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An evaluation of the Country-by-Country Reporting (CbC Template) for transfer pricing documentation purposes from a South African perspective

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Abstract

In February 2013, the OECD published a report on its findings concerning base erosion and profit shifting ("BEPS").[1] *That report, in particular Action Point 13, dealt with the re-examination of transfer pricing documentation wherein the shifting of profits to lower tax rate jurisdictions is addressed. The OECD proposed a Country-by-Country ("CbC") methodology whereby certain information is required to be disclosed within a Country-by-Country Reporting Template ("the CbC Template"). The main purpose of the CbC Template is to assist tax administrations to identify risks related to base erosion and profit shifting; also, and where applicable, data collected via the CbC Template can be used for economic and statistical analysis. The OECD is of the view that the CbC Template in assisting tax administrators to determine transfer pricing risk, will serve as a high-level risk assessment indicator for transfer pricing. Accordingly, the main aim of the CbC Template is to be a tool for tax administrators to identify and consequently ensure that the revenue of a country is not eroded unfairly.*

The objective of this paper is to review the CbC Template from a South African perspective and to determine the consequences for taxpayers arising from the information required to be disclosed. It follows that this paper will focus, in particular, on the challenges and consequences that exist within a South African context for a South African taxpayer conducting business in different tax jurisdictions. The paper will further analyse the CbC Template requirements in light of the legislative requirements for Transfer Pricing Documentation in South Africa.

[1] OECD (2013), *Addressing Base Erosion and Profit Shifting*, OECD Publishing, Paris. http://www.oecd-ilibrary.org/taxation/addressing-base-erosion-and-profit-shifting_9789264192744-en.

I. PRE-INTRODUCTORY REMARKS

In view of globalisation[2] and the 2008 economic crisis, companies, and specifically multinational enterprises ("MNEs"), were forced to re-adapt the ways in which they conduct business in order to derive profits with the main focus being tax efficient minimising their tax liability within the realms of the law. The changing markets, within which MNEs conduct business, may in certain instances be located within other jurisdictions.

Different tax jurisdictions apply different tax principles and companies such as MNEs can potentially be exposed to significant tax liabilities. If MNEs are to maintain a competitive advantage and derive favourable profits while limiting their tax liability, then they need to become more effective in the way they conduct business; they can do this by applying tax management strategies to ensure that certain profits that are in high tax-paying jurisdictions potentially can be allocated to a lower tax paying jurisdiction, within the confines of the law and within the MNE structure.

In order to maintain an advantage in an ever-changing business environment, MNEs enter into cross-border, related party transactions, such as establishing the value and purchasing of goods, the provision of services, the provision of loan funding and various other services. The objective is to claim a valid deduction for these expenses and by doing so, decrease their earnings before tax and thus reduce their tax liability.

In order to determine whether these transactions are market related and to rebut a tax authority in the event of a potential dispute, an 'arm's length' principle[3] is usually applied to ensure that the transaction is made at market value. Nevertheless questions have been raised about whether all companies do indeed follow the 'arm's length' principle in practice. BEPS is therefore a risk for tax administrations.

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[2] The OECD HANDBOOK ON ECONOMIC GLOBALISATION INDICATORS (ISBN 92-64-10808-4 – © OECD 2005) states that the term or word "globalisation" has been widely used to describe the increasing internationalisation of financial markets and of markets for goods and services. Globalisation in this instance refers above all to a dynamic and multidimensional process of economic integration whereby national resources become more and more internationally mobile while national economies become increasingly interdependent.

[3] An agreement is said to be at arm's length if made by two parties freely and independently of each other, and without some special relationship, such as being a relative, having another deal on the side or one party having complete control of the other. It becomes important to determine if an agreement was freely entered into to show that the price, requirements, and other conditions were fair and real. See also http://legal-dictionary.thefreedictionary.com/Arm's+Length+Transaction.

BEPS suggests that the Country-by-Country approach methodology will promote and encourage 'good behaviour' in adhering to the 'arm's length' principle. This paper attempts to evaluate the information to be disclosed in the CbC Template from a South African perspective and to determine the consequences for taxpayers arising from the information that has to be disclosed. This paper will focus on the challenges and consequences that will exist when a South African taxpayer conducts business in another tax jurisdiction. The evaluation will provide an introduction of the history of BEPS and look at the transfer pricing documentation requirements in a South African context. The evaluation will therefore consider primary sources and literature of a general nature applicable to South Africa. In the evaluation this paper attempts to highlight the requirements of the CbC Template, from a South African perspective, in the light of the transfer pricing documentation requirements.

1. INTRODUCTION

The OECD released a Report on BEPS [4] on 19 July 2013. The report acknowledges that globalisation can boost trade, stimulate the increase of foreign investments, and encourage the transfer of capital and labour. Nevertheless, a shift occurred insofar as manufacturing bases moved from high-cost locations to low-cost locations.[5] Multinational Base erosion and profit shifting therefore poses a clear risk for tax administrations.[6]

1.1. Action 13 – Re-examine Transfer Pricing Documentation Requirements

Action 13 is part of the BEPS Action Plan that re-examines transfer pricing documentation requirements. It notes that the OECD will:[7]

> "*…develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business. The rules to be developed will include a requirement that MNEs provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries, according to a common template.*"

[4] Refer to the report of the OECD, The Action Plan on Base Erosion and Profit Shifting, (2013) at page 7.
[5] *Ibid.*
[6] *Ibid.*
[7] Refer to the OECD, Public Consultation White Paper on Transfer Pricing Documentation, 30 July 2013.

The OECD, by the release of the BEPS Action Plan, focuses on the possible tax leakage that may occur in the tax base of jurisdictions around the world. In addition to re-examining transfer pricing documentation requirements, Action 13 also introduces a CbC Template which is intended to provide a "snap shot" of the MNEs financial position of all its entities across the globe.

1.2. Country-by-Country Reporting in a broader context

International standards of reporting based on sector or jurisdiction have already been developed for MNEs operating in, for example, the extractive industries, banking and finance. These international standards have increasingly been introduced into domestic legal systems within the European Union and the United States.[8] It is important to note that these international standards were not developed exclusively for tax purposes, but also to promote transparency in order to combat corruption and promote beneficiation of local communities, within the wider context.

Tax administrations do not generally have the resources or the skill sets needed to combat the erosion of a tax base. Tax administrations should be able to decide whether, and where, to allocate scarce resources to deal with this issue.[9]

Further, it is noted that CbC Reporting could be of interest to more than just MNEs and tax authorities, as it could indicate to the stakeholders the effectiveness and efficiencies of specific tax systems.[10] The potential importance of the CbC Reporting for stakeholders in discussed in more detail below.

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[8] Refer to M.T. Evers, I. Meier & C. Spengel, "Transparency in financial reporting: Is country by country reporting suitable to combat international profit shifting?*Bulletin for International. Taxation,* vol. 68, nos. 6/7 (2014). The authors of this article write that: "a comprehensive country-by-country reporting has not been implemented so far. Nevertheless, the public debate indicates a strong demand for more transparency in financial reporting. In this regard, the BEPS Action Plan reflects this trend towards stricter and more extensive disclosure requirements for companies in all industry sectors." The article notes that the European Commission has signalled its support for a comprehensive country by country reporting framework. See also: European Commission, Sustainability and Reporting: Europe at the forefront, Michel Barnier Speech/13/444 (2013).

[9] Public Comments Received Volume I - Letters A to D: Discussion Draft on Transfer Pricing Documentation and Country by Country Reporting, 23 February 2014: this refers to the voice of OECD Business that notes the importance of reducing the burden on business and tax administrations which operate on scare resources. Tax administrations usually have limited and scare resources, due to these resources being scare, the Country by Country Reporting template can be the tool by which tax authorities can use to determine whether tax risks exist and thereby utilise these scare resources to a maximum.

[10] European Union / OECD Country-by-Country Reporting: The Primary Concerns raised by a Dynamic Approach. María Amparo Grau Ruiz Issue: *Bulletin for International Taxation*, vol. 68, 10 (2014). Published online: 18 September 2014.

1.3. Transactions within a group context and tax liability

In order to ensure tax efficiencies within a group scenario, MNEs may take steps to determine the quantum of profits derived in certain tax jurisdictions and may consider the tax implications when it conducts cross-border intercompany transactions. Whilst certain transactions may be regarded as "normal commercial transactions" within a group scenario, these may not be normal practice when transacting with independent parties. This is because these transactions are specifically aimed at limiting the tax risk may include the limiting operational risks within the group entities or the separation of functions (such as intellectual property, manufacturing etc.). It may also include simulated transactions where the ownership of certain assets is split between legal entities within the group. The limitation of risk and separation of function type transactions rarely occur within an independent party scenario.

Other internal group transactions are however more common in independent party scenarios. On this basis transactions that occur within a group context could result in the shifting of profits within the MNE in order to mitigate the group's tax liability. These transactions could potentially result in tax leakages within a jurisdiction.

In light of the above, it could be argued that tax authorities do not always understand and appreciate the complexity that exists within the various operations of MNEs. On this basis, certain intercompany transactions, that may be regarded as "normal commercial transactions" within the group context, could however be viewed as the erosion of the tax base of a specific country by the tax authorities.

1.4. Conclusion

Tax authorities have therefore identified certain transactions that could potentially pose a risk to the tax base. The risk of eroding the tax base, together with the increased global movement for transparency and exchange of information is the focus of the OECD within the BEPS debate. These topics are therefore high on the agenda of both tax administrators and taxpayers. In light of Action 13 the transfer pricing documentation requirements should be evaluated within the implementation of the CbC Template. Chapter 3 examines these country by country reporting requirements in more detail.

2. UNDERSTANDING TRANSFER PRICING DOCUMENTATION REQUIREMENTS IN A SOUTH AFRICAN CONTEXT

2.1. Introduction

Transfer pricing, introduced in July 1995, has been a key focus area in South African for both taxpayers and the South African Revenue Service ("SARS"). Transfer pricing is governed by Section 31 of the Income Tax Act No. 58 of 1962 ("the Act") that sets out a rule for how cross-border, related party transactions must be treated, whereas Practice Note 7 ("PN7")[11] and Practice Note 2 ("PN2")[12] provide guidance on how SARS interprets the applicable law.

2.2. Historical background on Transfer Pricing

Significant changes were made to Section 31 of the Act that governs the legislative approach to transfer pricing. The old and now repealed version of Section 31 gave the Commissioner the discretion to challenge and consequently adjust the taxpayer's view of arm's length nature of the intercompany cross-border transactions. The new section 31 however places the onus on the taxpayer to self-assess whether intercompany cross-border transactions have been conducted in accordance with the arm's length principle.

Although South Africa is not a member of the OECD, SARS indicates that it generally accepts the OECD Transfer Pricing Guidelines ("OECD Guidelines") and significantly, has based its practice on these guidelines.[13] The transfer pricing methods, documentation guidelines and mutual agreement procedures noted in the OECD Guidelines are acknowledged by SARS as acceptable practices.[14]

[11] Practice Note 7 provides guidance to the taxpayer on the minimum requirements to be fulfilled if a Transfer Pricing Document is to motivate the arm's length principle.

[12] Practice Note No 2, Income Tax: Determination of taxable income where financial assistance has been granted by a non-resident of the Republic to a resident of the Republic, dated 14 May 1996: this provides guidance on the thin capitalisation requirements in respect of intergroup funding. The South African Revenue Service (SARS) subsequently on the 22 March 2013 issued a new draft interpretation note on thin capitalisation to provide guidance to South African enterprises that receive financial assistance from foreign related companies. The new interpretation note is intended to provide clarity on how the 'arm's length' standard should be applied to intra-group financial assistance. Although this practice Note No2, had been repealed the draft Interpretation Note dealing with Financial assistance has not been finalised by SARS. SARS however indicated that transfer pricing will be one of its key focus areas for the next few years as it has been identified as a risk area due to the increased presence of multinational organisations in South Africa.

[13] It can be noted that South Africa, whilst not a member of the OECD, has observation status and as a result accepts the OECD reports and generally base its practice on this. Practice Note 7 paragraph 10.3 on the documentation requirements states that

The Act does not impose a statutory requirement to prepare transfer pricing documentation, but the 2015/2016 (and for some year prior) annual income tax return ("ITR14") does require confirmation that any cross-border connected party transactions have been entered into at arm's length. This suggests that it is essential for affected companies to substantiate how the transfer price has been determined and furthermore, suggests that suitable documentation is the best way to demonstrate that these prices are indeed at arm's length, in terms of Section 31 of the Act.

