

Translation of Liechtenstein Law

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Law

of 4 November 2016

**on the International Automatic Exchange of
Country-by-Country Reports of
Multinational Enterprise Groups (CbC Act)**

I hereby grant My consent to the following resolution adopted by the Liechtenstein Parliament:¹

I. General provisions

Art. 1

Object

1) This Act regulates the implementation of the automatic exchange of country-by-country (CbC) reports of multinational enterprise groups between the Principality of Liechtenstein and partner jurisdictions in accordance with international agreements providing for automatic exchange of CbC reports (hereinafter "applicable agreements").

2) It determines in particular:

- a) the obligations of constituent entities;
- b) the transmission of CbC reports;
- c) the confidentiality, appropriate use of information and data safeguards;
- d) the applicable procedures;

¹ Report and Motion of the Government No. 99/2016

e) the penalties for contraventions against applicable agreements and this Act.

3) Differing provisions of the agreement applicable in individual cases remain reserved.

Art. 2

Definitions and designations

1) The following definitions are established for the purposes of this Act:

a) group: a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;²

b) multinational enterprise (MNE) group: a group which:

1. includes two or more enterprises which are resident for tax purposes in different jurisdictions, or includes an enterprise which is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and
2. is not an excluded MNE group.

An excluded MNE group may voluntarily waive the exclusion pursuant to paragraph 2;

c) excluded MNE group: a group having total consolidated group revenue in the respective previous fiscal reporting year not exceeding 900 million Swiss francs;

d) constituent entity:

1. any separate business unit of an MNE group that is included in the consolidated financial statement for financial reporting purposes or would be included if equity interests in such a business unit of an MNE group were traded on a public securities exchange;
2. any separate business unit which is excluded from the consolidated financial statement of the MNE group solely on size or materiality grounds; and

² Art. 2 para. 1 subpara. a amended by LGBL 2019 No. 313.

3. any permanent establishment of a separate business unit of an MNE group included in paragraph 1 or 2, provided the business unit prepares a separate financial statement for such a permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;
- e) reporting entity: a constituent entity which under the domestic legal framework of its jurisdiction of tax residence is required to file the CbC report on behalf of the MNE group;
- f) ultimate parent entity: a constituent entity of an MNE group, which based on the percentage of its direct or indirect interest in other constituent entities of this MNE group is required to prepare a consolidated financial statement under the accounting principles in its jurisdiction of tax residence or would be required to do so if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence and no other constituent entity of this MNE group directly or indirectly participated in this way;
- g) surrogate parent entity: a constituent entity of an MNE group that has been appointed by the ultimate parent entity to file the CbC report in its jurisdiction of residence on behalf of the ultimate parent entity;
- h) fiscal year: the annual accounting period for which the ultimate parent entity of an MNE group prepares the consolidated financial statement;
- i) reporting fiscal year: the fiscal year for which the data are reflected in the CbC report;
- k) systemic failure: the state which occurs when a partner jurisdiction persistently fails to comply with the obligation to automatically exchange the CbC reports of MNE groups with Liechtenstein for reasons which are not justified by the applicable agreement;
- l) a constituent entity resident in Liechtenstein:
 1. a constituent entity that is resident for tax purposes in Liechtenstein; and
 2. a permanent establishment located in Liechtenstein, with which a separate business unit of an MNE group is subject to tax in Liechtenstein;
- m) CbC report: a report which contains the following information pertaining to an MNE group:
 1. aggregate information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings or losses, number of employees,

- and tangible assets other than cash or cash equivalents with regard to each country in which the MNE group operates;
2. an identification of each constituent entity of the MNE group setting out the jurisdiction of the tax residence of such a constituent entity, and where different, the country in which the constituent entity was established or registered and the nature of the main business activities of the constituent entity;
- n) partner jurisdiction: a country or territory with which Liechtenstein has agreed to automatically exchange CbC reports.
- 2) Unless the applicable agreement or this Act specifies otherwise, the Fiscal Authority shall be the competent authority of Liechtenstein under the applicable agreement.
 - 3) The designations used in this Act to denote persons and functions include persons of male and female gender.

