

**APPROPRIATE USE AND
CONFIDENTIALITY**
of information contained in
Country-by-Country reports
and further aspects concerning:

- Filing procedure;
- Threshold assessment;
- Impact of currency fluctuations;
- XML Schema.

GUIDELINES

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PART 1. GUIDELINES - PURPOSES

These guidelines, in addition to providing preliminary information about the country-by-country reporting obligations to which multinational groups operating in San Marino shall be subject, have the main purpose of providing binding guidance on the appropriate and correct use of the information received/transmitted by the CbC reports to the staff involved in the Public Sector, to the above mentioned multinational groups and to all stakeholders.

These guidelines may be supplemented following any new agreements, new legislative updates or any claims for adjustment made by the OECD or to reply to any need for clarification that may emerge from the application of Delegated Decree no. 18 of 25 January 2019 - Provisions on the mandatory automatic exchange of information in the tax matters (hereinafter also referred to as the "Delegated Decree").

Feedback

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Part 2. INTRODUCTION

The Delegated Decree introduced in the Republic of San Marino the Country-by-Country reporting obligation, in order to bring San Marino legislation into line with the best practices in the international context identified in the BEPS project (*Base Erosion and Profit Shifting Project*), which was recently developed by the OECD within the G20 and whose Inclusive Framework was joined by San Marino on 28 June 2016.

In particular, Action 13 of the BEPS project, which led the OECD to design a "package" of 15 Actions, introduced a three-tiered approach to transfer pricing documentation, consisting of:

- A "Master File", containing standardised information relevant for all members of a multinational group;
- A "Local File", referring specifically to the material transactions of the local taxpayer in a given country;
- A Country-by-Country Report (hereinafter also referred to as the "CbC Report" or "CbCR") containing information relating to the global allocation of a multinational enterprise group's income and taxes, together with the location of its economic activity (all information contained in a CbC Report are also referred to as CbCR information).

In this respect, it should be noted that San Marino does not require, currently, the preparation of either the "Master File" or the "Local File".

As briefly mentioned in Part 1, these guidelines are given to supplement the CbC Regulations pursuant to Article 3 of the Delegated Decree and paragraph 2 of Section 5 of the Multilateral Competent Authority Agreement on Country-by-Country Reporting ("CbC MCAA"). These Guidelines will give effect to San Marino's commitment under the Inclusive Framework on BEPS for anti-elusive purposes, as well as other exchange of information instruments.

Part 3. COUNTRY-BY-COUNTRY REPORT (CBC REPORT OR CBCR)

Starting from the tax year 2019, as the first reference period to be taken into consideration, companies resident for tax purposes in San Marino, which qualify as ultimate parent entities of a multinational group are required to file a CbC Report with the Tax Office, in the manner to be indicated in the circular referred to in paragraph 2 of Article 5 of the Delegated Decree, if the annual consolidated group revenue in the preceding tax year is equal to or higher than 750 million Euro. It should be noted that in the cases provided for in paragraphs 2 and 3 of Article 3 of the Delegated Decree, to which reference should be made, additional Constituent Entities may also fall under this reporting obligation.

Through the competent authority (Central Liaison Office - CLO), the Tax Office with which the CbCR has been filed, will exchange information with the other jurisdictions where the group has operations, under a Qualifying Competent Authority Agreement (QCAA) or an international agreement allowing the automatic exchange of information, such as the Multilateral Competent Authority Agreement on County-by-Country Reporting (CbC MCAA), signed by the Republic of San Marino on 10 October 2018.

Part 4. THRESHOLD ASSESSMENT - DEFINITION OF REVENUES

Failing the total consolidated group revenue and pending the definition of the data to be reported, in order to define revenues, in particular to verify the filing threshold provided by letter d) of paragraph 1 of Article 2 of the Delegated Decree, the following elements are to be considered:

- all revenues from sales of semi-finished goods and raw materials or consumables, as well as of finished products or goods the production or exchange of which represent the company's core business, from the provision of services, rents, interests, royalties and bonuses, and any other amounts of a similar nature;
- extraordinary income (contingent assets and capital gains).

Payments received from other Constituent Entities that are treated as dividends in the payer's tax jurisdiction are not included in the definition of revenue.

