

THE ASSESSMENT AND COLLECTION OF TAXES LAWS OF 1978 TO 2015

Decree by virtue of article 6(16)

Introductory. WHEREAS, to improve international tax compliance under the Country-by-Country Reporting Implementation Package of the Organization for Economic Co-Operation and Development, the Republic has signed, on 01 November, 2016 upon decision by the Council of Ministers dated 28 September, 2016 the Multilateral Competent Authority Agreement on the exchange of Country-by-Country Reports,

Government AND WHEREAS, there is a need to implement the provisions of the Multilateral Competent Authority Gazette, Annex Agreement on the exchange of Country-by-Country Reports, as well as to provide and coordinate the VII(I) reporting obligations of the Multinational Enterprise Groups, 30.12.2016

AND WHEREAS, there is a need of reporting on intra-group transactions of Multinational Enterprises Groups giving the possibility to the tax authorities to address harmful tax practices through sufficient risk assessment of the intra-group transactions of Multinational Enterprises and tax controls,

The Minister of Finance, in exercising his powers conferred upon him under section 6(16) of the Assessment and Collection of Taxes Laws of 1978 to 2015, issues the following Decree:

4 of 1978
23 of 1978
41 of 1979
164 of 1987
159 of 1988
196 of 1989
10 of 1991
57 of 1991
86(I) of 1994
104(I) of 1995
80(I) of 1999
153(I) of 1999
122(I) of 2002
146(I) of 2004
214(I) of 2004
106(I) of 2005
135(I) of 2005
72(I) of 2008
46(I) of 2009
136(I) of 2010
163(I) of 2012
197(I) of 2012
198(I) of 2012
91(I) of 2013
78(I) of 2014
79(I) of 2014
108(I) of 2015
188(I) of 2015.

- Short title. 1. This decree shall be cited as the Assessment and Collection of Taxes (Exchange of Information within the framework of the Multilateral Competent Authority Agreement on the exchange of Country-by-Country Reports) Decree of 2017.
- Scope. 2. This Decree implements the standard for the automatic exchange of country-by-country reports which arises from the Competent Authority Agreement on the exchange of Country-by-Country Reports.
- Interpretation. 3.-(1) In this Decree, unless the context otherwise provides -
- “Reporting Entity” shall mean the Constituent Entity that is required to file a country-by-country report, according to the provisions of paragraph 7, in the Member State or in the third-country of its tax residence, on behalf of the Multinational Enterprise Group;
- Provided that, the Reporting Entity may be the ultimate parent entity, the surrogate parent entity, or any entity described in subparagraph (a) of paragraph 5;
- “competent authority” shall mean the Tax Commissionaire of the Tax Department;
- “International agreement” shall mean the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any Double Tax Treaty or any Tax Information Exchange Agreement to which the Republic is a party, and that by its terms provides legal authority for the exchange of tax information between the Republic and the parties, including automatic exchange of such information;
- “qualifying competent authority agreement” shall mean an agreement between authorised representatives of the Republic and Members States or third-countries that are parties to an international agreement and that requires the automatic exchange of country-by-country reports between the parties;
- “consolidated financial statements” shall mean the financial statements of a Multinational Enterprise Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single financial entity;
- “Excluded Multinational Enterprise Group” shall mean with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than €750,000,000 or an amount in local currency approximately equivalent to the above amount, as of January 2015, during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year;
- “business” shall mean any kind of business activities performed by the following persons:
- a) legal entity, or where the possibility is provided for under the legislation in force, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person;
- b) any other legal arrangement of whatever nature and form, regardless of whether it has legal personality, owning or managing assets, which, including income derived therefrom, are subject to any taxes.
- “equivalent country-by-country report” shall contain all information in the possession of the constituent entity having its tax residence in the Republic, which the entity received or acquired.
- “fiscal year” shall mean an annual accounting period with respect to which the ultimate parent entity of the Multinational Enterprise Group prepares its financial statements;
- “reporting fiscal year” shall mean the fiscal year the financial and operational results of which are reflected in the country-by-country report defined in paragraph 7;
- “Group” shall mean 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;
- “Multinational Enterprise Group” shall mean any Group that includes two or more enterprises the tax residence for which is in a Member State or third-country, or includes an enterprise that is resident for tax purposes in a Member State or third-country and is subject to tax with respect to the business

carried out through a permanent establishment in another Member State or third-country, and is not an Excluded Multinational Enterprise Group;

“Surrogate Parent Entity” shall mean Constituent Entity of the Multinational Enterprise Group that has been appointed by such Multinational Enterprise Group, as a sole substitute for the Ultimate Parent Entity, to file the country-by-country report in that Constituent Entity’s Member State or third-country of tax residence, on behalf of such Multinational Enterprise Group, when one or more of the conditions set out in subparagraph (a) (i-iii) of paragraph 5 applies

