

FREQUENTLY ASKED QUESTIONS ON CbCR

1. Threshold

- a. Scenario : Paragraph 2(a) of the Rules indicates that the Rules shall apply to MNEs with consolidated group revenue of at least RM3 billion. If the Ultimate Holding Entity (UHE) is in Germany (for example), which applies a EUR750 million threshold, will the Malaysian subsidiary of such German Ultimate Holding Entity be required to file CbCR locally with the 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 :

- 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 the MNE's consolidated group revenue for the FY preceding the reporting FY (i.e. FY 2016).

- Is the MNE required to file CbCR for FY2018?

Answer:

No.

2. Obligation to file

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 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 ultimate holding entity (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 (since it is not the sole substitute), 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.

- c. Scenario: Previously A Ltd (Ultimate Holding Entity residing in Malaysia) is having its year end of 31 August 2017 (1 September 2016 to 31 August 2017 for FY 2017). Subsequently A Ltd changed its year end to 31 December. If A Ltd has submitted CbCR for FY 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

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 ultimate holding entity (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 ultimate holding entity (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 ultimate holding entity (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 ultimate holding entity 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 ultimate holding entity (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:

Ultimate Holding Entity (Reporting Entity)	Financial Year End	Non-reporting constituent entities in Malaysia	Non-reporting constituent entities in overseas
ABC Bhd (tax resident in Malaysia)	31 December 2017	X Sdn Bhd	123 Japan Ltd
		Y Sdn Bhd	123 U.K. Ltd
		Z Sdn Bhd	123 S. Inc.

(i) Should ABC Bhd submit one notification as a Reporting Entity under Subrule/Subregulation 6(1)?

Answer:

Yes, the notification under Sub-Rule 6(1) will include details of all Malaysian and foreign non-reporting Constituent Entities.

(ii) Since ABC Bhd had submitted the notification under Subrule/Subregulation 6(1), will it be considered that ABC Bhd had also submitted notification on behalf of all its Constituent Entities under Subrule/Subregulation 6(2) in Malaysia?

Answer :

No. X Sdn Bhd, Y Sdn Bhd and Z Sdn Bhd should submit notification under Subrule/Subregulation 6(2) separately.

(iii) Can one of the Malaysian non-reporting Constituent Entities (X Sdn Bhd) submit one consolidated notification on behalf of all three Malaysian non-reporting Constituent Entities (X Sdn Bhd, Y Sdn Bhd and Z Sdn Bhd) under Subrule/Subregulation 6(2)?

Answer:

One of the Malaysian non-reporting constituent entities (X Sdn Bhd, Y Sdn Bhd and Z Sdn Bhd) can submit one consolidated notification on behalf of all three Malaysian non-reporting Constituent Entities under Subrule/Subregulation 6(2). This notification will include details of all three non-reporting Malaysian Constituent Entities. So if X Sdn Bhd submits this notification, Y Sdn Bhd and Z Sdn Bhd would not be required to file separate notifications.

This arrangement is applicable for a notification submitted before 30 November 2018.

4. Reporting Currency

- 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). Consistency (time in converting to MYR) is an important element. The currency rate used should be mentioned in Table 3, stating the currency rate and the date of conversion

- 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)

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)

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.