II. Obligations of constituent entities

Art. 3

Obligation of the ultimate parent entity to prepare and file the CbC report

- 1) Ultimate parent entities resident in Liechtenstein which according to Articles 1099 to 1101 PGR are not excluded from the duty to prepare a consolidated financial statement pursuant to Article 1097 PGR are required to prepare a CbC report and file it with the Fiscal Authority.³
- 2) If an ultimate parent entity resident in Liechtenstein appoints a constituent entity resident abroad as a surrogate parent entity, the ultimate parent entity resident in Liechtenstein is excluded from its obligation pursuant to paragraph 1.
- 3) An ultimate parent entity resident in Liechtenstein may only appoint a constituent entity resident abroad as a surrogate parent entity if:
 - a) its jurisdiction of residence requires the filing of CbC reports;
 - b) its jurisdiction of residence is a partner jurisdiction;
 - c) there has been no systemic failure of the jurisdiction of residence; and

³ Art. 3 para. 1 amended by LGBL 2019 No. 313.

- d) the constitutive entity has informed its jurisdiction of residence that it is the surrogate parent entity.

Art. 4

Obligation of the surrogate parent entity to file the CbC report

Surrogate parent entities resident in Liechtenstein of an ultimate parent entity resident abroad are required to file the CbC report with the Fiscal Authority.

Art. 5

Obligation of the constituent entity to file the CbC report

1) Constituent entities resident in Liechtenstein of an ultimate parent entity resident abroad which are not surrogate parent entities are, subject to paragraph 2, required upon request of the Fiscal Authority to file the CbC report of the MNE group with the Fiscal Authority, if:

- a) the ultimate parent entity is not required to file a CbC report in its jurisdiction of residence;
- b) the jurisdiction of residence of the ultimate parent entity is not a partner jurisdiction; or
- c) there has been a systemic failure of the partner jurisdiction in which the ultimate parent entity is resident.

2) The Fiscal Authority may not demand the filing of the CbC report if it receives the CbC report from a partner jurisdiction.

Art. 6

Requirements for the CbC report

- 1) The CbC report shall be drawn up in German or English.
- 2) The CbC report shall contain the financial information in the national currency or in the currency relevant to the business unit of the MNE group.
- 3) The CbC report shall be filed in accordance with the provisions of the Fiscal Authority.
- 4) The CbC report shall be filed with the Fiscal Authority within 12 months after the end of the reporting fiscal year. In the case of Article 5

paragraph 1 subparagraph c, the Fiscal Authority shall set a reasonable deadline for the filing of the CbC report.

Art. 7

Registration obligation

- 1) Reporting entities resident in Liechtenstein must register themselves unprompted with the Fiscal Authority.
- 2) The registration must according to the provisions of the Fiscal Authority take place by the last day of the reporting fiscal year.

III. Transmission of CbC reports

Art. 8

Principle

- 1) The Fiscal Authority shall transmit the CbC reports filed by the constituent entities of an MNE group resident in Liechtenstein to the competent authorities of the respective partner jurisdictions in which constituent entities of the MNE group are resident within the periods stipulated in the applicable agreement.
- 2) The Fiscal Authority is not required to transmit CbC reports if the transmission is contrary to the public policy (*ordre public*) of the Principality of Liechtenstein.
- 3) The Fiscal Authority is not required to transmit CbC reports or parts thereof if the competent foreign authority is not in a position to provide comparable information to the Fiscal Authority.
- 4) The Fiscal Authority shall retain the exchanged CbC reports up to the expiry of the maximum periods of limitation pursuant to Article 26. The exchanged information shall be destroyed after expiry of the maximum limitation periods.⁴

⁴ Art. 8 para. 4 amended by LGBL 2019 No. 313.

IV. Confidentiality, appropriate use of information and data safeguards

Art. 9

Confidentiality and appropriate use of information in the partner jurisdiction

1) All information for exchange received by the competent authority of a partner jurisdiction shall be subject to the confidentiality provisions and other safeguards provided in the applicable agreement, including the provisions limiting the use of the information exchanged.

2) In addition to the restrictions referred to in paragraph 1, the use of the information received by the competent authority of a partner jurisdiction may be limited to the permissible uses described in this paragraph. In particular, the information received by means of the CbC report may be used for assessing high-level transfer pricing, base erosion and profit shifting related risks, and, where appropriate, for economic and statistical analysis. The information will not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a fully functional analysis and a full comparability analysis. The information in the CbC report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate and, consequently, transfer pricing adjustments will not be based on the CbC report. Notwithstanding the above, there is no prohibition on using the CbC report data as a basis for making further enquiries into the MNE group's transfer pricing arrangements or into other tax matters in the course of a tax audit and, as a result, appropriate adjustments to the taxable income of a constituent entity may be made.

