



Dissecting the US Treasury's country-by-country reporting regulations

Expert on in-house corporate tax Nancy Manzano provides World Finance with insight into US country-by-country reporting regulations, with one definitive question in mind, what exactly has changed?

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In June 2016, the US Treasury Department (hereafter Treasury) and the Internal Revenue Service (IRS) released the much-anticipated final regulations for country-by-country reporting (CbCR). Since the proposed regulations were released in December 2015, the Treasury has received voluminous comments from taxpayers, coalitions, trade and professional associations, tax advisors, non-governmental organisations, social activist groups and religious organisations. Nonetheless, it is apparent that no substantial changes were made as a result of the comments, even as 2016 drew to a close. All told, the final CbCR regulations are generally consistent with the proposed regulations. And so, what follows is a recap of the changes, non-changes and various clarifications included in the final regulations.

Constituent entities

Among the most notable changes and clarifications in the final regulations is, “Constituent Entities/Persons Required to File”. Although no change was made to the proposed definition of “constituent entity”, the final regulations instruct that CbCR information is not required for foreign corporations or partnerships if those entities are not mandated to furnish information under IRC Section 6038(a).

The final rules also clarify that a permanent establishment includes a branch or business establishment of a constituent entity that is treated as a permanent establishment under an income tax convention to which that jurisdiction is a party; liable to tax in the jurisdiction in which it

is located; or treated in the same manner for tax purposes as an entity separate from its owner by the owner's tax jurisdiction. This is in accordance to Treas. Reg. §1.6038-4(b)(3).

In addition to allowing a US territory's ultimate parent to designate a US business entity as surrogate filer, the final rules also clarify that stateless entities are reported in aggregate, and each stateless entity's owner, reports its share of revenue and profit in tax jurisdiction of the owner. According to the preamble, this could result in some degree of double counting. Furthermore, distributions from a partnership to a partner are not included in the partner's revenue, while foreign insurance companies that elect to be treated as domestic corporations will be treated as entities resident in the US. Likewise, decedents' estates, individual bankruptcy estates and grantor trusts are not subject to CbCR.

Some clarification

The proposed regulations defined a tax jurisdiction as a “country” or a “jurisdiction that is not a country but that has fiscal autonomy”. Though

“Foreign insurance companies that elect to be treated as domestic corporations will be treated as entities resident in the US”



“fiscal autonomy” is not defined, the final rules do clarify that US territories and possessions qualify as tax jurisdictions for the purposes of CbCR. The final rules also clarify that a business entity will not be resident in a tax jurisdiction if the entity is only subject to tax in the jurisdiction by reason of a tax imposed on gross receipts with a reduction for expenses, provided the tax is applied with respect to income from sources or capital situated in the jurisdiction.

Treasury indicated in the regulations that Form 8975 may provide guidance on determining tax jurisdiction in cases where a business entity is resident in more than one tax jurisdiction. One final clarification in this area is an entity is not considered stateless merely because its tax jurisdiction of residence does not impose an income tax on corporations.

It is also important to note that the effective date for compliance has not changed; multinational entities (MNEs) headquartered in the US will need to comply with US CbCR regulations starting with fiscal years that begin on or after June 30, 2016, as reflected in the proposed CbCR regulations. The final regulations unveiled the IRS form number (Form 8975) for CbCR; the due date of Form 8975 remains unchanged and must be filed at the same time as the ultimate parent entity's income tax return, which includes extensions.

However, what has changed is that Treasury and the IRS plan to soon issue a procedure that will allow for earlier voluntary filing. Such voluntary filing should allay any “secondary reporting” concerns caused by the effective date discrepancy between the US and countries with a January 1, 2016 effective date.

Finally, in spite of comments suggesting that CbC reports be made public, the final regula-

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tions still do not provide for public disclosure of CbC reports. In the preamble, Treasury went a step further and reiterated that US MNEs will indeed benefit from confidentiality requirements, safeguards and appropriate use restrictions provided in the competent authority arrangements between the US and foreign jurisdictions.

