



Cyprus Tax News

Revised Decree on Country-by-Country Reporting issued by the Cyprus Minister of Finance

Following the relevant announcement of the Cyprus Tax Department in February this year, the Cyprus Minister of Finance issued on 26 May 2017 a Revised Decree on Country-by-Country (CbC) Reporting, under the powers conferred by Section 6(16) of the Assessment and Collection of Taxes Law. The Revised Decree replaces the initial Decree which was issued on 30 December 2016.

The main changes from the previous Decree are the following:

- The obligation of a Cyprus tax resident Constituent Entity of a Multinational Enterprise (MNE) Group, which is not the Ultimate Parent Entity (UPE) or the Surrogate Parent Entity (SPE), to file locally a CbC Report under the secondary mechanism, will not apply for Fiscal (accounting) Years starting before 1 January 2017. Such local filing obligation will only apply with respect to Fiscal Years starting on or after 1 January 2017.

Correspondingly, the related notification obligation of a Cyprus tax resident Constituent Entity falling within the above will also apply for Fiscal Years starting on or after 1 January 2017.

- The concept of *Equivalent CbC Report* has been introduced which requires a Cyprus tax resident Constituent Entity of an MNE Group to file a partial CbC Report under the secondary mechanism (e.g. where there is no UPE or SPE filing), in cases where the UPE has refused to provide all required information to the Cyprus tax resident Constituent Entity.

Since the *Equivalent CbC Report* filing falls under the secondary mechanism, it also applies with respect to Fiscal Years beginning on or after 1 January 2017.

- Introduction of requirement to maintain books and records supporting the information disclosed in the CbC Report.

Impact for MNE Groups

Following the issue of the revised Decree, MNE Groups should be taking steps to:

- (1) Assess whether they are in scope of CbC Reporting based on the €750m consolidated group revenue threshold.
- (2) Ensure that they have the necessary systems in place to collect the information required to be included in the CbC Report.
- (3) Determine which group entity will be the Reporting Entity.
- (4) Be clear on CbC Reporting deadlines and CbC penalty regimes globally, and not just in Cyprus, as they will likely have at least notification obligations in other jurisdictions in which they operate even if they file a CbC Report in Cyprus.
- (5) Consider the impact of the information that will be reported and take remedial measures going forward to ensure that global transfer pricing standards are adhered to.

Deloitte Cyprus can assist MNE Groups with assessing the impact of the above and complying with the CbC Reporting requirements.

Detailed Provisions of the Revised Decree

A more detailed analysis of the main provisions of the Revised Decree is presented below:

Framework and Objective

The Revised Decree, together with the Multilateral Competent Authority Agreement on the exchange of CbC Reports (MCAA) signed by Cyprus on 1 November 2016, establishes the legislative framework for the Cypriot tax authorities to collect information on MNE Groups with a total consolidated group revenue of €750 million or more.

The data collected globally under CbC Reporting is intended to be used by competent authorities for the purposes of assessing high-level transfer pricing risks and other risks related to base erosion and profit shifting.

CbC information to be reported

An MNE Group will be required to provide annually and for each tax jurisdiction in which it operates (through tax resident entities and/or permanent establishments) aggregate information relating to revenue from independent parties, revenue from associated parties, profit (loss) before income tax, income tax paid, income tax accrued, stated capital,

accumulated earnings, number of employees and tangible assets other than cash or cash equivalents.

Furthermore, an MNE Group will need to identify each Constituent Entity along with the jurisdiction of tax residency of each such entity (and where different from the jurisdiction of tax residence, the jurisdiction under the laws of which the entity is organized) and provide an indication of the business activities in which each entity engages.

Reporting Entities

In general, the obligation to file a CbC Report on behalf of the MNE Group lies with the UPE of the MNE Group, unless an SPE has been appointed by the group (applicable where certain conditions are met).

The CbC Report will be filed with the Cyprus tax authorities if the UPE or the SPE is tax resident in Cyprus or, under certain circumstances, where there is at least one Constituent Entity tax resident in Cyprus which is neither the UPE or the SPE.

A Cyprus tax resident Constituent Entity, which is neither the UPE nor the SPE, will be required to file a CbC Report in Cyprus under the secondary mechanism where certain circumstances apply e.g. where the UPE is not required to file a CbC Report in its jurisdiction of tax residence and an SPE has not been appointed by the MNE Group.