2.3. Subsequent Transfer pricing changes

In order to provide guidance on the SARS approach towards transfer pricing, PN7 was issued on 6 August 1999 and this provided clarity on the minimum documentation requirements.
Since the amendment of Section 31 of the Act, PN 7 no longer provides comment on the contemporaneous version of the primary legislation. The present situation is therefore not very clear as to what the documentation requirements are, for South African taxpayers to be considered as compliant. SARS has been indicating for some time that an updated Transfer Pricing Interpretation Note is to be published.

2.4. Transfer pricing documentation requirements going forward

At present, although no formal transfer pricing documentation requirements exist in South Africa, it should be noted that SARS does require some form of transfer pricing documentation from the taxpayer to substantiate the information that a taxpayer has to provide to SARS on an annual basis. This is the documentation which SARS may rely on when any transfer pricing risks are determined.

SARS follows the guidelines of the OECD. For further details refer to the OECD commentary regarding the country profile of South Africa. http://www.oecd.org/tax/transfer-pricing/transferpricingcountryprofiles.htm.

[14] See the article of ENSafrica, Draft Interpretation Note on thin capitalisation, ITA: Section 31, Practice Notes 2 and 7 that regarding Transfer Pricing Documentation. https://www.saica.co.za/integritax/2015/2420._Documentation_required. The authors of this article note that which provide taxpayers with guidance on how the South African Revenue Service (SARS) intended to apply the legislation.

3. A CRITICAL REVIEW OF THE COUNTRY-BY-COUNTRY REPORTING TEMPLATE REQUIREMENTS FROM A SOUTH AFRICAN TAX PERSPECTIVE

As indicated above in the previous chapter, although there are no legislative requirements to have transfer pricing documentation, there is a specific disclosure questions in the taxpayers' tax return and accordingly SARS may request the taxpayer to motivate the arm's length nature of its cross border related party transactions. However, in order to prove the arm's length nature of cross border transactions, the taxpayer will require transfer pricing documentation to motivate that the cross border related party transactions were conducted according to the arm's length principle. Therefore, notwithstanding the fact that there is no requirement to have transfer pricing documentation, the onus is still on the taxpayer to motivate that the cross border related party transactions were conducted on an arm's length basis.

As an introduction to the CbC Template, this section very briefly sets out the history and the background of that CbC Template. As a first step, the section sets out an outline of the CbC Template and its requirements. The section further includes a critical analysis of the CbC Template from a South African tax perspective. The critical analysis in this Chapter therefore follows on from chapter 2 above by noting that although no formal transfer pricing documentation requirements exist, a South African taxpayer nevertheless has the onus of substantiating the arm's length nature in the instance of a SARS query. The analysis then considers whether the CbC reporting will place additional requirements on a South African taxpayer entering into related party' s cross border transactions.

3.1. Introduction

3.1.1. Background and History

The OECD Guidance on Transfer Pricing Documentation and Country-by-Country Reporting (The Guidance on Transfer Pricing Documentation) was released which provides guidance to taxpayers about compliance requirements applicable to MNEs when compiling transfer pricing documentation and completing the CbC Template.[15]

At a high level, the CbC Template is intended to be a high-level risk assessment tool for tax authorities when identify transfer pricing risk.[16] The proposed approach is to achieve a balance between "the usefulness of the data to tax administrators for risk assessment and other purposes with any increased compliance burdens placed on taxpayers".[17]

In summary the CbC Template will require MNEs to report annually to their tax authority, and for each applicable tax jurisdiction, the amount of revenue, profit before income tax and income tax paid and accrued.[18] In addition, the CbC Template will also require MNEs to report their total employment, capital, retained earnings and tangible assets in each tax jurisdiction.[19] It will further require MNEs to identify each entity within the Group doing business, its tax jurisdiction and an indication of the business activities conducted by those entities.

3.1.2. Transfer Pricing Documentation

The Guidance on Transfer Pricing Documentation requires MNEs to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies. The following format is suggested:[20]

- A Master file;
- A Local File; and
- A Country by Country Reporting (CbC) Template.

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[15]See the article of Alveratz and Marshallm, New Guidance on Country by Country reporting for Multination Enterprises. Published on line on: 13 February 2015. http://www.alvarezandmarsal.com/new-guidance-country-country-reporting-multinational.

[16] Refer to the OECD, Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, Executive Summary, (2014), page 2 Section B.1 Transfer Pricing Risk Assessment paragraph 7 to 9.

[17] Refer to the OEDC Discussion draft paragraph 4 that comments on the compliance burden impactions that taxpayers face and the increased data risk that tax authorities has to adhere to.

[18]Refer to the OECD, Guidance on Transfer Pricing Documentation and Country-by-Country Reporting General Instruction for Annex III to Chapter V, pages 17 to pages 20.

[19] Refer to the OECD, Guidance on Transfer Pricing Documentation and Country-by-Country Reporting General Instruction for Annex III to Chapter V, pages 17 to pages 20.

[20] Refer to OECD, Discussion draft on Transfer Pricing Documentation and Country by Country Reporting, dated 30 January 2014 and the OECD, Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Executive Summary, (2014), page 3.

The OECD is of the view that these three documents:

> "*...will require taxpayers to articulate consistent transfer pricing positions, will provide tax administrations with useful information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries*".[21]

3.1.3. CbC Template

The CbC Template consists of three Tables (referred to as Table 1, Table 2 and Table 3) which the taxpayer is required to complete in order to disclose the required information to the applicable tax authority. The information is required in a table format and includes:[22]

- ***Table 1-*** the Table provides an overview of the allocation of income, taxes and business activities in a Country by Country format:
    - Tax Jurisdiction
    - Revenue – Unrelated/Related Parties total
    - Profit/Loss before Tax
    - Income Tax Paid on Cash Basis
    - Income Tax Accrued/Current Tax Year
    - Stated Capital
    - Accumulated Earnings
    - Number of Employees
    - Tangible Assets other than Cash and Cash Equivalents
- ***Table 2*** – provides a list of all the Constituent Entities of the MNE Group, classified according to Tax Jurisdiction and main industry information.
- ***Table 3*** – this gives the option to provide additional information.

3.1.4. Approach to the analysis of the CbC Template

The compiling and completion of the CbC Template requires additional information that MNEs have to disclose to their tax administration. These requirements will be analysed by way of certain scenarios. The scenarios will be analysed in light of the Country-by-Country Reporting Requirements

[21] OECD Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, OECD/G20 Base Erosion and Profit Shifting Project, (2014) , Executive Summary Page 9.
[22] The attached appendices provide further information on the Country by Country Template Table 1 to Table 3.

and the South African Tax implications thereof. The aim of the analysis will be to determine what challenges are posed by the CbC Template from a South African tax perspective when MNEs compile their Transfer Pricing documentation on the basis of these new requirements.

In the light of the current transfer pricing documentation requirements and best practices with which a South African taxpayer has to comply, the additional completion of the CbC Template from 1 January 2016, holds certain implications for the MNE.[23]

[23] Refer to Action 13: Country-by-Country Reporting Implementation Package, (2015) Article 8, page 9.

3.2. Analysis of CbC Template: Table 1 - Tax Jurisdiction Overview

3.2.1. Introduction

To complete Table 1 of the CbC Template the MNE is required to disclose information of where its tax jurisdiction is based. In the compiling process the term tax jurisdiction should, in conjunction with international as well as domestic tax principles, be considered to determine where the tax jurisdiction for a specific entity or division within a group is based. After defining these concepts in this context, a detailed analysis by way of a scenario will be presented from a South African perspective to highlight any risks and challenges that may exist.

3.2.2. The term Tax Jurisdiction within the CbC Template

A MNE, completing the CbC Template will need to compile the tax jurisdiction information requiring disclosure of all the tax jurisdictions in which the entities of the MNE group are resident for tax purposes.[24]

The CbC Template clearly defines that "*A tax jurisdiction is defined as a State as well as a non-State jurisdiction which has fiscal autonomy*".[25] In the event that certain entities of the MNE Group are deemed not to be residents in any tax jurisdictions, the CbC Template requires that these entities should be disclosed.[26]

The Guidelines further note that in the event that a MNE entity may be resident within simulations jurisdictions, the MNE should revert to the Double Tax Treaty (if applicable) for the determination of the tax jurisdiction.[27] In the event that no tax treaty is available to determine the tax jurisdiction, the MNE will be required to disclose the entity under review's place of effective management.[28] The commentary within the Annexure further states that the term "*place of effective management*" for

[24] Refer to the OECD Report on the Guidance on Transfer Pricing Documentation and Country-By-Country Reporting (2014), Specific Instructions for Annex III to Chapter V, page 41.
[25] *Ibid.*
[26] *Ibid.*
[27] *Ibid.*
[28] *Ibid.*

purposes of completing the CbC Template has to be in accordance with the provisions of Article 4 of the OECD Model Tax Convention and the Commentary.[29]

3.2.3. The term "Tax Jurisdiction" within a South African context

The definition of 'resident' in Section 1 of the South African Income Tax No. 58 of 1962 ("the Act") states that a "resident" includes an entity "*which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic*".[30]

In the event that a South African entity forms a company in another country, for example Nigeria, the risk is therefore that the Nigerian entity potentially may have its place of effective management in the Republic of South Africa. Therefore depending on the application of certain tests; in terms of Section 1 of the Act, the foreign incorporated entity may be deemed to be a South African resident. Accordingly, the Nigerian entity will be subject to tax in South Africa on its worldwide income instead of just being taxed on the South African sourced income.

The term "Place of Effective Management" in light of the OECD Commentary

In order to define the concept "place of effective management" ("POEM"), in an international context, reference can be made to the OECD Commentary on Article 4(3) of the Model Convention on Capital and Income, which employs the POEM concept.[31] It defines the POEM as "the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made." The Commentary further states that the POEM will be where the most senior person or group of persons, for example a board of directors, make decisions, it is the place where the actions to be taken by the entity as a whole are determined.

[29] *Ibid.*
[30] It can be noted that the definition includes the "place of effective management" test to determine the residence base of a company.
[31] OECD Commentary on Article 4(3) of the Model Convention on Capital and Income. www.oecd.org/tax/transfer-pricing//36221030.pdf.

The term "Place of Effective Management" in light of the Old Interpretation Note 6

The Act does not define the term "*place of effective managemen*t". SARS provided guidance in the form of an Interpretation Note No.6[32] ("OLD IN 6") on how SARS interprets the Place Of Effective Management (POEM), the OLD IN 6 subsequently had been revised and SARS reissued on 3 November 2015 the Interpretation Note No.6 ("NEW IN 6"), that clarifies POEM. The old IN 6 did not agree with international precedent. SARS deemed the following to be an indication whether a POEM does exist:

- the place where the company is managed on a regular or day-to-day basis by directors or senior managers of the company, irrespective of where the overriding control is exercised or where the board meets; and
- management by these directors or senior managers refers to the execution and implementation of policy and strategic decisions made by the board and it can also be referred to as the place of implementation of the entity's overall group vision and objectives.

This view contrasts with SARS' view in the old IN 6, which determines that the place of effective management is where a company is managed on a regular or day-to-day basis by the directors or senior managers of the company, irrespective of where overriding control is exercised, or where the board meets. SARS subsequently revised the IN6 with a draft IN6 ("new IN 6") which aligns more closely to the principles and guidelines established by International Case Law. The new IN 6 elaborates on the principles and guidelines surrounding "place of effective management" as in the term "resident" in Section 1(1) of the Act. In terms of the new IN6, substance over form will prevail and will require the identification of those persons in a company who actually "call the shots" and who exercise "realistic positive management". Or, in other words, a company's place of effective management must be determined by ascertaining who makes the key management and commercial decisions in respect of the company's business as a whole. It then needs to be determined where these decisions are substantively made. In determining the "*place of effective management*" SARS has

[32] Income tax interpretation note no. 6 that defines the resident: place of effective management. Released date: 26 march 2002.

traditionally focused on the place of implementation of the decisions of the senior group of persons, rather than on where these decisions are taken.

In the South African case *Oceanic Trust Co. Ltd NO (in its capacity as the trustee of Specialised Insurance Solutions (Mauritius) Trust) v Commissioner*, the court examined SARS' interpretation of the term "place of effective management".[33] This case involved an application for declaratory relief and unfortunately does not give a definitive view on the issue, but it would appear from the judgment that a South African court would be more likely to favour the OECD's approach rather than that of SARS.

