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Changes in Country-by-Country Reporting

Tax Alert

Dear Readers,

On 20 March 2017, the President signed the act of 9 March 2017 on the exchange of tax information with other countries (Journal of Laws 2017, item 648, hereinafter the "Act"). One of the issues regulated by this Act is the exchange of tax information on entities composing a group of entities (Country-by-Country Reporting: CBCR). This Act has not only transferred the provisions on CBCR from the Tax Act, but it has also introduced a number of changes in respect of the obligation to submit it, i.e. it mainly expanded the scope of entities obligated to do it.

The obligation to provide information on a group of entities has been so far governed by Art. 27(6) of the CIT Act and concerned domestic entities considered to be related entities pursuant to Art. 11(1)(1) and Art. 11(4) of the CIT Act, which:

1. in the light of the Accounting Act, are considered to be parent companies and fail to meet the criteria to be recognised as subsidiaries,
2. pursuant to the provisions of the Accounting Act, consolidate financial statements,
3. have a permanent establishment or a subsidiary outside the territory of Poland, as referred to in the Accounting Act,
4. have earned consolidated revenues, in accordance with the provisions of the Accounting Act, on the territory of Poland and abroad, which exceed EUR 750m.

The Act signed on 20 March 2017 has not only transferred the provisions on CBCR from the Tax Act, but it has also introduced a number of changes in respect of the obligation to submit it, i.e. it mainly expanded the scope of entities who are responsible for doing it.

As was the case also before the implementation of the Act, a parent company with its registered office or management board on the territory of Poland shall be obligated, in principle, to provide information on the group of entities, pursuant to Art. 83(1) of the Act.

It shall transfer electronically the CBCR to the Head of the National Fiscal Administration, within 12 months from the end of the reporting year (the year for which the annual consolidated financial statements are prepared).

According to Art. 84(1) introduced by the Act, entities other than parent companies, which have their management board or registered office in Poland or operate their business in Poland only through a permanent establishment, are also obligated to provide the Head of the National Fiscal Administration with information on the group, in case when:

- the parent company is not obligated to submit the CBCR for a given fiscal year in the country or on the territory of the registered office (management board), or
- despite the conclusion of the agreement on the exchange of tax information between Poland and the country or the territory of the registered office (management board) of the parent company, no qualifying agreement between competent authorities was concluded within 12 months from the date of the end of the fiscal year, or
- the country or the territory of the registered office (management board) of the parent company suspended the automatic exchange of information or constantly failed to observe the obligation to provide the information to the Polish side, provided that the parent company was informed of this fact (through the publication in the Public Information Bulletin).

The occurrence of the aforementioned circumstances will result, in principle, in the obligation to submit the CBCR by such an entity in Poland. However, in the situation when the entity obligated to submit the information on a group of companies fails to receive all the required data from the parent company, the entity will be obligated to notify in CBCR of this fact and to provide in CBCR only such information that it actually possesses.

Nevertheless, despite the fulfilment of the aforementioned conditions, pursuant to Art. 84(2 and 4) of the Act, the obligation to submit the CBCR will not occur in a situation when the group has already appointed a different entity from the group to comply with this obligation (subject to compliance with the additional conditions specified in the Act, e.g. collection by this entity of all the required data).

An additional duty introduced by the Act is the obligation to notify the Head of the National Fiscal Administration by the (Polish) entity composing a group of related parties, whose consolidated income exceeded EUR 750m (Art. 86(1) of the Act):

