

# Luxembourg issues additional guidance on OECD CbCR obligations relating to exchange of information

13 March 2018

## *In brief*

On 20 February 2018 the Ministry of Finance published additional clarification for the Luxembourg Country-by-Country Reporting (CbCR) regime. A grand-ducal regulation (règlement grand-ducal) has confirmed, in the form of a list, which jurisdictions are regarded as having both OECD-compliant CbCR legislation in force, and arrangements in effect with Luxembourg that allow for the effective automatic exchange between tax authorities of Country-by-Country (CbC) reports. For groups with any affiliates in Luxembourg, but with the ultimate group parent resident in a jurisdiction that is not listed in the grand-ducal regulation, either a “surrogate filer” should be appointed in Luxembourg or in a jurisdiction that is on the list (i.e. one with which Luxembourg can automatically exchange information), or else a CbC report has to be filed in Luxembourg under the “secondary mechanism”.

## *In detail*

The Luxembourg CbC obligations require Luxembourg ultimate parent entities controlling a Multinational Enterprise group (MNE group) whose total consolidated group revenue (“*chiffre d'affaires total consolidé*”) exceeds EUR 750 million, to file CbC reports with the Luxembourg tax authorities. Other Luxembourg entities that are members of MNE groups may also have obligations to file CbC reports in Luxembourg. Both Luxembourg MNE group parents, and other Luxembourg entities that are member of MNE groups, must also comply with annual notification requirements, this being a separate obligation.

Under the Luxembourg CbCR legislation, the Luxembourg tax authorities will exchange annually on an automatic basis the CbC report received from any Luxembourg reporting entity in an MNE group, with all the tax authorities of other jurisdictions where that MNE group has activities. However, a CbC report can only be exchanged in cases where both tax authorities have agreed to automatic exchange, any mechanism for this is effective, and their respective jurisdictions have in place legislation that requires the filing of CbC reports with respect to that fiscal year to which the CbC report relates.

The grand-ducal regulation (Mémorial A N° 136), which lists the jurisdictions regarded by Luxembourg as satisfying the above requirements, has been issued on 13 February 2018, and published on 20 February 2018. The official text is available at:

<http://legilux.public.lu/eli/etat/leg/rgd/2018/02/13/a136/jo>

Under the grand-ducal regulation, for CbCR for fiscal years beginning on or after 1 January 2016, Luxembourg has confirmed that appropriate exchange of information arrangements are in place with the following jurisdictions:

1. Argentina	12. Cyprus	23. Iceland	34. Malta	45. Slovak Republic
2. Jersey	13. Czech Republic	24. India	35. Mauritius	46. Slovenia
3. Latvia	14. Denmark	25. Indonesia	36. Mexico	47. South Africa
4. Australia	15. Estonia	26. Ireland	37. Netherlands	48. Spain
5. Austria	16. Finland	27. Isle of Man	38. New Zealand	49. Sweden
6. Belgium	17. France	28. Italy	39. Norway	50. Switzerland
7. Brazil	18. Germany	29. Japan	40. Poland	51. United Kingdom
8. Bulgaria	19. Gibraltar	30. Korea	41. Portugal	52. United States of America
9. Canada	20. Greece	31. Liechtenstein	42. Romania	
10. Colombia	21. Guernsey	32. Lithuania	43. Russia	
11. Croatia	22. Hungary	33. Malaysia	44. Singapore	

For CbCR for fiscal years beginning on or after 1 January 2017, the following jurisdictions are included:

1. All the jurisdictions listed above (i.e. as from 1 January 2016)
2. Chile
3. Uruguay

For jurisdictions not mentioned in the list, there is **no** appropriate exchange of information mechanism regarded as being in place with Luxembourg. Consequently, any affiliates in Luxembourg of groups where the ultimate parent is resident in a jurisdiction that is not listed in the grand-ducal regulation, a **CbC report** will have to be filed either by a “surrogate entity” resident in a jurisdiction listed in the grand-ducal regulation, or by an affiliate in Luxembourg.

Similarly, for 2016 and/or 2017, **notifications** filed in Luxembourg may already have confirmed that CbCR is being done by an MNE group entity, but in a jurisdiction for which there is no appropriate exchange of information on the basis of the grand-ducal regulation. In such cases, revisions of notifications may have to be made. The amendments in the notification would need to advise that there is to be a change in the jurisdiction of the reporting entity to one listed in the grand-ducal regulation. Alternatively, the MNE group must appoint a Luxembourg entity to do the CbCR.

## *In conclusion*

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This grand-ducal regulation is part of a series of ongoing CbCR developments, as new guidance and updates continue to be issued - e.g. further OECD Guidance on CbCR implementation came out in February 2018.

Luxembourg resident entities that are subject to the CbCR regime in any way must ensure that their MNE group entity filing the CbC report is resident in a jurisdiction listed in the grand-ducal regulation. If this is not the case, additional CbCR filing requirements, including revision of notifications already filed for 2016 and 2017, will almost certainly now have arisen.

Therefore, we recommend all Luxembourg entities that are members of MNE groups subject to the CbCR legislation to review the status of their CbC notifications and reporting, in the light of this new grand-ducal regulation.

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### *Let's talk*

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