<u>Application of Place of Effective Management" in light of the New Interpretation Note 6</u>

It can be noted that although no definitive rules exist that determine a company's POEM, the New IN 6 provides a number of "key facts and circumstances" that should be examined by a MNE when determining the POEM of a company that conducts cross border transactions. It should be noted that although the New IN 6 is not considered to be law, from a South African tax perspective, it is an indicator that SARS can consider to determine if a MNE has its POEM in South Africa. The content of the new IN 6, and therefore SARS approach is more aligned to international tax law and practice.

The New IN 6, provides guidance that the POEM of a company is considered to be that where decisions are made by executive management. This will be where the management and control or the realistic, positive management of the company is exercised.

It should be noted that with reference to the composition of the board, the New IN 6 highlights that an important factor that should be considered would be the location of where the board regularly meets and makes decisions affecting the company as a whole (where the board represents the true executive authority of the company).

This will be of little importance should the Board be seen to delegate its decision making role to lower level management, with the board merely rubber-stamping these decisions after they have already

[33] *Oceanic Trust Co Ltd NO v C: SARS* (2012) 74 SATC 127.

been made elsewhere. It is further noted that in determining where the key management and commercial decisions are "in substance" made, an analysis of what happens between board meetings becomes crucial. It could therefore also be useful to examine how a company's Board handles a crisis or various crises, expected or unexpected, that may arise during any relevant period.

In addition, the New IN 6 notes that a specific title may give an indication of a particular director's involvement in the decision-making process, although this may not always be the case. It follows that while a title may be useful in identifying the role that director performs in the company, it is the actual role performed, and whether it involves participating in key management and commercial decisions, that is determinative, not the director's title. The New IN 6 notes that it is no longer practically required for the Board to physically meet at the same location and it may be possible, for example, for certain directors with overriding decision-making powers to join the meeting remotely via conference call.

The term "Place of Effective Management" in light of Section 31 of the Income Tax Act

If a South African entity has a permanent establishment in a foreign jurisdiction, then it is required to allocate the permanent establishment's profits to South Africa. However, Section 31 of the Act that deals with transfer pricing issues, has a certain concession that South African taxpayers may utilise. Section 31(6) of the Act came into effect on 1 January 2013 and provides an exemption concerning any transaction, operation, scheme, agreement or understanding that comprises the granting of "financial assistance" by a person that is a resident to a Controlled Foreign Corporation ("CFC") in relation to that resident. In terms of the exemption, Section 31 of the Act must not be applied in calculating the taxable income or tax payable by that resident in respect of any amount received by or accrued to that resident in terms of that transaction, operation, scheme, agreement or understanding if:

- that CFC has a "foreign business establishment" as defined in Section 9D(1) of the Act; and
- the aggregate amount of tax payable to all spheres of government of any country other than South Africa by that CFC in respect of any "foreign tax year" of that CFC during which that transaction, operation, scheme, agreement, or understanding exists is at least 75% of the amount of normal tax that would have been payable in respect of any taxable income of that

CFC had that CFC been a resident for that foreign tax year: provided that the aggregate amount of tax so payable must be determined:

- after taking into account any applicable double taxation agreement and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than South Africa; and
- after disregarding any loss in respect of a year other than that foreign tax year or from a company other than that CFC.

The motivation for this relief allowance is that it assists those CFCs which are highly taxed; there is little overall net worldwide tax savings available to them if the interest is understated and therefore there is very little possibility for tax avoidance.

3.2.4. Analysis of Table 1: Tax jurisdiction in a South African context

To determine the challenges or risks that a MNE potentially might face, in the process of completing the CbC Template and to illustrate how the POEM test can impact on the CbC Template, a scenario will be presented. For purposes of the analysis of the scenario the following assumptions will apply.

A MNE Holding Company (SA Holdco) is a resident in South Africa for tax purposes. The MNE Group is involved in the manufacture and distribution of consumer goods that are distributed by the Group to its end users. SA Holdco, in order to maintain its competitive advantage against its competitors as part of the Groups market strategy, expanded into the African market. In order to improve SA Holdco's global footprint within the African territory, SA Holdco created a subsidiary (Foreign SACo) in another jurisdiction. The Foreign SACo as part of the SA Holdco Group's strategy will distribute the consumer goods of the SA Holdco within the new territory. The Foreign SACo will also assist with the promotion of the SA Holdco's brand. The SA Holdco Group entered into a service level agreement, which consisted of a trademark license whereby the Foreign SACo can distribute SA Holdco's products. SA Holdco, in turn, in order to protect the group's brand as part of the service level agreement, provided certain management and administrative assistance covering the use of the Groups brand name within the new market territory.

The service level agreement, consists of Royalties which are calculated on a percentage of sales and are in return for the exclusive right to use the brand name within the African region in which the Foreign SACo is located. Since the Foreign SACo is regarded as a start- up company the Holding company was involved in providing guidance and support. Foreign SACo, from a management point of view, obtains input and guidance from SA Holdco.

The Foreign SACo is based in a new tax jurisdiction that has a lower tax rate than South Africa. Foreign SACo, being a new market strategy of SA Holdco, requires that SA Holdco provides guidance, time and in instances, resources to ensure that SA Holdco's brand is kept intact. Although Foreign SACo is a subsidiary of SA Holdco, the subsidiary is required to consult SA Hold Co when new contracts are entered to. The effective management base is located within South Africa. The corporate strategy, marketing strategies and certain corporate strategy instructions is received by the Foreign SACo from SA Holdco.

Foreign SACo is not allowed to enter into any agreements without receiving guidance from the Board. The majority of the Board of directors are based in South Africa and in certain instances do fly to the jurisdiction where Foreign SACo is located to provide guidance in respect of management. Applying the tax principles discussed above to consider whether Foreign SACo is effectively managed in South Africa is as follow:

- Foreign SA Co cannot enter into any agreements without Head Office approval; Foreign SACo in order operate or function requires guidance from Head Office. It can be noted that all strategic and decision making situations is guide by Head Office;
- All contracts entered into a required to be reviewed by the Head Office and written approval is required from the Head Office;
- The Foreign SACo board members are all South African residents; and
- The Foreign SACo is managed on a regular or day-to-day basis by the directors or senior managers of the company that are based in South Africa.

3.2.5. Conclusion

Based on the conclusion above it is determined that Foreign SubCo is effectively managed from South Africa SA Holdco, when completing the CbC Template will disclose the Foreign SubCo's jurisdiction will be where the company is managed.

3.3. Analysis of CbC Template: Table 1: Revenue Related/Unrelated Parties

3.3.1. Introduction

Intercompany payments involve payments between related parties and as such, can be regarded as "normal" transactions within a group context. These intercompany payments can either be received by or paid by the various entities within the group. Examples of these payments include payments for goods, royalties, interest or service fees that are received or paid by related parties within the Group. These transactions are recorded as part of Revenue in the determination of profit for the period under review within a group.

A MNE in the process of determining its revenue for the period under review will include intercompany or related party transactions and unrelated party transactions. MNEs, in the drafting of their Annual Financial Statements usually disclose the related party transactions entered into for the period under review.

3.3.2. Table 1 – Revenue Related/Unrelated Parties, the term defined in Country by Country Reporting

Table 1 of the CbC Template requires a MNE to disclose the revenue of the group of companies for purposes of risk indication. Not only will a MNE be required to disclose the revenue derived between related parties, the revenue derived by unrelated parties also needs to be disclosed.

All revenue and other financial data would be taken directly from the South African entity's annual financial statements.[34] In the event that the South African entity has not prepared statutory annual financial statements, an audited financial statement prepared for any other purpose may be used; this is regardless of whether these audited reports were drafted for financing, regulatory purposes or

34 Refer OECD Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, OECD/G20 Base Erosion and Profit Shifting Project, (2014).

taxation requirements. If no such audited financial statements exists, then the entity's internal management accounts can be used.[35]

The currency in which these amounts have to be disclosed is normally the South African Rand. This requirement takes into account the fact that the Rand is the South African entity's functional currency and this requirement is in accordance with the accounting standard used by the entity. Nevertheless, the MNE's group may elect instead to report all amounts determined under consistent accounting principles and translated on a consistent basis to a single currency. SARS, in the process of assessing the risk, will review the revenue section of the CbC Template in the light of certain other aspects within the CbC Template to determine the quantum of the revenue and if further investigation or an audit should be conducted.

3.3.3. The term "Revenue" defined in the in the context of International Accounting Standards

The International Financial Reporting Standards ("IFRS") have been designed as a common global method for business operations to ensure that the accounts of a company or group of companies are understandable and comparable across international boundaries. These standards have evolved as a consequence of growing international shareholdings and trade. The existence of these standards is important for companies that have dealings in several different jurisdictions. IFRS are gradually replacing many of the different international accounting standards that currently exist.

IFRS 15 specifies how and when a company will recognise revenue and also requires such entities to provide the users of financial statements with more informative, relevant disclosures. IFRS 15 was issued in May 2014 and applies to an annual reporting period beginning on or after 1 January 2017.[36]

International Accounting Standards ("IASs") were issued by the former International Accounting Standards Council ("IASC"), and were endorsed and amended by the International Accounting Standards Board ("IASB"). The IASB will also reissue standards in this series if this is considered appropriate. IAS 18 Revenue outlines the accounting requirements for when to recognise revenue

[35] *Ibid.*
[36] http://www.iasplus.com/en/standards/ias and refer to the PwC Manual of Accounting IFRS 2015 volume 1 and volume 2, that provides guidance on whether IFRS or IAS standards will apply.

from the sale of goods, rendering of services, and for interest, royalties and dividends.[37] Revenue (in terms of IFRS 15, this standard deals with the recognition and measurement of Revenue) is measured using the basis of the fair value of the consideration received or receivable and is recognised when prescribed conditions are met; those conditions depend on the nature of the revenue.[38]

3.3.4. The term "Revenue" defined within a South African Income Tax context

The term "revenue"[39] is not defined in the Act. The term "gross income" is however defined in the Act. Gross income for income tax purposes therefore generally includes all revenue as recognised and measured for financial reporting purposes. The term "revenue" will be included in the term "gross income" that is defined in the Act. The Act states that all of the amounts received or accrued by a South African taxpayer derived in carrying on its trade will be deemed to fall within the definition of gross income as defined in the Act. Thus, the income from the sales of its inventory and properties, services, royalties, premiums and any other amounts received from both related and unrelated parties will be included in the gross income definition; this will be used as a basis to determine the taxable income.

When compiling transfer pricing documentation, a South African taxpayer is required to disclose the amount of revenue applicable to any related party transactions entered into by that taxpayer during the financial year under review. The type of related party transactions that will be reported in the Transfer Pricing Document can include by way of examples:[40]

- The sales of inventory and properties
- Services
- Royalties

[37] Will be superseded by IFRS 15 as of 1 January 2017.

[38] http://www.iasplus.com/en/standards/ias, refer to PwC Manual of Accounting IFRS 2015 Volume 1 and Volume 2 that provides guidance on whether IFRS or IAS standards will apply.

[39] Revenue is an accounting concept that is calculated by multiplying the price at which goods or services are sold by the number of units or amount sold. This results to the sales of the products that is sold, that results to revenue. Revenue will be the amount of money that a company receives during a specific period (being a financial year) and includes discounts and deductions in respect of the goods sold. It is the "gross income" which costs are subtracted to determine net income. There is a difference between how revenue is recognised, being that payment is received versus how income/revenue is measured. The quantum of the revenue will be taken into account when the transfer pricing risk is determined.

[40] Refer to Section 31 of the Income Tax Act that notes what an affected transaction is, in the determination for Transfer pricing purposes. Practice Note 7 further provides that the concepts are defined in section 1 and Section 31 of the Act, which is goods and services. The characteristics of the property or services can include tangible property, intangible property and services in relation to intercompany transactions.

- Premiums
- Any other amounts received from related parties

The taxpayer is required to disclose material transactions to SARS as part of the calculation of Revenue, to determine the risk.

