?

Answer :

No as its consolidated group revenue for FY 2017 did not exceed the threshold.

2. Obligation to file (19 October 2018)

Subrule 5(2) of the Rules outlines the circumstances under which "surrogate holding entity" filing would be required; e.g. where an UHE is not resident in Malaysia and is not required to file CbCR in its jurisdiction of residence. Further, "surrogate holding entity" has been defined in rule 3 of the Rules as a Constituent Entity of an MNE Group that is resident in Malaysia and appointed by the MNE Group as a sole substitute for the UHE to file the CbCR under Subrule 5(2) of the Rules.

- a. Scenario: An ultimate holding entity is not resident in Malaysia, but is required to file CbCR in its jurisdiction of tax residence in **XY Country**. However, there is no treaty between **XY Country** and Malaysia. Will the Malaysian subsidiary be required to file the CbCR locally and submit the Notification Letter with the Director General of Inland Revenue (DGIR)?

Answer:

No, as there is no provision for Malaysian subsidiary to file the CbCR Report through local filing in Malaysia. However the Malaysian subsidiary has the obligation to submit a Notification Letter as a Non-Reporting Entity.

CbCR will only be exchanged through Competent Authorities of countries who are parties to the CMAA (Convention on Mutual Administrative Assistance, or other International Agreement) and have a qualifying MCAA (Multilateral Competent Authority Agreement) with Malaysia.

- b. Scenario: An UHE (Green Limited) is a resident in **AB Country** and is not required to file CbCR in its jurisdiction of residence. Green Limited has designated GreenCo. Pte Ltd in **ADL Country** as the “surrogate holding entity” to file CbCR with **ADL Tax Authority**. **ADL Country** have a qualifying MCAA with Malaysia.

Will the Malaysian subsidiary of Green Limited be required to file the CbCR to IRBM or IRBM will obtain CbCR through automatic exchange of information (AEOI) from **ADL Tax Authority**?

Answer:

IRBM will obtain CbCR through AEOI with **ADL Tax Authority** (subject to the Qualifying Competent Authority Agreement in place).

However the Malaysian subsidiary has the obligation to submit a Notification Letter as a Non-Reporting Entity (Annex C2).

- c. Scenario: A Ltd (UHE residing in Malaysia) changed its financial year end from 31 August to 31 December. If A Ltd has submitted CbCR for FY 2017 (for financial year ended 31 August 2017 i.e 1st September,2016 – 31stAugust,2017) in other tax jurisdictions, does A Ltd has the obligation to submit CbCR for the remaining four (4) months in 2017,or should A Ltd submit the next CbCR for a period of 16 months pertaining to FY 2018 (1 September 2017 to 31 December 2018)?

Answer :

The submission of CbCR is based on the reporting entity financial year. Since A Ltd had submitted the CbCR for FY 2017, the next CbCR submission for A Ltd would be for a period of 16 months starting from 1 September 2017 to 31 December 2018 for FY 2018.

3. Notification (19 October 2018)

Since the Rules come into operation on 1 January 2017, would the first reporting financial year be the annual accounting period of the UHE commencing on or after 1 January 2017? Please indicate if the notification deadline for the scenarios below are in line with rule 6 of the Rules:

- a. Scenario: The UHE (reporting entity) is in France and its subsidiary is in Malaysia. Both companies have 31 December year end. For the Malaysian subsidiary, the first reporting financial year is 1 January 2017 to 31 December 2017. Should the Malaysian subsidiary notify DGIR about the reporting entity by 31 December 2017?

Answer:

Yes, Malaysian subsidiary need to submit a Notification Letter as a Non-Reporting Entity by the financial year end of the ultimate holding entity (31 December 2017).

- b. Scenario: The UHE (reporting entity) is in Japan and its subsidiary is in Malaysia. Both companies have 31 March year end. For the Malaysian subsidiary, the first reporting financial year is 1 April 2017 to 31 March 2018. Should the Malaysian subsidiary notify the IRBM about the reporting entity by 31 March 2018?

Answer:

Yes, Malaysian subsidiary need to submit a Notification Letter as a Non-Reporting Entity by the financial year end of the ultimate holding entity (31 March 2018).

- c. Scenario: The UHE (reporting entity) in Denmark has a 31 December year end (1 January 2017 to 31 December 2017) and its subsidiary entity in Malaysia has a 31 March year end (1 April 2017 to 31 March 2018). For the Malaysian subsidiary, the first reporting financial year is 1 January 2017 to 31 December 2017 (linked to UHE filing). Should the Malaysian subsidiary notify the IRBM about the reporting entity by 31 December 2017?

Answer:

Yes, Malaysian subsidiary need to submit a Notification Letter as a Non-Reporting Entity by the financial year end of the ultimate holding entity (31 December 2017).

- d. Scenario: The UHE (reporting entity) in the UK has a 31 March year end (1 April 2016 to 31 March 2017) and its subsidiary in Malaysia has a 31 December year end (1 January 2017 to 31 December 2017). For the Malaysian subsidiary, the first reporting financial year is 1 April 2017 to 31 March 2018 (linked to ultimate holding entity filing). Should the Malaysian subsidiary notify the IRBM about the reporting entity by 31 March 2018?

Answer:

Yes, Malaysian subsidiary need to submit a Notification Letter as a Non-Reporting Entity by the financial year end of the ultimate holding entity (31 March 2018).

