

Canada

Canada's Approach to Implementing OECD Documentation Rules

The author analyses how Canada implemented the OECD's transfer pricing documentation recommendations, that provide for a country-by-country report, a master file, and a local file, to combat base erosion and profits shifting.



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OECD BEPS Project

For many of us it seems like yesterday. However, it has been over four years since the OECD started its efforts, within the base erosion and profit shifting (BEPS) initiative, to revise the transfer pricing documentation guidance.

This new guidance is now included in Chapter V of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*.²

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² OECD (2017), *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, 2017 Edition.

It all began with the *White Paper* on transfer pricing documentation for public consultation released on July 30, 2013³, then a *Memorandum* which led to another public consultation on November 12 and 13, 2013.⁴

A "public discussion draft" was thereafter issued for comments in January 2014.⁵

It was followed by the first version of the *OECD Guidance on Transfer Pricing Documentation and Country-by-Country Reporting* in September 2014, the *Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting* in February 2015, and the *Country-by-Country Reporting Implementation Package* in June 2015.⁶

³ OECD (2013), *White Paper on Transfer Pricing Documentation*, July 30, 2013.

⁴ OECD (2013), *Memorandum on Transfer Pricing Documentation and Country by Country Reporting*, October 3, 2013.

⁵ OECD (2014), *Discussion Draft on Transfer Pricing Documentation and CbC Reporting*, January 30, 2014.

⁶ OECD (2015), *Action 13: Country-by-Country Reporting Implementation Package*, OECD/G20 Base Erosion and Profit Shifting Project, June 8 2015.

On October 15, 2015, the OECD released an updated series of reports including the updated *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*.⁷

There was more unfinished business as the OECD then released the *Country-by-Country Reporting XML Schema: User Guide for Tax Administrations and Taxpayers* in March 2016, followed by an updated version of *Guidance on the Implementation of Country-by-Country Reporting* in April 2017, and then two updated versions of the *Guidance on the Implementation of Country-by-Country Reporting* in July 2017 and September 2017, all these on top of the *Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports* released in September 2017.

Canadian Documentation Rules

In Canada, most of the guidance on transfer pricing documentation precedes the BEPS initiative.

The transfer pricing documentation cycle in Canada starts with the filing of prescribed form *T106 Information Return of Non-Arm's Length Transactions with Non-Residents*, provided the filing threshold is crossed.⁸

These requirements have been in force since 1988.⁹ Filing of *T106* is usually supplemented by filing of form *T1134 Information Return Relating to Controlled and Not-Controlled Foreign Affiliates*, which became applicable to fiscal years commencing on January 1st, 1996 or after.¹⁰

After these filings, the request for contemporaneous documentation may be issued by the Canada Revenue Agency (the CRA) at the onset of a transfer pricing audit under subsection 247(4) of the *Canadian Income Tax Act (ITA)*¹¹. This requirement came into force on June 18, 1998.¹²

⁷ OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, October 5 2015, Paris.

⁸ See the instructions in form *T106 Information Return of Non-Arm's Length Transactions with Non-Residents* and the *De Minimis Policy* both available online for more details.

⁹ In its original version, section 233.1 of the *Canadian Income Tax Act (ITA)* was applicable to any fiscal year ending after September 13, 1988 (S.C. 1988, c. 55, s. 176). It was amended in 1998 and has since applied to fiscal years starting on January 1st, 1998 or thereafter (S.C. 1998, c. 19, s. 231).

¹⁰ Section 233.4 ITA was added by S.C. 1997, c. 25, ss. 69(1). See the instructions in form *T1134 Information Return Relating to Controlled and Not-Controlled Foreign Affiliates* available online for more details.

¹¹ R.S.C. 1985, c. 1 (5th Supp.), as amended.

¹² Section 247 ITA was enacted in replacement of former subsections 69(2) and 69(3) ITA, which came into force in 1972 (S.C. 1970-71-72, c. 63), that were themselves enacted to replace subsections 17(3) and 17(4) ITA from the 1952 version of the *Income Tax Act*. Subsections 17(3) and 17(4) ITA replaced section 23B of the *Income War Tax Act*, the first transfer pricing

Information circular *IC 87-2R International Transfer Pricing*¹³ released on September 27, 1999 provides general guidance on arm's length transfer pricing determination.

