



Portugal introduces country-by-country reporting requirement

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Portugal's Budget Law for 2016, approved on March 16, introduced a country-by-country (CbC) reporting obligation for multinational enterprises (MNEs) that is intended to provide the Portuguese tax authorities additional information on the MNE's activities for risk assessment purposes.

This new obligation, included as article 121.^o-A of the Corporate Income Tax Code, applies to tax periods beginning on or after January 1, 2016, and is in line with the country-by-country reporting requirements set forth in the OECD's final report on Action 13 of the BEPS Action Plan.

MNEs that meet certain criteria must report to the Portuguese tax authorities financial information and other relevant data for each country in which the group operates.

Submission of the report is mandatory and will be performed electronically. The report is due at the end of the 12th month after the term of the tax period to which the data refers. For example, for tax periods ending on December 31, 2016, the CbC report is due on December 31, 2017.

Similar to the CbC rules introduced in other European countries, such as Spain and Italy, there are two types of entities to which this obligation may apply.

Parent companies of multinational groups

Portuguese resident entities must prepare the CbC report if:

- They are the parent companies ultimately required to prepare consolidated financial statements as defined in the accounting standards;
- Their consolidated turnover exceeds €750 million in the tax period prior to the one the CbC report refers to;
- They directly or indirectly hold or control one or more entities or permanent establishments located outside Portugal; and
- They are not held by one or more entities obligated to submit such report or by foreign companies that submit an equivalent report in a country with which Portugal has an agreement for the automatic exchange of information on this matter.

Subsidiaries of multinational groups

The CbC reporting obligation extends to Portuguese subsidiaries of multinational groups, provided that:

- They are directly or indirectly held or controlled by nonresident entities that are not obligated to file an equivalent declaration or, having such obligation, there is no agreement with the Portuguese tax authorities for the automatic exchange of information related to CbC reporting in force;
- The aforesaid entities, if they were resident in Portugal for tax purposes, would be obligated to file a CbC report; and

- No evidence is provided as to whether any other group entity, resident in Portugal or in a country with which Portugal has signed an agreement for the automatic exchange of information on this matter, has been designated to file such a report.

Despite the aforesaid criteria, any entity (either resident in Portugal or operating through a permanent establishment) that is part of a group that includes an entity obligated to file a CbC report is required to electronically submit to the Portuguese tax authorities the identification of the reporting entity and correspondent tax residence. The deadline to file such obligation is the end of the tax period to which the financial information to be included in the CbC report refers to.

Contents of CbC report

The official form of the CbC report has not been published. However, article 121.º-A of the Corporate Income Tax Code lists the type of data that should be included, which is globally in line with the OECD's final report on Action 13 of the BEPS Action Plan.

Thus, the CbC report should include aggregated data, by country or tax jurisdiction, of all entities that are part of the group (including permanent establishments), on the following items:

- Gross revenues segregated by related and third-party revenues;
- Earnings before corporate income tax and other taxes due on income of a similar or analogue nature to the corporate income tax;
- Corporate income tax and other income taxes of a similar nature due;
- Corporate income tax and other income taxes of a similar nature paid, including withholding taxes;
- Share capital and other equity items, at the end of the tax period;
- Accumulated earnings;
- Number of full time employees at the end of the tax period;
- Net book value of tangible assets (other than cash and cash equivalents);
- List of the entities resident in each country/tax jurisdiction, including permanent establishments, identifying the main business activities carried out by each; and
- Other elements considered relevant and, if applicable, an explanation of the data included in the report.

Penalties

Taxpayers that fail to comply with the CbC reporting requirement will be subject to an administrative penalty ranging from €500 to €10,000.

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