

## LT in Focus

# The CbC Law: Overview Of Key Provisions

**On 22 November 2017**, the Federation Council approved the Federal Law On Amendments To Part One Of The Russian Tax Code (the "CbC Law", or the "Law"), aimed at implementing the international automatic exchange of financial account and multinational enterprise information.

Read on for an overview of the key aspects of the Law that regulates the preparation and the scope of documentation to be filed by multinational enterprise groups ("MNE Group").

In our previous overview we analysed the key provisions of the Draft Law. In this paper we focus on the latest amendments.

### MNE documentation

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#### Key legal provisions

The Law will apply to the MNE Groups that report revenues of **not less than RUB 50 billion** under consolidated financial statements for a fiscal year of 12 consecutive calendar months immediately preceding the reporting period.

The Law sets forth the main requirements for the scope of documentation that a taxpayer belonging to an MNE Group (except foreign entities that receive only passive income as defined by Article 309 of the Russian Tax Code) must file with the tax administration.

The scope of documentation includes:

- A notification of participation in an MNE Group
- The country-by-country data of MNE Group that includes the following:

- Master File;
- Local File;
- CbC report.

**The provision of the Law apply to financial years beginning in 2017**, however there is an option for MNEs to voluntarily apply new provisions to financial years starting within 2016.

The local file requirements will apply starting from **1 January 2018**.

### Notification of participation in MNE Group

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**The first notification of participation in MNE Group must be filed by 31 August 2018.**

Any constituent entity of an MNE Group shall file a notification of participation in the MNE Group no later than eight months after the last day of the Reporting Fiscal Year of such MNE Group's ultimate parent company.

The Law sets forth the scope of such notification. In particular, it shall include: the information on the taxpayer (whether it is a ultimate parent company or a surrogate parent company, whether it is listed as a strategic enterprise), the information on the tax

administration authorized to issue preliminary approvals for strategic enterprises, the name of the ultimate parent company and the surrogate parent company (if applicable), and the last day of the reporting period.

The taxpayer will not have to file a notification if the ultimate parent company, the surrogate parent company or another constituent entity of the MNE Group has filed such notification, including information about all participants of such MNE group, recognized as tax residents of the Russian Federation.

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## Country-by-Country data

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### Master File



**First Master File can be requested no earlier than 31 December 2018.**

The Master File must be submitted upon request of the tax administration within **three months** of such request. The Master File can be requested from an MNE Group entity that is recognised as a taxpayer in accordance with the Russian Tax Code (except foreign entities that receive only the passive income as defined by Article 309 of the Russian Tax Code), but no earlier than 12 months and no later than 36 months of the last day of the reporting period specified in the notification.

The Master File can be requested by the tax administration during an audit of controlled transactions (Article 105.17 of the Russian Tax Code) or upon request of a foreign tax administration.

According to the Law, the Master File shall contain the following information:

- A chart describing information on the structure of participation in capital and on monitoring of the MNE Group and the information on markets of the product (services, works);
- The MNE's business profile, including the description of key performance drivers, supply chain for five types of goods (services) that contribute more than five percent to the total revenue for the reporting period; geographic locations of the principal product (service) markets; a list and a brief overview of material service contracts; a short functional analysis of the MNE Group entities; the information on material restructuring, asset purchase and disposal transactions for the reporting period;
- The MNE Group's intangibles, including a list of material contracts for intangibles between the MNE Group entities;
- An overview of the MNE Group's financial activities;
- Other information (consolidated reporting, a list and a brief description of material pricing agreements, etc.).

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### The Local File



**First Local File can be requested no earlier than 31 December 2019.**

Local file will also have to be submitted upon request of the tax administration within **30 days** of receiving such request.

The Local File may be requested starting from **1 June** of the year following the calendar year in which the controlled transactions took place. However, for the first two years of implementation, i.e. 2018 and 2019, the Local File can be requested **not earlier than 31 December** of the year following the calendar year, in which the income/expense from the controlled transaction was recognised.

In addition to the information required by Sub-Items 1 and 2, Article 105.15 of the Russian Tax Code (the requirements for preparation and submission of the Local File), the Local File shall contain:

- Information on the taxpayer's management bodies, identity of the executives its management reporting is presented to, and the countries (territories) in which such executives operate;
- Information on the taxpayer's activity and its market strategy; on the restructuring of the taxpayer's operations within the MNE Group and the transfer (receipt) of intangibles and the explanation of the impact such restructuring had on the taxpayer's business;
- Information on the taxpayer's competitors;
- A justification of the arm's length nature of pricing in the controlled transaction(s);
- A description of the adjustments made to ensure the transaction's comparability;
- Copies of material agreements between the MNE Group entities that affect the pricing of the controlled transaction(s);
- Copies of pricing agreements and tax rulings issued by foreign tax administrations and applied in the transactions between the MNE Group entities that are associated with the controlled transaction(s) under review and that the Russian tax administration did not contribute to;
- The auditor's report on the taxpayer's financial statements for the last reporting period (if the taxpayer is subject to mandatory audit or had its financial statements audited voluntarily).