Transfer pricing memorandum *TPM-05R Requests for Contemporaneous Documentation*¹⁴, initially issued in October 2004 as *TPM-05*, highlights the CRA's administrative positions with respect to requests for contemporaneous documentation under 247(4) ITA.

Transfer pricing memorandum *TPM-09 Reasonable efforts under section 247 of the Income Tax Act*¹⁵, issued in September 2006, offers additional guidance regarding the potential applicability of transfer penalties that could result from transfer pricing adjustments.

In short, Canadian legislative provisions related to transfer pricing documentation were somewhat getting dusty in light of the BEPS initiative. Following the release of the *OECD Guidance on Transfer Pricing Documentation and Country-by-Country Reporting* in September 2014, changes were thus expected to ensure that there would be coordination between the Canadian legislation and regulations and the OECD guidance on BEPS.

Changes did happen, although it took a while to get there. These changes were more modest than expected as highlighted below. In a nutshell, changes to transfer pricing documentation in Canada started and ended with a draft including legislative proposals on country-by-country reporting (CbC reporting), which was issued by the Department of Finance Canada on July 29, 2016.¹⁶ Following a "public consultation," final proposals were sent to Parliament in October 2016.¹⁷ These "final" proposals were in fact identical to the proposals put forward in July 2016. No proposals of changes were released regarding the Master File and Local File requirements put forward by the OECD.

Canadian Master File and Local File

It is now well-known in transfer pricing circles that the OECD suggests a "three-tiered documentation ap-

ing provision in Canada which came into force in 1939 and applied to fiscal years ending on January 1st, 1938 and afterward.

¹³ Canada, *IC 87-2R International Transfer Pricing*, Canada Revenue Agency, September 27, 1999.

¹⁴ Canada, *TPM-05R Requests for Contemporaneous Documentation*, Canada Revenue Agency, March 28, 2014, which replaced *TPM-05* released on October 13, 2004.

¹⁵ Canada, *TPM-09 Reasonable efforts under section 247 of the Income Tax Act*, Canada Revenue Agency, September 18, 2006.

¹⁶ Canada, *Legislative Proposals Relating to Income Tax, Sales Tax and Excise Duties*, Department of Finance Canada, July 29, 2016, <https://www.fin.gc.ca/drleg-apl/2016/ita-lir-0716-eng.asp>.

¹⁷ Canada, *Notice of Ways and Means Motion to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures*, Department of Finance Canada, October 21st, 2016, <http://www.fin.gc.ca/drleg-apl/2016/bia-leb-1016-eng.asp>.

proach” for transfer pricing documentation, that is, through the Master File, the Local File and the Country-by-Country report.¹⁸

During the *Canadian Tax Foundation Annual Conference Roundtable*, which took place on November 29, 2016, the CRA was asked whether it expected “reasonable efforts” to include a Master File and a Local File in answer to a request for contemporaneous documentation handed out under 247(4) ITA.¹⁹

The short answer was “No.” In its written response, available in CRA Views 2016-0669801C6, the CRA indicated that “BEPS Action Item 13 has been dealt with by the introduction of proposed section 233.8 of the Income Tax Act relating to Country-by-Country Reporting. The “reasonable efforts” requirement is based on the legislation contained in section 247 of the Income Tax Act, in particular the requirement to produce “contemporaneous documentation” in accordance with subsection 247(4). Proposed section 233.8 has no direct relation to section 247 and does not include a specific requirement to produce a “local file” or “master file.” As such, the CRA has not altered its criteria regarding whether a taxpayer has made reasonable efforts to determine and use arm’s length transfer prices.”

Based on this CRA statement, it would therefore appear that companies or partnerships subjected to section 247 ITA do not have to put together a Master File nor a Local File, that is, seen from Canadian transfer pricing compliance purposes. Subparagraphs 247(4)(a)(i) to (vi) ITA may indeed already cover what is required within the Master File and Local File, at least from a Canadian tax perspective.

Having said that, the Local File and especially the Master File will likely be required where a company may be under transfer pricing audit outside of Canada. Although the United States does not either require the Master File nor the Local File under section 1.482 CFR, most European and Asian countries require the Master File and the Local File under their respective transfer pricing provisions. As a result, it will usually boil down to the “proper packaging” of the available information.

