

13 December 2017

## Dear client,

New issues have emerged regarding Hungary's country-by-country reporting obligation. Specifically, several practical questions have arisen in respect of filling in notification sheet 17T201T. In order to clarify these issues, KPMG's Tax practice contacted the Hungarian Tax Authority ("the Authority"), and provides the following need-to-know update on country-by-country reporting:

## Background

On 15 May 2017, an amendment to Act 37 of 2013 on Certain Regulations on International Administrative Cooperation in Field of Taxes and Other Charges ("Aktv") was accepted by the Hungarian Parliament, entered into force on 31 May 2017. Via this amendment, the automatic exchange of information in a country-by-country report ("CBC report") is transposed into domestic law. (For further reference, please see our previous newsletter regarding the CBCR rules [here](#).)

Accordingly, the Authority has published on its website form 16CBC, which is applicable regarding the obligation for country-by-country reporting. Only those multinational enterprises ("MNEs") are obliged to submit form 16CBC that have achieved at least an annual consolidated group revenue of EUR 750 million in the fiscal year preceding the reporting fiscal year. (For more information, our previous newsletter regarding the rules of CBCR is available [here](#).)

According to the changes effective from May 2017, Hungarian group members are subject to notify the Authority whether they are obliged to submit the CBC report and, if so, the nature of this notification and the last day of the reporting fiscal year should also be disclosed.

On the other hand, a group member which is not obliged to submit the CBC report shall declare that it does not bear such an obligation and must

also name the entity and the country in which the reporting will be filed with the corresponding tax authority.

## Personal scope

As mentioned above, the Hungarian tax resident member of an MNE group is obliged to make a CBCR-related notification to the Authority, if its MNE group achieved at least an annual consolidated group revenue of EUR 750 million in the fiscal year preceding the reporting fiscal year. **Below this threshold, neither the CBCR notification obligation arises for the Hungarian tax resident company, nor should any declaration about it be filed with the Authority.**

**The CBC report submission obligation for a Hungarian tax resident company can arise in the following cases:**

- as the Ultimate parent entity;
- as the Surrogate parent entity;
- due to specific reasons (in line with Section 2 or Section 4 of Paragraph 43/N of Aktiv.).

In case the group member does not have an obligation to report as per the qualifications above, **it must only fulfill the notification obligation.**

The specific reasons mentioned in the last point above will be elaborated upon later in this brief.

## Reporting fiscal years

Pursuant to the general rules, a Hungarian tax resident company is subject to the notification obligation for two reporting fiscal years together. **The first notification** is to be filed for the fiscal year commencing on or after 1 January 2016, and for the fiscal year commencing on or after 1 January 2017.

Given that the 17T201T form cannot be filled in and processed otherwise, **the taxpayer should submit two different notifications (i.e. separate 17T201T forms) to the Authority for the fiscal years commencing on or after 1 January 2016 and on or after 1 January 2017, respectively.** As per the information received from the Authority, first the notification for fiscal year 2016 should be made, then – in practice a couple of days later – the notification for the fiscal year 2017 should be made.

## Submission deadline

The statutory deadline for the submission of the notification form is as follows:

- for the fiscal year commencing on or after 1 January 2016, **within 12 months from** the last day of that fiscal year;
- for the fiscal year commencing on or after 1 January 2017, by the last day of the fiscal year.

In the light of the aforementioned, the statutory notification deadline of **both 17T201T forms** for a taxpayer having a calendar fiscal year is 31 December 2017 for fiscal year 2016 and for fiscal year 2017. For a taxpayer that has a fiscal year ending on 31 March, the statutory notification deadline **for both 17T201T forms** is 31 March 2018 for the fiscal year ending on 31 March 2017 and for the fiscal year ending on 31 March 2018.

**Any change in the information must be reported within 30 days.**

## Detailed rules for the CBCR notification

### Type of notification

Currently operating companies subject to CBCR-related notification as per Aktv. have to choose the “Reporting of changes” option (Code No. 2) in the second row of the 17T201T form’s cover page. Accordingly, filling in row no. 24 on the B06-sheet is necessary for CBCR-related information.

Hereinafter, the rules of the CBCR-related notification differ depending on whether the Hungarian tax resident company is liable for submission of the CBC report or not.

If the Hungarian tax resident company is obliged to submit a CBC report, in the second box of row no. 24 on the B06 sheet, the following information must appear:

- the nature of the CBC report submission obligation; and

- the last day of the reporting fiscal year.

In the following section, the rules applicable for taxpayers not obliged to fulfill the CBC report submission requirement are outlined.

### Indication of the reporting fiscal year on the form

The taxpayer is to indicate the first day of the reporting fiscal year – as per the effective date of change – in row no. 3 of form 17T201T’s cover page.

For a taxpayer having a fiscal calendar year it must indicate this on 1 January 2016 for fiscal year 2016 and 1 January 2017 for fiscal year 2017 as the effective date of change, respectively. For a taxpayer with a fiscal year ending on 31 March, 1 April 2016 for the fiscal year commenced in 2016, and 1 April 2017 in for the fiscal year commenced in 2017 is to be indicated.

### Name and tax residence status of CBCR submitting group entity

If the Hungarian tax resident company is not liable for submission of a CBC report, it is obliged to indicate the **name and tax residence of the reporting entity and the nature of the notification** in the third box of row 24 on sheet B06, which will submit the CBC report covering the entire MNE group for the relevant tax authority of the jurisdiction as per its tax residence.

## Consequence of insufficient notification

Cases of failing to submit reports or notifications, late submission, or providing incorrect, false, or incomplete information may be subject to a **default penalty of up to HUF 20 million** imposed on the taxpayer, or the reporting entity.

## Specific cases

According to information received from the Authority, even if a Hungarian tax residence group member company does not qualify either as Ultimate or Surrogate parent entity, as per the rules set by Aktv. (listed below), it is possible that the aforementioned company will be liable to submit a CBC report to the Authority:

1. if there is no effective agreement on the automatic exchange of information in CBCR between the tax authorities of Hungary and the jurisdiction where the ultimate parent entity is tax resident (in practice, this applies to MNE groups whose tax residence is in jurisdictions outside of the EU);
2. if the jurisdiction where the Ultimate parent entity is a tax resident, domestic law does not mandate submission of a CBC report;
3. in cases of error in the automatic exchange system of the jurisdiction where the Ultimate parent entity is tax resident.

Additionally, if the MNE does not have any member which would submit the CBC report covering all the EU tax resident group member companies for the reporting fiscal year, the Hungarian tax resident group member is obliged to submit CBCR to the Authority (as per Section 2 of Paragraph 43/N of Aktv.).

Similarly to the above, the CBC report submission obligation may arise for the Hungarian tax residence taxpayer in the following cases as well:

- if more members of the MNE group have tax residence in the EU, and
- at least one of the three criteria listed above occurs, and
- the MNE group assigns that the Hungarian tax residence company fulfill the CBC report submission obligation in respect to all of the group member companies having EU tax residence (as per Section 4 of Paragraph 43/N of Aktv.)

In respect of the above, regarding the fiscal year commencing on or after 1 January 2016, the Hungarian tax resident company will be exempted from the CBC report submission obligation (as per Section 2 of Paragraph 45/F of Aktv.).

**Nevertheless, the specific rules above will be applicable only for the fiscal year commencing on or after 1 January 2017.**

If the above sections are relevant to the operation of your business, it is highly recommended that you consult with your regular tax advisor in order to fulfill the CBC report submission obligation.

If you have any further questions concerning the points above, please do not hesitate to contact us:

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