Furthermore, as specified by the OECD¹, if some items are reported as a "net" amount in the income statement on the basis of correct accounting principles, i.e. by adding together the costs and revenues associated with certain types of transactions, such net amount should be considered as the relevant revenue amount for the purposes in question, since the gross amount of these items is not required.

By way of example, reference will therefore be made to the resulting sum of the items in the income statement, as defined by Accounting Principle no. 2 established by the San Marino Association of Certified Accountants and Accounting Experts (ODCEC):

- + A.1 (revenues from sales and provision of services)
- + A5 (other revenues and income, reporting separately contributions to be made in the current financial year)
- + C15 (income from shareholdings, reporting separately those relating to subsidiaries and related parties, net of the payments received from other Constituent Entities that are treated as dividends in the payer's tax jurisdiction)
- + C16 (other financial income²)
- + E20 (extraordinary income).

To identify the companies for which the above mentioned filing threshold should be calculated, please note the reference made in letter a) of paragraph 1 of Article 2 of the Delegated Decree to letter m) of paragraph 1 of Article 2 of Law no. 166 of 16 December 2013 - General income tax, to be integrated with the subsequent letters n) and o) of the same paragraph. In addition, reference is made to internationally recognised and accepted accounting standards and to the interpretations provided by the OECD, where applicable.

¹ Guidance on the implementation of country-by-Country Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, September 2018, p. 22: "Definition of total consolidated group revenue (April 2017; Updated November 2017, February 2018)".

² a) from receivables entered as fixed assets, reporting separately those derived from subsidiaries and related parties, as well as those from parent companies;
b) from securities entered as fixed assets that are not shareholdings;
c) from securities entered as current assets that are not shareholdings;
d) from income other than the previous ones, reporting separately those relating to subsidiaries and related parties, as well as those from parent companies.

Part 5. IMPACT OF CURRENCY FLUCTUATIONS ON THE AGREED EUR 750 MILLION FILING THRESHOLD

As set out in the Action 13 Report³ of the BEPS project, the agreed threshold for the purpose of determining whether a multinational enterprise group (MNE Group) is an Excluded MNE Group is EUR 750 million or a near equivalent amount in domestic currency as of January 2015, as resulting from the total consolidated group revenue.

Provided that the jurisdiction of the Ultimate Parent Entity has implemented a reporting threshold that is a near equivalent of EUR 750 million in domestic currency as it was at January 2015, an MNE Group that complies with this local threshold should not be exposed to local filing in any other jurisdiction that is using a threshold denominated in a different currency.

Pursuant to the OECD's guidance⁴, there is no requirement for a jurisdiction using a threshold denominated other than in Euro to periodically revise this in order to reflect currency fluctuations.

For example, assume that an MNE Group whose Ultimate Parent Entity resides in a jurisdiction using a domestic currency other than the EUR (Country A) and one of its Constituent Entities is headquartered in a country whose national currency is EUR (Country B, such as San Marino). As a result of currency fluctuations, in a given period it may occur that the reporting threshold in a country is in excess of the agreed threshold (for example, when total revenues are considered according to the current EUR exchange rate), and it is simultaneously below such threshold in another country (if the amount expressed in foreign currency is compared with the threshold in that currency), thus leading to uncertainty of interpretation. In this regard, if Country A has implemented a reporting threshold that is a near equivalent of EUR 750 million in domestic currency as it was at January 2015, the same threshold also applies to the Constituent Entity residing in Country B (in this case, San Marino) of a MNE Group. Therefore, following the example mentioned above, if the total consolidated group revenues are below the threshold in Country A but, as a result of currency fluctuations, such amount is in excess of EUR 750 million, the Constituent Entity residing in Country B (San Marino) is not exposed to local filing (as provided by paragraph 2 of Article 3 of the Delegated Decree).

³ [Transfer Pricing Documentation and country-by-Country Report - Action 13: Final Report](#), OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, 2015.

⁴ Guidance on the implementation of country-by-Country Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, September 2018, p. 21: "Impact of currency fluctuations on the agreed EUR 750 million filing threshold (June 2016)".

