

# ***Transfer Pricing Documentation – SARS expects the secondary mechanism for filing Country-by-Country Reports to be exercised by December 2017***

14 September 2017

## ***In brief***

In terms of the Country-by-Country Reporting Regulations (“CbCR Regulations”) published by the SA Revenue Service (“SARS”) in December 2016, a SA-resident company that is a member, but not the Ultimate Parent Entity (“Parent”), of a Multinational Enterprise Group (“MNE Group”), may be required to file a CbCR with the SARS. This so-called “secondary mechanism” will arise if the Parent’s tax jurisdiction does not have a Qualifying Competent Authority Agreement (“QCAA”) in place by the time the CbC Report must be filed.

SARS has now published a [list of 92 jurisdictions](#) which have not concluded QCAA’s with SA. Prominent countries on this list are China, India, Japan, Korea, Luxembourg, Nigeria, Switzerland and the UAE.

The SARS intends to update this draft list in October before issuing a final Public Notice in November 2017. The first filing deadline for CbCRs is 31 December 2017, for Groups with December 2016 year-ends.

## ***In detail***

Article 2(2)(ii) of the CbCR Regulations provides that there are three circumstances in which a SA-resident Constituent Entity, which is not the Parent, will be required to file a CbCR with the SARS.

These include:

- a) if the Parent is not obligated to file a CBCR in its jurisdiction of tax residence; or
- b) if the Parent’s tax jurisdiction has an International Agreement to which SA is a party but

does not have a QCAA in effect with SA; or

- c) if there has been a Systemic Failure in the Parent’s tax jurisdiction.

On 6 September 2017 SARS published a list of 28 jurisdictions which do have a QCAA with SA. This list matches the OECD’s record\* which is available here:

<http://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm>

If there is more than one SA-tax-resident in the group to which Article 2(2) applies,

then the group may designate one of those SA companies to file the CbCR and must notify SARS accordingly within 12 months of the end of the Reporting Fiscal Year.

The SARS is not obligated to publish a list of jurisdictions that have a Systemic Failure.

If the foreign Parent is not required to file a CBCR in its home country or is tax-resident in a non-QCAA country, but nominates a “Surrogate Entity” —resident in a country that does have a QCAA with SA— the SA-

## **Tax Alert**

### **National Tax Technical**

resident group companies would not be required to submit the CBCR in SA. For example, if the Parent is resident in the BVI but nominates a UK subsidiary to file the Group's CBCR in the UK, then the SA subsidiaries would not file the CBCR in SA.

#### **Key take away**

An SA-resident entity which is a Constituent Entity (but not the Parent) of an MNE Group

with a consolidated group turnover of at least EUR750M, should determine whether the Group's CBCR will be filed by its Parent or by a Surrogate Entity.

If the Parent or Surrogate Entity is tax-resident anywhere other than the countries with which SA has a QCAA (28 jurisdictions as at 31 August 2017), then the Group should prepare to file its CbC Report in SA by the 12-month deadline.

Potentially affected SA-resident subsidiaries of foreign groups should monitor the QCAA list as and when it is updated.

\*The US is not listed by the OECD because it has not signed the Multilateral Competent Authority Agreement, but SA and the US have directly concluded a bilateral CBCR exchange agreement.

#### **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact:

David Lerner  
Cape Town  
(021) 529 2364  
[david.lerner@pwc.com](mailto:david.lerner@pwc.com)

JP Borman  
Johannesburg  
(011) 797 5291  
[jan-paul.borman@pwc.com](mailto:jan-paul.borman@pwc.com)

(Prof) Osman Mollagee  
Johannesburg  
(011) 797 4153  
[osman.mollagee@pwc.com](mailto:osman.mollagee@pwc.com)

Stefan Botha  
Johannesburg  
(011) 797 5271  
[stefan.botha@pwc.com](mailto:stefan.botha@pwc.com)

Michael Butler  
Cape Town  
(021) 529 2393  
[michael.butler@pwc.com](mailto:michael.butler@pwc.com)

Corneli Espost  
Cape Town  
(021) 529 2171  
[corneli.espost@pwc.com](mailto:corneli.espost@pwc.com)

This Tax Alert is provided by PricewaterhouseCoopers Tax Services (Pty) Ltd for information only, and does not constitute the provision of professional advice of any kind. The information provided herein should not be used as a substitute for consultation with professional advisers. Before making any decision or taking any action, you should consult a professional adviser who has been provided with all the pertinent facts relevant to your particular situation. No responsibility for loss occasioned to any person acting or refraining from acting as a result of using the information in the Alert can be accepted by PricewaterhouseCoopers Tax Services (Pty) Ltd, PricewaterhouseCoopers Inc. or any of the directors, partners, employees, sub-contractors or agents of PricewaterhouseCoopers Tax Services (Pty) Ltd, PricewaterhouseCoopers Inc. or any other PwC entity.

© 2017 PricewaterhouseCoopers ("PwC"), a South African firm, PwC is part of the PricewaterhouseCoopers International Limited ("PwCIL") network that consists of separate and independent legal entities that do not act as agents of PwCIL or any other member firm, nor is PwCIL or the separate firms responsible or liable for the acts or omissions of each other in any way. No portion of this document may be reproduced by any process without the written permission of PwC.