



New transfer pricing requirements in Latin America under BEPS

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Several countries in Latin America have established new transfer pricing documentation obligations associated with the OECD's Base Erosion and Profit Shifting (BEPS) initiative.

In this new year, Mexico, Colombia and Peru have included in their local legislation new documentation requirements that follow a three-tiered approach: country-by-country (CbC) report, master file, and local file. These requirements are based on the revised Chapter V of the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration.

Below is a summary of those requirements.

CbC Report

In Latin America, five countries (Mexico, Brazil, Colombia, Peru and Chile) have implemented CbC reporting. This requirement applies to multinational controlling groups with annual consolidated group revenue in the immediately preceding fiscal year of approximately €750 million. In Mexico, Brazil and Colombia, such companies are required to report that revenue prior to December 31, 2017. In Chile, reporting is required prior to June 30, 2017; and in Peru prior to December 31, 2018. It is important to highlight that this is the first time Brazil is following an OECD

initiative concerning transfer pricing documentation, having incorporated it under Normative Instruction RFB No. 1681.

Most of Latin America's taxpayers will not be affected directly by CbC reporting. The main impact will arise from the tax authorities' ability to use the CbC report to better assess transfer pricing adjustments for any taxpayer whose multinational group needs to comply with the CbC Report. Most Latin American countries will have access to the CbC report through the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (the CbC MCAA).

Master File and Local File

The main reporting impact for most taxpayers in Mexico, Colombia and Peru will relate to submission of the master and local file reports. Each of these three countries has implemented those requirements differently; moreover, in each jurisdiction, the amount of information that taxpayers need to provide is still pending.

- **Mexico** was the first country to include an additional informative return for the master file and local file applicable to taxpayers that had a revenue in the immediately preceding fiscal year of more than US \$30 million. This return must be submitted before December 31, 2017. It is important to mention that Mexican taxpayers are still required to comply with the previous transfer pricing requirements (transfer pricing documentation and transfer pricing informative return).
- **Colombia** has just undergone a structural tax reform and these new obligations were included in Law No. 1819, approved on December 29, 2016. A local taxpayer with revenue in the immediately preceding fiscal year of more than US\$0.7 million must prepare and send supporting documentation containing a master report and a local report within the terms, conditions and timing to be established by the national government.
- **Peru**, under Legislative Decree No 1312, has modified its formal transfer pricing requirements. A local taxpayer will need to submit: (i) a Local File (US\$0.7 million revenue threshold), to be submitted in 2017; (ii) Master File (US\$24 million dollars revenue threshold), to be submitted until 2018; and (iii) CbC, to be submitted until 2018.

These new documentation requirements oblige taxpayers to review and, where appropriate, reassess the way in which they have documented their compliance with the arm's length principle under a principle of transparency and global coordination, emphasizing the following points:

- Greater coordination between the parent company and the subsidiary for preparation of the studies
- Consistent narratives regarding business model, intercompany contracts, intangible assets, risks and transfer pricing policies
- Emphasis on strategic activities, company personnel and the creation of intangible assets
- Availability of financial information per transaction or type of information to support the selected methodology

For more information about the impact of these new requirements, please contact either of the authors.

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