Part 6. USE AND CONFIDENTIALITY - GUIDANCE ON THE APPROPRIATE USE OF INFORMATION CONTAINED IN THE COUNTRY-BY-COUNTRY REPORT

CbCR information transmitted to the competent authorities of San Marino by the corresponding authorities of any other foreign jurisdiction, with which a Qualifying Competent Authority Agreement is in effect, will be treated by them as confidential in accordance with national legislation on confidentiality and data protection, and will be collected in compliance with the fundamental rights and freedoms of taxpayers.

Without prejudice to compliance with the confidentiality rules, the provisions of Law no. 171 of 21 December 2018 do not apply to the exchange of information for the purposes of international cooperation in tax matters, pursuant to letter c), paragraph 4, article 3 of Law 171/2018.

Sec. 6.1. Appropriate use of information

The San Marino Tax Office must use information contained in the Country-by-Country Report only "appropriately", i.e. in compliance with the purposes and restrictions on use established by Article 8 of the Delegated Decree.

This provision is in line with paragraphs 25 and 59 of the OECD Final Report on Action 13⁵ and is also consistent with paragraph 2 of section 5 of the Multilateral Competent Authority Agreement on Country-by-Country Reporting (CbC MCAA).

Appropriate use is restricted to:

- a) high level transfer pricing risk assessment;
- b) assessment of other base erosion and profit shifting related risks;
- c) economic and statistical analysis, where appropriate.

The use of Country-by-Country Reports information as a basis for making further enquiries into the MNE's transfer pricing arrangements or into other tax matters in the course of a tax audit will not be considered as inappropriate.

Similarly, the Tax Office may use intelligence obtained from CbC as a basis for making further enquiries to taxpayers; however, such enquiries must meet the "foreseeable relevance" standard for the exchange of information on tax matters pursuant to Article 26 of the OECD Model.

As provided for in paragraph 4 of Article 8 of the Delegated Decree, the authorities and persons concerned shall ensure the necessary level of protection of data and confidentiality of information as described in Article 22 of the Convention on Mutual Administrative Assistance in Tax Matters (ratified by Parliamentary Decree no. 115 of 23 July 2015), in the same manner as information obtained under the domestic law and, to the extent needed, in accordance with the safeguard clauses specified by the supplying jurisdiction as required under its domestic law.

In the event of a breach of the obligations provided for in paragraph 2 of Article 8 of the Delegated Decree, the Tax Office will promptly suspend the exchange of information to protect more efficiently the relevant information.

The Tax Office, in carrying out its tasks, may use CbCR information in planning a tax audit or as a basis for making further enquiries into the pricing arrangements or other tax matters, in the course of an audit or other compliance actions. The Tax Office is not required to make commitment that these enquiries must relate specifically to potential risks identified through the use of CbCR information.

For example, CbCR information (such as the details of Constituent Entities in Table 2 of the Annex A to the Delegated Decree) may be used as the basis for making enquiries into tax matters identified using other data sources or arising during the course of a tax audit. For further clarification, please refer to the OECD's document "*Country-by-Country Reporting: Handbook on*

⁵ [Transfer Pricing Documentation and country-by-Country Report - Action 13: Final Report](#), OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, 2015.

*Effective Tax Risk Assessment*⁶, which provides official guidance on tax risk assessment.

Sec. 6.2. Policy governing the appropriate use

The Tax Office and CLO staff likely to have access to CbCR information in the course of their work should comply with the content of these guidelines, which will be published on the Intranet of the Public Administration and on the website of the Ministry of Finance and Budget.

The Tax Office, assisted by the Ministry of Finance and Budget, is required to regularly provide training to appropriate staff on the effective use of CbCR information.

This training will also explain the obligations and commitments of the Tax Office to immediately notify the CLO, in accordance with the MC CAA, of any case of non-compliance with respect to the appropriate use condition, and to promptly concede any competent authority proceeding that involves a tax adjustment using an income allocation formula based on CbCR information.

Sec. 6.3. Consequences of non-compliance with the appropriate use condition

Failure by San Marino to comply with the appropriate use condition may result in the consequences set out in the Report on Action 13 and in the CbC MCAA.

In this regard, as indicated by the OECD, the use of CbC Reports is inappropriate if the information is used as a conclusive evidence that transfer prices are or are not appropriate or as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis, as in the case of a global formulary apportionment of income.

