

## **Irish CbC reporting for multinational groups, Irish investment funds and Irish SPVs**

Ireland's country by country ("CbC") reporting regulations (the "Regulations") were published in January 2016. The Regulations include important details on when Irish subsidiaries of non-Irish headquartered groups will be obliged to file CbC reports with the Irish Revenue Commissioners ("Irish Revenue"). We have also considered the impact of the Regulations on international groups that include Irish investment funds and SPVs.

### **CbC reporting for Irish headquartered groups**

In line with OECD recommendations, the requirement to submit a CbC report applies to Irish headquartered multinational companies with annual consolidated group revenue of €750 million or more. The reporting requirement applies for accounting periods beginning on or after 1 January 2016. CbC reports (based on the OECD template) must be filed with Irish Revenue within 12 months of the end of the relevant accounting period.

In order to exchange the CbC reports in other jurisdictions, Irish Revenue will enter competent authority agreements with the tax authorities of other jurisdictions providing for the automatic exchange of CbC reports. This process has already commenced with Ireland signing a multilateral competent authority agreement along with 30 other countries (of which the US is not one). Further details are set out in the last section of this update.

### **CbC reporting for Irish subsidiaries of non-Irish headquartered groups**

Irish subsidiaries of non-Irish headquartered multinational groups with annual consolidated group revenue of €750 million or more will be obliged to file an 'equivalent CbC report' with Irish Revenue if:

- (a) no such obligation is imposed on the ultimate parent company of the group in the headquarter jurisdiction and no other company within the group (described in the Regulations as the 'surrogate parent') has opted to file a full CbC report in another jurisdiction;
- (b) Ireland and the headquarter jurisdiction (or, if relevant, the surrogate parent jurisdiction) have not agreed a competent authority agreement providing for exchange of CbC reports by the time the obligation to file a CbC report in Ireland would apply; or
- (c) there has been 'systemic failure' in the headquarter jurisdiction (or, as the case may be, the surrogate parent jurisdiction) and it has failed to comply with its exchange of information obligations under the competent authority agreement.

The 'equivalent CbC report' must include information that is within the custody or possession of the Irish subsidiary or information that the Irish subsidiary has the power to obtain. The Regulations do not indicate what information will be considered in the power of an entity to obtain. However, it is anticipated that in most circumstances information relating to the subsidiaries of the Irish reporting entity would be expected to be included in an equivalent CbC report.

Not all jurisdictions have finalised their CbC reporting provisions, most notably the US. It is quite possible that no CbC reporting obligation will apply in the headquarter jurisdictions of some multinational groups operating in Ireland for 2016 (and possibly later financial years). Irish subsidiaries of multinational groups that are headquartered in such jurisdictions should confirm whether a 'surrogate parent' will file a CbC report in another jurisdiction. If no 'surrogate parent' is identified in the group, the Irish obligation to file an equivalent CbC report with Irish Revenue will apply for accounting periods beginning on or after 1 January 2016.

### **CbC reporting for international groups that include Irish investment funds and SPVs**

In line with OECD recommendations, no industry exemptions are included in Ireland's CbC reporting rules. Accordingly, investment funds and special purpose vehicles such as section 110 companies ("**SPVs**") that are members of larger international groups and meet the specified thresholds are required to report in the same way.

To understand how the CbC rules apply to Irish investment funds and SPVs, it is best to split those entities into two categories (i) investment funds and SPVs that have a significant investor (whether directly or indirectly) that is *required* under the accounting standards applying in its own jurisdiction to include the Irish investment fund or SPV in its consolidated accounts (or would be so required if the shares or equity interests in the investor entity were traded on a stock exchange) and (ii) investment funds and SPVs that have no such investor.

#### *Irish investment funds and SPVs with no significant investor*

Taking category (ii) first, such Irish investment funds or SPVs will be required to file a CbC report in Ireland if:

- the Irish investment fund or SPV holds interests in non-Irish entities and is *required* to prepare consolidated financial statements in respect of it and those investments under accounting standards applied in Ireland (or would be so required if the interests in the investment fund or SPV were traded on the Irish Stock Exchange); and
- the consolidated group revenue is €750 million or more.

Such investment funds and SPVs will be treated as an 'ultimate parent entity' for the purposes of CbC reporting. The CbC report must be filed for all accounting periods beginning on or after 1 January 2016 and must be filed within 12 months of the end of the accounting period.