3.3.5. Analysis of Table 1: Revenue Related/Unrelated Parties in a South African context

In order to illustrate the allocation of revenue to be disclose the following example is presented: SA Holdco is a holding company based in South Africa. The Holdco group manufactures and distributes products that are used in the mining industry to mine and extract ore. These products and equipment are distributed to various markets within the African continent. Foreign SubCo (a subsidiary of SA Holdco), due to the extensive industry knowledge of the group, obtained the contract to provide equipment to a mining company based in its jurisdiction. The group has service level agreements with its Foreign SubCo, covering the know-how and technical knowledge of the business; in terms of those service level agreements Foreign SubCo is required to pay a royalty fee to SA SubCo for the use of the know-how and knowledge. SA SubCo in addition to the revenue derived from related parties and in addition to transactions with related parties, conducted the sale of assets to independent third parties. The sales to the independent parties are regarded material.

The royalties are calculated on a percentage of sales and are in return for the exclusive right to use the brand name within the African region in which Foreign SubCo is located. In this situation SA SubCo will disclose the royalty amount as revenue, and this will be taxed in terms of domestic law.

In the event of completing the CbC Template, the SA Holdco will be required to disclose all Revenue for the applicable period under review. For clarification purposes the revenue derived will be disclosed under separate columns that requires all of its related party transactions and all of the independent third party sales (also referred to as unrelated party transactions) will be disclosed separately when the CbC Template is completed.

3.3.6. Conclusion

To determine whether a risk does exist SARS will look at the quantum of revenue sourced from related and unrelated parties (including independent third parties) which will provide an indication of the level of risk to SARS. SA Holdco will, as required in the CbC Template, group all of the revenue in an aggregate lump. The CbC Template does not provide an indication of what the revenue is made up of when used to determine the potential risk that may exist. The potential argument that Foreign SubCo may potentially be effectively managed from South Africa, will not provide an indication of risk to SARS. In the event that Foreign SubCo arguably can be deemed to be effectively managed from South Africa it will not be clear from the CbC Template.

3.4. Analysis of CbC Template: Table 1: Profit/Loss before Tax

3.4.1. Introduction

For accounting purposes, South Africa follows and adopts the accounting principles as guided by IFRS. SARS acknowledges and accepts that the use of IFRS is an acceptable standard for a South African entity to determine the profit and loss for a financial year under review. SARS requires South African taxpayers to file, their Annual ITR14, no more than twelve months after the financial year end. The ITR14 contains a calculation of the taxable income for the financial year under review after taking into account the provisions of the Act. Additional disclosure regarding transfer pricing is required by way of answering specific questions on the return. After submission of the ITR14, SARS may request the supporting Annual Financial Statements as well as any other additional information that SARS may require at the discretion of SARS.

3.4.2. The Term Profit/Loss before Tax in a Country-by-Country Reporting context

The Country-by-Country Guidance Report stipulates that the profit (loss) before income tax should be disclosed in Table 1.[41] The Country-by-Country Guidance Report indicates that the sum of profit (loss) before income tax should be disclosed for the entity resident for tax purposes in the relevant jurisdiction.[42] Any extraordinary income and expense items should be included.[43] The Country-by-Country Guidance Report indicates that MNEs may choose to use data from their consolidated reporting packages to report those amounts of revenues and earnings before income tax taken directly from statutory financial statements; however, in the absence of any such financial statements, data may be taken from internal managerial accounts.[44]

A reading of the Country-by-Country Guidance Report ("the Report") suggests that MNEs should use the accounting principles or what is referred to as "book" revenues to disclose the profit before tax, and the actual income tax paid, when completing the Country-by-Country Report. That income tax paid is recognised on a cash paid basis, and is applied after the tax reporting standards of the

[41] OECD Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, OECD/G20 Base Erosion and Profit Shifting Project, (2014).
[42] *Ibid.*
[43] *Ibid.*
[44] *Ibid.*

countries' legislation have been taken into account. The cash paid basis for purposes of the discussion of this paper, will be the actual tax paid, disclosed on the Annual financial Statements in terms of IFRS accounting standards, whereas the tax amount payable per the annual income tax return is based on the amount of revenue after tax adjustments that is disclosed for filing purposes to SARS. The concepts as on Income Tax Paid a Cash basis will be discussed in further detail in Section 3.5.2 of the Report. An approach that combines book revenues and taxes paid may cause an incorrect assessment by SARS of a MNE based in SA.

It should be noted that when the annual financial statements and tax returns are compiled, the book and tax values/numbers frequently do not coincide. Any differences mainly arise from differences in the treatment of income and expense items from accounting and tax perspectives. The Act allows for tax allowances such as wear and tear allowances that are different from the base used to determine depreciation for book purposes and higher current tax deductions, which may create a deferred tax liability for accounting purposes. A further example of differences in the accounting profit treatment versus the taxation treatment involves reserves for inventory, which are not allowed as deductions for income tax purposes. There are also numerous other incurrals, which are not allowed as expenses for tax purposes, but are deducted for accounting purposes.

It should be noted that this appears to be an example of a matching concept problem, where the responsible official must compute the tax paid that match the book income reporting. However, the IFRS International Accounting Standard 12, which is followed in South Africa, rejects this approach.

3.4.3. Analysis of Table 1 –Profit/Loss before Tax in a South African context

The following discussion illustrates the possible discrepancies between book and tax accounting values. For comparison purposes two companies are compared. They are both based in South Africa and have the same revenue. The one company is engaged in a manufacturing business and the other is engaged in the provision of services.[45]

[45] Refer to the Public Comments Received Volume III - Letters K to R: Discussion Draft on Transfer Pricing Documentation and Country by Country Reporting, 23 February 2014. Refer to the comments raised by Mazaars in respect of the taxes paid. The example for this discussion purposes had been obtained from Mazars's comments. For r illustrative purposes it had been adapted for South African purposes.

Item	Type of Entity Under Review			
	Manufacturing Company		Service Company	
	Book value *	Tax value *	Book value*	Tax Value *
Nett Pre Tax Profit	2 000 000	2 000 000	2 000 000	2 000 000
Depreciation	(200 000)			
Wear & Tear: Section 12C of the Income Tax Act No.58 of 1962 – Acceleration of Wear and Tear		(750 000)		
Accrued Expenses	(200,000)	200,000	(200 000)	200 000
Taxable Income	1,600,000	1,450,000	1,800,000	2,200,000
Tax Paid @ 28%	448,000	406,000	504,000	616,000
Effective Tax Rate (ETR)	22.40%	20.3%	25.20%	30.80%

* All amounts in SA Rand

<u>The Manufacturing Company</u>:

The Nett Profit before Tax of R2,000,000 is significantly reduced by R750,000 because of the accelerated wear and tear deduction that the Manufacturing Company can use for tax purposes: the quantum allowable is 50% of the cost of the asset used in the production of the product (that is greater than the amount used for book value purposes).

The Nett Profit before Tax is increased by R200, 000 because of accrued expenses that are not deductible for tax purposes until they are paid. These tax adjustments made to the taxable income will result in R406, 000 being paid in tax assuming a rate of 28% and a low ETR ("Effective Tax Rate") of 20.30% if the actual tax paid referred to as the cash tax payments is used for this purpose. It should be noted that the Manufacturing Company has a deferred tax liability of R210, 000 based on net temporary differences of R750, 000 that it will have to pay taxes on that amount in future. As shown in the Table above, the Manufacturing Company will have a book effective tax rate of 22.40%.

The Service Company:

The Nett Profit before Tax of R2, 000,000 is increased by R200, 000 because of accrued expenses that cannot be deducted for tax purposes until they have been paid. These adjustments made to the taxable income result in R504, 000 being paid in taxes and a high ETR of 30.80% if cash tax payments are used for this purpose. It should be noted that the Service Company will be able to deduct these accrued expenses once paid and so this Company will have a book effective tax rate of 25.20%.

It is important to note that the amounts of tax paid are very different in the practical scenario: in other words, ETR discrepancies exist and in the example given the tax rate is 20.30% versus 30.80% for the Manufacturing Company and Service Company, respectively. The difference in the ETR however is only temporary: over time both companies will pay exactly the same amount of tax.

In order to be able to evaluate, accurately, the tax position of a company, it is important to take into account differences between the accounting book values and the tax treatment. The amount of taxes paid taken into account in isolation will not allow tax authorities to establish an accurate and full overview of the tax burden of a given business; this isolated view typically ignores possible long-term and short-term temporary differences between book and tax items. Any such calculation may lead to an unfair or favourable treatment of taxpayers when ETR and related tax risks are analysed by tax administrations. The tax exposure of a South African taxpayer may appear limited whereas, in reality, certain taxes are only temporarily deferred.

3.4.4. Conclusion

The scenario described above can create a potential problem for South African taxpayers, but possible remedies are available.

- A taxpayer should choose tax values for reporting Revenues and Earnings Before Tax Depreciation and Amortization ("EBITDA") as opposed to book values as this will be a more accurate representation of the tax actually paid.
- The disclosure of additional information on tax expenses.

- The effective rate of tax paid by the entity using reported income from the annual tax return provides a true reflection of the actual position; this can provide a true reflection of the profit in relation to the taxation paid.

The actual cash tax payments will be reported and it is considered necessary to report the tax payments disclosed for annual financial statement purposes. For purposes to identify if a leakage had occurred in the tax base, it is suggested that that both the tax expense disclosed for annual financial statements and the current tax for the financial year under review should be disclosed in order to determine whether a tax leakage had occurred for the year under review, as the tax note in the annual financial statements as disclosed may include refunds or over payments from prior years that will not provide a true indication of the tax situation.

3.5. Analysis of CbC Template: Table 1: Income Paid – Cash Basis

3.5.1. Introduction

The amount of tax that an entity has to pay within a tax jurisdiction is not only a cash flow or economic issue as there is also a social-economic element that has to be taken into account. A South African taxpayer that operates within South Africa provides its contribution to society not only on a financial level, but also on a social-economic level where poverty is reduced and the company's financial stimulation helps to increase the South African tax base.

3.5.2. Table 1 Income Tax paid -the term in the context of the Country by Country Requirements

The total amount of income tax actually paid during the financial year under review has to be disclosed, in terms of the accounting standards adopted, according to the guidance report.[46] This amount includes the cash taxes paid. Any withholding taxes paid by other entities should be included.

3.5.3. Analysis of Table 1 – Income Tax Paid – Cash basis in a South African context

To determine what tax an entity has paid for the year, a review of the ETR can be made. The IFRS accounting standards (which South Africa has adopted) indicate that the ETR for the entity for the year under review should be disclosed in its annual financial statement under the Taxation note. [47]

In this context the term ETR refers only to the corporate income tax that was paid by the South African entity. Other type of taxes are not included in the term, such as indirect taxes, and typically withholding taxes on interest, dividend taxes, Value Added Tax ("VAT") and customs and excise taxes; all of these form part of the total taxes paid by the South African Company.

For comparison purposes the following example will explain the differences between the Tax Cash Paid Method and the Tax Provision Method that exist due to the different methods adopted by two tax

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[46] Refer to the Guidance Report on Country by Country Reporting.

[47] The effective tax rate is often a more accurate representation of a taxpayer's tax liability than its marginal tax rate.

jurisdictions. The methodology and principles to illustrate the concept of the Tax Cash Paid Method and the Tax Provision Method had been obtained from Mazars' comments in the Public Comments on Country by Country Reporting. The commentary as obtained from Mazars had further been adapted in a South African context:[48]

Tax Cash Paid Method

Country	South Africa		Country B	Low Tax jurisdiction
Currency	**ZAR**		**GBP but converted to ZAR for comparison**	
Tax Year		**2014**		**2014**
Net profit/(loss) before tax[49]		100 000 000		200 000 000
Taxable Income for the year		10 000 000		10 000 000
Tax Rate		28%		20%
Tax Payable for 2014		2 800 000		2 000 000
Tax Paid for the year (Cash)		3 410 000		(120 000)
2014 Provisional tax/estimates	2 800 000		2 200 000	
2013 Tax Refund Received	(500 000)		(800 000)	
2012 Tax Refund receivable	(10 000)		(20 000)	
Withholding Taxes	10 000		20 000	
Dividend Taxes	200 000		400 000	
Indirect Taxes	400 000		(500 000)	

Tax Provision Method

Country	South Africa		Country B	Low Tax jurisdiction
Currency	**ZAR**		**GBP but converted to ZAR for comparison**	
Tax Year		**2014**		**2014**
Net profit/(loss) before tax		100 000 000		200 000 000
Taxable Income for the year		10 000 000		10 000 000
Tax Rate	28%	28%	20%	
Tax Payable for 2014		2 800 000		2 000 000
Tax Paid for the year		2 900 000		1 300 000
2014 Provisional tax/estimates	2 800 000		2 200 000	
2013 Tax Refund	(500 000)		(800 000)	

[48] This scenario has been obtained from the public comments made by Mazars regarding the Public Comments on Country by Country Reporting. For purposes of this discussion the scenarios noted by Mazars have been elaborated and adapted for South African purposes and to discuss the risks that exist from a South African point of view. For discussion and clarification purposes South Africa base its provision of tax on the actual tax cash paid basis rather than the tax provision method.

