



# Swiss Federal Act on the international automatic exchange of country-by-country reports by multinational enterprises (MNE Groups)

(CbC Act)

**SR 654.1**  
dated 16 June 2017 (status of 1 December 2017)

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*The Swiss Federal Assembly of the Swiss Confederation,<sup>1</sup>  
on the basis of Article 173(2) of the Swiss Federal Constitution,  
and having considered the Federal Council Dispatch dated 23 November 2016<sup>2</sup>,  
decrees:*

## Section 1: General Provisions

### ARTICLE 1 Subject Matter

- 1 This Act shall govern the implementation of the automatic exchange of country-by-country reports by MNE groups between Switzerland and its treaty partners:
  - a. based on the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (the "CbC MCAA") dated 27 January 2016<sup>3</sup>;
  - b. based on other international agreements that foresee an automatic exchange of country-by-country reports.
- 2 Any deviating provisions in the treaty pertinent to the individual case shall remain applicable.

### ARTICLE 2 In this Act, the following terms shall mean:

- a. *Applicable treaty*: the agreement referred to in Article 1(1)(a) applicable in the individual case or the agreement referred to in Article 1(1)(b) applicable in the individual case;
- b. *Treaty partner*: Country or territory with which Switzerland has an agreement to automatically exchange country-by-country reports;
- c. *Group*: A group of companies controlled by a legal entity that is obliged to prepare consolidated financial statements for that group as per Article 963(1)-(-3) of the Swiss Code of Obligations (CO)<sup>4</sup>;

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<sup>1</sup> SR 101

<sup>2</sup> BBI 2017 33

<sup>3</sup> SR 0.654.1; BBI 2017 103

<sup>4</sup> SR 220

- d. *Constituent entity:*
1. any separate business unit of an MNE Group that is included in the consolidated financial statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on an exchange;
  2. any such business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on grounds of size or materiality; and
  3. any permanent establishment of any separate business unit of the MNE Group included in (1) or (2) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.
- e. *Constituent entity domiciled in Switzerland:*
1. any constituent entity that is taxable pursuant to Article 50 of the Swiss Federal Act of 14 December 1990<sup>5</sup> on Direct Federal Taxation (DFTA) and Article 20(1) of the Federal Act of 14 December 1990<sup>6</sup> on the Harmonization of Direct Taxation at Cantonal and Communal Levels (DTHA); or
  2. any permanent establishment that is taxable pursuant Article 51(1)(b) DFTA and Article 21(1)(b) DTHA;
- f. *Ultimate Parent Entity:* The constituent entity of an MNC group that, based on the share of its directly or indirectly held equity interests in other constituent entities of that MNC group, is or would be obliged pursuant to the accounting standards in the state or territory of its tax residency to prepare consolidated financial statements if the equity interests were traded on an exchange and no other constituent of this MNE group were to directly or indirectly hold such equity interests;
- g. *Ultimate parent entity domiciled in Switzerland:* any constituent entity subject to taxation under Article 50 DFTA and Article 20(1) DTHA that is obliged to prepare consolidated financial statements pursuant to Article 963(1)-(-3) CO and which is not exempt from such duty pursuant to Article 963a(1)(2) CO;
- h. *Surrogate Parent Entity:* any constituent entity subject to taxes under Article 50 DFTA and Article 20(1) DTHA or under the law of its country of domicile, which, as the representative of the ultimate parent company, is obliged to file the country-by-country report on behalf of the MNE group;
- i. *Reporting entity:* the parent entity domiciled in Switzerland or the surrogate parent entity that is obliged to file the country-by-country report on behalf of the MNE Group;
- j. *Fiscal reporting year:* the tax period as per Article 79(2) DFTA and Article 31(2) DTHA for which the data in the country-by-country report is documented;

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<sup>5</sup> SR 642.11

<sup>6</sup> SR 642.14

- k. *Swiss tax identification number for legal entities (Unternehmens-Identifikationsnummer; UID)*: The company identification number pursuant to the Swiss Federal Act of 18 June 2010<sup>7</sup> on the Business Identification Number;
- l. *Systemic failure*: condition that occurs when the treaty partner obliged to exchange country-by-country reports persistently fails to meet its duties for reasons other than those that are in accordance with the terms of the applicable treaty.

## Section 2: Country-by-country reports

### ARTICLE 3 Content

- 1 A country-by-country report shall include, structured by the countries and territories in which the MNE Group is active, data on revenues, taxes paid and other key figures as well as information on the most important commercial activities of the MNE Group's constituent entities.
- 2 The Swiss Federal Council shall define the required content of country-by-country reports, taking into account international standards.