#### *Irish investment funds and SPVs with a significant investor*

An Irish investment fund or SPV that has a significant investor (whether direct or indirect) that is required to prepare consolidated financial statements incorporating the investment fund or SPV will not be treated as an 'ultimate parent entity' for the purpose of the Irish CbC rules. This category is likely to include investment funds and SPVs held by banks and other financial institutions. If the annual consolidated group revenue of such an investor's group is €750 million or more, the Irish

investment fund or SPV may have secondary reporting obligations in Ireland and be required to file an equivalent CbC report with Irish Revenue if:

- no obligation is imposed on the investor in the investor jurisdiction to file a full CbC report and no other entity in the consolidated investor group has opted to act as surrogate parent and file a CbC report;
- Ireland has not entered into a competent authority agreement to automatically exchange CbC reports with the investor jurisdiction (or surrogate parent jurisdiction as the case may be); or
- there has been systemic failure in the investor jurisdiction (or the surrogate parent jurisdiction) and it has failed to comply with applicable exchange of information obligations.

It might not always be evident to an investment fund or SPV that an investor is obliged to include it in its consolidated financial statements. Even where the investment fund or SPV is aware that it is being incorporated into an investor's consolidated financial statements, it may not be clear if it is being included because the investor is required to do so under applicable accounting standards or because the investor is preparing consolidated financial statements for management purposes. It is not clear what level of inquiry the directors of an Irish investment fund or SPV are expected to make to satisfy themselves that no Irish reporting obligation applies. These problems are not unique to the Irish CbC regime and reflect the OECD's insistence on applying the CbC rules equally across all industries.

As a practical matter, Irish investment funds and SPVs with a significant investor may find it difficult to confirm in the first case whether the CbC rules apply to the investor group and in the second case what entity (if any) within the investor group is fulfilling the reporting obligations. Having regard to the penalties for non-compliance, such investment funds and SPVs might consider filing an equivalent CbC report in Ireland including the information within the possession of the investment fund or SPV. It is possible that in some cases, such equivalent CbC report might only include information relating to the investment fund or SPV.

#### **Notification obligations to be satisfied before the end of the financial year**

All multinational groups operating in Ireland including groups with Irish investment funds or SPVs that exceed the consolidated group revenue threshold have notification obligations under the Regulations regardless of whether the group is headquartered in Ireland or not.

- Irish headquartered groups and non-Irish headquartered groups that have elected to treat an Irish subsidiary, investment fund or SPV as the 'surrogate parent' for the purposes of CbC reporting must notify Irish Revenue of their status before the end of the financial year (ie, by 31 December 2016 if their financial year is the calendar year).
- Irish subsidiaries of non-Irish headquartered groups and Irish investment funds or SPVs that are members of larger investor groups must notify Irish Revenue of the identity and jurisdiction of tax residence of the reporting entity for CBC reporting purposes before the end of the financial year.

## Failure to comply

An Irish company that fails to provide a CbC report without reasonable excuse is liable to a penalty of €19,045 and a further penalty of €2,535 for each day the failure continues (ie the total penalty arising over one year would amount to €944,320). If a CbC report is incomplete or incorrect a penalty of €19,045 applies (but no daily fine).

## Ireland's CbC competent authority agreements

Some progress has recently been made in progressing Ireland's CbC competent authority agreements. On 27 January 2016, Ireland signed a multilateral competent authority agreement along with 30 other countries (the "**Multilateral Agreement**"). The Multilateral Agreement provides for the automatic exchange of CbC reports with other signatory jurisdictions if the multinational group that has submitted the CbC report has operations in that jurisdiction. The signatories to the Multilateral Agreement for the most part are European countries but also include Australia, Chile, Costa Rica, Japan, Malaysia, Mexico, Nigeria and South Africa. Notably, the US is not a signatory.

In addition, on 28 January 2016, the European Commission proposed further amendments to Directive 2011/16/EU to provide for the automatic exchange of CbC reports between Member States. Under the proposed amendment, EU Member States would be required to exchange CbC reports received with other EU Member States if the multinational group that has submitted the CbC report has operations in that jurisdiction. It is intended that the amendment to Directive 2011/16/EU will be implemented by Member States by 31 December 2016.

You can read about what is required for EU corporate tax proposals to become law [here](#). We would note that in recent years, the EU has been quite successful in quickly agreeing new EU law providing for the automatic exchange of tax information. For example, in 2015, proposals providing for the automatic exchange of information on tax rulings issued by the tax authorities of EU Member States were agreed within seven months.

It is intended that the first exchange of CbC reports under the Multilateral Agreement and the proposed EU law provisions will occur by 31 March 2018.

Should you wish to discuss CbC reporting and how it applies to your business, please contact any of our tax partners or your usual Matheson contact.