

French Country-by-Country Reporting requirements may impact US multinational groups

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Executive summary

On 4 December 2017, the French Government published additional comments regarding the potential treatment of Country-by-Country (CbC) Reporting (CbCR) requirements of French subsidiaries and branches of foreign multinationals, where the country of residence of the foreign multinational has not yet signed the automatic exchange of information agreement with France. This is, for example, the case for US-based multinational enterprises that have to comply with CbCR requirements in France.

Although the French Government, in this most recent publication, aims to provide increased comfort that no CbCR-related penalties would apply if certain conditions are met, its 4 December announcement still leaves room for interpretation and fails to provide the legal certainty sought after by French entities and their parent companies.

Detailed discussion

The United States (US) has still not been included in the French ministerial order that contains the list of States considered as “compliant” for CbCR purposes (i.e., States which have introduced CbCR requirements and with which France has entered into an agreement allowing effective automatic exchange of CbC

reports) and negotiations for a specific bilateral Competent Authority Agreement (CAA) on the Exchange of CbC reports between France and the US are still ongoing.

Accordingly, the question may arise as to whether the French entities of a US group have to file a CbC report in France when the ultimate parent entity (UPE) of the group has voluntarily filed a CbC report in the US.

In this respect, the OECD has issued guidelines encouraging the States in which local filing obligations exist for fiscal years starting from 1 January 2016 to adopt a “transitory rule” in order to relieve the entities established within their territory whose ultimate parent entity (UPE) is established in a State where CbCR filings are not yet mandatory from any CbCR filing requirements in the case where the UPE voluntarily files a CbC report in its country of residence, subject to the following conditions:

- ▶ The UPE files a CbC report which complies with the requirements of the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting Action 13 Report on CbCR in its country of residence by the filing deadline for the reporting fiscal year (i.e., by 31 December 2017 in the case of French constituent entities whose fiscal year begins on 1 January 2016)
- ▶ The UPE is established in a State which has implemented CbCR requirements by the filing deadline for the reporting fiscal year, even if filing of a CbC report for the reporting fiscal year in question is not due under those requirements (i.e., by 31 December 2017 in the case mentioned above)
- ▶ A qualifying CAA is in effect between the State of residence of the UPE and the State of residence of the local entities by the filing deadline for the reporting fiscal year (i.e., by 31 December 2017 in the case mentioned above)
- ▶ There is no systemic failure in the State of residence of the UPE
- ▶ Notification requirements are fulfilled in both States

Pursuant to the OECD recommendations, the French tax authorities released a statement on 4 December indicating that the French subsidiaries and branches of a foreign group whose UPE is not located in a State included in the above-mentioned ministerial order would be relieved from any CbCR filing requirements in France for a fiscal year starting from 1 January 2016 if the following conditions are met:

- ▶ The UPE voluntarily files a CbC report in its State of residence for the respective fiscal year
- ▶ This CbC report complies with the requirements set out by the OECD
- ▶ The local tax authorities of the State in which the UPE is located provide the French tax authorities with this CbC report

With respect to the situation of US groups, according to verbal information provided to us by the French tax authorities, the French tax authorities consider that the exchange of CbC reports between France and the US should be possible on the basis of the current France-US Tax Treaty which contains a provision for exchange of information. Moreover, both France and the US are still in negotiations, and so it may be possible that both countries could agree to an exchange mechanism under the existing treaty, other than on an automatic basis, once both sides are confident that all appropriate measures are in place, including, for example, data safeguards.

As a consequence, assuming agreement is reached on a mechanism to share this information, it seems that the voluntary filing of a CbC report in the US should relieve the French entities of US groups from their obligation to file a CbC report in France for the fiscal year starting on 1 January 2016. In this regard, we understand that there may be an announcement forthcoming on this matter from the US.

However, barring any further formal communications from either the French or US tax authorities, French subsidiaries or branches of US groups can only obtain legal certainty that France will not apply any penalties relating to CbC reporting requirement if at least one of the following steps are taken:

- ▶ The US UPE designates a surrogate parent entity (SPE) to file CbCR, and this SPE is located in a State that has signed the automatic exchange of information agreement with France
- ▶ The US group decides to also file a CbC report in France

It should be noted that the first option would then still require the French subsidiary or branch to notify the name and the location of the SPE on its French tax return. Also, adoption of the second option would require the French subsidiary or branch of the US UPE to file a CbC report that complies with the relevant French standard as defined by law (i.e., Article 223 quinquies C of the French Tax Code).

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EYG no. 07009-171Gbl

1508-1600216 NY
ED None

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