



Country-by-Country Reporting (CbCR) Implementation in Liechtenstein

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Background

Country-by-Country Reporting is part of Action 13 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Action Plan. The Final Report "Transfer Pricing Documentation and Country-by-Country Reporting", published in October 2015, introduces a three-tiered approach to transfer pricing documentation:

- (1) a **master file** containing standardized information relevant for all group members of multinational enterprises (MNE) regarding their global business operations;
- (2) a **local file** containing detailed information referring specifically to material transactions of the local tax payer;
- (3) a **Country-by-Country Report**.

This approach should provide tax administrations with relevant and reliable information to conduct transfer pricing risk assessments and examinations as an essential part of tackling the BEPS challenges.

In the following an overview of the Country-by-Country reporting and its implementation in Liechtenstein is given.

What is the legal basis for CbC Reporting in Liechtenstein?

The legislation that implements CbC Reporting in Liechtenstein includes the CbCAct and the CbC-Ordinance that entered into force as of 1 January 2017. From a legal perspective, the automatic exchange of CbC Reports is primarily built on the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) and the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (MCAA-CbC). At present (information as of 22 June 2017) 64 jurisdictions incl. Liechtenstein have signed the MCAA-CbC and even more may sign.

The Liechtenstein list of currently 48 partner jurisdictions for CbC Reporting purposes is expected to grow further.

Who is required to file a CbC Report in Liechtenstein?

Country-by-Country Reporting requirements apply to MNE groups with annual consolidated group revenue of CHF 900 million or more in the preceding fiscal year (EUR 750 million equivalent as of 1 January 2015). A MNE group with consolidated group revenue below the threshold is exempted from the filing requirement.

However, in Liechtenstein there is the possibility to waive the exemption and file the CbC Report voluntarily. This alternative could be useful to avoid a CbC Report in a country (due to Secondary Reporting Mechanism as Liechtenstein implements CbC Reporting one year later than some other countries) which is not desired.

When does an Entity become a Reporting Entity in Liechtenstein?

The following Constituent Entities may be required to file the CbC Report on behalf of the MNE group and thereby become a Reporting Entity in Liechtenstein:

- (1) the Ultimate Parent Entity tax-resident in FL;
- (2) the Surrogate Parent Entity tax-resident in FL;
- (3) any Constituent Entity including a permanent establishment in Liechtenstein (under a secondary reporting mechanism).

What does the term "Constituent Entity" mean?

The term "Constituent Entity" means:

- any separate business unit that is included in the Consolidated Financial Statements of a MNE group, or would be so included, if equity interests in such business unit were traded on a public securities exchange;

- any such business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size or material grounds;
- any permanent establishment within the MNE Group with a separate financial statement.

In Liechtenstein the parent entity of a MNE group as well as all its subsidiaries are generally to be included in the Consolidated Financial Statements. However, there is no need to do so under certain circumstances described in Art. 1104 Persons and Companies Act (PGR), e.g. if the costs would be disproportionately high.

Which entities qualify as Ultimate Parent Entities in Liechtenstein?

A Constituent Entity tax-resident in Liechtenstein qualifies as an Ultimate Parent Entity, if it owns a sufficient interest in one or more other Constituent Entities so that it is required to prepare Consolidated Financial Statements, or would be so required, if its equity interests were traded on a public securities exchange. Liechtenstein resident Parent Entities in the legal form of a company limited by shares (*Aktiengesellschaft*), a partnership limited by shares (*Kommanditaktiengesellschaft*), and a limited liability company (*Gesellschaft mit beschränkter Haftung*) that own the majority of voting rights or otherwise exercise controlling influence over their subsidiaries are required to prepare Consolidated Financial Statements according to Art. 1097 PGR in connection with Art. 1063 PGR. Therefore, only entities with the mentioned legal form could qualify as Parent Entities for CbCR purposes. Foundations, Establishments and Trust Reg. (inter alia) are not required to prepare Consolidated Financial Statements and can therefore not function as Parent Entities for CbCR purposes. This complies with the understanding of the Liechtenstein tax authority.

When can a Surrogate Parent Entity be appointed?

A Liechtenstein resident Ultimate Parent Entity is allowed to appoint a Surrogate Parent Entity as its sole substitute to file the CbC Report on behalf of the whole MNE Group in the jurisdiction of residence of the surrogate parent entity. In this case, the Liechtenstein resident Ultimate Parent Entity will be exempt from the filing obligation. However, the appointment of a Surrogate Parent Entity is possible only if the following conditions are fulfilled:

- (1) the jurisdiction of residence of the Surrogate Parent Entity requires filing of CbC Reports;
- (2) the jurisdiction of residence of the Surrogate Parent Entity is a partner jurisdiction of Liechtenstein in terms of the automatic exchange of CbC Reports;
- (3) there has been no systemic failure by the jurisdiction of residence of the Surrogate Parent Entity to exchange CbC Reports;
- (4) the jurisdiction of residence of the Surrogate Parent Entity has been notified by the respective Constituent Entity that it is the Surrogate Parent Entity.