Canadian Country-by-Country Reporting Rules

Overview

Section 233.8 ITA with respect to country-by-country reporting in Canada came into force on December 15, 2016.²⁰ The CRA published *RC4651 Guidance on Country-by-Country Reporting in Canada* on March 24, 2017 (the *RC4651*).²¹ Filing obligations of a country-by-

country report are specifically prescribed by subsection 233.8(3) ITA. Country-by-country reporting is applicable to fiscal years starting on or after January 1st, 2016, as indicated in the *RC4651*.²²

It is noteworthy that the *RC4651* indicates that “Canada is committed to using information provided on CbC reports in accordance with only the uses permitted in the BEPS Action 13 Final Report. CRA will not use CbCR information, by itself, to make reassessments to the income of a taxpayer for the purposes of the Act.” This compares with the very uncertain scope of use of CbC information that was included in the legislative proposals on country-by-country reporting from July 29, 2016.²³

Primary Reporting Mechanism

In Canada, country-by-country report filing must be made by the “ultimate parent entity” of the MNE, if it is a resident of Canada for the “reporting fiscal year”.²⁴ This is the “primary reporting mechanism” in Canada.²⁵ An “ultimate parent entity” is defined as a “constituent entity” which “holds directly or indirectly a sufficient interest in one or more constituent entities of the MNE group so that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of residence [. . .]”.²⁶

In simple terms, a “constituent entity” is any entity of the MNE group that is “included in the consolidated financial statements of the MNE group for financial reporting purposes” or solely excluded “because of size or materiality”.²⁷ This includes a permanent establishment (PE), as it is defined in section 8201 of the *Income Tax Regulations*.²⁸ Although that definition is then superseded by the definition of a PE found in every bilateral tax treaties concluded by Canada.²⁹

As for fiscal year, it is defined for country-by-country reporting purposes as the “annual accounting period with respect to which the ultimate parent entity of the MNE group prepares its financial statements.”³⁰ From that definition, the “reporting fiscal year” is defined as a “fiscal year, if the financial and operational results of the fiscal year are reflected in the country-by-country report.”³¹

The *RC4651* indicates that an “ultimate parent entity” (UPE) for reporting purposes is “always identified by reference to the last day of the fiscal year to which the CbC report relates. Therefore, for an MNE group with a fiscal year end of December 31, 2016, the UPE is identified by reference to the date of December 31,

¹⁸ OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, *op. cit.*

¹⁹ Question no. 9 to the *CTF Annual Conference Roundtable* was labelled as follows: “Does CRA expect that the “reasonable efforts” that a taxpayer must make to determine and use arm’s length transfer prices include the preparation of transfer pricing documentation consistent with the OECD recommendations in Action 13 of the BEPS initiative (i.e., Master File and Local File transfer pricing documentation)?”

²⁰ Section 233.8 ITA was added by S.C. 2016, c. 12, s. 61; first reading on October 25, 2016; second reading on November 29, 2016; third reading on December 6, 2016; royal assent on December 15, 2016.

²¹ Canada, *RC4651 Guidance on Country-by-Country Reporting in Canada*, Canada Revenue Agency, March 24, 2017.

²² *RC4651*, “Effective date of CbCR in Canada.”

²³ *Op. cit.*; see the introductory remarks.

²⁴ Paragraph 233.8(3)(a) ITA.

²⁵ *RC4651*, “Entities that are required to file in Canada.”

²⁶ Subsection 233.8(1) ITA, *ultimate parent entity*.

²⁷ Subsection 233.8(1) ITA, *constituent entity*.

²⁸ The inclusion of PEs stems from the definition of a “business entity” under subsection 233.8(1) ITA. “Business entity” is then itself included in the definition of a “constituent entity” under the same subsection.

²⁹ For example, Article V of the *Convention between Canada and the United States of America with Respect to Taxes on Income and on Capital*.

³⁰ Subsection 233.8(1) ITA, *fiscal year*.

³¹ Subsection 233.8(1) ITA, *reporting fiscal year*.