[49] For purposes of this discussion on Country by Country Reporting and the scenario above, the term net profit(loss) before tax can be assumed that the net profit is recognised as per financial reporting requirements. The nett revenue for these purposes has been calculated on the IFRS standards.

Received				
2012 Tax Refund receivable	(10 000)		(20 000)	
Withholding Taxes	10 000		20 000	
Dividend Taxes	200 000		400 000	
Indirect Taxes	400 000		(500 000)	

Tax Cash Paid for 2014. The figure given in the Table relates to the Tax Cash Paid for the 2014 financial year, R 3 410 000. In relation to income before tax of R 10 000 0000, the amount appears to be distorted.

The Cash Tax Paid for 2014 includes the 2013 refund that relates to the overpayment of provisional tax. In South Africa, the Cash Tax Paid, together with VAT, customs and excise duties form only part of the total taxes that are paid by the South African Company.

If SARS reviews the CbC Template only on the basis of the cash taxes paid in South Africa (tax paid of R 3 410 000) and Country B (ZAR 1 200 000)(GBP 120 000) a low tax jurisdiction, and bases its enquiry solely on the cash tax portion paid, then it follows that a query regarding normal transfer pricing principles such as the arm's length principle and the profit shifting from high-tax jurisdictions to low-tax jurisdictions will not be raised. In the event of a query based on the ZAR 1,200 000 a shifting of profits from low-tax jurisdictions to high tax jurisdictions occur that does not comply with transfer pricing principles.

A question arises regarding the flexibility of the method used to obtain the data and to present it in the CbC Template; this is normally done on the basis of the current tax provision report for financial statement purposes. The approach towards completing the information is completely different from the South African requirements and understanding of what the interpretation of the concept is. This can provide the tax authority with a distorted picture of the actual tax liability. The tax information based on the cash paid basis will not align the tax provision with the financial information as prepared for accounting purposes and disclosed in the CbC Template. The points noted between the Tax Cash Paid and Tax Provision Method will result to different tax amounts paid to be disclosed in the CbC Template.

Tax Cash Paid Method

- The information calculated or derived on the cash basis will only provide SARS with the relevant tax amount that was paid for the tax period under review or with information on the actual tax that was paid in Country B.
- The information will correspond with the information that was filed to the relevant tax authority.
- The receipts in principle should correspond to the information filed, excluding penalties and interest.
- Separate Tax Paid Cash statement identifies taxes paid.
- Cash Tax amounts do not obviously relate to the income reported in the CbC Template.

Tax Provision Method

- The tax liability for the year under review can readily be connected to the income for that particular year.
- There is clear alignment with the financial statements (consolidated financial statements and statutory accounts) that reflect the tax provision clearly relating to the income for the year.
- For companies that may not have an existing statement that separately identifies taxes paid on a cash basis, the most efficient approach for providing report information on taxes would be to use data sourced from the current tax provision on their financial statements.

3.5.4. Conclusion

It should be noted that the taxpayer in the completion of the income tax paid section of the CbC Template will be compiling information and disclosing the tax amount paid. The quantum of this amount could be seen as a risk, for both SARS and the taxpayer, from a cash flow point of view rather than from a transfer pricing point of view.

The tax paid by a South African MNE may not be in accordance with the tax situation for the group as a whole and this anomaly may create wrong perceptions. The total tax paid can provide a distorted picture of the group in relation to the revenue if considered in isolation.

3.6. Analysis of CbC Template: Table 1: Income Tax – Accrued Current Year

3.6.1. Introduction

It had been established in Section 3.4.1., that for accounting purposes, South Africa follows and adopts the accounting principles as guided by IFRS. The concept Income Tax Accrued relates to the quantum of the tax assessed for a company, as determined in relation to the Revenue derived in relation to a specific period, being the tax liability which it has not yet paid. For IFRS and accounting purposes accrued taxes are deemed as a on a company's balance sheet.

3.6.2. The term Income Tax Accrued Current Year in a CbC Template context

The amount of Income Tax Accrued for the tax year under review should be recorded as prescribed in the Guidance on Transfer Pricing Documentation and Country-by-Country Reporting (OECD, 2014). Specific instructions are given in Annex III to Chapter V where it is stipulated that the quantum should be the sum of the accrued current tax expenses applicable to taxable profits or losses for the year.[50]

The current tax expense should reflect only operations in the current year and should not include deferred taxes or provisions for uncertain tax liabilities.

3.6.3. Analysis of Table 1 – Income Tax Accrued Current Year of CbC Template in a South African context

The breakdown of the tax amount paid by entities within a group and within different tax jurisdictions will be disclosed in the CbC Template. These amounts will provide a tax authority with an indication of what the potential tax exposure in those other tax jurisdictions will be for those respective entities.

[50] Refer to the Country by Country Guidance Report for clarification.

The disclosure of the information concerning tax paid can result in "fishing expeditions" that the tax authority in another tax jurisdiction or South Africa may conduct in order to obtain information to determine whether a transfer pricing leakage has occurred. The sharing of any information that is relevant only to some jurisdictions should be done after following tax information exchange procedures in order to safeguard confidentiality and to prevent "fishing expeditions" that a tax authority might otherwise be tempted to conduct.

3.6.4. Conclusion

As noted previously, the CbC Template requires that the reporting of income tax should rather be disclosed on the actual tax cash paid basis that states a true reflection of the tax situation for the applicable year under review.[51] The amount of tax paid is not an indication if a transfer pricing leakage occurred or whether sufficient tax has been paid. A tax jurisdiction has different tax rates and the cash paid or accrued during a year, is not an indication if the correct tax due has been included in a jurisdiction. This information disclosed by the taxpayer can be misleading as the tax accrued may include tax amounts relating to other years. This information will not be an indication to SARS whether a transfer pricing leakage has occurred.

[51] The cash basis earlier had been defined as the actual taxation expense that relates to the applicable tax year. The cash basis relates to the actual cash expense that has flow for the period under review.

3.7. Analysis of CbC Template: Table 1: Stated Capital

3.7.1. Introduction

Stated Capital is the amount of capital that a company should hold, in order to pay dividends and other pay outs that potentially can be paid to shareholders as a return on their investment.

In order for a MNE to expand by way of purchasing assets to derive income, it is necessary to obtain financial resources. A MNE can motivate or finance these expansions either by debt or equity. Debt involves borrowing money (either intercompany or external funding) to be repaid, plus interest. Equity relates to the raising of money by selling interests in the company. In the event that a company is thinly capitalised the ratio between the debt and equity can be used by SARS to obtain an indication of risk.

3.7.2. The term "Stated Capital" defined in Accounting Standards

The following principles are applied when a company's annual financial statements are drafted to reflect the company's share capital.

An ordinary share is defined as a common share or common stock. It is an equity instrument that is subordinate to all other classes of equity instruments.

3.7.3. The term "Stated Capital" in a CbC Template context

The stated capital reflected on the year-end balance sheet of each entity within the Group would be reported. In the event that the entity under review is a permanent establishment, then *"the stated capital should be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes"* as per the Guidance on Transfer Pricing Documentation and Country-by-Country Reporting (OECD, 2014). Specific instructions are provided in Annex III to Chapter V.

3.7.4. The term stated capital in a South African Tax context

The Act provides guidance on what is termed a "share". From a South African point of view the stated capital and accumulated earnings reflected on the year-end balance sheet of the entity will be reflected in the audited annual financial statements. South African legislation takes into account Thin Capitalisation[52] requirements[53], and with this in mind this section will be applicable to disclosure from a South African point of view. Thin Capitalisation can apply to a South African entity that receives excessive foreign loan funding from an offshore related party.

3.7.5. Analysis of "Stated Capital" in a South African context

In determining the transfer pricing risk, SARS can use the stated capital as an indicator to determine whether transfer pricing risks exist. Although stated capital is one factor that a revenue authority can use to determine whether transfer pricing risks exist, it should not be viewed in isolation and there is a need to take into account the group structure as well as the intercompany type of funding that the entity might be involved in.

3.7.6. Conclusion

The stated capital may be one good indicator for determining risk but as noted above, stated capital cannot be reviewed and considered in isolation. In the event that a South African taxpayer receives foreign intercompany loan funding then the accumulated earnings as well as the stated capital should be reviewed to determine whether a MNE is or is not thinly capitalised.

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[52] Thin capitalisation is where a non-resident grants financial assistance to a resident, SARS potentially could deny the resident a deduction in respect of excessive interest or finance costs paid to the non-resident. Thin capitalisation was subject to the so-called safe-harbour rule which was that where the debt to equity ratio of the resident was less than or equal to three-to-one, deductions potentially would not be denied by SARS.

[53] Thin Capitalisation will be discussed further in Section 3.8.

3.8. Analysis of CbC Template: Table 1: Accumulated Earnings

3.8.1. Introduction

A South African taxpayer's financial statements are drafted in terms of IFRS accounting standards and the accumulated earnings will be therefore disclosed under capital. When a MNE's annual income tax return needs to be completed, the ITR14 requires, for disclosure purposes, that the accumulated earnings be disclosed.

SARS may use the accumulated earnings as an indicator of the transfer pricing risk. If a South African taxpayer has an assessed loss (in other words, the accumulated earnings are negative) it could be interpreted as an indicator of risk and SARS may start asking additional questions. SARS might also query if a potential thin capitalisation risk might exist, if loan funding has been provided. Although the accumulated earnings is one factor that can be used to determine the risk, it should not be reviewed in isolation without taking into account the group structure and the intercompany type of funding that the entity might be involved in.

3.8.2. The term "Accumulated Earnings" in Accounting Standards

The IFRS Accounting Standards principles are applied when a company's annual financial statements are drafted in respect of accumulated earnings.

3.8.3. The term "Accumulated Earnings" in a CbC Template context

MNEs should report the total accumulated earnings of all of the entities for tax purposes in the related tax jurisdiction at the end of the tax year under review. In the case of permanent establishments, accumulated earnings should be reported by the legal entity of which it is a permanent establishment, this requirement is in accordance with the Guidance on Transfer Pricing Documentation and Country by Country Reporting (OECD, 2014); the specific instructions are found in Annex III to Chapter V.[54]

[54] Guidance on Transfer Pricing Documentation and Country by Country Reporting (OECD, 2014).

3.8.4. The term "Accumulated Earnings" in a South African context

Thin Capitalisation rules stipulated in the Act (in particularly Section 31) will apply when a South African taxpayer is funded either directly or indirectly by a non-resident connected person (related party). The provision of the loan funding to a South African taxpayer with excessive intra-group, back-to-back or intra-group-guaranteed debt may result in what SARS regards as excessive interest deductions being deducted from its income for tax purposes, thereby depleting the South African tax base.

Under previous legislation and in accordance with guidance in Practice Note 2 (PN2)[55], Income Tax: Determination of taxable income where financial assistance has been granted by non-resident of the Republic to a resident of the Republic, the Commissioner of SARS was allowed some discretion; thus, if the international financial assistance rendered was considered to be excessive in proportion to the particular lender's fixed capital in the borrower, then the interest and finance charges arising from that excessive financial assistance could be disallowed.

Changes have since been made to Section 31 of the Act that incorporates the thin capitalisation provisions within the transfer pricing rules and as a result, the provision of inbound financial assistance is viewed in the same manner as any inter-company transaction between connected parties.[56] The impact of these changes is that the tax treatment of inbound financial assistance is governed by the transfer pricing rules which require the transaction to be at arm's length; in other words, subject to the same terms and conditions as would be found between independent parties transacting with one another. The South African borrowing entity has to satisfy SARS that the quantum of the loan received can be supported, taking into account all other loan funding received.[57]

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[55] SARS Practice Note: No 2, Income Tax: Determination of taxable income where financial assistance has been granted by a non-resident of the Republic to a resident of the Republic, dated 14 May 1996 provides guidance on the thin capitalisation requirements in respect of intergroup funding. As noted in Chapter 2, SARS subsequently on the 22 March 2013 issued a new draft interpretation note on thin capitalisation to provide guidance to South African enterprises that receive financial assistance from foreign related companies. The new interpretation note is intended to provide clarity on how the 'arm's length' standard should be applied to intra-group financial assistance. Although this practice Note No2, had been repealed the draft Interpretation Note dealing with Financial assistance has not been finalised by SARS. Although the draft Interpretation had been released, it is still in draft format and therefore not legally binding.