3) The Fiscal Authority shall inform the competent authorities of the partner jurisdictions of the restrictions on the use of the CbC reports as well as the obligations of confidentiality under the provisions for administrative assistance of the applicable agreement.

Art. 10

Information received from the partner jurisdictions

The Fiscal Authority may only use the CbC reports received by the partner jurisdictions in the sense of Article 9 paragraph 2.

Art. 11⁵*Data processing and data security*

1) In the course of fulfilling its duties the Fiscal Authority is authorised to process information to be exchanged and personal data. They may operate an information system for this purpose.

2) Information for exchange that is processed by the Fiscal Authority and the competent authority of the partner jurisdiction must be protected against unauthorised use through appropriate technical and organisational measures.

Art. 12

Security breaches

1) The Fiscal Authority shall inform reporting entities resident in Liechtenstein of any security breach concerning information being processed by the Fiscal Authority, if this breach is expected to affect the protection of personal data.⁶

2) Paragraph 1 shall apply mutatis mutandis to a security breach concerning information being processed by the competent authority of the partner jurisdiction, provided the Fiscal Authority is informed of it.⁷

3) Reporting entities resident in Liechtenstein are required to inform constituent entities resident abroad immediately of a security breach as referred to in paragraphs 1 and 2.

4) The Fiscal Authority shall inform the Data Protection Office of a security breach as referred to in paragraphs 1 and 2.

⁵ Art. 11 amended by LGBL 2019 No. 313.

⁶ Art. 12 para. 1 amended by LGBL 2019 No. 313.

⁷ Art. 12 para. 2 amended by LGBL 2019 No. 313.

V. Procedural provisions

Art. 13

Organisation and procedures

- 1) The Fiscal Authority issues all decrees and makes all decisions that are necessary for the application of the applicable agreement and this Act.
- 2) It may prescribe the use of specific forms in an electronic format.

Art. 14

Obligation of disclosure

- 1) Constituent entities resident in Liechtenstein shall disclose to the Fiscal Authority all facts that are necessary for the implementation of the applicable agreement and this Act.
- 2) Statutory provisions concerning data, professional or commercial secrets do not preclude the disclosure of information in accordance with paragraph 1, unless it is information covered by protection of confidentiality pursuant to § 108 paragraph 1 subparagraph 2 StPO (Code of Criminal Procedure) and its disclosure would represent an inadmissible circumvention of confidentiality as defined in § 108 paragraph 3 StPO. Constituent entities resident in Liechtenstein are released from their obligations of confidentiality to the equivalent extent.

Art. 15

Inspections

- 1) The Fiscal Authority may conduct inspections in order to verify that the obligations of the constituent entities resident in Liechtenstein are fulfilled.
- 2) Constituent entities resident in Liechtenstein shall grant the Fiscal Authority unrestricted access to all information relevant for the fulfilment of their obligations under the applicable agreement and this Act and which the latter consider necessary to carry out the inspections.

Art. 16

Restoration of the lawful conditions

1) The Fiscal Authority will informally request the concerned constituent entity resident in Liechtenstein to restore the lawful conditions within an appropriate time limit, if:

- a) there is reason to believe that administrative or other minor errors might have led to an incorrect or incomplete transmission of data or other instances of non-compliance with the applicable agreement or this Act; or
- b) the Fiscal Authority notices that a constituent entity resident in Liechtenstein is failing to meet the obligations under the applicable agreement and this Act to a significant degree.

2) The time limit referred to in paragraph 1 may be extended in justified circumstances. If the failings are not rectified within the specified time the Fiscal Authority will issue an appropriate decree.

3) In the event of a significant failure to comply as referred to in paragraph 1 subparagraph b and failure to restore the lawful conditions after a decree such as referred to in paragraph 2 has become legally enforceable, the imposition of a fine as referred to in Articles 20 to 22 is reserved.

Art. 17

Applicable procedural law

Unless this Act specifies otherwise the National Administration Act (LVG) shall apply.

Art. 18

Legal remedy

1) A written objection may be made against decrees of the Fiscal Authority under this section within 30 days from the day of service.

2) The objection must contain the petitions and state the facts on which they are based.

3) If an objection has been validly raised the Fiscal Authority shall examine the decree without being bound by the petitions presented and shall issue a reasoned ruling on the objection.

4) The provisions of Articles 117 and 118 SteG (Tax Act) shall apply to the legal remedies and the proceedings mutatis mutandis.