“Multilateral Convention for Mutual Administrative Assistance in Tax Matters and the Protocol thereto or Multilateral Convention” shall mean the convention between the Member States of the Council of Europe and the Member States of the Organization for Economic Co-Operation and Development and it constitutes a multilateral mean providing for the administrative collaboration of tax authorities to address tax evasion and avoidance;

“constituent entity” shall mean any of the following:

a) any separate business unit of a Multinational Enterprise Group that is included in the Consolidated Financial Statements of the Multinational Enterprise Group for financial reporting purposes, or would be so included if equity interests in such business unit of a Multinational Enterprise Group were traded on a public securities exchange;

b) any such business unit that is excluded from the Multinational Enterprise Group’s Consolidated Financial Statements solely on size or materiality grounds;

c) any permanent establishment of any separate business unit of the Multinational Enterprise Group included in paragraph (a) or (b), provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes

“Systemic failure” shall mean, either that a Member State or a third-country has a Qualifying Competent Authority Agreement in effect with the Republic but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement), or that a Member State or a third-country has persistently failed to automatically provide to the Republic, country-by-country reports in its possession of Multinational Enterprise Groups that have Constituent Entities in the Republic;

“ultimate parent entity” shall mean the constituent entity of a Multinational Enterprise Group that meets the following criteria:

a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such Multinational Enterprise Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its Member State or the third-country of tax residence or would be so required if its equity interests were traded on a public securities exchange in its Member State or third-country of tax residence;

b) there is no other Constituent Entity of such Multinational Enterprise Group that owns directly or indirectly an interest described in paragraph (a) above in the first mentioned Constituent Entity;

“third-country” shall mean any country that is not a member of the European Union.

(2) Any other terms included in this Decree and not specifically defined herein, shall have the meaning given to the terms under the Law, as amended from time to time or under the Competent Authority Agreement on the exchange of Country-by-Country Reports, as they bind the said entity.

Filing obligations

4. (a) Every Ultimate Parent Entity of a Multinational Enterprise Group that is resident for tax purposes in the Republic shall file a country-by-country report conforming to the requirements of paragraph 7 with respect to its Reporting Fiscal Year by the date specified in paragraph 10;

(b) Every Surrogate Parent Entity that is resident for tax purposes in the Republic shall file a country-by-country report conforming to the requirements of paragraph 7 with respect to its Reporting Fiscal Year by the date specified in paragraph 10.

Filing obligations for Constituent entity

5 (a) A Constituent Entity that is resident for tax purposes in the Republic but not the Ultimate Parent Entity of a Multinational Enterprise Group, shall file a country-by-country report conforming to the requirements of paragraph 7, within the deadline specified in paragraph 10, where the Ultimate Parent Entity of a Multinational Enterprise Group is not resident for tax purposes in the Republic and one of the following conditions applies:

(i) the Ultimate Parent Entity of the Multinational Enterprise Group is not obligated to file a country-by-country report in the Member State or in the third-country of tax residence;

(ii) the Ultimate Parent Entity is resident for tax purposes in a Member State or in a third-country, which has a current International Agreement to which the Republic is a party, but does not have a Qualifying Competent Authority Agreement in effect to which the Republic is a party by the time specified in paragraph 10 for filing the country-by-country report for the Reporting Fiscal Year;

(iii) there has been a Systemic Failure of the Member State or of the third-country of tax residence of the Ultimate Parent Entity that has been notified by the competent authority of the Republic to the Constituent Entity resident for tax purposes in the Republic;

Provided that, a Constituent Entity that is resident for tax purposes in the Republic as defined in this paragraph, requests from the Ultimate Parent Entity to provide all necessary information in order to be able to meet its obligations for filing a country-by-country report, according to paragraph 7. If, however, the said Constituent Entity has not received or acquired all the necessary information to file a report for the Multinational Enterprise Group, it shall file an equivalent country-by-country report and announces to the competent authority that the Ultimate Parent Entity has refused to provide the necessary information:

Provided further that, where there are more than one Constituent Entities of the same Multinational Enterprise Group that are resident for tax purposes in the Republic and one or more of the conditions set out in subparagraphs (i),(ii),(iii) of subparagraph (a) apply, Multinational Enterprise Group may designate one of such Constituent Entities to file the country-by-country report with the competent authority of the Republic conforming to the requirements of paragraph 7 within the deadline specified in paragraph 10 that the filing is intended to satisfy the filing requirement of all the Constituent Entities of such Multinational Enterprise Group that are resident for tax purposes in the Republic;

Provided further that, where a Constituent Entity is not able to receive or acquire all information required for filing a country-by-country report, conforming to the requirements of paragraph 7, the said Constituent Entity shall not be eligible to be designated as the Reporting Entity of the Multinational Enterprise Group for the purposes of the above reservation.