[56] SARS overhauled section 31 of the Income Tax Act of South Africa, No. 58 of 1962 (the Act), with the new section 31 coming into being through the promulgation in the Taxation Laws Amendment Act, No. 23 of 2011 (TLAA) on 10 January 2012. The TLAA provided for the new transfer pricing regime's effective date of 1 April 2012; applying in respect of tax years commencing on or after that date.

[57] Loan funding for purposes of interpreting the legislation, includes third party loans.

The terms under which the funds are advanced must be at arm's length and should not exceed what the South African borrower would be able to sustain if the standard serviceability and related tests had been applied by a third party in determining the funding to be advanced. SARS may require taxpayers to consider the transaction from both the lender's perspective and the borrower's perspective in the application of the arm's length principle.

SARS issued a draft Interpretation Note to assist taxpayers with the interpretation of the new rules. Although this Interpretation Note is still in draft, it does provide a degree of guidance on how SARS will apply the transfer pricing provisions to inbound financial assistance.[58]

The Interpretation Note proposes the following approach:

- A MNE has to determine whether a funding amount is truly at arm's length. The arrangement from the perspective of both the lender and the borrower has to be considered taking into account the following factors:
  - Would the lender at arm's length, be acting in the true interests of the business and would have been prepared to lend under the terms and conditions proposed?
  - The borrower acting at arm's length and acting in the true interests of the business would have been prepared to agree to such terms and conditions?
- A functional analysis of the transaction to achieve the following will be conducted:
  - To understand the funding structure, the date of transaction and source of funding. Also take into account the purposes to which the funds will be put to use and the repayment terms of the arrangement.
  - To understand the business, industry and market conditions impacting the borrowing entity.
  - To understand the financial strategy of the business; in particular, how the capital is allocated, the relationship between capital and cash flows from operations, changes to the funding transactions; and, details of the companies within the group affected by the funding transactions.

[58] The draft note was released in March 2013. To date SARS have not provided any indication when the final note will be released.

    - To understand the current and future financial position of the borrower; this includes financial ratios and indicators of creditworthiness.
    - To obtain information and data on comparable transactions.
- Understand the economic nature of the arrangement and whether the economic substance of the arrangement is debt/equity in nature.[59]
- Determine the arm's length price or interest rate to apply.[60]

To assess whether the arrangement is truly at arm's length, SARS adopts a risk-based audit approach in selecting potential thin capitalisation cases for audit. SARS indicates that it will consider the following:

- Is the taxpayer carrying a greater quantity of interest-bearing debt that it can sustain on its own?
- Would the duration of the lending be longer in an arm's length scenario?
- Are the repayment terms or other terms consistent with what would be agreed with an independent party?

When SARS is deciding whether a specific case should be audited, it will consider transactions to be a greater risk if the Debt: Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA) ratio of the South African taxpayer exceeds 3:1. Nevertheless companies within this ratio should not feel completely safe because SARS is not prevented from auditing a taxpayer who is within that ratio. The ratio merely indicates the level of risk set by SARS for the purpose of selecting cases for audit. Moreover, the ratio may vary in different industries and according to the creditworthiness of the particular taxpayer.

[59] SARS proposes that the arrangement's treatment for IFRS and accounting purposes should be a starting point.
[60] This is based on the factual position and should be evaluated from both the perspective of the lender and the borrower.

Legislation	**Under previous Practice Note 2**		**Draft Interpretation Note**	
Debt Ratio	**Does Apply?**	**Ratio used**	**Does Apply?**	**Ratio to be used that will provide an indication of risk**
Safe Harbour Ratio	Yes		No longer applies	Arm's length principle will apply to provide an indication of risk
Debt: Equity		3:1		Ratio will be done and evaluated at the Arm's length principle in light of the industry
Financial Ratios				
Debt/EBITDA[61] Ratio			Yes	Industry Data – Supported by a benchmark study
Interest Cover Ratio			Yes	Industry Data – Supported by a benchmark study
Debt/Equity Ratio			Yes	Industry Data – Supported by a benchmark study
Financial Assistance – Interest Limitation				
Interest Deduction Limitation for a debtor when a "controlling relationship" exists between the debtor and the creditor.[62]			Section 23M[63] provides for a limitation on the amount of interest which can be deducted on loans sourced from a person that is in a 'controlling relationship' with the debtor where the interest is not subject to tax in the hands of the person to which it accrues. The interest deduction limitation will be calculated on the aggregate of: • the amount of interest received by or accrued to the debtor; and • A percentage of the adjusted taxable income of the debtor to be determined in accordance with a formula which links deductible interest to the average repo rate for the year. *<u>Exclusions on interest</u>* Deduction limitation ceiling of 60 per cent of the adjusted taxable income of the debtor which will exclude the previous year's assessed loss. Excess of limitation interest may be carried forward to the following year. Not applicable to any interest incurred by a debtor in relation to back-to-back loan funding where the sole purpose is to obtain funding from an unconnected lending institutions.	

61 Earnings before Interest, Taxes, Depreciation and Amortisation.

62 A controlling relationship will exist where a person directly or indirectly holds at least 50 per cent of the equity shares or voting rights in a company.

63 It can be noted that in line with recent pronouncements by the OECD relating to BEPS, section 23M was introduced by the Taxation Laws Amendment Act, 31 of 2013. Section 23M of the Act come into effect on 1 January 2015 and has a similar purpose to the thin capitalisation provisions of section 31 of the Act.

3.8.5. Applying transfer pricing principles in the CbC Template and in a South African context

As discussed above, the "safe harbour" provisions had been removed and SARS adopted a risk-based approach that is applied when selecting cases for audit. In terms of the new requirements, the existing financing and business arrangements of MNEs have to be reviewed by the MNE to assess the potential implication of the rules.

The level of borrowing is no longer considered solely with reference to the investor. The South African MNE's level of debt is considered in its entirety and compared to comparable companies to ascertain whether the debt (loan funding) is in accordance with arm's length principles. A South African entity's entire level of debt is now reviewed not only in relation to the related party borrowings.

South African taxpayers must be able to demonstrate that debttransaction is at arm's length, or that a tax deduction has been claimed for any expenditure incurred on any portion of the debt that is not arm's length.

To determine whether a MNE is thinly capitalised, certain ratios are required to be calculated, analysed and interpreted by the MNE to determine whether a risk might exist and may service as an indication of risk. To quantify whether risks may exist a MNE's financial results, being the balance sheet, income statement and tax computation are reviewed and interpreted in light of the ratios. A tax authority in the process of determining the quantum of the ratio's, should interpret the ratios in light of the industry that the MNE's operates in. For illustrative purposes the Company S Hold Co operates in the manufacturing sector.

The following ratios provide an indication of the potential risk that may exist for accumulated earnings. The ratios can be an indication that a risk may exist:

- *Debt/Equity Ratio*
- *Interest Cover Ratio*
- *Debt/EBITDA Ratio*
- *Interest Limitation Deduction*

The Balance sheet for the financial year ending 30 June 2015 will be used to calculate and interpret the following ratio:

- *Debt/Equity Ratio*

Company S Hold Co **Balance sheet for the year ending 30 June 2015**	
	Rand Amount
Non-Current Assets	**262 000 000**
Property Plant and Equipment	172 000 000
Goodwill	30 000 000
Intangible assets	60 000 000
Current Assets	**68 000 000**
Inventory	20 000 000
Trade Receivables	35 000 000
Cash and Cash Equivalents	13 000 000
Total Assets	**330 000 000**
Equity and Liabilities	
Equity	**195 000 000**
Share Capital	100 000 000
Share Premium	30 000 000
Retained Earnings	50 000 000
Reserves	15 000 000
Long Term Liabilities	**70 000 000**
Long Term Loan	50 000 000
Deferred Tax Liability	8 000 000
Finance Lease Obligation	12 000 000
Current Liabilities	**65 000 000**
Trade Payables	35 000 000
Short term liabilities	10 000 000
Current Portion of Liabilities	15 000 000
Current Taxation	5 000 000
Total Equity and Liabilities	**330 000 000**

The Income Statement of Company S Hold Co for the year ending 30 June 2015 will be used to determine the following ratios:

- *Interest Cover Ratio*
- *Debt/EBITDA Ratio*

Company S Hold Co **Income Statement for the year ending 30 June 2015**	
	Rand Amount
Revenue Sales	2 000 000 000
Cost of Sales	(1 000 000 000)
Gross Profit	1 000 000 000
Deduct: Operating Expenses	(500 000 000)
General Administration	200 000 000
Finance Cost	300 000 000
Profit before Tax	500 000 000
Taxation	(98 000 000)
Nett Profit After Taxation	**490 200 000**

The Tax computation of Company S Hold Co for the year ending 30 June 2015 will be used to determine and interpret the following ratios:

- *Interest Limitation Deduction*

Company S Hold Co Tax computation for the year ending 30 June 2015	
	Rand Amount
Nett Profit for the period under review	500 000 000
Adjustments	(150 000 000)
Depreciation and Amortisation	150 000 000
Wear and Tear	(300 000 000)
Taxable Income	**350 000 000**
Taxation liability calculated at 28%	**98 000 000**

Calculation of Debt/Equity Ratio

The Debt/Equity Ratio is also referred to as the Gearing Ratio. A high debt/equity ratio in principle provides an indication that a company has been aggressive in financing its growth with debt. It can be noted that aggressive leveraging practices are often associated with high levels of risk. This may result in volatile earnings as a result of the additional interest expense that is included in the income statement.

The debt/equity ratio of 3:1 provides an indication for whether the debt in relation to equity can be regarded as excessive. The debt/equity ratio is 0.69.[64] It can be concluded that the company has taken on minimal debt and therefore has a low risk. Debt is used to finance increased operations. In the event that the company under review was more capital intensive and, for example in the manufacturing industry, the amount of debt would have been substantially more, the ratio would have increased to 3:1.

Calculation of Interest Cover Ratio

The Interest Coverage Ratio indicates the capacity of the company to pay its interest obligations.

64 Per the Annual Financial Statements (AFS) the total equity and debt amounts to R330 000 000. Equity per the AFS includes share capital, share premium, retained earnings and other reserves. For the purposes of the calculation Equity is deemed to be R195 000 000. Debt for the purposes of the calculation includes the Long Term and Current Liabilities (R70 000 000 + R65 000 000). Earnings before Interest, Depreciation and Amortisation.

An interest cover of 2.667 implies that the company has sufficient profitability to bear 2.667 times the amount of the current finance cost.[65] The effect of taxation is normally ignored when the interest cover calculation is done. The reasoning behind this is to facilitate a better comparison of the contribution of the company's underlying profitability towards meeting its interest obligations. In the event that the taxation component is taken into account, a distorted calculation will be obtained due to the effects of items such as the revision in tax rates, policies and prior period tax adjustments over several accounting periods.

Calculation of Debt/EBITDA Ratio

The Debt/EBITDA ratio can be used to compare the liquidity position of one company to the liquidity position of another company within the same industry.[66]

A lower debt/EBITDA ratio is a positive indicator that the company has sufficient funds to meet its financial obligations when they fall due. A higher debt/EBTIDA ratio means that the company is heavily leveraged and it might face difficulties in paying off its debts. For discussion purposes the Debt/EBITDA ratio is 0.142:1.[67] Ratios below 3 can be regarded as reasonable.[68]

Calculation of Interest Limitation Deduction

The taxable income for the period under review is R 350 000 000 as per the detailed calculation. The interest expense limitation in terms of the formula will be R140 000 000.[69] For purposes of the calculation, the limitation in relation the R300 000 000 interest paid will apply. For a capital

[65] Earnings before Interest and Tax consists of net profit before tax of R500 000 plus the Interest of R300 000 therefore EBIT: Interest Expense (800 000 000:300 000 000) (2.667:1).

[66]Earnings before Interest, Taxes, Depreciation and Amortisation.

[67] Per the Annual Financial Statements (AFS) the total equity and debt amounts to R330 000 000. For the purposes of the calculation Debt is deemed to be R135 000. Debt includes the Long Term and Current Liabilities (R70 000 000 + R65 000 000). Earnings before tax is R500 000 000. Interest Expense of R300 000 000 and depreciation of R150 000 will result to a EBITDA of R950 000 000. Debt: EBITDA (135 000 000:950 000 000) will be (0.142:1).