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## CbC report



### The first CbC report must be filed by 31 December 2018.

The CbC report is filed by an ultimate parent company of an MNE Group or a surrogate parent company **no later than 12 months** of the last day of the reporting period.

The MNE Group's constituent entities submit the CbC reports upon the tax administration request. The constituent entity will be exempted from filing a CbC report subject to the following conditions:

- 1) The CbC report is filed in the Russian Federation by the ultimate parent company or the surrogate parent company of the MNE Group.
- 2) The ultimate parent company or the surrogate company is a tax resident of a foreign state (territory) that meets the following criteria:
  - The national laws of such state (territory) require the filing of the CbC reports;
  - Such state (territory) is a party to the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports;
  - Such state (territory) is not on the black list of countries that systemically fail to exchange the CbC reports ;
  - Such state (territory) has been notified on the reporting entity of the MNE Group.
- 3) The consolidated revenue of the MNE Group is under RUB 50 billion or the revenue threshold set by the national laws of a foreign state (territory).

In certain cases, the tax authority may require a taxpayer, who is a participant of an MNE Group, to file the CbC report. In those cases, the filing deadlines are set by the tax administration, but **may be not less than three months** of the date the request is received.

The CbC report shall contain the following information:

- 1) The total revenue for the reporting period, divided into transactions with the companies of MNE Group and transactions with other counterparties, including associated enterprises;
- 2) Profit (loss) before tax for the reporting period;
- 3) The income tax (or equivalent) accrued in the reporting period;
- 4) The income tax (or equivalent) paid in the reporting period;
- 5) The amount of stated capital at the last day of the reporting period;
- 6) The accumulated earnings at the last day of the reporting period;
- 7) The number of employees for the reporting period;
- 8) The value of tangible assets as at the last day of the reporting period;
- 9) Identification details of each MNE Group entity, including the country of incorporation, tax residency, and principal operations.

The information shall be presented per each separate jurisdiction.

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## Penalties

The Law proposes the following penalties for failure to report or for misreporting:

- RUB 50,000 with respect to the notification of participation in a MNE Group;
- RUB 100,000 with respect to the CbC reports;

- RUB 100,000 for failure to submit the Local File;
- RUB 100,000 for failure to submit the Master File.

The Law provides a transitional period (2017-2019), during which penalties will not be applied.



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## Key changes

Please note the following changes have been introduced into the Law as compared to the previous version:

- For the purpose of defining the perimeter of a group an important clarification is that an associated enterprises are not included in an MNE Group;
- In the definition of an MNE Group it is not mentioned that an MNE group is recognized as a group of organizations that it is either required to prepare consolidated financial statements or **would be so required** for stock exchange listing purposes. In this regard, an issue of providing documentation for the MNE for non-public companies remains controversial;
- **Permanent establishments** qualify as MNE Group entities;
- The requirement to file a notification of participation in an MNE Group, the Master File, and the Local File will not apply to **foreign entities that receive only passive income as defined by Article 309** of the Russian Tax Code;
- The Law **refines the content of the notification of participation** in an MNE Group and specifies that the data are to be **reported as at the last day of the reporting period**;
- It is specified that the Master File and the Local File contains the concept of **materiality**: the Law refers to "material agreements between the MNE Group entities", "material contracts", and "material transactions" (that are to be reflected in the Master File), but does not offer a definition of the term itself;
- According to the existing Law, transfer pricing documentation can be requested **not earlier than 1 June** of the year following the calendar year, when the controlled transactions were conducted. For MNE Group entities, whose income/expense from controlled transactions are recognised in **2018-2019**, the Local File **can be requested not earlier than 31 December** of the year following the calendar year, when such income/expense were recognized;
- The taxpayers **will not be held liable** for tax offences arising out of MNE filing requirements that were committed during the **2017, 2018 and 2019 reporting periods** (vs. 2018-2020 in the previous version).

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We hope that you will find the information in this edition interesting and useful. Please feel welcome to contact us for more information on the topics covered.

Best regards,

**Deloitte CIS Partners**

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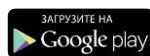


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## TaxSmart App



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