

# An overview of Nigeria's 2018 Income Tax (Country by Country Reporting) Regulations

## Background

The Federal Inland Revenue Service (FIRS) recently released the Income Tax (Country by Country Reporting) Regulations, 2018 ("CbCR Regulations" or "the Regulations"), which marks yet another significant step by Federal Government of Nigeria in its quest to align the Nigerian tax system with outcomes of ongoing international tax reforms.

Though not a member-country of the Organisation for Economic Cooperation and Development ("OECD"), Nigeria has, nevertheless, been taking steps to adopt and implement the initiatives emanating from the OECD Base Erosion and Profit-shifting ("BEPS") program.

It is in line with its commitment towards implementing the OECD BEPS framework that Nigeria signed the Multilateral Competent Authority Agreement for the Automatic Exchange of Country-by-Country Reports ("CbC MCAA") on 27 January 2016, and released the CbCR Regulations.

## Effective date

The effective date is January 2018 to be adopted retrospectively, as the Regulations were issued in June 2018.

## Scope of the CbCR Regulations

The CbCR Regulations apply only to Multi-National Enterprises (MNE) Groups that meet the following criteria:

- (i) Revenue benchmark: Total consolidated revenue of not less than ₦160,000,000,000 during the accounting year immediately preceding the reporting accounting year. The revenue benchmark translates to EUR 750 million at a conversion rate of 1 EUR: ₦213 average Central Bank of Nigeria ("CBN") exchange rate as at 27 January 2016 when Nigeria signed the CbC MCAA.
- (ii) Tax residency: Ultimate Parent Entity (UPE) or Constituent Entity (CE) are resident for tax purposes in Nigeria
- (iii) Financial statements consolidation: Nigerian tax-resident UPE which file consolidated financial statements, or whose Nigerian tax-resident CE's financial statements are consolidated by the Group's UPE. Based on the consolidation rules of the IFRS applicable in Nigeria,



The CbCR Regulations have a laudable aim of extracting more transparent information on the economic and fiscal activities of MNE Groups, which will enable tax authorities to better assess and combat tax evasion and avoidance risks.

MNE Groups will be required to file CbC Reports in Nigeria where the UPE has power (either through voting rights or contractual powers) over the other entities to direct their relevant activities, has exposure or rights to receive returns from them and has the ability to use its powers to influence the amount of the returns.

The Regulations define 'Group' as enterprises that are related through ownership or control. Specifically, entities that are either required to prepare consolidated financial statements for financial reporting purposes, or would have been required to do so if the equities of any of the enterprises were traded on a public securities exchange.

Where the equities of the UPEs are quoted on an exchange, the accounting rules to be applied in determining the existence and membership of a Group for CbCR purposes will be the accounting rules already being used by the Group.

Where the UPE's equities are not quoted, it may use its local Generally Accepted Accounting Principles (GAAP), International Financial Reporting Standards (IFRS) or any particular accounting standard(s) mandated by the jurisdiction of residence of the UPE.

## Obligations of MNE Groups under the CbCR Regulations

MNE Groups covered by the CbCR Regulations have the

following obligations:

- (i) Filing: file CbC Reports with FIRS not later than 12 months after the last day of the MNE Group's Reporting Accounting Year
- (ii) Notification: Constituent Entity (CE) is to notify FIRS on or before the last day of the Reporting Accounting Year of the MNE Group, whether it is the UPE or Surrogate Parent Entity (SPE) of the group
- (iii) Where the CE is not the UPE or SPE of the group, obligation to notify the FIRS; on or before the last day of the Reporting Accounting Year of the MNE Group, of the identity and tax residence of the appropriate reporting entity for the group

## Information required to be disclosed in the CbC Report

The model template for CbC Report contained in the Regulations is based on the template in Annex IV to Chapter V of OECD's final BEPS Action 13 Report and requires the following information to be provided with regard to each jurisdiction in which the MNE Group operates:

- (i) Aggregate information relating to the amount of revenue
- (ii) Profit or loss before income tax
- (iii) Income tax paid
- (iv) Income tax accrued
- (v) Stated capital
- (vi) Accumulated earnings
- (vii) Number of employees

- (viii) Tangible assets other than cash or cash equivalents.

The CbC Report will also contain an identification of each CE of the MNE Group, setting out the jurisdiction of tax residence of such CE, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such CE is organised, and the nature of the main business activity or activities of such CE.

## Penalties

The penalty for failure to file the CbC report is ₦10,000,000 for the first month of default and ₦1,000,000 for every month the default continues. Also, the penalty for filing incorrect/false report is ₦10,000,000 while the penalty for failure to notify FIRS of the MNE Group's UPE or SPE, or the identity and residence of the group's reporting entity is set at ₦5,000,000 for the first month of default and ₦10,000 for every day the default continues.

## Conclusion

The CbCR Regulations have a laudable aim of extracting more transparent information on the economic and fiscal activities of MNE Groups, which will enable tax authorities to better assess and combat tax evasion and avoidance risks. However, there is a concern that the Regulations may significantly increase the compliance burden of taxpayers.

It is therefore expected that FIRS will expedite other aspects

of the BEPS implementation arrangements that are necessary for achieving balance between the usefulness of the data required by tax authorities and increased compliance burdens on taxpayers. One of such arrangements is the framework for government-to-government automatic exchange of CbC Reports. We are not aware if Nigeria has activated such bilateral arrangements and her failure to do so by the first CbCR filing due date may lead to duplication of filing obligations by MNE Groups for Nigeria.

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