### ARTICLE 4 Language

The country-by-country report shall be prepared in one of the Confederation's official languages.

### ARTICLE 5 Currency

The country-by-country report shall include the financial information in Swiss francs or in the MCE group's business-relevant currency.

## Section 3: Rights and duties of constituent entities

### ARTICLE 6 Duty to prepare country-by-country reports

- 1 MNE Groups, where the ultimate parent entity is domiciled in Switzerland and where the annual consolidated revenues exceed a certain threshold in the tax period immediately prior to the fiscal reporting year are obliged to prepare a country-by-country report.
- 2 The Swiss Federal Council shall define the threshold, taking into account international standards.

### ARTICLE 7 Filing duty of the reporting entity

The reporting entity is obliged to file the country-by-country report with the Swiss Federal Tax Administration (SFTA).

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<sup>7</sup> SR 431.03

## ARTICLE 8 Filing duty of other constituent entities domiciled in Switzerland

- 1 Where the annual consolidated revenues exceed the threshold set in Article 6, the SFTA may oblige any other MNE Group constituent entity domiciled in Switzerland to file a country-by-country report, if:
  - a. the state or territory of the ultimate parent entity's tax residency is not a treaty partner; or
  - b. a systemic failure occurred in the treaty partner state where the ultimate parent entity has its tax residency.
- 2 The SFTA does not require constituent entities domiciled in Switzerland to file a country-by-country report if the surrogate parent entity has already filed such a report in a treaty partner state.

## ARTICLE 9 Surrogate Parent Entity

- 1 A constituent entity domiciled in Switzerland which is not the ultimate parent company may be designated as the surrogate parent entity.
- 2 A constituent entity domiciled abroad which is not the ultimate parent company may be designated as the surrogate parent entity, if:
  - a. its state of domicile is a treaty partner;
  - b. no systemic failure occurred at the state of domicile; and
  - c. the constituent entity's state of domicile has been notified of its capacity as surrogate parent entity.

## ARTICLE 10 Obligation to register

- 1 The reporting entity shall register with the SFTA, indicating the following:
  - a. its status as ultimate parent entity or surrogate parent entity;
  - b. the company name and domicile;
  - c. the UID;
  - d. the date it became operational.
- 2 If the reporting entity has its statutory domicile abroad but the place of its effective management is in Switzerland, its Management shall register the reporting entity with the SFTA, indicating the following:
  - a. the reporting entity's status as ultimate parent entity or surrogate parent entity;
  - b. the company name, the location of its headquarters and Management's address in Switzerland;

- c. the UID;
  - d. the date on which the reporting entity commenced its activities.
- 3 The Swiss Federal Council may prescribe that any other constituent entity domiciled in Switzerland shall provide the SFTA with information on the company name, address and domicile of the constituent entity required to file the country-by-country report.
  - 4 The obligation to register must be complied with no later than 90 days after the end of the fiscal reporting year.
  - 5 If its status as reporting entity ends, the reporting entity shall de-register with the SFTA at its own initiative.

#### **ARTICLE 11 Filing deadlines for the country-by-country report**

- 1 The reporting entity shall file the country-by-country report annually with the SFTA, at the latest twelve months after the fiscal reporting year has ended.
- 2 In cases pursuant to Article 8(1), the filing deadline shall commence on the day that the SFTA has served the written request that the constituent entity domiciled in Switzerland file a country-by-country report.

#### **ARTICLE 12 Administrative fine in case of delay**

If the reporting entity obliged to file the country-by-country report fails to meet the deadline, it will be charged an amount of 200 Swiss francs for each day between the end of the deadline and the date on which the FTA is sent the country-by-country report, but not more than 50,000 Swiss francs.

### **Section 4: Transmission of country-by-country reports and statute of limitations**

#### **ARTICLE 13 Transmission and use of country-by-country reports**

- 1 The SFTA shall transmit within the deadlines set in the applicable treaty the country-by-country reports it receives from reporting entities to the competent authorities of the treaty partners where constituent entities of the same MNE Group are domiciled.
- 2 It shall transmit the country-by-country reports that it received based on Articles 7 and 8 to the authorities responsible for determining and levying the direct taxes in the Cantons where constituent entities of that MNE Group are domiciled.
- 3 It shall point out to the treaty partners' competent authorities and the authorities responsible for determining and levying the direct taxes in the Cantons that restrictions on the use of the coun-

try-by-country reports are in place and that the confidentiality requirements as per the provisions on administrative assistance of the applicable treaty must be adhered to.

- 4 The country-by-country reports that the SFTA receives based on Article 8(1) shall be subject to the same use restrictions as if it had received them based on the CbC MCAA<sup>8</sup>.

