



## Luxembourg newsflash

29 December 2016

### Country-by-country reporting (CBCR) implementation in Luxembourg

#### 1. Background

The CBCR Law was published on 27 December 2016 together with an FAQ by the Luxembourg tax administration and will enter into force as of 1 January 2017. Luxembourg entities falling within the scope of the CBCR Law will be required to communicate economic, financial and tax information for financial years starting as of 1 January 2016 in the form of a country-by-country report (the **Report**) to the Luxembourg tax administration who will in turn exchange the information received with the other EU and non-EU jurisdictions concerned.

To set the global framework, these new provisions are part of the new transfer pricing documentation approach adopted by the G20 and enshrined in the report on Action 13 of the Base Erosion and Profit Shifting (**BEPS**) Action Plan released in October 2015.



## 2. Which entities are concerned?

According to the CBCR Law there are three situations in which a Luxembourg entity must file a CBCR and thereby become a “Reporting Entity” (**Reporting Entity**):

1. Any Luxembourg resident entity which is the ultimate parent entity of a Multinational Enterprise Group (**MNE Group**) with consolidated group revenue of EUR 750 million or more in the preceding fiscal year and which is either (i) preparing consolidated financial statements or (ii) which would be required to do so if its equity interests were traded on a public securities exchange;
2. Any Luxembourg tax resident entity elected as substitute for the non-Luxembourg ultimate parent entity of the MNE Group;
3. Any Luxembourg tax resident entity in case (i) the non-Luxembourg ultimate parent entity of the MNE Group is not required to file a CBCR in its own jurisdiction, (ii) the jurisdiction of the non-Luxembourg ultimate parent entity of the MNE Group has no agreement in force with Luxembourg at the time of the CBCR filing or (iii) there is a systemic failure on the part of the jurisdiction of the ultimate parent entity to implement the CBCR notified by the Luxembourg tax administration.

Even though CBCR is primarily addressed to multinationals, it may potentially have an impact on *i.a.* alternative funds as well as investment structures. In particular all actors with a consolidated group revenue of EUR 750 million or more need to verify whether they are preparing consolidated financial statements and/or whether they would be required to do so if the equity interests in the group entities were traded on a public securities exchange. If this is the case, the Luxembourg entities of the group may be subject to CBCR or at least have certain notification obligations (as detailed below under section 4).

### 3. What information should be reported?

The information requested under the CBCR is divided into three different categories as follows:

- The first section of the Report needs to include information relating to the amount of revenue, the profit (or loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash and cash equivalents with regard to each jurisdiction in which the MNE Group operates.
- The second section of the Report needs to provide for an identification of each entity of the MNE Group setting out their jurisdiction of tax residence as well as their main economic activities.
- The third section covers other additional information that the Reporting Entity may provide such as the source of the data communicated.

### 4. How to notify and report? To whom?

In a first step under the CBCR Law, any Luxembourg (i) Reporting Entity and (ii) non-reporting entity which forms part of an MNE Group (a so-called Constituent Entity) is obliged to notify the Luxembourg tax administration (i) of whether an entity is either a Reporting Entity under DAC IV or (ii), if it is a Constituent Entity of an MNE Group, of the identity and tax residence of the Reporting Entity.

Once the relevant information has been completed by the MNE Group in the appropriate form, the data must be sent to the Luxembourg tax administration by the Reporting Entity and then exchanged on the common communication network of the European Union as defined in point 13 of Article 3 of Directive 2011/16/EU with the other relevant jurisdictions. A Grand-Ducal decree should be published to precise the list of jurisdictions with which Luxembourg will be entitled to exchange information.



Whereas with regard to the notification, the communication must be performed by the concerned entities via the government portal [guichet.lu](http://guichet.lu), the technical aspects with regard to the CBCR in itself have not yet been determined and will be published in detail in the FAQ section of the Luxembourg tax administration's website.

## 5. Deadlines

With regard to CBCR, it will be applicable for all fiscal years starting as of 1 January 2016. In such case:

- i. the notification under the CBCR is due in general by the last calendar day of the relevant fiscal year, with the exception of the fiscal year 2016 which has an initial notification deadline extended to 31 March 2017; and
- ii. the Report is due within 12 months after the last day of the fiscal year covered by the Report.

To take an example, for a Luxembourg Reporting Entity with a fiscal year ending 31 December 2016, the first fiscal year to be reported about is the fiscal year ending 31 December 2016 (with notification of its status to the Luxembourg tax administration until 31 March 2017) and the deadline for submission of the Report is 31 December 2017. In case the fiscal year of the Reporting Entity is based on a non-calendar fiscal year, e.g. one which closes on 30 April 2016, the first reporting fiscal year is the fiscal year ending 30 April 2017 and the deadline for submitting the Report is 30 April 2018 (*i.e.* 12 months after the last day of the fiscal year).