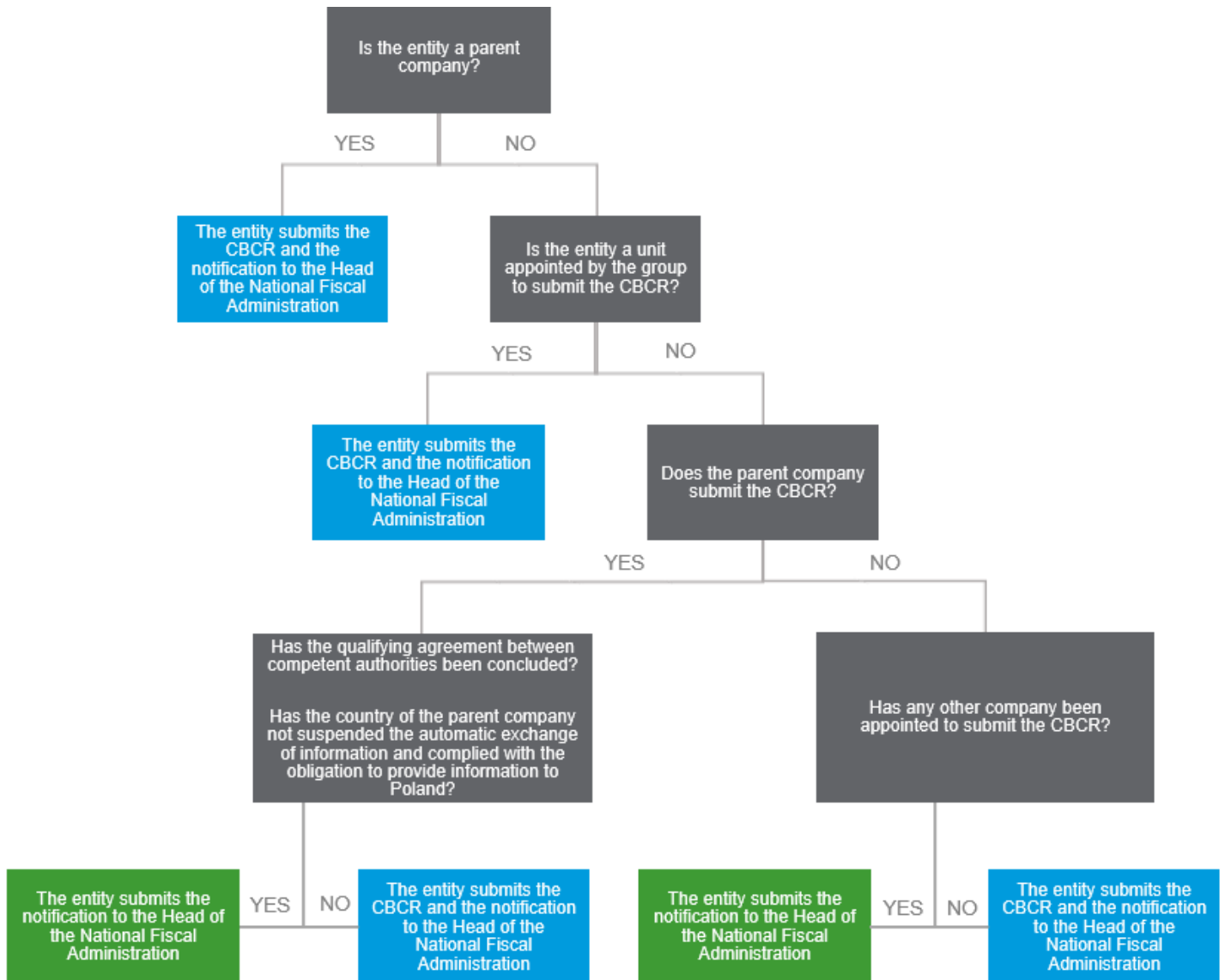
- of the fact that it is the parent company, the reporting company, or
- to specify the reporting entity and the country (territory) in which the CBCR will be submitted.

The deadline for such a notification is usually the last day of the reporting fiscal year of a given group of entities. However, according to the transitional regulations, regarding year 2016, these entities are obligated to notify the Head of the National Fiscal Administration within 10 months from the end of the reporting fiscal year, i.e. by 31 October 2017 (assuming that the fiscal year of a taxable person coincides with a calendar year).

It is also worth mentioning that for not fulfilling abovementioned duties, i.e. both for not providing CBCR as the parent company or the appointed company and for not providing the notification as (Polish) entity composing a group of related parties, whose consolidated income exceeded EUR 750m (Art. 86(1) of the Act), legislator has imposed fine which may be equal up to PLN 1m (Art. 90 and Art. 91 of the Act).

Additionally, tax authorities may impose fine on natural person acting on behalf or in the interest of tax payer for providing untrue information for the purposes of information about entities composing a group of related parties. The maximum fine may be equal up to PLN 6.4m.

In order to determine whether the Polish entity (an entity with its management board, registered office or permanent establishment in Poland) is obligated to report on entities composing the group whose consolidated income exceeded EUR 750m, it is necessary to conduct an analysis for which the following algorithm is helpful:





Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

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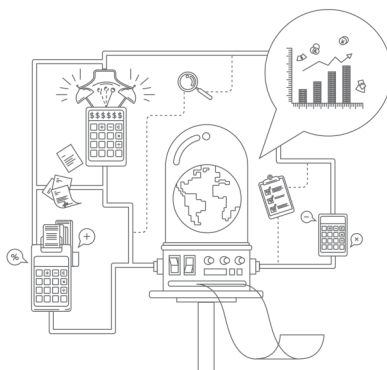
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