

22 June 2017

The South African Revenue Service  
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PRETORIA  
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**RE: Draft public notice requiring the submission of CbC, master file and local file returns**

We write to comment on the draft public notice requiring the submission of CbC, master file and local file returns to be issued in terms of section 25 of the Tax Administration Act.

A. Introduction

Once issued, it is our understanding that the draft notice will require that the persons specified in the schedule will be required to submit returns for reporting fiscal / financial years commencing on or after 1 January 2016. These returns will have to be submitted within 12 months of the last day of each of these years. The returns will have to be in the form and contain the information specified in the BRS: CbC and Financial Data Reporting (meaning the Country-by-Country and Financial Data Reporting external business requirement specification schema).

It is our further understanding that the Reporting Entity (other than a Surrogate Parent Entity) resident in South Africa will have to submit returns relating to the CbC Report, master file and the local file. Under these rules, a person's whose potentially affected transactions (as defined) exceeds R100 million will have to submit a return relating to the master file and the local file.

The returns will have to be submitted using SARS eFiling.

## B. Comments for consideration

Many taxpayers forming part of multi-national enterprises have been planning and preparing for these anticipated reporting requirements. These taxpayers realise the magnitude of the information expected and are setting-up sophisticated systems to gather and package the information. From their perspective, it is important that the requirements in South Africa are consistent with the requirements of other countries applicable to group company members, all of which must be based on the OECD guidelines. Furthermore, these companies need clarity and certainty so that they can ensure that their systems will be able to provide the information required.

The Regulations Specifying the Country-by-Country Reporting Standard for multinational enterprises (issued on 23 December 2016) have provided clarity on the requirements for triggering the CbC Report, which are aligned with the OECD guidelines. However, little clarity exists on the detailed information to be contained in the returns relating to the master file and local file. This lack of clarity is of great concern because these taxpayers need to start assembling the key information now so the required returns can be compiled. Taxpayers with years that commenced on 1 January 2016 only have six months left to submit these returns.

We recommend that clarity on the detailed requirements of the returns should be provided as soon as possible to enable taxpayers to meet their obligations in practice. In this regard, we note the following:

- The BRS: CbC and Financial Data Reporting should be made available. Without this information, the form of the returns and the information to be disclosed in them are completely unknown.
- It is not clear whether the returns “relating to” the master file and the local file would, in fact, be the equivalent of the full master file and the full local file, or whether the required returns will only be expected to contain specified information extracted from the master file and local file.
- The terms “master file” and “local file” are used in the draft notice without being defined for purposes of the draft notice. It seems that the SARS public notice dated 28 October 2016 (which sets out the record keeping requirements of a person whose potentially affected transactions

exceeds R100 million) serves a different purpose and cannot be used as guidance. Certainty should be provided as to the definitions of “master file” and “local file”.

- The master file and local file requirements should be consistent with the OECD guidelines and should not be more onerous. Reference should be made to the OECD’s BEPS Action Point 13. This would align South Africa with the other countries that follow the OECD guidelines. South Africa’s requirements should be well understood and accepted. Multinational enterprises cannot implement different sophisticated and expensive systems in each jurisdiction. South African taxpayers which form part of a larger group should be able to follow the same/similar methodologies to prepare their master file and/or local file as those followed throughout the group.
- Although it is stated that these returns must be submitted electronically using SARS eFiling, further clarity is required on exactly how this submission process will work in practice. For example, will there be separate returns or will the existing transfer pricing schedules in the ITR14 tax return be used/expanded?
- These returns/schedules, as well as SARS guidelines thereon, should be published for comment as soon as possible so that they can be finalised and used by taxpayers to prepare for the first round of eFiling.
- We would also request further consultation to ensure that the necessary alignment is reached and all uncertainty is removed.

In closing, we again welcome the opportunity to comment on the draft public notice and look forward to future engagements. This matter is important to our members, and they would like to engage so they can best understand what is expected for full compliance.

Yours sincerely

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**Head of Tax Policy**