2016.”³² In Canada, as in most countries around the world, restructuring or takeover will trigger an end of fiscal year. As such, the CRA expects the UPE of the acquired group to file a CbC report “up to the date of takeover.”³³ The UPE of the acquirer group is then expected to file CbC report moving forward.³⁴

Secondary Reporting Mechanism

“Secondary reporting mechanisms”, as they are labelled by the RC4651, are also included in paragraph 233.8(3)(b) ITA. Country-by-country report filing may therefore be carried out by a “constituent entity” of the group, that is, other than the ultimate parent entity, if this entity is a resident of Canada for the reporting fiscal year and the “ultimate parent entity” does not have to file a CbC report in its “jurisdiction of residence.”³⁵

Other specific situations may also require country-by-country report filing by a “constituent entity” which is a resident of Canada. For instance, where the “jurisdiction of residence” does not have a “qualifying competent authority agreement in effect to which Canada is a party” or when there has been “systemic failure.”³⁶ These special situations intend to cover instances where the “automatic exchange of country-by-country reporting information” (CbC MCAA) may not properly work, that is, when there is “systemic failure.”³⁷

Where more than one entity may fall within the application of these rules of exception, subsection 233.8(4) ITA allows for the “designation” of a unique constituent entity for filing purposes.

Exchange of CbC Information

In instances where neither the primary nor the secondary reporting mechanisms apply, the CRA will receive the country-by-country reports through the automatic exchange of CbC information under the CbC MCAA.³⁸ As of June 22, 2017, 64 countries have signed the CbC MCAA.³⁹ It is noteworthy that the United States had yet to sign the CbC MCAA at the time of this article.

However, the Competent Authorities of Canada and the United States have concluded a bilateral agreement on the exchange of Country-by-Country Reports on June 7, 2017.⁴⁰ A first exchange of Country-by-Country Reports between Canada and the United States is expected to take place no later than 18 months after the

last day of any fiscal year of a subjected MNE group for fiscal years ending in 2016. Thereafter, exchanges of Country-by-Country Reports should occur within 15 months following the last day of the fiscal year of a subjected MNE group.

Surrogate Reporting Mechanism

Aside from the primary and secondary reporting mechanisms as well as the exchange of information arrangements, subsection 233.8(5) ITA provides for filing by a “surrogate parent entity,” which is defined as a “constituent entity” of the group “that has been appointed by the MNE group—in substitution for the ultimate parent entity—to file the country-by-country report on behalf of the MNE group.”⁴¹

Eligibility to “surrogate filing” basically waives the requirement for country-by-country report filing in Canada. But it is subject to specific conditions. Surrogate filing is allowed if the surrogate parent entity of the group “files a country-by-country report in respect of the reporting fiscal year with the tax authority of its jurisdiction of residence on or before” the prescribed deadline applicable to the Canadian entity.⁴² Surrogate filing is also subjected to the CbC MCAA requirements described above.⁴³

Filing Deadline

In every instance, country-by-country report filing to the CRA must be completed within 12 months after the last day of the reporting fiscal year.⁴⁴ When a notification of “systemic failure” has been received by a “constituent entity,” filing is required within 30 days, unless the statutory 12-month delay is further away in time.⁴⁵

Where a fiscal year lasts less than 12 months, the reporting deadline remains within 12 months after the last day of the reporting fiscal year. The rule with respect to notification of “systemic failure” also applies.⁴⁶

Transitory Measures

Not every country has country-by-country reporting legislation already in force. In other countries, country-by-country reporting will commence on fiscal years starting on or after January 1st, 2017 or January 1st, 2018.⁴⁷ To deal with these discrepancies, the CRA has indicated that a constituent entity will not be required to file a country-by-country report in Canada during the transition period. However, the following three conditions must be met. First, an ultimate parent entity must have filed in its country of residence on a voluntary basis within 12 months after the last day of the reporting fiscal year, as defined above by section 233.8 ITA. Second, the foreign jurisdiction must have country-by-country reporting regulations or law in place, even if not yet into force. Third, CbC MCAA must be in place

³² RC4651, “Change of UPE during a fiscal year”.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Subparagraph 233.8(3)(b)(i) ITA and clause 233.8(3)(b)(ii)(A) ITA.

³⁶ Subparagraph 233.8(3)(b)(i) ITA and clauses 233.8(3)(b)(ii)(B)/(C) ITA.

³⁷ See the *Multilateral Competent Authority Agreement on the Exchange of CbC Reports* available online for more details.

³⁸ RC4651, “Automatic exchange of CbC information.”

³⁹ See *Signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-By-Country Reports (CbC-MCAA)* available online for more details.

⁴⁰ See Canada, *Canada-U.S. Tax Convention – Arrangement signed on the exchange of Country-by-Country Reports*, June 8, 2017, available online: <https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/competent-authority-agreements-notice/canada-us-tax-convention-arrangement-signed-exchange-country-reports.html>.

