

Tax & Legal Weekly Alert

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Approval of the Multilateral Competent Authority Agreement on automatic Exchange of country-by-country reports

The Ministry of Finance or its authorized representative as Competent Authority will automatically exchange on an annual basis country-by-country reports ("CbC reports") received from each reporting entity, resident for tax purposes in Romania, with the other Competent Authorities of the jurisdictions with which the agreement is in force and where, based on the information in the CbC Report, one or more constituent entities of the MNE Group are either resident for tax purposes or are subject to the tax rules corresponding to their permanent activity.

The Romanian Competent Authority will be able to automatically exchange CbC reports with other jurisdictions as well, in addition to those of the European Union, once these exchange relationships will be activated.



Approval of the Multilateral Competent Authority Agreement on automatic Exchange of country-by-country reports

On June 20, the Government of Romania approved the Multilateral Competent Authority Agreement on automatic Exchange of country-by-country reports signed on 19 December 2017 in Bucharest, published in the Official Monitor of Romania no. 507 / 20.06.2018.

Each Competent Authority will automatically exchange on an annual basis country-by-country reports, received from each reporting entity resident for tax purposes under its jurisdiction with the other competent authorities of the jurisdictions with which the agreement is in force and where, based on the information in the CbC Report, one or more constituent entities of the MNE Group are either resident for tax purposes or are subject to the tax rules corresponding to their permanent activity.

Exceptions to the above are the Competent Authorities of the jurisdictions that have specified that they will be considered as non-reciprocal jurisdictions, specifically jurisdictions that will complete CbC reports but who will not receive the completed CbC reports.

Time and maner of Exchange of Information

A CbC report will be exchanged only if both Competent Authorities have the agreement in place and their jurisdictions have legislation in force that requires the completion of the CbC reports.

The CbC Report for the fiscal year of the MNE Group starting on or after the date indicated by the Competent Authority in the notification (i.e. the first CbC report) will be automatically exchanged as soon as possible but not later than 18 months after the last day of that fiscal year.

In all other cases, the CbC Report should be exchanged as soon as possible but no later than 15 months after the last day of the fiscal year of the MNE Group which the CbC Report refers to.

The Competent Authorities will automatically exchange CbC reports through a common scheme in Extensible Markup Language (XML).

Confidentiality and Data Safeguards

All exchanged information is subject to the confidentiality rules and protection measures specified in the Convention on Mutual Administrative Assistance in Tax Matters.

The information contained in the CbC report will be used to assess the risks associated with transfer pricing, base erosion and profit shifting. The information will not be used as a substitute for a detailed transfer pricing analysis of transactions' prices and individual pricing based on a full functional analysis and a full comparability analysis.

The CbC report may be the basis for further investigations into the MNE Group's transfer pricing arrangements or other tax issues during a tax audit, and as a result, appropriate adjustments can be made to the taxable income of a constituent entity.

Consultations

In case an additional investigation based on the data provided by the CbC Report leads to undesirable economic outcomes, the competent authorities in the jurisdictions where the affected constituent entities have their tax residence will consult each other in order to resolve the case.

Effective date

The agreement will enter into force between two competent authorities on the latter of the following dates: (i) the date on which the second authority provides the Coordinating Body Secretariat a notification including the jurisdiction of the other authority; and (ii) the date on which the Convention entered into force and is in effect for both Jurisdictions.

For further questions regarding the aspects mentioned in this alert, please contact us.



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