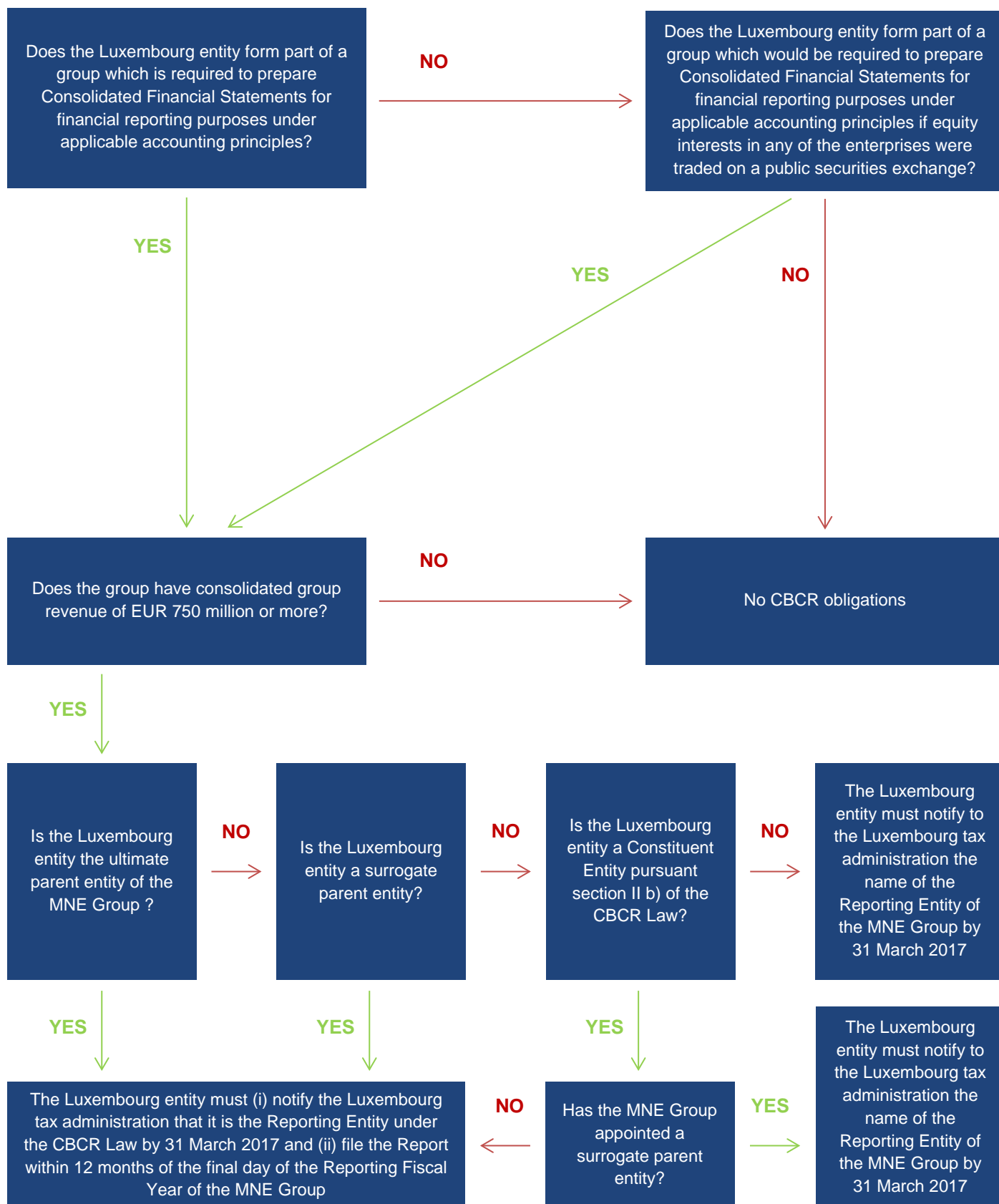
The Luxembourg tax administration will then conduct an exchange within 15 months following the last day of the fiscal year covered by the CBCR. For the first reporting, the CBCR Law provides for an extension of the submission deadline up to 18 months.

## 6. Sanctions

If the Reporting Entity resident for tax purposes in Luxembourg fails to file the Report, files it late or files false or incomplete information, or fails to inform the Luxembourg tax administration that the ultimate parent refuses to provide key information for the purpose of the CBCR filing, it could be fined up to EUR 250,000.

## 7. Our view

The implementation of the DAC IV and correspondingly the Action 13 of the BEPS Action Plan once again demonstrates Luxembourg's commitment to timely implement new international tax standards. Even though the CBCR Law in itself can be welcomed, there are still some substantial aspects which will need clarification in 2017. First and foremost the technical aspects of how the CBCR will be conducted have not yet been determined by the Luxembourg tax administration. Additionally, in particular, how, and whether, Reports submitted on a voluntary basis by parent entities established, *inter alia*, in the United States, Japan, Switzerland and Liechtenstein will be handled for Luxembourg group companies has not yet been determined and needs to be reassessed during 2017. With our expertise in tax, transfer pricing and accounting law, we are able to assist you in the relevant procedures and assessments in order to ensure an appropriate application of the CBCR Law.





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