⁴¹ Subsection 233.8(1) ITA, *surrogate parent entity*.

⁴² Paragraph 233.8(5)(a) ITA.

⁴³ Paragraph 233.8(5)(b) ITA.

⁴⁴ Paragraph 233.8(6)(b) ITA.

⁴⁵ Paragraph 233.8(6)(a) ITA.

⁴⁶ RC4651, “Fiscal years less than 12 months”.

⁴⁷ See the following OECD’s webpage for an overview as of June 29, 2017: <http://www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm>

with Canada without the ultimate parent entity having been notified of systemic failure.⁴⁸

Reporting Threshold

The guidance included in the *OECD Implementation Package* of June 2015 indicates a “reporting threshold of 750 million Euros as of January 2015.”⁴⁹ A review of the country-by-country reporting threshold is scheduled for 2020.⁵⁰ The Canadian legislation also elected to fix the reporting threshold at 750 million Euros. But it is based on “the fiscal year immediately preceding the particular fiscal year, as reflected in its consolidated financial statements for the preceding fiscal year.”⁵¹ This inconsistency with the OECD language creates foreign exchange conversion and currency fluctuation issues.

Regarding the foreign exchange conversion issues, the *RC4651* suggests that “[g]iven that revenues are typically earned throughout a fiscal year, using an average exchange rate for the period (as published by the Bank of Canada) is acceptable for the purpose of the conversion that may be required in the definition of excluded MNE group in subsection 233.8(1) of the Act.”⁵² This simplification for reporting purpose is welcomed. The *RC4651* also indicates that reporting may be performed in a “functional currency”, provided the proper election has been made under paragraph 261(3)(b) ITA. Where such an election is performed, every amount should be stated in the same currency.⁵³

With respect to the currency fluctuation issues, the onus remains on Canadian companies. The CRA indirectly addresses the matter by indicating in the *RC4651* that “where the UPE [ultimate parent entity] of an MNE group is resident in a jurisdiction other than Canada, provided that jurisdiction has implemented a reporting threshold that is a near equivalent of €750 million in its domestic currency as it was at January 2015, an MNE group that complies with this local threshold will not be subject to the secondary reporting mechanism in Canada.”⁵⁴ Although useful in some instances, these explanations do not address the issues connected with the primary reporting mechanism that in fact applies to Canadian ultimate parent entities. The reporting threshold for any given MNE Group may still be reached or not from one year to another.

RC4649 Country-by-Country Report

In Canada, filing for country-by-country reporting purposes is carried out with prescribed form *RC4649 Country-by-Country Report* (the *RC4649*).⁵⁵ At this time, filing of the *RC4649* may be performed either electronically or by paper.⁵⁶ Where amended filing is re-

quired, it must be performed in the same format that the original filing.⁵⁷ Technical questions on country-by-country report filing may be sent directly to the CRA by email.⁵⁸

The *RC4649* and the *RC4651* both provide detailed instructions on how to file the country-by-country report. Space does not allow for a detailed discussion of all those rules. However, among the less intuitive rules from a tax perspective, the *RC4651* underscores that “[f]inancial data related to a foreign permanent establishment of the business entity should be included in the reporting of the jurisdiction of the permanent establishment and excluded from the reporting for the tax jurisdiction of the business entity.”⁵⁹ This tax treatment is in fact in line with the OECD position on the subject found in the *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting* issued in October 2015.⁶⁰

The *RC4651* also underlines that “[p]ayments received from other CEs [constituent entities] that are treated as dividends in the payor’s tax jurisdiction should be excluded [from revenues].”⁶¹ This treatment is also in line with the OECD position on the matter.⁶²

Regarding the number of employees, total number by jurisdiction must be reported on a “full-time equivalent basis.” Total number of employees by jurisdiction may “be reported as of the year-end, on the basis of average employment levels for the year or on any other basis consistently applied across tax jurisdictions and from year to year.”⁶³ It is worth mentioning that “independent contractors, their employees, and seconded employees participating in the ordinary operating activities of the CE [constituent entity] should be reported as employees,” according to the CRA.⁶⁴ This position goes one step further than the OECD guidance which indicated that “independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees.” [Emphasis is ours].⁶⁵ This inconsistency may create some reporting challenges from country to country.

