

Ref #: 632586

12 October 2017

South African Revenue Service
Private Bag X923
Pretoria
0001
BY E-MAIL: acollins@sars.gov.za

Dear Adele

COMMENTS ON: DRAFT LIST OF JURISDICTIONS CONTEMPLATED IN ARTICLE 2(2)(ii)(b) OF THE COUNTRY-BY-COUNTRY (CBC) REGULATIONS SPECIFYING THE CBC REPORTING STANDARD FOR MULTINATIONAL ENTERPRISES

1. We herewith present our comments on behalf of the South African Institute of Chartered Accounts (SAICA) Transfer Pricing Subcommittee on the Draft List of Jurisdictions contemplated in Article 2(2)(ii)(b) of the Country-By-Country (CbC) Regulations specifying the CbC Reporting Standard for Multinational Enterprises (MNE) released by the South African Revenue Service (SARS), hereafter referred to as the "Draft Lists".

OBSERVATIONS

2. We set out below, some observations as well as questions in respect of the Draft Lists and related matters:

Simplification of explanation regarding in which cases Draft Lists are applicable

3. The guidance provided in the Draft Lists regarding its application, although in terms of Article 2(2)(ii)(b) of the CbC Regulations dated 23 December 2016, seems rather complicated and difficult to understand by the layman.

4. Submission: It is therefore suggested that SARS should simplify the explanation on the first page of the Draft Lists to clarify when a South African taxpayer has an obligation to file a CbC Report, and when not, and when each of the lists finds application. For example, if the Ultimate Parent Entity in a MNE Group is resident in one of the countries set out in the first list, then the South African member of that group is not required to file a CbC Report in South Africa.

Timing

5. During the public stakeholder meeting held on 10 August 2017 it was indicated that the final public notice requiring the submission of CbC, master file and local file returns in terms of section 25 of the Tax Administration Act would be released in early September 2017.
6. The Draft Lists in turn state that the final lists will only be made available by the end of November, but December yearend taxpayers need, in terms of the current Draft



public notice requiring the submission of CbC, master file and local file returns in terms of section 25 of the Tax Administration Act, to file their CbC Reports on or before 31 December 2017.

7. This leaves very little time for taxpayers to confirm whether they in fact need to file in South Africa and to gather the required documentation and information.

8. Submission: SARS should make available the finalised lists as soon as possible, not later than 15 November 2017. In addition, SARS should provide for an extension of the filing date as set out in the Draft public notice requiring the submission of CbC, master file and local file returns in terms of section 25 of the Tax Administration Act.

Tool for checking filing requirement

9. An electronic system or tool which would allow taxpayers to identify whether or not they are required to file a CbC Report in South Africa rather than to solely rely on the publication of lists, would be practical and welcomed.

10. Submission: It is submitted that such a tool would provide an easy checking mechanism and could be updated on a regular basis. The OECD's system for checking which Multilateral Competent Authority Agreement on the exchange of Country-by-Country Reports (CbC MCAA) relationships have been activated and could serve as an example.

List in terms of Article 2(2)(ii)(c)

11. While Article 2(4) of the CbC Regulations dated 23 December 2016 provides for an obligation for SARS to publish lists of countries in terms of Article 2(2)(ii)(b), it also provides for a discretion for SARS to publish a list of countries in terms of Article 2(2)(ii)(c).

12. Submission: The question arises if a list of countries in terms of Article 2(2)(ii)(c) would be published by SARS and if so, the date thereof, to ensure that South African taxpayers comply with the CbC Reporting Standard.

South African members of MNE Groups performing Parent Surrogate Filing

13. The OECD introduced a mechanism called "parent surrogate filing" whereby the Ultimate Parent Entity can file voluntarily in its country of residence and assuming exchange can take place then this voluntary filing would satisfy the filing requirement in the Constituent Entity country and release the obligation to file locally. Some countries (Ireland, Netherlands, etc.) have formally stated that they will accept a parent surrogate filing to release any local filing obligations.
14. Based on the South African legislation it seems as if South Africa will have a filing requirement in place regarding cases where the Ultimate Parent Entity is not obliged to file in its tax jurisdiction and has not appointed a Surrogate Parent Entity, despite the fact that the Ultimate Parent Entity voluntarily file.

15. Submission: The taxpayer should be required to notify SARS of the fact that the Ultimate Parent Entity will submit a CbC Report in cases where a Surrogate Parent Entity has been appointed, although it is not obligatory, they are doing this voluntarily.

16. In situations where a surrogate filing, in a jurisdiction other than the jurisdiction where the Ultimate Parent Entity is situated, takes place the obligation for CbC Reporting filing in South Africa (in accordance with Article 2(3) of the South African CbC Reporting Standard) will only be removed where the group made available a CbC Report through a Surrogate Parent Entity that files the report with the tax authority of its jurisdiction and the following conditions are satisfied:

- The jurisdiction requires CbC Report filing;
- The jurisdiction has a Qualifying Competent Authority Agreement in effect to which South Africa is a party;
- The jurisdiction of tax residence of the Surrogate Parent Entity has been notified; and
- SARS must be notified no later than 12 months after the last day of the fiscal year of the group.

Draft List: Jurisdictions with both an International Agreement and Qualifying Competent Authority Agreement in place as at 31 August 2017

17. The list of jurisdictions on “Jurisdictions with both an International Agreement and Qualifying Competent Authority Agreement in place as at 31 August 2017” reflects only 28 of the 65 signatories of the CbC MCAA as at 6 July 2017.

18. It is specifically noted that all the BRICS countries and Japan are excluded from this list, although they are signatories of the CbC MCAA.

19. Submission: The question therefore arises why not all signatories are reflected and how those signatories not listed be dealt with. A further question that comes to mind is if the existence of the CbC MCAA does not already creates a Qualifying Competent Authority Agreement with SARS. The questions should be addressed to provide clarity to South African taxpayers to ensure that the necessary filing requirements are adhered to.

Jurisdictions with an International Agreement but no Qualifying Competent Authority Agreement in place as at 31 August 2017

20. It is noted that some countries are on the list regarding “Jurisdictions with an International Agreement but no Qualifying Competent Authority Agreement in place as at 31 August 2017”, which are already on the OECD’s list of signatories of the CbC MCAA.

21. Submission: Clarification is required as to why these countries, e.g. Singapore and Switzerland, are on this list as these countries have already signed the CbC MCAA.

CbC Reporting - Notification

22. With regards to the notification procedure to be followed in the case where the South African member of the MNE is not required to file a CbC Report in South Africa, we would like to understand what the proposed final mechanism for submission of the notification to SARS will be.



23. Some SAICA members have advised that they have been requested to submit CbC Reporting notifications via email to Bus_Sys_CDsupport@sars.gov.za, until further notice.

24. Submission: SARS should please confirm that this email is in fact a valid mechanism to submit the notification. In addition, SARS should also advise in what format the notification must be sent to this email address and what information is required.

CONCLUSION

25. We would like to thank SARS for the opportunity to provide constructive comments in relation to the Draft Lists. SAICA believes that a collaborative approach is best suited in seeking actual solutions to complex problems.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

Christian Wiesener

Madelein Grobler

**CHAIRPERSON OF THE TRANSFER
PRICING SUB COMMITTEE**

**SAICA PROJECT MANAGER: TAX
LEGISLATION**

The South African Institute of Chartered Accountants