(b) Notwithstanding the provisions of this paragraph, when one or more of the conditions set out in subparagraphs (i), (ii), (iii) of subparagraph (a) apply, an entity described in this paragraph, shall not be required to file a country-by-country report with the competent authority of the Republic with respect to any Reporting Fiscal Year, if the Multinational Enterprise Group of which it is a Constituent Entity has made available a country-by-country report conforming to the requirements of paragraph 7 with respect to such Fiscal Year through a Surrogate Parent Entity that files that country-by-country report with the competent authority of the Member State or the third-country of its tax residence on or before the date specified in paragraph 10, and that satisfies the following conditions:

i) the Member State or the third-country of the tax residence of the Surrogate Parent Entity requires filing of country-by-country reports conforming to the requirements of paragraph 7;

ii) the Member State or the third-country of the tax residence of the Surrogate Parent Entity, has a Qualifying Competent Authority Agreement in effect to which the Republic is a party by the time specified in paragraph 10 for filing the country-by-country report for the Reporting Fiscal Year;

iii) the Member State or the third-country of the tax residence of the Surrogate Parent Entity has not notified the competent authority of the Republic of a Systemic Failure;

iv) the Member State or the third-country of the tax residence of the Surrogate Parent Entity has been notified, by the Constituent Entity resident for tax purposes in such Member State or third-country that it is the Surrogate Parent Entity;

v) a notification has been provided to the competent authority of the Republic, in accordance with

the subparagraph (b) of paragraph 6.

Notification for filing purposes

6. (a) Any Constituent Entity of a Multinational Enterprise Group that is resident for tax purposes in the Republic, shall notify the competent authority, whether it is the Ultimate Parent Entity or the Surrogate Parent Entity referred to in paragraph 5(a), no later than the last day of the Reporting Fiscal Year of such Multinational Enterprise Group.

Provided that, for the Fiscal Years starting between 01 January 2016 and 20 October 2016, the first notification from the Reporting Entity of a Multinational Enterprise Group that is either the Ultimate Parent Entity of the Multinational Enterprise Group that is resident for tax purposes in the Republic or the Surrogate Parent Entity of the Multinational Enterprise Group that is resident for tax purposes in the Republic, shall be carried out no later than 20 October, 2017.

Provided further that, a Constituent Entity referred to in paragraph 5(a) shall not be obliged to notify the competent authority for the Fiscal Years that start between 01 January 2016 and 31 December 2016.

(b) Where a Constituent Entity of a Multinational Enterprise Group that is resident for tax purposes in the Republic is not the Ultimate Parent Entity nor the Surrogate Parent Entity nor the Constituent Entity referred to in paragraph 5(a), it shall notify the competent authority of the identity and tax residence of the Ultimate Parent Entity and the Reporting Entity, no later than the last day of the Reporting Fiscal Year of the said Multinational Enterprise Group.

Provided that, for Fiscal Years starting between 01 January 2016 and 20 December 2016, the first notification shall be carried out no later than 20 October, 2017.

Country-by-country report information

7. For the purposes of this Decree, the country-by-country report with respect to an Multinational Enterprise Group is a report containing

a) Aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to the Member State or third-country in which the Multinational Enterprise Group operates;

b) An identification of each Constituent Entity of the Multinational Enterprise Group, setting out the Member State or third-country of tax residence of such Constituent Entity, and where different from such Member State or third-country of tax residence, the Member State or third-country under the laws of which such Constituent Entity is organised, and the nature of the main business activity or activities of such Constituent Entity.

Automatic exchange of country-by-country reports

8. (a) The competent authority of the Republic that received the country-by-country report according to paragraphs 4 notifies, through an automatic exchange and within the deadline set out in subparagraph (b) of this paragraph, the country-by-country report to any Member State or third-country where, on the basis of the information in the country-by-country report, one or more Constituent Entities of a Multinational Enterprise Group are either resident for tax purposes, or are subject to tax with respect to the business carried out through a permanent establishment .

(b) The country-by-country report is to be exchanged within 15 days after last day of the Fiscal Year of the Multinational Enterprise Group to which the country-by-country report relates. The first country-by-country report is exchanged for the Fiscal Year of the Multinational Enterprise Group commencing on or after 01 January, 2016 and no later than 18 months after the last day of the Fiscal Year."

Model and guidelines for the country-by-country report and the notification Annex I.