Final act

Further regulations indicate that the period covered by the CbC report is the period of the ultimate parent entity's applicable annual financial statement that ends with or within the parent entity's taxable year. If the parent entity does not prepare annual financial statements, the reporting period covered is the 12-month period that ends on the last day of parent entity's taxable year.

Under the proposed regulations, data sources were limited to certified financial statements, books and records maintained with respect to each constituent entity, or records used for tax reporting purposes. The final regulations, which more closely align with the Organisation for Economic Cooperation and Development's (OECD) recommendation, offer a more expansive set of data sources, including both regulatory financial statements and internal management accounts.

In the proposed regulations' definition of revenues, dividend payments were excluded, provided

they were also treated as dividends in the jurisdiction of the constituent entity (or payor). The final regulations clarify that this exclusion also applies to imputed earnings and deemed dividends. Moreover, the final regulations indicate that for tax-exempt entities, revenue only includes unrelated business taxable income.

The proposed regulations called for MNEs to report, or reasonably estimate, the total number of employees on a full-time equivalent (FTE) basis (with the option of including independent contractors) in the relevant tax jurisdiction in which they performed work as of the end of the accounting period. The final regulations adopt an approach consistent with the OECD recommendation that employees be reported in the jurisdiction of tax residence of the employer, not where work is performed. The final regulations' definition of tangible assets was expanded to expressly exclude intangibles and financial assets.

Three readiness questions

The final CbCR requirements add new levels of complexity to tax data management activities; as such, MNE tax departments should now take the time to evaluate how they will respond to CbCR.

Addressing certain questions can help, starting with: can we separate our financial data by-entity and by-country? This may include aggregating financial data by country, converting business unit financial data into legal entity data, separating the data by country, as well as reconciling local statutory statements and local tax returns.

The second pertinent question that MNE tax departments should ask is, do we have control over our data? This involves ensuring that enterprise resource planning (ERP) and related financial and tax-automation systems can organize, consolidate and deliver the data required to populate Form 8975.

Finally, they must ask whether it is necessary to implement new processes and new tax technology. New processes may be required to supplement currently available data, while new technology may also be needed so that MNEs can easily reconcile CbCR data to their audited financial statements, legal entity books, local country tax returns and transfer pricing documentation.

As MNE tax departments engage in evaluating CbCR, they should keep in mind the same prominent details in the final regulations' preamble: compliance is necessary; a thorough effort is required; and tax data management challenges and risks still loom. ■

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Manzano's expertise includes US federal, state and local corporate income taxation and accounting for income taxes, with a particular focus on tax for the financial services industry. Before joining Vertex Inc to develop new income tax solutions, Manzano served as a Tax Director at 21st Century/Farmers Insurance and MBNA America Bank, as well as Supervising Tax Analyst in the Philadelphia office of KPMG.



Vertex[®] Enterprise for Country-by-Country Reporting

The global tax environment is changing rapidly as countries are adopting the OECD's Base Erosion and Profit Shifting (BEPS) recommendations. Specifically, Action 13 of BEPS includes country-by-country (CbC) reporting as a primary component. As a result, multinational entities now have even more complexities associated with their income tax compliance process. Vertex Enterprise can help your organization manage the challenge of CbC compliance more efficiently through advanced data management.

Vertex Enterprise: Your Path to CbC Compliance

Vertex Enterprise can help your corporate tax department collect, reconcile, and report financial and non-financial data in the format required for the CbC reporting template in a consistent manner across multiple country filing requirements. This includes:

- Data management capabilities to handle the high degree of complexity imposed by the new CbC reporting requirements
- Reconciliation of CbC data to other important tax and financial reports
- Audit support with record retention and full audit trail of data transformations

Vertex Enterprise is a technology solution that can help your corporation overcome the data management challenge associated with CbC compliance. And it can do so as an integral component of your overall global income tax data management lifecycle.

CbC Reporting is Transformational

The OECD's CbC reporting template is transformational for both taxpayers and tax authorities, ushering in an unprecedented level of transparency.

