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German Tax and Legal News

Clarifications awaited following final Germany-US agreement on CbC report exchanges

2018 and 2019 interim agreements are replaced by permanent agreement, but details still must be specified.

Following the adoption of interim solutions in 2018 and 2019 for the spontaneous exchange of country-by-country (CbC) reports between Germany and the US (see [GTLN dated 5 December 2019](#)), the governments of the two countries reached what is intended to be a permanent solution for the automatic exchange of CbC reports through a [competent authority arrangement](#) (CAA) signed on 14 August 2020. However, the CAA does not cover all of the details regarding the exchange of CbC reports, so the parameters for the exchange of reports for fiscal years beginning in 2019 (the interim solutions adopted in 2018 and 2019 covered financial years beginning in the period from 2016–2018) remain uncertain as of the end of November 2020. Clarifications are expected to be provided through an additional agreement.

The interim solutions adopted in 2018 and 2019 had the effect of limiting the circumstances in which a German taxpayer that is part of a multinational enterprise group with a US ultimate parent entity could be required to file a CbC report with the German tax authorities under the “secondary mechanism,” by providing that the competent authorities of Germany and the US would spontaneously exchange CbC reports for certain fiscal years. The CAA signed between Germany and the US on the automatic exchange of CbC reports is intended to replace the interim solutions and is based on article 26 (exchange of information and administrative assistance) of the 1989 tax treaty between Germany and the US. However, as noted above, the CAA does not contain precise specifications regarding the exchange of CbC reports (scope, timing, etc.). Therefore, it is unclear, in particular, as from what date the automatic exchange of CbC reports will apply. Accordingly, another interim solution for fiscal years beginning in 2019 cannot be ruled out. Article 2 of the CAA provides for the conclusion of a separate agreement that is intended to cover the relevant details.

As the international exchange of information continues to increase, so does the number of tax audit cases in which the data derived from CbC reports is actively used by German tax auditors. This underscores the increased importance of accurate and thorough preparation and analysis of CbC reporting as part of transfer pricing planning and documentation, and of being prepared for potential tax audits. Taxpayers may wish to consult professional advisors regarding any questions that may arise and/or for support in the preparation of CbC reports.

Background

CbC reporting is a mechanism that may be used for a high-level assessment of transfer pricing risks or BEPS-related risks by tax authorities, and is part of the standardized three-tiered documentation approach in line with [action 13](#) of the OECD’s [BEPS project](#).

Since CbC reporting generally is a local documentation obligation, whether it provides a comprehensive cross-border benefit depends, in particular, on the willingness of participating jurisdictions to exchange information. As of August 2020, there were already more than 2,500 activated bilateral exchange relationships that are intended for the annual automatic exchange of CbC reports between jurisdictions.

Most exchange relationships are based on the [Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports](#) (CbC MCAA), to which 88 jurisdictions (as of August 2020) have committed themselves within the framework of an international instrument for the bilateral automatic annual exchange of CbC reports. In addition—and alongside [EU directive 2016/881](#), which requires EU member states to automatically exchange CbC reporting information within the EU—bilateral CAAs for exchanges under tax treaties or agreements on the exchange of tax information, such as the August 2020 agreement signed between Germany and the US, are another important legal basis for the automatic exchange of CbC reports.

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