With respect to tangible assets other than cash and cash equivalents, the “sum of net book values of tangibles assets” must be used according to the *RC4651*.⁶⁶ Since the use of book value will involve the accounting policies of the group and/or the various entities of the group located in different tax jurisdictions, this may create some reporting challenges. Reconciliation with specific jurisdiction’s amortization schedules for tax purposes may also generate some issues in the course of tax audits. It might be reasonable to assume that some guidance on these issues will be released by the OECD in the upcoming months.

All in all, as indicated in the *RC4651*, a reporting entity is expected to “adopt a reasonable, consistent and practical approach” to country-by-country report fil-

⁴⁸ *RC4651*, “Voluntary filing (parent surrogate filing)”.

⁴⁹ *Op. cit.*, p. 9 (Article 1, par. 3).

⁵⁰ OECD (2017), *Guidance on the Implementation of Country-by-Country Reporting*, July 2017, p. 14.

⁵¹ Paragraph 233.8(1) ITA, *excluded MNE group*.

⁵² *RC4651*, “Conversion of consolidated group revenues to Euros”.

⁵³ *RC4651*, “Table 1 – Overview of allocation of income, taxes and business activities by jurisdictions”.

⁵⁴ *RC4651*, “The impact of currency fluctuations on the €750 million filing threshold”.

⁵⁵ Subsection 233.8(3) ITA.

⁵⁶ *RC4651*, “Filing an *RC4649 Country-by-Country Report* with the CRA”.

⁵⁷ *RC4649*, “Amended report”.

⁵⁸ COUNTRYREPG@cra-arc.gc.ca.

⁵⁹ *RC4651*, “Table 1 – Overview of allocation of income, taxes and business activities by jurisdictions.”

⁶⁰ OECD (2015), *op. cit.*, p. 31.

⁶¹ *RC4651*, “Revenues.”

⁶² OECD (2015), *op. cit.*, p. 33.

⁶³ *RC4651*, “Number of employees..”

⁶⁴ *Ibid.*

⁶⁵ OECD (2015), *op. cit.*, p. 34.

⁶⁶ *RC4651*, “Tangible assets other than cash and cash equivalents”.

ing.⁶⁷ The reporting entity is also expected to take into “account the guidance provided in the BEPS Action 13 Final Report [. . .].”⁶⁸ It is noteworthy that the reporting entity is deemed liable by the CRA for all the information included in the country-by-country report.⁶⁹

Penalties relating to country-by-country report filing are found in subsection 162(5) ITA, subsection 162(7) ITA and paragraphs 162(10)(a)-(b) ITA.⁷⁰

As indicated in the *RC4651*, “[s]ubsection 162(5) of the Act provides a penalty for the failure of any person to provide any information required on a prescribed form made pursuant to the Act or the Regulations. The penalty for the failure to provide the information is \$100, and is applicable to each such failure.”⁷¹ As also indicated in the *RC4651*, a penalty for the “failure to file an information return” may also be levied. Under subsection 162(7) ITA, the “penalty is equal to \$25 per day of default, subject to a \$100 minimum and a \$2,500 maximum.”⁷²

⁶⁷ *RC4651*, “Completing the RC4649 Country-by-Country Report.”

⁶⁸ *Ibid.*

⁶⁹ *Ibid.* See also the discussion on penalties below.

⁷⁰ *RC4651*, “Penalties.”

⁷¹ *Ibid.*

⁷² *Ibid.*

Steeper penalties may also apply “where a person or partnership, knowingly or under circumstances amount to gross negligence, fails to file an information return as and when required [by section 233.8].”⁷³ As underlines in the *RC4651*, in simple terms, “[w]here no demand has been served under section 233 to file the return, the penalty is \$500 per month for up to 24 months. If a demand is served and not complied with, the penalty is \$1,000 per month. It begins to run from the month in which the return was required to be filed.”⁷⁴

With regard to penalties and filing in general, the CRA indicated that it “intends to provide a reasonable degree of flexibility for MNE groups filing a CbC report in Canada in respect of their initial reporting fiscal year, where guidance or interpretation on certain issues may not have been available.”⁷⁵ Despite this temporary breathing room, caution should nonetheless be exercised when filing for country-by-country reporting for the first time to ensure that unwarranted transfer pricing audit issues are not raised.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *RC4651*, “Effective date of CbCR in Canada.”