For the first time, taxing authorities throughout the world will be able to ascertain multinational companies' income and tax payments to specific countries. A repeatable, accurate, and consistent method of collecting, transforming, and summarizing the data needed for the CbC report is essential in this new environment of global tax compliance transparency. Vertex Enterprise is a technology solution that delivers these foundational capabilities for your multinational corporation's tax function, as you improve and transform your tax processes to meet the new requirements of CbC reporting.



Increased Complexity and Effort

Preparing the CbC reporting template and dealing with the potential additional audit activities will create significant complexity for the tax department. New data sources will need to be identified and collected, more granular detail of financial account data will be necessary, and additional data unification, conversions, and summarizations will be required. With a new filing like CbC, an entirely new set of reconciliation steps will be necessary to ensure accuracy. And if managed with traditional methods such as spreadsheets, it will become a very time-intensive activity for the tax department.

The tax department will now need to take business unit and cost center data that has been compiled for legal entities, and then break it down again to separate it by country. This will become a significant new burden.

Without internal system changes, additional time-consuming manual processes and resources will be required annually.

Mitigating Risk

Vertex Enterprise can help your corporation mitigate the many risks related to CbC compliance. It can also help your tax department reduce the time, effort, and complexity associated with the new requirements that CbC reporting imposes on your global income tax data management processes. As a result, audits will be more manageable, with more favorable outcomes for your company.

The Power of Vertex Enterprise

Through the Vertex Tax Performance Engine™, Vertex Enterprise can help make the CbC compliance process less onerous and more efficient.

The Vertex Tax Performance Engine can help tax professionals streamline the many tasks associated with CbC reporting. It can unify data from all of your data sources, then validate and tax-enrich it, enabling you to complete the CbC reporting template much more easily. It provides governance and control over the data and the tax process required to complete the form, including:

- Connections directly to source ERP and consolidation systems to collect the financial account data needed. Generic flat file and spreadsheet interfaces also provide a mechanism to import data from other sources as necessary (i.e., FTE or fixed asset data needed for the CbC report).
- Tools for the tax department to configure the conversion of worldwide business unit financial data to legal entity book income. This includes mechanisms to unify differences in accounting methods (i.e., IFRS, US GAAP, or local stat) and currencies, and then summarize and allocate by country as specifically required in the CbC template.
- The ability to easily reconcile the form to local statutory statements, worldwide audited statements, legal entity books, local tax returns, transfer pricing documentation, and local international reporting such as U.S. Form 5471s.
- Retention of all tax data used to prepare the CbC report, providing the ability to access any data associated with past filings, with an auditable trail of data transformations back to the source.

Vertex Enterprise is an advanced tax data management solution that streamlines and simplifies CbC compliance for global tax departments.

A Single Platform for All Tax Activities

Vertex Enterprise provides a single platform unifying the data, tax applications, and analytics required to manage all tax activities on a global scale. The heart of Vertex Enterprise is the Vertex Tax Performance Engine.



Talk to Vertex

Vertex can provide expert guidance and a powerful solution to help your organization manage the challenges of BEPS country-by-country reporting. For full details, call 800.355.3500, or visit taxpossible.com.

