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Practitioners Generally Welcome Revisions Announced To CBC Template, But Outline Remaining Concerns

Practitioners including an AstraZeneca official and the chair of the OECD's Business and Industry Advisory Committee express some difference of opinion about whether the decision to require only aggregated financial information improves the OECD's country-by-country reporting template, but unanimously welcome changes including the elimination of transactional reporting of related-party royalties, interest and service fees.

Practitioners interviewed by Bloomberg BNA about recently announced changes to the Organization for Economic Cooperation and Development's template for country-by-country reporting generally welcomed the added flexibility of the new format, but not all agreed that it would significantly reduce the compliance burden for companies.

Ian Brimicombe, AstraZeneca's vice president of corporate finance, told Bloomberg BNA it will be simpler for many multinational corporations, particularly those with a single line of business, to collect aggregate country data than to compile the data by legal entity as originally proposed. This change will reduce the administration burden and "is a win-win for business and tax authorities," he said.

Two other practitioners—William Morris, chair of the tax committee of the OECD's Business and Industry Advisory Committee, and Alison Lobb of Deloitte in London—agreed with Brimicombe, but Peter Barnes of Caplin & Drysdale in Washington, D.C., said the burden of gathering information would be largely the same for companies. Barnes, who also is a senior fellow at Duke University, said that in almost all cases, taxpayers will have to use legal entity data to compile the aggregate number.

The decision of OECD Working Party No. 6 to require aggregated financial data by country rather than a breakdown of the data by legal entity was announced March 31 along with four other major changes to the template:

- the addition of a second page on which multinationals would need to list all group entities, by country, that are aggregated into the country number, and include codes reflecting business activities in each entity;
- the decision to make the country-by-country reporting template a separate document and not part of the master file of documentation;

- the elimination of the last six columns of the proposed template, which would have required transactional reporting of related-party royalties, interest and services fees paid to and received from constituent entities; and

- added flexibility on the source for financial data, which would allow companies to use either statutory reports or data from the reporting package for consolidation as long as it is "applied consistently across all countries from year to year" (22 *Transfer Pricing Report* 1444, 4/3/14).

Countrywide Reporting

Morris, praising the decision to allow aggregated reporting by country, said that to have required companies to report the information on an entity-by-entity basis would have detracted from the usefulness of the reporting template as a high-level risk assessment tool and "could have run to hundreds of pages." On the other hand, reporting income, taxes and other items by country gives a "high-level map of the world that tax authorities can then use to direct more detailed questions if those numbers show clear anomalies on the face of the report."

Brimicombe said providing information by country is the most useful way for a tax authority to assess risks when comparing the revenue, profits and tax cash to the activities going on in the country. "The separation of activities by entity, in country, adds nothing to the risk assessment but makes it less transparent in disaggregated form," he said.

Lobb said worldwide reporting "assists with some entries specifically, such as tax payments made under a fiscal consolidation."

Need for Flexibility

Two Washington, D.C., practitioners—David Ernick of PricewaterhouseCoopers LLP and Sean Foley of KPMG LLP—stressed the need for flexibility.

Ernick said that for multinationals set up to report on an entity basis, reporting on a country basis might be achieved just by aggregating entity level data, or using country consolidations that have been prepared for other purposes. However, he said, moving away from an entity basis may create different challenges for some companies.

Companies today do not often perform “in-country consolidations” to eliminate “intracountry” transactions, Ernick said, and thus aggregation “may not necessarily provide the most meaningful information for local tax authorities.”

Foley said that while KPMG has heard from a number of companies that gathering the entity-level data called for in the draft template would be time-consuming and expensive, the aggregate approach might be problematic for other companies depending on the final mechanics. The issue, he said, “is whether the aggregate countrywide approach will require multinationals to prepare consolidated financials on a country basis.” This generally would require the elimination of intercompany transactions within the country, which can be very complex.

Barnes, former chief tax counsel at General Electric, raised a different concern. Most taxpayers assume that the country-by-country information eventually will be made public even though the OECD has said the information will be used only by governments. “If the information is going to go public, then most companies will prefer to have aggregate data revealed, rather than separate legal entity information,” he said.

Second Page

Brimicombe said the addition of a second page to the country-by-country template “is still burdensome [for business] and adds nothing to the risk assessment so should be dropped. It’s a compromise with no purpose.”

