

Cyprus: MOF revises CbC reporting decree

On 26 May 2017, the Cyprus Minister of Finance issued a revised decree on country-by-country (CbC) reporting, which replaces the decree issued on 30 December 2016. The main changes made by the new decree are as follows:

- The obligation of a Cyprus tax resident constituent entity of a multinational (MNE) group that is not the ultimate parent entity (UPE) or the surrogate parent entity (SPE) to file a CbC report with the Cyprus tax authorities under the “secondary mechanism,” along with the corresponding notification obligation, will apply beginning with fiscal (accounting) years (FYs) starting on or after 1 January 2017.
- The concept of an “equivalent CbC report” is introduced to require a Cyprus tax resident constituent entity of an MNE group to file a partial CbC report under the secondary mechanism in cases where the UPE has refused to provide all information necessary for the Cyprus entity to file a complete report. Since the equivalent CbC report filing falls under the secondary mechanism, it also applies with respect to FYs beginning on or after 1 January 2017.
- A requirement to maintain books and records supporting the information disclosed in the CbC report is introduced.

The revised decree, together with the Multilateral Competent Authority Agreement on the Exchange of CbC Reports signed by Cyprus on 1 November 2016, establishes the legislative framework for the Cypriot tax authorities to collect and exchange information on MNE groups with a total consolidated group revenue of EUR 750 million or more.

CbC reporting obligation and notifications

The obligation to file a CbC report in Cyprus on behalf of an MNE group generally lies with the UPE of the MNE group, unless an SPE has been appointed by the group (where certain conditions are fulfilled). The CbC report must be filed with the Cyprus tax authorities if the UPE or SPE is tax resident in Cyprus. Under certain circumstances, a Cyprus tax resident constituent entity that is not the UPE or SPE will have to file a CbC report in Cyprus under the secondary mechanism (*e.g.* where the UPE is not required to file a CbC report in the jurisdiction in which it is tax resident, and the MNE group has not appointed an SPE).

In cases where the Cyprus tax resident constituent entity is the UPE or SPE, the first CbC report of an MNE group (to be filed by the UPE or SPE) is required to be filed for the FY beginning on or after 1 January 2016. However, in cases where the secondary mechanism applies, the revised decree provides that the first CbC report (to be filed by the Cyprus tax resident constituent entity) will be for the FY beginning on or after 1 January 2017.

A constituent entity of an MNE group that is tax resident in Cyprus will have to notify the Cyprus tax authorities whether it is the UPE or SPE (and thus will be filing a CbC report in Cyprus), or a constituent entity performing local CbC reporting in Cyprus under the secondary filing mechanism. If the Cyprus tax resident constituent entity is not acting in such a capacity, it must submit a notification to the Cyprus tax authorities containing the identity and tax residence of the UPE and the reporting entity of the MNE group. For FYs beginning between 1 January 2016 and 20 October 2016, the first notification is due by 20 October 2017; otherwise, the deadline will be the last day of the reporting FY of the MNE group.

Where a Cyprus tax resident constituent entity that is not the UPE or SPE files a report in Cyprus under the secondary mechanism, the revised decree provides that the corresponding notification obligation applies for FYs beginning on or after 1 January 2017.

Equivalent CbC report

If the UPE refuses to provide all required information to the Cyprus resident constituent entity to comply with its local filing requirement, the revised decree requires the Cyprus entity to file an “equivalent CbC report” containing all information in its possession, and to inform the Cyprus tax authorities that the UPE has refused to provide the information.

The required format of the equivalent CbC report described in the decree will follow the template provided in the OECD final report on BEPS action 13.

Maintenance of books and records

The decree provides that the Cyprus tax authorities may request books and records from the reporting entity that explain and support the information disclosed in the CbC report. The reporting entity is required to maintain the books and records for six years. Where such documents are located outside Cyprus, the reporting entity will be required to bring the information to Cyprus by the deadline set by the Cyprus tax authorities.

Exchange of CbC reports

According to the revised decree, the CbC report filed by the reporting entity on behalf of the MNE group should be exchanged automatically by the Cyprus tax authorities with other jurisdictions in which the MNE group has a presence (*i.e.* a tax resident entity or a permanent establishment) within 15 months from the last day of the FY of the MNE group to which the report relates. By exception, the first exchange of CbC reports in relation to FYs starting on or after 1 January 2016 will be made within 18 months from the last day of the reporting FY. CbC reports received by the Cyprus tax authorities under the secondary mechanism (*i.e.* via local constituent entity filing) are not mentioned in the revised decree as being subject to the automatic exchange of information.

Comments

The revised decree does not introduce specific penalties for noncompliance with CbC reporting obligations; therefore, the general fines in the Assessment and Collection of Taxes Law apply. Higher penalties are likely to be introduced to provide a more effective disincentive for noncompliance.

Following the issuance of the revised decree, MNE groups that are subject to CbC reporting in Cyprus should take steps to determine (i) which group entity will be the reporting entity and whether they have the necessary systems and procedures in place to collect the information to be included in the CbC report, and (ii) whether an equivalent CbC report is required. MNE groups also should consider the impact of the information that will be reported and take steps necessary to comply with global transfer pricing standards.

Further guidance on the application of the CbC reporting and exchange requirements is expected to be issued by the Cyprus tax authorities in the near future.

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