If the UPE refuses to provide all required information to the Cyprus tax resident Constituent Entity to comply with its local filing requirement, the latter will be required to file an *Equivalent CbC Report* containing all information in its possession and at the same time inform the Cyprus tax authorities of the UPE's refusal to provide the information.

The CbC Report shall be filed electronically by the Reporting Entity on an annual basis. Where there are more than one Cyprus tax resident Constituent Entities, one of these entities may file the CbC Report on behalf of the others. A Constituent Entity cannot however assume this role if it is unable to obtain all the information from the UPE to file a complete CbC Report.

The required format of the CbC Report described in the Decree will follow the template provided in BEPS Action 13.

First Reporting Fiscal Years

In cases where the Cyprus tax resident Constituent Entity is the UPE or the SPE, the first CbC Report of an MNE Group – to be filed by the UPE or SPE - will be for the Fiscal Year beginning on or after 1 January 2016.

In cases where the secondary mechanism applies, the first CbC Report - to be filed by the Cyprus tax resident Constituent Entity - will be for the Fiscal Year beginning on or after 1 January 2017.

Exchange of CbC Reports

According to the Decree, the CbC Report filed by the Reporting Entity on behalf of the MNE Group should be exchanged automatically by the Cyprus tax authorities with other jurisdictions in which the MNE Group has presence (i.e. a tax resident entity or a permanent establishment in that jurisdiction).

The exchange of the CbC Report is made within 15 months from the last day of the Fiscal Year of the MNE Group to which the Report relates. By exception, the first exchange of the CbC Report in relation to Fiscal Years starting on or after 1 January 2016, will be made within 18 months from the last day of the Reporting Fiscal Year.

CbC Reports received by the Cyprus tax authorities under the secondary mechanism (i.e. via local Constituent Entity filing) are not mentioned in the Revised Decree as being subject to automatic exchange of information.

Notifications

The Decree also establishes certain notification obligations with respect to informing the Cyprus tax authorities of the identity of the UPE and the Reporting Entity.

A Constituent Entity of an MNE Group that is tax resident in Cyprus will need to notify the Cyprus tax authorities whether it is the UPE or the SPE (and thus will be filing a CbC Report in Cyprus), or a Constituent Entity performing local CbC Reporting in Cyprus due to the secondary filing mechanism. If the Cyprus tax resident Constituent Entity is not acting in such a capacity, it shall file a notification with the Cyprus tax authorities containing the identity and tax residence of the UPE and the Reporting Entity of the MNE Group.

The deadline for filing with the Cyprus tax authorities the notifications mentioned above is the last day of the Reporting Fiscal Year of the MNE Group.

For Fiscal Years beginning between 1 January 2016 and 20 October 2016, by exception, the first notification is made by 20 October 2017.

Where a Cyprus tax resident Constituent Entity, that is not the UPE or SPE, files a Report in Cyprus under the secondary mechanism, the notification obligation applies for Fiscal Years beginning on or after 1 January 2017.

Maintenance of books and records

The Decree provides that the Cyprus tax authorities may request books and records from the Reporting Entity explaining and supporting the information disclosed in the CbC Report.

Where books and records are located outside Cyprus, the Reporting Entity shall be obliged to bring such information to Cyprus within the deadline set by the Cyprus tax authorities.

The Reporting Entity is required to maintain the books and records for a period of six years.

Penalties

As currently no specific penalties have been introduced in Cyprus with respect to non-compliance with CbC Reporting obligations, the general fines provided for in the Assessment and Collection of Taxes Law will apply until such time as the legislation is amended in this respect.

The current penalties that can be imposed under the legislation begin at €100, but specific penalties are likely to be introduced in the near future of a higher amount to provide a more effective disincentive for non-compliance.

Further expected developments

It is understood that further developments are expected in Cyprus in the near future, including with respect to specific nuances contained in Council Directive (EU) 2016/881 that will impact on how Cyprus, as an EU Member State, will be applying the CbC Reporting requirements of BEPS Action 13.

In addition, guidance is expected to be issued by the Cyprus tax authorities in due course on various aspects of CbC Reporting.



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