

What to expect from the Multilateral Competent Authority Agreement on automatic exchange of country-by-country reports signed by Cyprus

Development and global implementation of the Base Erosion and Profits Shifting (BEPS) Action Plan, prepared by the Organisation for Economic Co-operation and Development (OECD), have successfully continued in 2016. The Country-by-Country (CbC) reporting initiative, under Action 13 of the BEPS, has not been an exception.

As of 7 December 2016, fifty jurisdictions have already signed the Multilateral Competent Authority Agreement (MCAA) on the automatic exchange of CbC reports.

What does the CbC reporting and automatic exchange of CbC reports entail?

The ultimate parent entity of any large multinational enterprise (MNE) (with annual consolidated group revenue in the immediately preceding fiscal year equal to or exceeding 750,000,000 EUROS, or a near equivalent amount in domestic currency), for the MNE group's fiscal year beginning on or after 1 January 2016, will have to prepare and file a CbC report in the jurisdiction of its tax residence. Then, following the government-to-government mechanism implemented, CbC reports will be exchanged on an automatic basis with the competent authorities of the jurisdictions in which the MNE group operates.

Which information will be exchanged?

Information on the amount of revenue, the amount of profit before tax, the amount of tax paid and accrued will be reported. The CbC reporting also requires MNEs to report their total number of employees, stated capital, retained earnings and tangible assets in each jurisdiction.

As we have mentioned before, CbC reports will be exchanged automatically, based on the legal mechanism implemented by the participating jurisdictions.

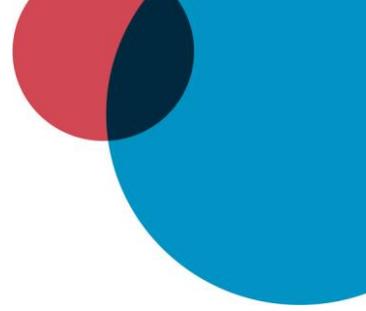
There are some existing legal mechanisms which can be used for this purpose, one of which is the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (CbC MCAA), which has been developed based on the article 6 of the Convention on Mutual Administrative Assistance in Tax Matters (Convention).

Cyprus, being a jurisdiction participating in the Convention, has opted for the rules and procedures foreseen by the CbC MCAA, by signing the CbC MCAA on 1 November 2016.

The Ministry of Finance of Cyprus has already initiated development of the appropriate local legal and regulatory framework, through the development of a special Decree. The Decree will determine, inter alia, the obligations of the reporting entities in relation to the submission of CbC reports to the tax authorities.

We assume that a new legislation will be presented soon, since the European Union Commission earlier this year presented its anti-tax avoidance package - which the CbC reporting was part of - with a recommended deadline for its implementation set to be 31 December 2016.

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Coming back to the CbC MCAA, it is worth mentioning that according to the section 8 of the CbC MCAA, Cyprus is obliged to provide to the Coordinating Body Secretariat (OECD Secretariat that provides support to the Coordinating Body) a written notification containing, among other things, a list of jurisdictions with respect to which Cyprus intends to have the CbC MCAA in effect and exchange CbC reports with, or a declaration that it intends to have this agreement in effect with all other competent authorities that provide a similar notification. Also, Cyprus has to indicate whether it prefers to be included in the list of non-reciprocal jurisdictions which will send, but will not receive CbC reports.

Additionally, for an actual exchange to take place, both participating jurisdictions have to harmonise their legislation with CbC reporting requirements accordingly and to ensure that the required confidentiality and data safeguard standards are in place.

In summary, it is worth reiterating that the exchange will not start with the jurisdictions which are not party to the CbC MCAA. For instance, if one entity from the group of the MNE is a tax resident of the Russian Federation, a CbC report will not be sent to the Russian tax authorities until the Russian Federation joins the agreement.

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