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Switzerland – Tax Alert

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BEPS Initiative

The Organization for Economic Co-operation and Development/OECD had launched the Base Erosion and Profit Shifting/BEPS initiative to curb aggressive tax planning and to streamline the international tax systems. Pursuant to such initiative the OECD issued a package of reports to address BEPS. Action point number 13 sets out a three tiered standardized approach to Transfer Pricing documentation with the following elements:

- Country-by-Country Reporting/CbCR,
- Master File and
- Local File.

These CbCR requirements were to be implemented in the European Union for fiscal years beginning on or after January 1, 2016 to Multinational Enterprises/MNEs with annual consolidated group revenue of at least EUR 750m. MNEs must collate CbCR data for business year 2016 and file such CbCR data within 12 months with their respective domestic tax authorities. Subsequently, the CbCR data will be exchanged with involved foreign fiscal authorities through automatic exchange of information. Such CbCR information enables tax authorities to undertake transfer pricing analysis, mismatch and hybrid entities assessments.

Switzerland from 2018

Based on the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports the Swiss parliament developed an implementation bill for CbCR that likely will enter into force December 1, 2017. As of business year 2018, CbCR data must be collected and filed with Swiss tax authorities within the following 12 months, with first filing due by end of 2019. Swiss officials will exchange relevant information for the first year under review before June 30, 2020 with involved foreign tax authorities. Penalties are imposed for non-compliance.

Transition Period for MNEs with Nexus to Switzerland in Years 2016 and 2017

Swiss penal law may sentence persons involved in illegal actions, such as private exchange of certain information with foreign authorities with imprisonment of up to three year or a fine. The implementation bill addresses this discrepancy of Swiss penal law, economic facts in certain OECD member states and multinational obligations Switzerland has agreed on. In analogy to CbCR data exchange for business year from 2018, the implementation bill allows the exchange of 2016 and 2017 CbCR data with foreign tax authorities if routed via the Swiss federal tax authorities.

Recommendations

It is key that MNEs with nexus to Switzerland exchange CbCR data via the Swiss federal tax authorities to avoid a possible conflict with Swiss penal law. GT Switzerland may navigate clients through this new process of exchange of CbCR data, can assist on formatting CbCR data in accordance with Swiss requirements for submission and can advise on preparation of Swiss tax compliant master and local files.

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