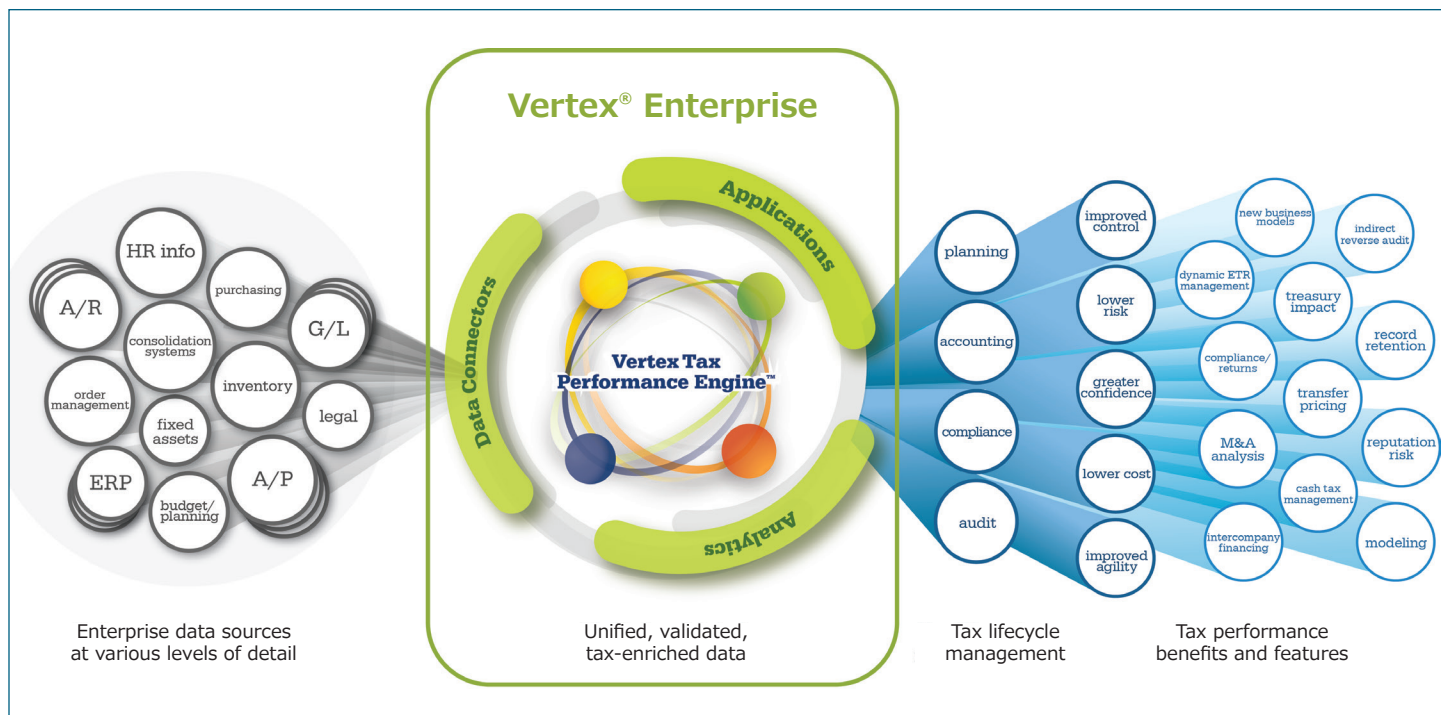
Experience What is Tax Possible with Vertex Enterprise

Automating and improving data management for BEPS country-by-country reporting is just one example of what is 'tax possible' with Vertex Enterprise. This flexible solution allows companies to combine their data, tax applications, and analytics in a variety of ways to put tax in control of the end-to-end tax lifecycle for all tax types.

This comprehensive tax performance management solution combines all the data, tax applications, and analytics needed to manage income and transaction tax activities on a global

scale. Using Vertex Enterprise, the tax department can collect, harmonize, transform, and access the massive amounts of data required to maximize efficiency and increase the tax department's strategic contribution to the business.

To learn how Vertex Enterprise can help your tax department manage the challenges of BEPS country-by-country reporting, contact us at **800.355.3500**.



Vertex Enterprise is a single platform that unifies the data, tax applications, and analytics required to manage all tax activities on a global scale. The heart of Vertex Enterprise is the Vertex Tax Performance Engine, which uses data connectors to unify all enterprise data sources at various levels of detail, then validates and enriches it to make it "tax ready" to be utilized at every stage of the tax lifecycle.

About Vertex

Founded in 1978, [Vertex Inc.](#) is the leading provider of corporate tax software and services to automate, integrate, streamline or outsource tax processes for companies of all sizes, from small to medium-sized businesses to global multinationals. Vertex provides solutions for all tax types with industry-specific solutions for retail, communications, hospitality and leasing industries.

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