- e. Scenario: *(Amended 8 January 2019)*

Scenario 1	Scenario 2	Scenario 3
Subrule 6(1) of the Income Tax (CbCR) Rules 2016/Subregulation 6(1) of the Labuan Business Activity Tax (CbCR) Regulations 2017	Subrule 6(2) of the Income Tax (CbCR) Rules 2016/Subregulation 6(2) of the Labuan Business Activity Tax (CbCR) Regulations 2017	Subrule 6(2) of the Income Tax (CbCR) Rules 2016/Subregulation 6(2) of the Labuan Business Activity Tax (CbCR) Regulations 2017
Annex B	Annex C1	Annex C2
Reporting Entity (Ultimate Holding Entity/Ultimate Parent Entity) in Malaysia	Reporting Entity (Ultimate Holding Entity/Ultimate Parent Entity) in Malaysia. Constituent Entity in Malaysia	Reporting Entity (Ultimate Holding Entity/Ultimate Parent Entity) outside Malaysia. Constituent Entity in Malaysia.
ABC Bhd	X Sdn Bhd	M Sdn Bhd
	Y Sdn Bhd	P Sdn Bhd
	Z Sdn Bhd	Q Sdn Bhd

(i) Scenario 1

Which Annex should the Malaysian Reporting Entity (ABC Bhd) submit to IRBM to comply with Subrule/Subregulation 6(1)?

Answer :

Annex B should be submitted with Attachment 1 (a list Constituent Entities in Malaysia) and Attachment 2 (a list of Constituent Entities Outside Malaysia).

(ii) Scenario 2

Assuming that the Reporting Entity (UHE) in Malaysia, ABC Bhd has 3 subsidiaries in Malaysia, i.e X Sdn Bhd, Y Sdn Bhd and Z Sdn Bhd.

Can any one of the Malaysian non-reporting Constituent Entities submit one consolidated notification letter on behalf of all three Malaysian non-reporting Constituent Entities under Subrule/Subregulation 6(2)?

Answer :

Yes. Any one of the Malaysian non-reporting constituent entities which is the appointed Constituent Entity and has obtained the consent from other Constituent Entities in Malaysia can submit one consolidated notification (Annex C1 together with Attachment 1) on behalf of all the Malaysian non-reporting Constituent Entities for the purpose of Subrule/Subregulation 6(2).

E.g. If X Sdn Bhd is the appointed Constituent Entity and has obtained consent from Y Sdn Bhd and Z Sdn Bhd, then X Sdn Bhd can submit one consolidated notification letter i.e. Annex C1 together with Attachment 1 (a list of constituent entities in Malaysia) to comply with the requirement of Subrule/Subregulation 6(2).

(iii) Scenario 3

In the case where the Reporting Entity (UHE) is located outside Malaysia, Can any one of the Malaysian non-reporting Constituent Entities submit one consolidated notification letter on behalf of all Malaysian non-reporting Constituent Entities under Subrule/Subregulation 6(2)?

Answer :

No, each Malaysian non-reporting Constituent Entity must submit a separate notification letter (Annex C2) to IRBM.

E.g. If the reporting entity (UHE) of M Sdn Bhd, P Sdn Bhd and Q Sdn Bhd is located outside Malaysia, then M Sdn Bhd, P Sdn Bhd and Q Sdn Bhd must each submit a separate notification letter.

4. Reporting Currency (19 October 2018)

(a) What is the currency to be used when reporting to IRBM ?

Answer :

The reporting of any CbCR financial data should be in Malaysian Ringgit (MYR). The average exchange rate for the reporting year should be used. The MNE should also state the rate that it used in Table 3.

(b) Is there any specific guidance on the currency rate?

Answer :

There is no specific guidance on which source can be used for obtaining the average exchange rate; however, in the Malaysian context, Bank Negara Malaysia can be utilized as an authentic source of extracting such forex rate.

5. Income Tax Paid (on Cash Basis) (19 October 2018)

Does the 'Income Tax Paid (on Cash Basis)' include tax paid for previous years? E.g. If the taxes paid in FY 2018 include taxes of RM3,000 for FY 2015 to FY 2017, should the reporting entity include the RM3,000 in its CbCR for FY 2018?

Answer:

The reporting entity should report the total amount of income tax actually paid during the relevant financial year. As such, in the above scenario the reporting entity would have to report the RM3,000 paid in FY 2018's CbCR under 'Income Tax Paid (on Cash Basis)'.

6. Income Tax Accrued (Current Year) (19 October 2018)

Should income tax provision be included under Income Tax Accrued (Current Year)?

Answer:

The reporting entity should report the sum of the accrued current tax expense recorded on taxable profits or losses of all the constituent entities for the reporting financial year. The current tax expense should reflect only operations in the current year and should not include deferred taxes or provisions for uncertain tax liabilities.

7. The appropriate use of information contained in CbC Reports *(New 8 January 2019)*

How will the information provided in a CbC report be used ?

Answer:

IRBM will use the information contained in CbCR report as set out in the Action 13 BEPS Report.

The information contained in CbC reports will be used as follows:

- High level transfer pricing risk assessment;
- Assessment of other base erosion and profit shifting related risks;
- Economic and statistical analysis.

The information contained in CbC reports may also be used in planning a tax audit or as the basis for making further enquiries for an audit.

The information contained in CbCRs will not be used as a basis for proposing changes to transfer prices or adjusting a taxpayer's income using global formulary apportionment.