Art. 19

Obligations of confidentiality

1) Any person charged with the execution of the applicable agreement and this Act or engaged in the execution thereof is subject to official secrecy and shall maintain confidentiality with regard to other official bodies and private individuals concerning observations made in the conduct of this activity and deny access to official documents.

2) The obligation of confidentiality does not apply:

- a) for the Fiscal Authority in the transmission of CbC reports and the provision of information to the competent authority of the partner jurisdiction in accordance with the applicable agreement and this Act;
- b) with respect to Liechtenstein bodies engaged in the administration of justice that are charged with the execution of the applicable agreement and this Act;
- c) with respect to Liechtenstein bodies engaged in the administration of justice, the Public Prosecution Service and the National Police Force in the investigation of criminal offences punishable by courts;
- d) with respect to Liechtenstein supervisory authorities and agencies responsible for the imposition of supervisory and disciplinary measures against legal entities;
- e) insofar as there is a legal basis for this.

VI. Penal provisions

Art. 20

Breaching of the filing and registration obligation

1) Fines of up to CHF 250,000 will be imposed by the Fiscal Authority on any person who deliberately:

- a) violates the filing obligation as set out in Articles 3, 4 or 5;
- b) violates the registration obligation as set out in Article 7.

2) In the event of negligence the fines referred to in paragraph 1 may amount to up to CHF 100,000.

Art. 21

Breaching of the obligation of disclosure and circumvention of inspections

Fines of up to CHF 20,000 will be imposed by the Fiscal Authority on any person, who jeopardises the implementation of the applicable agreement and this Act, by deliberately or negligently:

- a) violating the obligation of disclosure as set out in Article 14;
- b) impeding or preventing the proper conduct of an inspection pursuant to Article 15 or makes it impossible.

Art. 22

Contraventions against implementing provisions and official orders

Fines of up to CHF 5,000 will be imposed by the Fiscal Authority on any person who deliberately or negligently:

- a) contravenes an implementing provision of this Act, insofar as its violation is declared a punishable offence;
- b) defies an official decree imposed on that person which refers to the penalty stated in this Article.

Art. 23

Legal remedy in administrative proceedings

1) Administrative prosecution decisions of the Fiscal Authority pursuant to Articles 20 to 22 may be contested within 14 days from the day of service at the National Tax Commission.

2) Appeal decisions of the National Tax Commission may be contested within 14 days from the day of service at the Administrative Court.

Art. 24

Supplementary procedural provisions

In the absence of derogating provisions in the present Act, Articles 152 to 159 LVG shall apply mutatis mutandis to the proceedings referred to in Articles 20 to 22.

Art. 25

Responsibility of legal persons

1) If contraventions are committed by a legal person, the legal person is subject to a fine.

2) The executive bodies shall be jointly liable for the fines imposed if the fines are not paid by the legal person.

Art. 26

Statute of limitations

1) For contraventions referred to in Articles 20 to 22, prosecution and enforcement shall become statute-barred in five years.

2) The period of limitation for prosecutions under the statute of limitations commences at the end of the year in which the violation was last committed. The period of limitation is suspended while the suspect is abroad. The period of limitation is interrupted by any investigation measures conducted against the suspect. The period of limitation starts afresh after each interruption. The period of limitation may not be more than double the original period.

3) The period of limitation for enforcement commences with the legally binding conclusion of the criminal proceedings. It shall be suspended as long as the penalty remains unenforceable in Liechtenstein. The period of limitation of sentence enforcement will be interrupted by every enforcement measure conducted against the convicted person. The period of limitation starts afresh after each interruption. The period of limitation may not be more than double the original period.

VII. Final provisions

Art. 27

Implementing regulations

The Government shall enact the regulations required for the implementation of this Act.

Art. 28

Approval power

The Government is responsible for the inclusion of a country or territory in the list pursuant to Section 8 paragraph 1 subparagraph e of the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (MCAA-CbC).

Art. 29

Voluntary filing and transmission of CbC reports

The Fiscal Authority may transmit CbC reports which are voluntarily filed with it by constituent entities resident in Liechtenstein and which concern reporting fiscal years prior to the entry into force of this Act to the competent authorities of the partner jurisdiction in which constituent entities of the MNE group are resident.

Art. 30

Entry into force

Provided that the referendum deadline expires unutilised this Act shall enter into force on 1 January 2017, otherwise on the day after the announcement.

By proxy for the Prince of Liechtenstein:
signed *Alois*
Hereditary Prince

signed *Adrian Hasler*
Head of the Princely Gov-
ernment