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Global Tax Alert

News from Transfer Pricing

Switzerland releases draft legislation on country-by-country reporting for consultation

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Executive summary

On 13 April 2016, the Swiss Federal Council initiated the consultation procedure on the multilateral agreement on the exchange of country-by-country (CbC) reports as well as the federal act for domestic implementation.

The draft legislation for CbC reporting generally follows the recommendations of the Organisation for Economic Co-operation and Development (OECD) as presented on 5 October 2015 in its final report on Action 13 (*Transfer Pricing Documentation and Country-by-Country Reporting*). The draft bill, however, does not adopt the three-tiered approach to transfer pricing documentation consisting of a master file, local file and CbC report.

It is expected that the new law will enter into force effective from 2018 so that Swiss headquartered multinationals with an annual consolidated group revenue of CHF 900m or more will be required to file the first CbC report for fiscal years beginning on or after 1 January 2018. The Federal Council will determine the states (Partner States) with which Switzerland agreed to conduct exchanges once the respective legal basis is implemented. The first automatic exchange of CbC reports with Partner States is expected to take place during the first half of 2020 with information related to fiscal year 2018.

Swiss groups will be allowed to file a CbC report for fiscal years 2016 and 2017 with the Swiss Federal Tax Administration (SFTA) for exchange purposes on a voluntary basis.

Detailed discussion

The draft legislation published with the consultation release for the automatic information exchange of CbC reports complies with the OECD minimum standards. Accordingly, CbC reporting obligations shall apply to Swiss headquartered multinational groups with annual consolidated group revenue of at least €750m, which equals CHF 900m (based on the exchange rate as of 1 January 2015). The Federal Council will determine the exact threshold amount in an ordinance in accordance with international standards. It is expected that approximately 200 Swiss headquartered multinationals will become subject to the CbC reporting.

The CbC report can be prepared in English or in a Swiss official language (German, French or Italian). The figures can be presented in Swiss francs or in the main currency of the group. The CbC report must be filed with the SFTA within 12 months following the end of the reporting period. Non-compliance with the CbC reporting obligation may be subject to a penalty of up to CHF 250k.

The draft legislation includes a secondary filing mechanism according to which the SFTA can require a Swiss constituent entity of a foreign parent multinational to file a CbC report in Switzerland if the ultimate parent entity is resident in a foreign country that is not a Partner State or if there is a systemic failure in the foreign headquarters jurisdiction.

Subject to certain conditions, the draft legislation further provides to multinational groups, the option to appoint a foreign constituent entity as the surrogate parent entity which would file the CbC report in its country of residence on behalf of the group (surrogate filing).

CbC reports shall be automatically exchanged on an annual basis with the tax authorities of jurisdictions in which the Swiss group has constituent entities. The exchange will only take place if a treaty is available providing the legal basis for such exchange. The CbC data is transmitted exclusively to the foreign tax authorities and will not be published.

The following legal basis must be implemented before CbC reports can be exchanged with Partner States:

- ▶ OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (already adopted by Swiss Parliament on 18 December 2015; to be ratified)
- ▶ Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (MCAA; signed by the Federal Council on 27 January 2016; part of the consultation release; to be submitted and approved by Swiss Parliament)
- ▶ Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals (part of the consultation release; to be submitted to and approved by Swiss Parliament)

Timing

The consultation phase will run until 13 July 2016. After the consultation, the legislation is submitted to the Swiss Parliament for approval. Once approved, the new law is subject to a facultative referendum. If no such referendum is called, the new CbC reporting legislation is expected to enter into force on 1 January 2018.

The first automatic exchange of CbC reports may take place during the first half of 2020 with respect to information related to fiscal year 2018.

For fiscal years 2016 and 2017, the draft legislation provides that Swiss headquartered multinationals may file a CbC report with the SFTA on a voluntary basis. The SFTA will exchange such reports with individual countries on the basis of a tax treaty or another international agreement with an exchange of information clause, without compromising the confidentiality. A formal request of the other country will not be required.

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