For that purpose, San Marino has the following commitments under the above mentioned agreement:

- a) to guarantee that appropriate use is a condition for receiving and using CbC Reports;
- b) to disclose breaches of appropriate use to the Co-ordinating Body Secretariat, through the Central Liaison Office - CLO (for exchanges pursuant to the CbC MCAA);
- c) to promptly concede inappropriate adjustments in competent authority proceedings; and
- d) to temporarily suspend exchange of CbC Reports following consultation in cases of non-compliance.

Sec. 6.4. Measures to monitor, control and restrict access to CbC Reports

The Tax Office commits to restrict access to CbC Reports to the designated staff and to put in place adequate measures to ensure effective control and monitoring of the use of CbCR information to ensure appropriate use.

To this end:

- a) only the CLO's staff handling the exchange of CbCR and members of the Tax Office in the compliance function and involved in risk assessment shall have access to CbC Reports;
- b) the risk assessment staff of the Tax Office may be located separately from other staff;
- c) password protected computers should be used to access electronic data relating to CbC Reports.

In addition, the Tax Office will have to comply with the following instructions:

- d) To store physical copies of CbC Reports, if needed, in locked rooms or locked filing cabinets with access for authorised persons only;
- e) To provide CbCR information (including complete CbC Reports, extracts from CbC Reports or analyses based on CbC Reports) to staff in the compliance function, to the extent that this is covered by the appropriate use conditions;
- f) To monitor which staff access CbCR information;

⁶ [Handbook on Effective Tax Risk Assessment](#), OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, September 2017.

- g) To ensure that the risk assessment team maintains a record of what information was shared, the reason for sharing it, and the staff with whom it was shared;
- h) To ensure that appropriate use is adequately evidenced;
- i) To incorporate the appropriate use condition into the existing tax review mechanisms;
- l) To continually review and monitor the measures put in place to ensure appropriate use of CbC information, and where necessary, introduce control, or expand existing controls, to ensure that CbC Reports are available to staff involved in activities covered by the appropriate use conditions, while restricting access to other staff;
- m) in addition to periodically monitor the outcome of the further enquiries made on the basis of the results of the risk analysis carried out, the Tax Office will have to promptly communicate to the competent authority (CLO - Central Liaison Office), which will provide notification to the competent authority of the foreign jurisdictions for the purposes of mutual administrative assistance in tax matters, about the following issues:
 - i. the possible use of information in case of non-compliance with the obligations provided by Article 8 of the Delegated Decree, which have led to suspend the exchange of the related information;
 - ii. any violations of paragraph 4 of Article 8 of the Delegated Decree that have led to the initiation of proceedings for breach of official secrecy;
 - iii. any actions taken as a result of the breaches referred to in the preceding points.

The provisions on the appropriate use and processing of data are inspired by the OECD guidelines on the "appropriate use" of information contained in "Country by Country Reporting" and transpose the provisions of the Convention on Mutual Administrative Assistance in Tax Matters.

The provisions contained in the Delegated Decree, as well as the clarifications contained in the interpretative documents or guidelines published by the OECD on its institutional website are applicable to anything not explicitly mentioned in these guidelines.

Part 7. CBC XML SCHEMA

In order to facilitate the swift and uniform implementation of CbC Reporting and with a view to accommodating the electronic preparation, filing and exchange of CbC Reports, a CbC XML Schema and the related User Guide have been developed by OECD⁷.

The XML Schema to be used will be attached to the circular referred to in paragraph 2 of Article 5 of the Delegated Decree.

This schema is a data structure for electronically holding and transmitting information. XML, “extensible markup language”, is commonly used for this purpose⁸. The above mentioned User Guide explains the information required to be included in each CbC data element to be reported in the CbC XML Schema v. 1.0.1.

It also contains guidance on how to make corrections of data items within a file that can be processed automatically.

⁷ [Country-by-Country Report XML schema: User Guide for Tax Administrations](#), OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, September 2017.

⁸ Examples are the OECD’s Common Reporting Standard XML Schema, the United States’ FATCA XML Schema and the European Union’s Fisc 153 format.