Allgemeines Treuunternehmen
seit 1929

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Country-by-Country Reporting (CbCR)

CbCR refers to the automatic exchange of country-by-country reports by multinational corporate groups that have a consolidated annual turnover of at least CHF 900 million.

A country-by-country report primarily contains information about the worldwide distribution of revenue and other income, income taxes and other key indicators as well as information about the corporate group's most important business activities. The exchange of country-by-country reports should ensure the correct taxation of corporate groups in their respective tax jurisdictions.

The Liechtenstein Tax Administration exchanges these reports with its partner states. At the same time, it receives reports from its partner states for corporate groups that include a Liechtenstein constituent legal entity (see Chart I). CbCR is therefore a reciprocal procedure.

Basis

CbCR is based on the BEPS (Base Erosion and Profit Shifting) Action 13 that defined the following components of transfer pricing documentation:

- Master file (basic information about the corporation's structure and business activities);
- Local file (detailed information about material transactions of local group companies);
- CbC report.

Implementation in Liechtenstein

CbCR is primarily based on the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (MCAA-CbC) and the Convention on Mutual Administrative Assistance in Tax Matters.

Liechtenstein has adopted a corresponding implementation act and ordinance. The CbC Act and the CbC Ordinance entered into force on 1 January 2017.

Initial registration with the Tax Administration had to be made by 31 December 2017 and the country-by-country report for the 2017 tax reporting year must be submitted to the Tax Administration by 31 December 2018 at the latest.

The list of partner states is annexed to the Ordinance. As at 1 August 2018, the list contained 62 partner states.

Constituent / reporting legal entity

If the company is part of a multinational corporate group with revenue of more than CHF 900 million, the following legal entities are affected by CbCR:

- ultimate parent entities (Art. 2 para. 1 (f) CbC Act);
- surrogate parent entities (Art. 2 para. 1 (g) CbC Act);
- constituent legal entities including branches (Art. 2 para. 1 (d) CbC Act) who are obliged to submit a CbC report upon request of the Tax Administration, known as the "second mechanism" (Art. 5 CbC Act).

Reporting legal entities are constituent legal entities that are obliged by the law of their country of tax domicile to submit the country-by-country report.

Ultimate parent entities

As a general rule, only ultimate parent entities that are subject to the consolidation requirement are affected. According to the Persons and Companies Act PGR (Art. 1097 in conjunction with Art. 1063), these primarily include public limited companies and limited liability companies. Foundations, establishments, trust enterprise (or trust reg.) and trust settlements are not subject to the consolidation requirement and are therefore also not obliged to draw up a country-by-country report (see Chart II).

Surrogate parent entities

An ultimate parent entity domiciled abroad can instruct a constituent legal entity domiciled in Liechtenstein to submit the country-by-country report to the Liechtenstein Tax Administration on behalf of the ultimate parent entity. If this option is used, the Liechtenstein constituent legal entity is obliged to prepare the country-by-country report and file it with the Liechtenstein Tax Administration.

On the other hand, an ultimate parent entity domiciled in Liechtenstein can also instruct a constituent legal entity domiciled abroad to file the country-by-country report in its country of domicile. The conditions for delegating this obligation to a foreign company are:

- the country of domicile requires the submission of country-by-country reports;
- the country of domicile is a partner state;
- the country of domicile has not systematically failed to transmit the country-by-country reports; and
- the country of domicile has been notified by the constituent legal entity of its appointment as surrogate parent entity.

Second mechanism

Constituent legal entities of a multinational corporate group domiciled in Liechtenstein (who are not ultimate parent entities or surrogate parent entities) must submit the report to the Tax Administration upon request when:

- the ultimate parent entity is not obliged to submit the report in its country of tax domicile;
- the country of tax domicile of the ultimate parent entity is not a partner state; or
- the partner state has systematically failed to transmit the country-by-country reports.

The Liechtenstein Tax Administration may not, however, require the submission of the report if it receives the report from a partner state.

Requirements for the country-by-country report

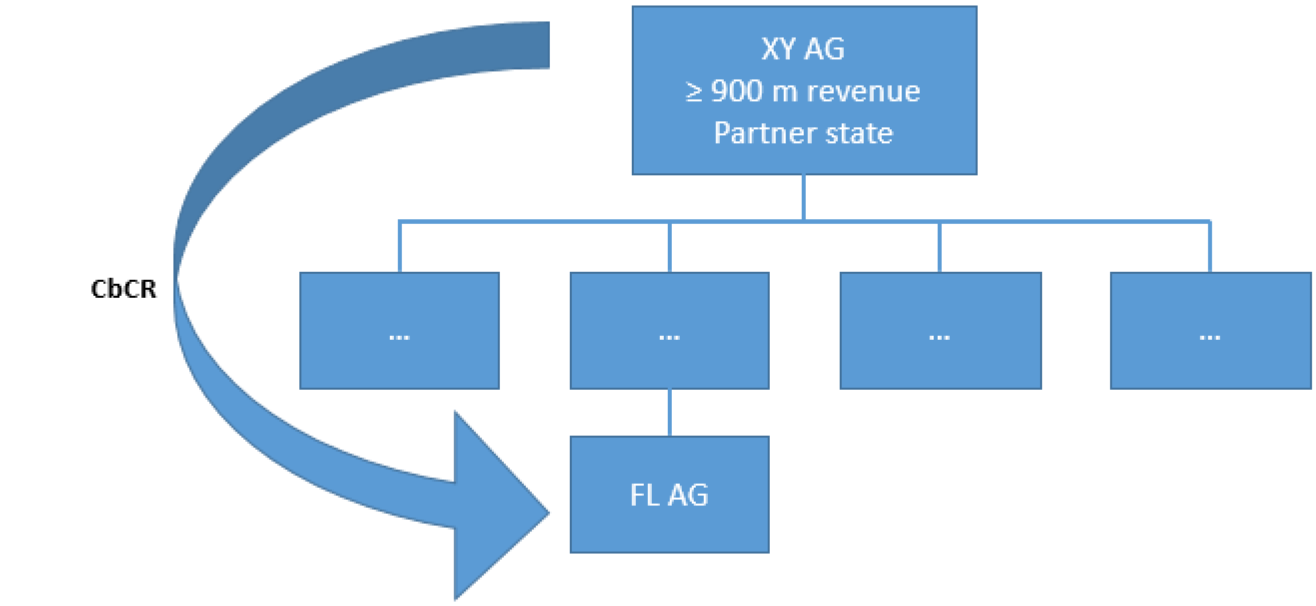
The report can be drawn up in German or in English. The report has to be filed within 12 months of the end of the reporting period in accordance with the Tax Administration's regulations.

Sanctions for breaches of obligations

Companies who violate the registration and submission obligations can be fined up to CHF 250'000 for intentional breaches and up to CHF 100'000 for breaches caused by negligence.

If you need any further information, you may contact the author of this article, Jürg Brinkmann, at Allgemeines Treuunternehmen. This ATU Info is intended for general information purposes only and does not replace legal advice.

I. CbC reporting by partner state



II. No CbC reporting by Liechtenstein