[68] Refer to the following website http://www.readyratios.com on clarification of a reasonable ratio. All of these ratios however should be supported by benchmarking studies that provide reasonable comparables that will provide support to motivate the arm's length principle.

[69] The interest-cap formula is roughly 40% of the tax version of EBITDA. The Adjusted' taxable income at the end of any tax year is determined before — i.e., requires add-backs and reductions for — interest income and expenditure, capital allowances and claw-backs/recoupments, and any assessed loss carried forward from the previous year. Adjusted taxable income will be the R350 000 x 40% that results to R140 000. The new interest-cap formula applies together with, and in addition to, the existing transfer pricing and thin capitalisation rules. The interest expense of R300 000 may be limited as per interpretation of the legislation. The interest expense therefore allowable will be R160 000 being the actual interest expense of R300 000 minus the interest cap amount calculated being R140 000.

intensive company that relies on debt to finance its operations, the limitation of interest can have commercial implications that capital intensive companies should take into account.

3.8.6. Conclusion

The issue of thin capitalisation is a contentious one in the tax arena. Developing countries that obtain funding from offshore holding companies are exposed to the risk that profits can be extracted from the developing countries' tax bases by way of excessive interest payments.

The stated capital is therefore an indication whether a transfer pricing leakage has occurred. Although these ratios cannot be reviewed in isolation and do not form part of the CbC Template, these ratios are important in the process of compiling information that is required to be disclosed in the CbC Template. The ratios do serve as an indication of risk.

Although the local legislation does have mechanisms in place to limit excessive interest deductions, the CbC Template in itself will not assist SARS to determine whether or not the South African tax base is being eroded.

One good indicator of risk is the level of accumulated earnings but, as noted above, it should not be reviewed in isolation. The South African taxpayer should note that if it decides to provide intercompany loan funding then the accumulated earnings should be reviewed to determine whether or not SARS could perceive the South African taxpayer as being thinly capitalised.

3.9. CbC Template: Table 1: Number of Employees

3.9.1. Introduction

Intra-group service transactions rendered to parties within a group context can be regarded as normal transactions. For transfer pricing purposes a question arises on how these costs are allocated within a group context. The costs can be allocated to the relevant entity either by the direct or indirect method. Certain allocation keys such as the number of employees or the turnover may be used to determine the cost base when the indirect method is used. South African taxpayers that use the indirect method to allocate costs may use the number of employees to determine the portion attributable to the entity.

3.9.2. The term "Number of Employees" in light of CbC Template Requirements

The total number of employees on a full-time equivalent ("FTE") basis is recorded for all constituent entities in their applicable jurisdictions.

3.9.3. Analysis of Table 1: Number of employees in a South African context

In order to illustrate the risk that a South African MNE can potentially face, the following example is given to illustrate transfer pricing principles SA Holdco has a manufacturing entity within South Africa. In order to obtain a market presence in another jurisdiction, SA Holdco decides to purchase a company, Foreign SubCo, to distribute the manufactured products within that other jurisdiction. SA Holdco seconds two employees to assist the Foreign SubCo to develop the market. These two secondees, in terms of their contracts, have the authority to represent SA Holdco within the foreign jurisdiction. If the distributing entity, Foreign SubCo, should be profitable and SA Holdco does not wish to extract profits by service costs, then SARS can use the CbC Template to determine if a risk exists; in doing so it may determine that the entity is effectively managed from South Africa and that a full profit should be allocated to South Africa.

3.9.4. Conclusion

SARS can use the number of employees in relation to the profit base to determine that profits can be potentially attributable to South Africa. Although the number of employees is only an initial step to determine if a risk exists, this number should not be seen as a conclusive test to determine if a potential transfer pricing leakage occurred.

3.10. CbC Template Table 1: Tangible Assets other than Cash or Cash Equivalents

3.10.1. Introduction

In order for MNEs to derive profits or revenue, certain assets will be utilised to gear or finance the operations. In a capital intensive sector, such as the manufacturing industry, MNEs will need to purchase tangible assets in order to manufacture the products that are sold to end users.

For transfer pricing purposes to determine the return or mark-up that should be applied to the costs charged, a profit level indicator is used for bench marking purposes. The profit level indicator is selected on the basis of the assets utilised and capital employed. In the process of the profit level indicator selection to determine the return on assets, it is noted that assets for accounting and tax purposes include property, plant and equipment as well as intangible assets. For the purposes of this paper the term "tangible assets" is defined in accordance with accounting and tax principles.

3.10.2. The term "Tangible Assets" other than cash or cash equivalents in light of CbC Template

The CbC Template requires a MNE to disclose the sum of the net book values of tangible assets in the relevant tax jurisdiction. The Guidance on the Transfer Pricing Documentation and Country-by-Country Reporting (OECD, 2014) CbC Template - General Instructions for Annex III to Chapter V notes that "w*ith regard to permanent establishments, assets should be reported by reference to the tax jurisdiction in which the permanent establishment is situated."*[70]

The report adds that for the purpose of completion of the CbC Template, the term "tangible asset" will not include cash or cash equivalents, intangibles, or financial assets.[71]

3.10.3. The term "Tangible Assets" other than cash in a South African context

A South African taxpayer, when completing its ITR14, is required to disclose certain information regarding assets. Thus, the accounting book value of the fixed property, plant and equipment and

[70] Refer to the OECD Report, Guidance on Transfer Pricing Documentation and Country-by-Country Reporting (2014), page 39.
[71] *Ibid.*

other fixed assets is disclosed in the balance sheet section of the ITR14.[72] Upon submission of the ITR14, SARS can obtain an indication of the assets utilised by a MNE.

SARS PN 7 requires a South African MNE, when compiling contemporaneous documentation, to conduct a functional analysis that is an assessment of the functions performed, the risks assumed and the assets utilised. The assets utilised can be categorised as tangible or intangible assets and this information can be used to help determine the entity's characterisation. The term "tangible assets" for transfer pricing purposes includes fixed property, plant and equipment utilised by the entity under review.

3.10.4. Analysis of Table 1: Tangible Assets in a South African context

To demonstrate how the assets utilised and link to the profit level indicator to provide an indication of risk, for analysis purposes the assumptions will be based on a South African MNE (SA Co) with a holding company (Foreign Holdco) based in another jurisdiction. The group is involved in manufacturing electrical appliances that are sold to the public. SA Co manufactures these electrical products for Foreign Holdco but a certain product is only manufactured on a contract assignment basis. SA Co, for group transfer pricing purposes, is classified as a contract manufacturer. SA Co only manufactures products for the group but is allowed to sell the manufactured products direct to the public. The return on assets is selected as the profit level indicator applying the Transactional Net Margin Method (TNMM) to determine the margin.

The selection of the assets used will provide SARS with an indication of risk but more detail will be required to determine the quantum of the assets used; note that all assets should be used in the process of manufacture. SARS, when reviewing the CbC Template will be able to determine whether the assets used and the profit are in alignment with a contract manufacturer in the electrical appliances industry. The CbC Template will provide an indication of the profit spread within the group, SA Co's profit margin and the assets used.

3.10.5. Conclusion: "Tangible Assets" in a South African context

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[72] Being the cost of the assets purchased excluding depreciation.

It can be concluded that when reviewing the disclosure of the type of assets used in relation to the profit base, that SARS may determine that profits can be potentially attributable to South Africa. The characterisation of the entity and the disclosure of the assets used may disclose the type of assets used; nevertheless, the indication of the assets used is only an initial step used by SARS to determine if a risk exists.

3.11. Analysis of CbC Template: Table 2: List of all of the Constituent Entities of the MNE Group per Tax Jurisdiction

3.11.1. Introduction

For a MNE to complete the CbC Template in Table 2, the MNE is required to disclose information of all of the entities of the group per tax jurisdiction. After defining these concepts in light of the CbC Template and taxation concepts, a detailed analysis, by way of a scenario will be done from a South African perspective to highlight risks and challenges that may exist.

3.11.2. The Table 2 requirements within the CbC Template context

A MNE, for disclosing purposes, will be required to complete Table 2 of the CbC Template. Table 2 – as per guidance in the Guidance to Transfer Pricing documentation and CbC Template requires an MNE to disclose the applicable tax jurisdiction and relevant entities residency in the tax jurisdiction. The MNE is further required to disclose the tax jurisdiction of incorporation in the event that the tax jurisdiction differs from the tax jurisdiction of residence.

The MNE in terms of the requirements of the CbC Template will be liable to select the applicable Main Business Activity code applicable to the entity under review. The codes disclosed in Table 2 are not "business" codes, as these codes relate to the transfer pricing activity of an entity. The nature of the entities' business activities is an important piece of information for tax administrations which allows them to assess audit risks and to identify targets for further investigations.

3.11.3. Analysis of Table 2: List of constituent entities

The CbC Template - Table 2 - requires an MNE to disclose its applicable tax jurisdiction and its constituent entities resident in the tax jurisdiction. It must also disclose the tax jurisdiction of incorporation if this is different from the tax jurisdiction of residence. The MNE must 'tick" the applicable Main Business Activity code applicable to the entity under review.

The CbC Template requires a South African taxpayer to disclose the business codes for the Main Business Activities in certain categories. Although there is an extensive list of categories, there is some ambiguity as to what selection to use in the report. This issue will be discussed in the scenarios below.

3.11.4. Analysis of Table 2: List of constituent entities in a South African context

In order to determine what the risks for a South African MNE are in the process of completing the CbC Template, the scenarios discussed below will provide some clarity on the potential risks that may exist for a South African taxpayer in completing the CbC Template - Table 2.

3.11.4.1. *Holding Company and other activities*

In the event that a South African MNE is involved in Holding Company activities, the entity will be required to disclose the information. For illustrative purposes a South African taxpayer (SA Holdco) is the holding company of the group of companies. The group of companies is involved in the following: the manufacturing of machinery, its distribution, and the sale of the required products used in the mining industry. The group as part of its market strategy decides to expand its operations within the African market. Due to it being a start-up company in a new jurisdiction, one of SA Holdco's subsidiaries, (Foreign SACo), was unable to obtain sufficient financing. SA Holdco, with a favourable credit rating, decides to utilise its credit loan funding and, in turn, provides financing for Foreign SACo. SA Holdco, in order to utilise its favourable credit rating, decides to carry out some financing operations to its subsidiaries, in countries where the subsidiaries were able to obtain favourable interest rates on loan funding.

The group as part of its market strategy decides to expand its operations within the African market. SA Holdco as part of the initial expansion process will be providing certain administrative and support services to these start-up entities within the new regions; those services include IT and accounting services.

SA Holdco will need to select the holding company section in Table 2. Since SA Holdco will carry out some financing operations for its cross-border subsidiaries, and it provides some administrative and support services to the start-up subsidiaries, the question arises as to how SA Holdco should be classified. No guidance is provided on the question of what section the SA Holdco should be required to opt as a "Holding Company," a "Finance" company or an "Administrative and Support Service" for disclosure purposes. The risk exists that SA Holdco may regard itself as a holding company while SARS might challenge this.

If SA Holdco does decide to provide financing and administrative support services in equal measure to a start-up, offshore-related entity, the question arises: how should this holding company be classified on the CbC Template. Guidance for the South African MNE should be provided.

3.11.4.2. *Manufacturing and Research and Development exposure*

Should a group, which manufactures machinery used by end users for manufacture of products, in terms of its service level agreements decide to allow its SA SubCo to provide certain commercial services to entities within the group A Group, but these services are not only limited to manufacture; thus, SA SubCo may also provide some Research and Development services as part of the group A Group's strategic decision. From applying the CbC Template, it can be concluded that there is not sufficient guidance as to what the SA SubCo should be disclosed as when the CbC Template is completed.

3.11.4.3. *Sales, Marketing and Distribution and other activities*

A group of companies is involved in the manufacture, distribution and sale of white products such as washing machines used for household purposes. The holding company, Holdco is based in another jurisdiction. The SA SubCo company is classified as a distributing entity. In terms of the revised corporate strategy the Group Co decides to expand its business into the developing countries. Because SA SubCo is close to the African market and understands the region, SA SubCo is allowed, in terms of its service level agreements, to perform certain sales and marketing services relating to the African market. For purposes of this example the selection in Table 2 should be "ticked" as sales, marketing and distribution. If SA SubCo was to be classified as a distributor/limited risk distributer or an agent for classification purposes, then the entity would not have performed the sales or marketing functions and these cannot be aggregated together.