#### **ARTICLE 14 Statute of limitations**

- 1 The SFTA's requirement that the reporting entity submit its country-by-country reports shall expire five years after the calendar year has lapsed in which the country-by-country report had to be submitted.
- 2 The statute of limitation shall be interrupted by any official action intended to assert the claim to the country-by-country report, which is brought to the attention of a reporting legal entity. The statute of limitations shall re-start upon the interruption.
- 3 The statute of limitations shall become effective at the latest ten years after the calendar year has elapsed in which the country-by-country report had to be submitted.

## **Section 5: Country-by-country reports received from treaty partners**

#### **ARTICLE 15**

- 1 The SFTA shall forward the country-by-country reports it received by treaty partners to the cantonal authorities responsible for determining and levying the direct taxes.
- 2 It shall point out to the restrictions in the use of the country-by-country reports and the confidentiality requirements as per the provisions on administrative assistance of the applicable treaty.

## **Section 6: Organization and proceedings**

#### **ARTICLE 16 Duties of the SFTA**

- 1 The SFTA shall ensure the correct application of the applicable treaty as well as of this Act.
- 2 It shall take all necessary measures and precautions.
- 3 It may require the use of specific forms and may request that certain forms are only submitted electronically.

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<sup>8</sup> SR 0.654.1; BBI 2017 103



## ARTICLE 17 Data processing

- 1 Based on the applicable treaty and this Act, the SFTA may process personal data, including personal information on administrative or criminal proceedings and tax-related penalties in order to fulfill its tasks.
- 2 It may systematically use the UID to fulfill its tasks, based on the applicable treaty and this Act.

## ARTICLE 18 Information system

- 1 The SFTA shall maintain an information system to process the data from the country-by-country reports, including personal data on administrative or criminal proceedings and sanctions in tax matters that it has received based on the applicable treaty and this Act.
- 2 The data may be processed solely by SFTA employees or by experts monitored by the SFTA.
- 3 The information system shall serve the SFTA to fulfill its duties in accordance with the applicable treaties and this Act. Namely, it may be used to:
  - a. receive and transmit country-by-country reports in accordance with the applicable treaty and Swiss law;
  - b. keep a register of constituent entities domiciled in Switzerland;
  - c. process judicial proceedings in connections with the applicable treaty and this Act;
  - d. carry out reviews in accordance with Article 22;
  - e. impose and enforce administrative and criminal sanctions;
  - f. process requests for administrative and legal assistance;
  - g. fight tax offenses;
  - h. prepare statistics.
- 4 The Swiss Federal Council shall define the specificities, in particular on:
  - a. the organization and management of an information system;
  - b. the categories of the processed personal data;
  - c. access and modification rights; and
  - d. the retention period, the archival and destruction of data.
- 5 Upon request, the SFTA may grant access to the data in the information system to the cantonal

authorities to which it transmits country-by-country reports in accordance with Articles 13(2) and 15(1) if these need this data to perform their statutory duties, i.e. determine and levy direct taxes.

## **ARTICLE 19** Duty to provide information

Upon request, reporting entities must provide information to the SFTA on all circumstances material to the implementation of the applicable treaty and this Act.

## **ARTICLE 20** Duty of confidentiality

- 1 Persons entrusted with or otherwise involved in the enforcement of the applicable treaty or this Act shall maintain the information gained in the course of their work confidential towards other authorities and third parties.
- 2 Professional secrecy does not apply:
  - a. to the transmission of information and publications in accordance with the applicable treaty and this Act;
  - b. when providing judicial or administrative bodies with official information from the authorities entrusted with enforcing this Act;
  - c. if the applicable treaty permits the lifting of professional secrecy and the Swiss law provides a legal basis for this lifting.
- 3 Findings on third parties made in the course of a review as per Article 22 may only be used to implement the applicable treaty.

## **ARTICLE 21** Statistics

- 1 The SFTA shall be entitled to prepare and publish anonymized statistics based on the information gained from the country-by-country reports.
- 2 No right exists to access data that goes beyond the information published in accordance with (1).

## **ARTICLE 22** Review

- 1 Using the information available, the SFTA shall verify whether the obligations under the applicable treaty and this Act have been fulfilled regarding its completeness and conformity with the international standard.
- 2 If it determines that a constituent entity domiciled in Switzerland has not fulfilled its obligations or has fulfilled them only inadequately, it shall set a reasonable period of time to remedy the deficiencies, indicating the measures in accordance with (3).
- 3 If the legal entity does not remedy the deficiencies within the set time limit, it may

- a. demand that the legal entity hand over its books, accounting records and other documents or inspect these documents at its premises;
  - b. obtain written or verbal information.
- 4 In case of any dispute, it shall issue a ruling.
- 5 Upon request, it shall issue a declaratory ruling on:
  - a. the reporting entity's capacity as reporting entity as per the applicable treaty and this Act;
  - b. the content of the country-by-country reports as per the applicable treaty and this Act.