The appointment of a Constituent Entity resident abroad as a Surrogate Parent Entity of a Liechtenstein resident Ultimate Parent Entity is therefore only possible, if the filing of CbC Reports abroad as well as the passing-on of such documents to Liechtenstein is ensured. When the Liechtenstein tax authority receives a CbC Report from abroad, the filing obligation of the Liechtenstein Ultimate Parent Entity is regarded to be fulfilled.

On the other hand, a Liechtenstein resident Surrogate Parent Entity of a foreign Ultimate Parent Entity is required to file a CbC Report with the Liechtenstein tax authority.

What is the Secondary Reporting Mechanism?

A Liechtenstein tax-resident Constituent Entity of a MNE group may be requested by the Liechtenstein tax authority to file a CbC-Report under the Secondary Reporting Mechanism. This can be the case when there is no Liechtenstein resident Ultimate Parent Entity and no Liechtenstein resident Surrogate Parent Entity has been appointed. The Secondary Reporting Mechanism applies when one or more of the following circumstances are met:

- (1) the Ultimate Parent Entity is not required to file a CbC Report in its jurisdiction of residence;
- (2) the jurisdiction of residence of the Ultimate Parent Entity is not a partner jurisdiction of Liechtenstein in terms of the automatic exchange of CbC Reports;
- (3) there has been a systemic failure by the jurisdiction of residence of the Ultimate Parent Entity to exchange CbC Reports.

A Liechtenstein tax-resident Constituent Entity will have no filing obligations, if the Liechtenstein tax authority receives the CbC Report from one of the partner jurisdictions.

What information should a CbC Report contain?

The information contained in a CbC Report is divided into three categories:

- (1) The first section requires the following financial information from each tax jurisdiction in which the MNE Group operates:
 - a. revenue from related parties, from third parties and total revenue;
 - b. profit (or loss) before income tax;
 - c. income tax paid;
 - d. current year income tax accrued;
 - e. stated capital;
 - f. accumulated earnings;
 - g. number of employees;
 - h. tangible assets other than cash and cash equivalents.
- (2) In the second part a list of all Constituent Entities of the MNE group, their jurisdiction of tax residence and, if different, their jurisdiction of incorporation as well as the nature of the main business activities of each Constituent Entity should be provided.

- (3) The third section covers additional relevant information such as the source of data used.

When does the CbC legislation come into effect in Liechtenstein?

The CbC Reporting applies for fiscal years beginning on or after 1 January 2017.

What deadlines need to be met?

Liechtenstein Reporting Entities have to register, without being requested to do so, with the Liechtenstein tax authority by the last day of the reporting period, i.e. by 31 December 2017. They are required to file the CbC Report within 12 month after the last day of the reporting fiscal year. Therefore, the first CbC Report must be filed by 31 December 2018 concerning the fiscal year 2017. Concerning FY 2016 CbC Reports may be filed on a voluntary basis.

Are there any Sanctions?

The penalty for failing to file a CbC Report or to register as a Reporting Entity will be up to CHF 250.000 in case of intent or up to CHF 100.000 in case of negligence.

Our comments

The intention of BEPS was that the annual consolidated group revenue should be the only exemption that CbC Reporting need not be done. As mentioned above, the Liechtenstein implementation contains another exemption (legal form). Whether this is also in line with BEPS may be questioned. However the effectiveness of the report filing and information exchange mechanisms will be monitored and it might be possible that the "second" exemption will not be accepted.

The following flow chart provides a visual depiction of the CbC Reporting in Liechtenstein.

For further information please directly contact:



Heinz Hanselmann
Swiss Certified Tax Expert and Public Accountant
LL.M. International Taxation
Mail: heinz.hanselmann@confida.li
Phone: +423 235 84 45



Sascha Bonderer
lic.oec. HSG
Swiss Certified Public Accountant
Mail: sascha.bonderer@confida.li
Phone: +423 235 84 15



Elia Sozzi
Certified Fiduciary, Federal Diploma of Higher Education
Mail: elia.sozzi@confida.li
Phone: +423 235 84 14



Iryna Gartlacher, MSc
LL.M. International Taxation
Mail: iryna.gartlacher@confida.li
Phone: +423 235 84 49

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Flow chart: CbC Reporting in Liechtenstein