This example illustrates a situation in which the attention of SARS could fall on the company, from an audit risk assessment perspective, if the SA SubCo as the distributing entity, performs additional services such as sales and marketing functions.

3.11.5. Conclusion

There are certain services that should rather be listed as separate activities as illustrated in the examples above. Each service should have its own code rather than grouping these services together in one section, as these business functions can be separated for transfer pricing purposes.

A South African taxpayer, when compiling its transfer pricing documentation, will compile it in a Master File format as indicated in the OECD Guidelines. These taxpaying entities are classified in accordance with their business function but this will result in excessive categorisation. The risk in this scenario lies in the oversimplification of the facts and the circumstances of the business within the CbC Template. The information will be limited in order to reach a well-founded conclusion if a risk assessment is done.

3.12. Analysis of CbC Template: Table 3: Additional Information to disclose

3.12.1. Introduction

After completing the CbC Template in Table 1 and Table 2, the CbC Template has a Table 3 with the heading: Additional Information to be disclosed. The CbC Template requires that any further brief information or explanations should be included that is deemed necessary to facilitate the compulsory information required.[73]

3.12.2. The term "Additional Information" in light of the CbC Template requirements

Table 3 of the CbC Template requires a taxpayer to explain or to include the supplementary information considered necessary to facilitate the understanding of the information provided in that CbC Template.[74] If the South African's taxpayer is involved in a business activity that falls within the "other" definition given in Table 2, then it will be required to stipulate the constituent entity's activity in this section.[75]

3.12.3. The term "Additional Information" in a South African context

PN 7 provides guidance on what is deemed as contemporaneous information. It should be noted that SARS has been provided with "additional" powers under Chapter 5 of the Tax Administration Act (Act No 28 of 2011 and hereafter the "Tax Admin Act") to gather any relevant material from taxpayers for the purpose of proper administration of tax laws; the information can be gathered by way of inspection, verification or audit. Thus, SARS is empowered to obtain any other additional information that it deems fit.

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[73] Refer to the OECD Report, Country by Country Reporting, Table 3.

[74] Refer to the OECD Report, Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, (2014), page 34 to page44.

[75] *Ibid.*

When completing and filing the Annual (ITR14)[76] the taxpayer must disclose whether any intra-group transactions with offshore related parties have been entered into. If the answer to this question is in the affirmative, then the taxpayer is required to respond to further questions, eg whether it has transfer pricing documentation supporting that all cross-border connected party transactions during the period under review were arm's length.

The taxpayer, in order to be compliant, will prepare information based on the guidance provided in PN 7 and Section 31 of the Act, all of which follow international standards.

3.12.4. Analysis of Table 3 - Additional information requirements in a South African context

For discussion purposes to determine the challenges or risks that Table 3 - Additional information required, the following scenario will apply for the analysis.

A South African MNE company, (SA Holdco), is involved in activities that arguably do not fall within the definition of "services" or any other criteria as given in the CbC Template's Table 2, which provides a breakdown of the type of business activities when completing the CbC Template. For purposes of completing the CbC Template, the MNE, in order to meet the completion requirements and being a prudent taxpayer will be required to revert to selecting the relevant option "other".

The OECD Guidance to Transfer Pricing Documentation and Country-by-Country Reporting provides no guidance on what is deemed as an applicable description for "other". The South African MNE Company will therefore be required to disclose the information of what it deems as "other" under the Table 3.

3.12.5. Conclusion

There is a definite risk that the taxpayer's view of what constitutes sufficient information under the "additional" category may not be sufficient from SARS' point of view. SARS can potentially challenge the taxpayer with the "non-disclosure" argument.

[76] Refer to the SARS website regarding the ITR14 disclosure requirements.

If a South African taxpayer wishes to disclose information “additional” to the required information already disclosed, care should be taken to make sure that the tax authority, SARS, does not dispute the validity of the information.

4. CONCLUSION

Section 3 of this paper provided information on the evaluation of the CbC Template, the information that a South African MNE has to compile when it conducts related party cross-border transactions for purposes of completing the CbC Template. Section 3 further presented the tax requirements that a MNE has to consider when conducting business within South Africa' borders. In light of the requirements of the CbC Template that a South African taxpayer now has to consider, a critical analysis was done in order to determine what the potential challenges or risks can be for a taxpayer completing the CbC Template.

Section 2 of this paper discussed the Transfer Pricing Documentation requirements with which a South African taxpayer has to comply. Section 2 also provided a high-level discussion of the Transfer Pricing Documentation requirements in light of the CbC Template. It is suggested that Section 2 provides an understanding of what the Transfer Pricing Documentation requirements are from a South African perspective. Section 2 concludes that although there are no formal transfer pricing documentation requirements, it is suggested that it is sensible practice to have formal transfer pricing documentation in place.

The evaluation of the risks in Section 3 shows that although the OECD's viewpoint is that the CbC Template will assist developing countries to ensure that no transfer pricing leakage occurs, it is nevertheless clear that a transfer pricing leakage can occur without detection. In conclusion, the paper has shown the following:

a) The aim of the CbC Template is to ensure that transparency is provided to a tax authority; this gives that tax authority an indication of risk, allowing it to determine whether a transfer pricing audit needs to be done.
b) The CbC Template does indeed pose risks for the South African taxpayer from a compliance point of view.

A summary of the risks identified in this paper follows:

- *Section 3.2 - Tax Jurisdiction*

  A MNE will be required to disclose the relevant tax jurisdictions where certain entities are based. In the event that an entity may not be deemed to be a tax resident of any tax jurisdiction, this will be required to be disclosed. A MNE unintentionally may, due to commercial reasons, not be tax resident within a certain jurisdiction. The MNE may not have been intentionally creating a transfer pricing leakage.

- *Section 3.3 - Related/Unrelated Revenue*

  A MNE will be required to disclose the revenue for the period under review. The request for the disclosure will provide SARS with an indication of whether an internal comparable transaction does exist. This usually is used by companies to motivate the relevant mark-up that is applied within inter-company transactions. Should the unrelated party sales be immaterial this can also be deemed as an indication of risk for SARS.

- *Section 3.4 – Profit/Loss before Tax*

  Differences exist between the accounting book values and the tax treatment. In the event that a MNE is required to disclose the information on the CbC Template the information will be disclosed on the approach that the MNE has based this on its annual financial reporting statements. In the event that tax authorities review the information it will be difficult to establish an accurate and full overview of the total tax burden on a given business and the view may therefore be derived in isolation.

  The review of the ETR and related tax risks will therefore be analysed by tax administrations in isolation.

- *Section 3.5 and Section 3.6- Income Paid – Cash Basis and Accrued Tax*

  The income tax paid information that will be disclosed will provide an indication of risk for tax authorities from a cash flow point of view rather than from a transfer pricing point of view.

The total tax paid can provide a distorted picture of the group in relation to the revenue, and as a result tax authorities will not always be seeing the "*bigger picture*".

- *Section 3.7 and Section 3.8 - Stated Capital and Accumulated Earnings*

  The risk for companies exists that the accumulated earnings and stated capital will be reviewed in isolation from the loan funding. A company may be thinly capitalised in the case of it being a start-up company. Start-up companies may not have sufficient accumulated reserves to leverage substantial debt.

- *Section 3.9 - Number of employees*

  In the event that a MNE does have limited employees and the profit allocated to the entity is substantial, or vice versa, the entity under review may have a substantial loss and an extensive amount of employees. This may be an indication that a leakage of the tax base has occurred.

- *Section 3.10 - Tangible Assets*

  The type of assets used in relation to the profit base, may determine the profits potentially attributable to South Africa. The characterisation of the entity and the disclosure of the assets used may disclose the type of assets used.

- *Section 3.11 – Business Codes*

  The risk for companies exist that the business codes list is not exhaustive. Since the list is generic the risk exists that it can result in the oversimplification of the facts and the circumstances of the business within the CbC Template. The information will be limited in order to reach a well-founded conclusion if a risk assessment is done.

- *Section 3.12 – Additional Information*.

  No guidance is provided on what is regarded as "Additional" information. No guidance is provided on what is expected. What may be regarded as sufficient for a South African taxpayer to be disclosed as additional information might not necessarily be deemed as sufficient information for a revenue authority. A taxpayer in the event of being transparent may provide SARS with unnecessary information that bears no relevance for purposes of CbC Template purposes.

The evaluations in this paper note the following:

- If the South African taxpayer is to remain complaint and to act in the way that a prudent taxpayer should, then SARS will have to provide further guidance for implementing the CbC Template.

The following suggestions can be noted:

- *<u>Section 3.2 – Tax Jurisdiction</u>*

  The tax jurisdiction disclosure may require that a MNE be deemed to be resident within multiple tax jurisdictions. Guidance will be required to what SARS may deem as the dominant tax jurisdiction as in the event of multiple tax jurisdictions, a MNE may be registered and a legitimate taxpayer within more than one tax jurisdiction.

- *<u>Section 3.3. - Revenue – Related/Unrelated party</u>*

  The unrelated party column can be discarded. The unrelated sales transactions may be an indication to SARS whether potential internal comparable transactions may exist. Although this is not adding any value as an indication of risk within a group context, it does provide the company in relation to group sales whether risks exist from a transfer pricing point of view.

- *<u>Section 3.4 – Profit/Loss before Tax</u>*

  MNEs in order to mitigate the potential risks that may exist in the completion of the CbC Template may determine the tax values for reporting Revenues and Earnings Before Tax (EBITDA) as opposed to book values.

  The MNE may collect data on current taxes payable and tax expense per book (as opposed to only current tax values).

The effective rate of tax paid by the entity provides a true reflection of the actual position; this can provide a true reflection of the profit in relation to the taxation paid.

- *Section 3.5 and Section 3.6 - Income Paid – Cash Basis and Accrued Income Tax current tax year*

  The total tax paid can provide a distorted picture of the group. It is suggested that in the event of completing the CbC Template, that reasoning should be provided on how the quantum is determined to avoid that the tax portion will be reviewed in isolation.

- *Section 3.7 and Section 3.8 – Stated and Accumulated Earnings*

  The risk for companies exists that the stated capital and accumulated earnings will be reviewed in isolation of the loan funding. A company may be thinly capitalised as a result of a start-up company. Start-up companies may not have sufficient accumulated reserves to leverage substantial debt. Reviewed in isolation this can be deemed as a potential risk. Further although a company may have sufficient funding, a more capital intensive company (i.e. manufacturing entity) may be more of a risk due to funding necessary to obtain machinery from external parties, such as banks.

- *Section 3.9 - Number of Employees*

  The number of employees can provide an indication of risk for MNEs in the completion of the CbC Template takes case when disclosing the employee base. The number of employees in relation with the income of the entity and the functions of the entity can provide an indication of whether the tax base had been eroded.

- *Section 3. 10 Tangible Assets*

  It is suggested that the tangible assets section be split between tangible assets and intangible assets. Although the assets are aggregated and only used for the indication of risk, intangible assets do pose a risk from a transfer pricing point of view and therefore these should be disclosed separately to avoid unnecessary queries.

- *<u>Section 3. 11 – Business Codes</u>*

  In Table 2 – The selection of the business codes can be increased and be more extensive to ensure that certain complex industries will be able to provide SARS with the required and relevant information to determine whether there may be certain risks.

- *<u>Section 3.12 Additional Table 3</u>*

  Examples or guidance can be provided by SARS as to what is deemed to be additional information. Guidance can be provided to ensure that unnecessary information will not be provided that will provide an indication of risk.

To finally conclude, in the event that a South African taxpayer wishes to remain compliant, SARS will be required to provide guidance on the implementation and the requirements on the CbC Template.

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Annexure A:

Country-by-Country Reporting Table 1 to 3

Table 1 - Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE Group:
Fiscal year concerned:

Tax jurisdiction	Revenues			Profit (Loss) before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued - Current Tax	Stated capital	Accumulated earnings	Number of employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 2 - List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group:
Fiscal year concerned:

Tax jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity (ies)												
			Research and Development	Holding or Managing intellectual	Purchasing or Procurement	Manufacturing or Production	Sales, marketing or Distribution	Administrative, Management or Support Services	Provision of Services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant	Other
	1														
	2														
	3														
	1														
	2														
	3														

Table 3 - Additional Information

Name of the MNE Group:
Fiscal year concerned:

Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of compulsary information provided in the country-by-country report.