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German Tax and Legal News

Joint Germany-US statement issued on spontaneous exchange of CbC reports for 2018

Interim solution for exchange of CbC reports extended to fiscal years beginning in 2018.

On 26 November 2019, the US Internal Revenue Service (IRS) published a [joint statement](#) from the German and US competent authorities on the implementation of the spontaneous exchange of country-by-country (CbC) reports for fiscal years beginning in 2018. The statement provides for an interim solution for the exchange of CbC reports, since the competent authorities believe that the objectives of exchanging CbC reports (including assessing high-level transfer pricing and BEPS risks and economic and statistical analysis, where appropriate) should not be postponed until an agreement for the automatic exchange of CbC reports is concluded between Germany and the US.

The competent authorities issued similar joint statements on the spontaneous exchange of CbC reports for fiscal years beginning in [2016](#) and [2017](#). These arrangements have the effect of limiting the circumstances in which a German taxpayer that is part of a multinational enterprise (MNE) group with a US ultimate parent entity may be required to file a CbC report with the German tax authorities under the "secondary mechanism."

Background

The secondary mechanism for filing CbC reports, as regulated by the German General Tax Code, requires a German taxpayer (legal entity or permanent establishment) that is part of an MNE group to file the group's CbC report with the German competent authority where the report is not made available by the jurisdiction of the ultimate parent entity. In any case where the German competent authority does not receive a CbC report for any calendar year, the secondary mechanism would apply.

In particular, the secondary mechanism may apply if there is no information exchange agreement (multilateral or bilateral tax convention or tax information exchange agreement providing for the automatic exchange of tax information) between the country of residence of the ultimate parent company and Germany. According to the German regulations, in the absence of such an information exchange agreement, a German taxpayer must submit the group's CbC report to the German competent authority, even if the ultimate parent company submitted the report on time in its jurisdiction of residence.

Such a secondary filing mechanism has not been implemented in the US regulations.

Germany-US information exchange agreement under negotiation

Given that the US is not a signatory of the [Multilateral Competent Authority Agreement on the Exchange of CbC Reports](#) (CbC MCAA), there is a need for a bilateral exchange agreement for CbC reports between Germany and the US to avoid an automatic local filing obligation for US-headquartered MNEs with group members resident in Germany. The German and US governments are working toward a solution to address this issue by negotiating a bilateral intergovernmental agreement and a competent authority arrangement to allow for the automatic exchange of CbC reports. Once concluded, these agreements will avoid secondary filing obligations for US-headquartered multinationals with group members resident in Germany, to the extent the ultimate parent entities duly file their CbC reports in the US and the automatic exchange mechanism works effectively.

Interim solution extended

Germany and the US wish to exchange CbC reports via their competent authorities without waiting for the conclusion of the negotiations for the intergovernmental agreement and competent authority arrangement. For this purpose, both countries have agreed on a joint statement on the spontaneous exchange of CbC reports for fiscal years of MNE groups commencing on or after 1 January 2018 and before 1 January 2019, pursuant to Article 26 (Exchange of Information and Administrative Assistance) of the 1989 Germany-US income and capital tax treaty.

The statement published by the US IRS on 26 November 2019 is an update to the earlier

joint statements of the two countries (published by the US IRS on 11 July 2018 and 14 December 2018), with respect to the exchange of CbC reports between Germany and the US for fiscal years beginning in 2016 and 2017, respectively.

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