## Section 7: Suspension and termination

### ARTICLE 23 Responsibilities

The Swiss Federal Department of Finance (FDF) shall act only with the Swiss Federal Council's authorization if it, based on the applicable treaty:

- a. suspends or terminates the automatic exchange of country-by-country reports with a treaty partner;
- b. terminates the treaty.

### ARTICLE 24 Request by a reporting entity

- 1 A reporting entity may request the FDF to suspend the automatic exchange of country-by-country reports with a treaty partner if it credibly substantiates that the treaty partner has breached the provisions on confidentiality and restrictions on the use of country-by-country reports stipulated in the applicable treaty.
- 2 In the event that the FDF considers the request to be justified, it shall present it to the Swiss Federal Council for a decision. The Swiss Federal Council shall make the final decision.
- 3 Should the FDF consider the request to be unfounded, it shall issue a declaratory ruling on whether the treaty partner violates the provisions on confidentiality and restrictions on the use of the country-by-country reports as stipulated in the applicable treaty. If the appeals authority approves an appeal against this ruling, the FDF submits the request to the Swiss Federal Council for a decision. The Swiss Federal Council shall make the final decision.

## Section 8: Penal provisions

### ARTICLE 25 Inaccurate or incomplete reports

- 1 Anyone who deliberately provides inaccurate or incomplete information in the country-specific report that substantially distorts the requested information and is a misrepresentation of the actual circumstances shall be liable to a fine of up to CHF 100,000.
- 2 If the maximum fine amounts to 25 000 Swiss francs and if the determination of the punishable persons as per Article 6 of the Federal Act on Administrative Criminal Law (ACLA) of 22 March 1974<sup>9</sup> were to result in investigative measures disproportionate to the penalty, the persecution of these persons may be abandoned and in their stead, the business operation (Article 7 ACLA) may be sentenced to paying the fine.

### ARTICLE 26 Violation of official orders

Anyone who, in the course of a review under Article 22, willfully fails to comply with an official ruling which refers to the threat of punishment under this Article shall be liable to a fine of up to CHF 10,000.

### ARTICLE 27 Legal procedures

- 1 To prosecute and assess any violations of this Act, the ACLA<sup>10</sup> applies.
- 2 The SFTA is the prosecuting and sentencing authority.

## Section 9: Final provisions

### ARTICLE 28 Approval powers

The Swiss Federal Council shall be responsible for including a state or territory on the list as per Section 8(1)(e) of the CbC MCAA<sup>11</sup>.

### ARTICLE 29 Amendments to the applicable treaty

The Swiss Federal Assembly shall approve all amendments to the applicable treaty by simple federal resolution. If an amendment meets the requirements of Article 141(1)(d)(3) of the Federal Constitution, the approval resolution shall be subject to an optional referendum.

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<sup>9</sup> SR 313.0

<sup>10</sup> SR 313.0

<sup>11</sup> SR 0.654.1; BBI 2017 103

### **ARTICLE 30** Transmission of country-by-country reports on tax periods prior to this Act entering into force

- 1 Under the CbC MCAA<sup>12</sup>, the SFTA shall transmit to the competent authorities of the treaty partner in which constituent entities of the same MNE Group are domiciled the country-by-country reports voluntarily submitted to it since the entry into force of this Act by an ultimate parent entity domiciled in Switzerland on fiscal years prior to the entry into force of this Act.
- 2 It shall draw the attention of the competent authorities of the treaty partners to the restrictions on the use of the country-by-country reports transmitted and to the confidentiality obligations under the provisions of the CbC MCAA.
- 3 The registration in accordance with Article 10(1) and (2) shall take place at the latest at the time of the voluntary submission of the country-by-country report.
- 4 The submission deadline as defined in Article 11(1) is applicable by analogy.

### **ARTICLE 31** Beginning of the duty to prepare the country-by-country report

The obligation to prepare a country-by-country report arises with the fiscal reporting years that begin at the earliest on the first day of the calendar year following the entry into force of this Act.

### **ARTICLE 32** Referendum and entry into force

- 1 This Act shall be subject to an optional referendum.
- 2 The Swiss Federal Council shall determine the date upon which this Act enters into force.

*Date of entry into force: 1 December 2017<sup>13</sup>*

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<sup>12</sup> SR **0.654.1**; BBI **2017** 103

<sup>13</sup> Decision of the Swiss Federal Council of 18 Oct 2017

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