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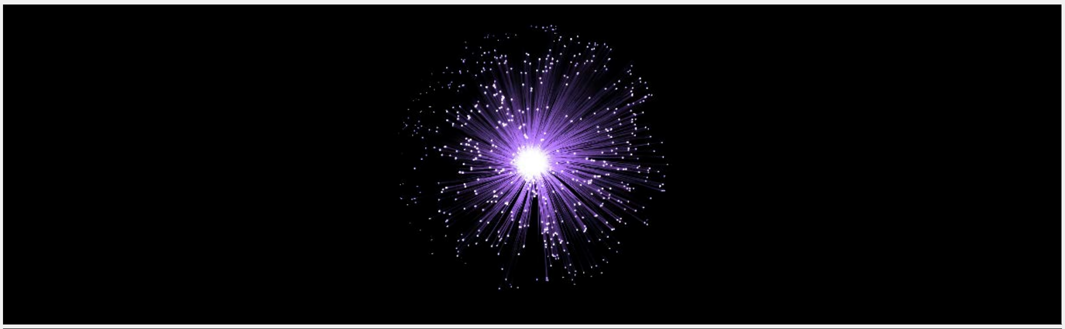

Luxembourg issues draft law on country-by-country reporting

Global Transfer Pricing Alert 2016-029

Luxembourg's Parliament on August 2 issued a draft tax law introducing country-by-country (CbC) reporting obligations based on the recommendations in the OECD's final reports on the base erosion and profit shifting (BEPS) initiative and transposing Council Directive (EU) 2016/881 regarding the mandatory automatic exchange of information in the field of taxation.

The draft law intends to implement Council Directive (EU) 2016/881 and BEPS Action 13 based on the Multilateral Competent Authority Agreement signed by Luxembourg. The proposed CbC rules would require Luxembourgish ultimate parent entities of multinational companies with a consolidated group turnover of EUR 750 million or more to file a CbC report with the Luxembourg competent tax authority.

CbC Report

According to the draft tax law, and in line with the OECD guidance, the CbC report consists of three parts:

- An overview of the aggregate allocation of income, taxes, and business activities (including capital, assets, and employees) to each tax jurisdiction;
- A list of all "constituent entities" of the multinational group included in the aggregation for each tax jurisdiction; and
- Additional information that is necessary to understand the information provided for the first two parts.

The draft law also envisages, subject to conditions, a secondary filing mechanism whereby a "surrogate parent entity" or any "constituent entity" that is not the ultimate parent company may be designated as a "reporting entity."

The draft law also includes rules for the determination of a “surrogate parent entity” and a “constituent entity” resident in Luxembourg as a “reporting entity” for purposes of the CbC reporting rules. The “reporting entity” is obligated to communicate to the competent tax authority.

In addition, a Luxembourg-resident “constituent entity” that is neither an ultimate parent entity, a surrogate parent entity, nor a reporting entity is under the obligation to notify the competent tax authority of the identity of the reporting entity.

Submission deadline

The CbC report must be filed for fiscal years starting on or after January 1, 2016. The deadline for the submission of CbC reports is 12 months after the last day of the relevant fiscal year. For the first year, the deadline has been extended to 18 months. Thus, *the first reporting period* includes fiscal years starting on or after January 1, 2016, and *the first reporting deadline* is 18 months following the end of the first fiscal year. For example, a Luxembourg-resident reporting entity will have to submit the first CbC report by the end of June 2018, at the latest, provided its fiscal year is the calendar year.

Exceptions

As expected, the threshold for filing a CbC report has been implemented in the amount of EUR 750 million (or an equivalent amount in local currency as of January 2015) of consolidated group revenue. If the threshold is not exceeded in the preceding fiscal year, the multinational group does not have to prepare a CbC report.

Penalties

The draft law provides for penalties of up to EUR 250,000 when:

- The CbC report is not filed within the prescribed period, or if the data submitted is incomplete or incorrect;
- The conditions subject to which a reporting entity is designated have not been observed; and
- The relevant notifications to the competent tax authority have not been submitted.

The comments on the draft law make it clear that the reporting entity’s motives for failing to comply with the reporting requirement should be taken into account in the determination of the penalty amount. The amount of the potential penalties is in line with penalties for similar noncompliance with FATCA reporting obligations.

Automatic exchange of CbC reports

The draft law introduces a mechanism for the automatic exchange of CbC reports between the competent tax authorities in Luxembourg and the jurisdictions in which a reporting obligation arises (“jurisdiction soumise à déclaration”).

As a result, the automatic exchange of CbC reports will be initiated with EU member states as well as with other jurisdictions, signatories to the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports previewed by BEPS Action 13.

A list of all jurisdictions with which automatic exchange is to be initiated is expected to be included in a separate decree.

With respect to deadlines, the Luxembourg competent tax authorities are obligated to exchange CbC reports within three months of their submission. The period for exchanging CbC reports covering the first covered fiscal year starting on or after January 1, 2016, is extended to six months.

Next Steps

Luxembourg's parliament must now review, discuss and, if necessary, modify the draft law before it can be approved.

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