Morris agreed. Listing each entity by business activity code “still strikes BIAC as overburdening a high-level report. I would argue that the total number of entities per country, and all relevant business codes, would provide the starting point from which governments could then move to ask more detailed questions about certain sectors.”

Lobb said some businesses with a large number of entities will be concerned by this change. “But many [companies] that we have spoken to think that this is an acceptable compromise provided the codes are sufficiently clear and comprehensive.”

Ernick, who has been an outspoken critic of the country-by-country template, also said the compromise of the second page seems reasonable. He warned, however, that the usefulness of business activity indicators as a high-level risk assessment tool may be limited. “This is another area where it will be important to have a uniform standard for activity indicators in order to avoid confusion and unnecessary compliance burdens.”

Business Codes

Barnes said he understands why governments want taxpayers to provide business codes, “but the require-

ment has the potential to create big disputes, without necessarily giving governments a big benefit.”

A company, Barnes said, may have a very small amount of its activity fall into one of the categories for which there is a business code. Under the applicable accounting rules, the amount of activity may be so small that the accounting rules do not even require segmented accounts for that line of business.

Yet, Barnes said, if the taxpayer omits a particular code, the government may believe the taxpayer is hiding information, or failing to fill out the template correctly.

Barnes said providing aggregated information is a good step, “but this compromise leaves open the likelihood of disputes and does not affect the burden imposed on taxpayers.”

Positive Changes

Practitioners agreed wholeheartedly with the decisions to make the template a stand-alone document, to eliminate the required reporting of related-party royalties, interest and service fees, and to allow flexibility regarding the source of financial data.

On the royalty, interest and service fee transactions, Brimicombe noted that a tax authority is not precluded from asking for relevant documents in a targeted way once the initial risk assessment has been completed.

Barnes, meanwhile, said allowing flexibility on the source of data is “an essential move” because companies have different internal reporting systems.

Brimicombe said that building in the option for both top-down and bottom-up reporting systems “is very welcome.”

Morris said BIAC “brought in some systems experts to explain” issues surrounding reporting systems to the OECD. “They got a very fair hearing, and I think the results of that are reflected in the revisions,” he said.

Reasonable Balance

Brimicombe said the OECD has come a long way in appreciating both what represents a burden to business and what information would be useful to tax authorities for the purposes of risk assessment. “We are getting to a reasonable balance between high level data that is sufficient to develop a robust risk assessment and the compliance burden on business.”

Morris said the burden of complying with the revised template should be less than before. “BIAC believes that we are coming closer to a balance between a legitimate desire of governments to have a clear high-level picture across the group, and the desire of business to provide only information which is going to be useful and in the least burdensome way.”

Lobb said on the whole, the revised template strikes a reasonable balance, and is a big step forward towards a practical solution for businesses and tax authorities “who would also find large volumes of information difficult to process.”

Remaining Issues

Brimicombe said the key outstanding issue for the OECD working party to resolve is the process by which the template will be filed and disseminated.

Taxpayers’ preference, Brimicombe said, would be to submit the template to the home tax authority in or-

der to preserve confidentiality. Access thereafter could be through the treaty network. “For those countries who do not have treaties with the U.K., or other territories, the incentive is obvious—sign up to treaties as encouraged by OECD and access the data and gain protection and broader related benefits.”

Foley agreed with Brimicombe that confidentiality is the number-one remaining issue. Other questions for the OECD, he added, are:

- how to handle joint ventures;
- the standard for what constitutes a “group” given that some countries have low thresholds for control; and
- the possibility that each country will decide for itself whether the country-by-country template and master file are adequate.

Morris said that while a couple of items might be questioned—for example, tangible assets—“the more serious issues remain the outstanding questions on method of transmission and confidentiality, and clarification on there not being a requirement for reconciliation.”

Ernick said the draft template was released on a non-consensus basis, “which from my experience at OECD meetings likely means that if any country requested a data point be included on the template then it was, with the idea that the scope of required reporting could be pared back in the final version, based upon further consideration after comments were received.”

Thus, he said, “I’m optimistic that the final version of the template will take compliance burdens into account and be scaled back somewhat.”

That outcome would serve the interests of tax administrations as well, Ernick said. “You don’t want boxes of data being filed that are impossible to sort through, with no good way to separate the wheat from the chaff.”

The OECD will hold a public consultation on transfer pricing documentation and country-by-country reporting May 19.

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