Tax Newsletter

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AGREEMENT ON THE EXCHANGE OF COUNTRY-BY-COUNTRY REPORTS ('CBC')

At the end of January 2016, 31 OECD countries signed the agreement on exchange of information, which expressively enables the automatic exchange of country-by-country reports.

I. COUNTRY-BY-COUNTRY REPORTING

We have already published articles and newsletters about the country-by-country reporting ('CbCr') obligation. One of the major points of OECDS's Base Erosion and Profit Shifting Action Plan (BEPS) is to complement the transfer pricing documentation requirements by a report summarizing the financial figures and other indicators of corporate groups on a country-by-country and company-by-company level. The reports enable the tax authorities to receive information regarding the global allocation of the income, the taxes paid and the economic activity of the group entities. The major aim of the report is to improve risk assessment for the tax authorities regarding transfer pricing and other base erosion and profit shifting technics.

The reporting obligation has already been introduced in several countries (Australia, France, United Kingdom), while other countries are at the preparation stage of the introduction (such as Denmark, Germany, Canada).

II. THE AGREEMENT ON EXCHANGE OF INFORMATION

The signed tax co-operation agreement (Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports, 'MCAA') enables the member countries to exchange CbC Reports filed in the particular countries. In practice, this means that through the automatic exchange of reports member states will have an insight to reports of companies operating in other member states and will be able to formulate a thorough picture of the group, not only part of the information will be interpreted.

The signatory countries undertake, inter alia, to introduce the necessary regulations requiring certain domestic seated groups to prepare and file CbC Reports. Namely, all signatory states are obliged to be providing information; countries may only decide whether they require any information from other member states.

In the course of the first exchange of reports, figures and data regarding tax year 2016 should be submitted – expectedly in 2017-2018.

III. WHAT ARE THE CONSEQUENCES OF THE AGREEMENT FOR HUNGARIAN ENTITIES?

Hungary has not yet signed the agreement; however, the introduction of the reporting obligation and the adoption of the agreement are both expected in the near future.

It also forecasts the introduction that changes are only expected among the OECD countries, but also in the European Union in this regard: the amendment of the automatic information exchange directive ('AEOI directive', 2011/16 Council Directive), which is likely to be extended by the provisions of CbC reports. This would mean that the EU-countries would be obliged to introduce the reporting obligation as of 2016. Therefore, the changes are likely to boost in the near future, and the Hungarian legislation on transfer pricing is actually to be complemented by the reporting obligation.

As mentioned above, according to the proposal of OECD, only the largest corporate groups (the consolidated revenue of which exceeds 750 million EUR in the preceding year) will be obliged to prepare and file CbC report. The reports would be filed by the principal entities of the group in their own states. As a result, the new obligation will directly apply for only a limited number of companies in Hungary, in a submitting status. However, several entities would be affected indirectly, as all large groups should provide information in the principal country regarding all group entities of all member states. Consequently, the data of the Hungarian companies may also be published. As the reporting obligation may be already mandatory in the current year of 2016, we suggest closely monitoring the rules and amendments of the legislation affecting corporate groups, as well as it is recommended to be well-prepared for the new challenges deriving from the reporting obligation.

It is worth testing previous years to check what can be derived from the data which should be submitted and to identify risks from taxation point of view (eg. no employee in a particular country, but the tax base is the highest there), in addition, to develop a procedure regarding who will supply data for the report within the group, how data will be adjustable to the local reports, how the differences can be explained.

The agreement was signed by Australia, Austria, Belgium, Chile, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Mexico, Netherlands, Nigeria, Norway, Poland, Portugal, Slovak

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Republic, Slovenia, South Africa, Spain, Sweden, Switzerland and the United Kingdom.

Should you have any questions concerning the above, our colleagues are at your disposal.

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