9. (a) The country-by-country report shall be completed in English according to specific directives contained in Annex I and according to the relevant circular issued by the Commissionaire.

(b) The relevant circular shall also define on the basis of guidelines the way to complete and file the notifications provided for in paragraph 6, which shall also be completed in English.

Provided that, both the country-by-country report and the notifications shall be filed in electronic format.

Date of filing the

10. (a) The Ultimate Parent Entity or the Surrogate Parent Entity of a Multinational Enterprise Group

country-by-country report to the competent authority.

that is resident for tax purposes in the Republic, shall file the country-by-country report to the competent authority with respect to the Reporting Fiscal Year within 12 months after the last day of the Reporting Fiscal Year of the Multinational Enterprise Group.

Provided that, the first Fiscal Year in respect of which a country-by-country report is filed shall be the one commencing on or after 01 January 2016.

b) A Constituent Entity of a Multinational Enterprise Group that is resident for tax purposes in the Republic shall file a country-by-country report or an equivalent country-by-country report, by virtue of paragraph 5, to the competent tax authority in respect of the Reporting Fiscal Year within 12 months after the last day of the Reporting Fiscal Year of the Multinational Enterprise Group.

Provided that, the first Fiscal Year in respect of which a country-by-country report or an equivalent country-by-country report is filed, by virtue of paragraph 5, shall be the one commencing on or after 01 January 2017.

Appointment of representative

11(1). Every Reporting Entity may appoint a representative to perform the duties and obligations imposed by this Decree.

(2) Where a person is appointed by virtue of subparagraph (1) -

(a) the Reporting Entity filing information, shall be able to provide, if the competent authority requests so, the files and documents used to identify and file the information contained in the country-by-country report.

(b) the Reporting Entity filing information, shall be responsible for any failure of the said person to meet his obligations, despite the fact that the actions were carried out by the said person or that the failure to act was a failure of that person to act.

Keeping information and other data

12(1). In order to examine whether the information filed by a Reporting Entity is correct and complete, the competent authority may request the Reporting Entity to file to the competent authority, within a reasonable time period set out by the competent authority, the information, including copies of the relevant books, documents and other data, or any electronically stored information, at its disposal or under its control with respect to the information required to be filed to the competent authority for the purposes of this Decree.

(2) Where information required to be reported or controlled by the competent authority, is outside the Republic in any way, the Reporting Entity filing information should take all the necessary measures to transmit information in the Republic within the time period set out by the competent authority in order for the Reporting Entity to be able to comply with the requirements of the competent authority on the basis of this Decree.

(3) Each Reporting Entity should keep for a period of six years all books, documents and various files, including those stored electronically, which relate to the information required to be filed to the competent authority for the purposes of this Decree.

Electronic filing

13. Requirements for filing information to the competent authority by the Reporting Entity shall be as follows:

(a) The data shall be filed electronically using an electronic mean of filing specified by the relevant circular issued by the Commissionaire;

(b) The filing shall be accepted only if valid against the form referred to in subparagraph (c).

(c) Unless there is proof to the contrary:

(i) The use of an electronic filing system is presumed to have resulted in the making of the return only if this has been successfully recorded as such by the relevant electronic system ;

(ii) the time of filing shall be considered to be the time recorded by the electronic system and that the person who serves the filing shall be considered to be the person designated by the electronic filing system;

(d) information filed on behalf of a Reporting Entity shall be considered to be filed by the Entity unless

the latter proves that the information was filled without its consent.

Use and confidentiality of country-by-country report information

14.(a) Information exchanged between Member States and third-countries in accordance with paragraph 7 is used by the competent authority for assessing high-level transfer pricing, base erosion and profit shifting related risks, including assessing the risk of non-compliance by members of the of a Multinational Enterprise Group with applicable transfer pricing rules, and where appropriate for economic and statistical analysis. Transfer pricing adjustments by the tax authorities of the receiving Members State and third-country shall not be based on information exchanged in accordance to paragraph 7. Notwithstanding the above, Members States and third-countries are not prevented from using information exchanged between them in accordance with paragraph 7 as a basis for making further enquiries into the Multinational Enterprise Group's transfer pricing arrangements or into other tax matters in the course of a tax audit and, as a result, may make appropriate adjustments to the taxable income of a Constituent Entity.

(b) The competent authority shall preserve the confidentiality of the information contained in the country-by-country report at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention.

Issue of guidelines

15. For facilitating the compliance with this Decree, the competent authority may from time to time issue guidelines.

Repealing of Decree. Government Gazette, Annex III(I): 31/12/2016.

16. The Assessment and Collection of Taxes (Exchange of Information) within the framework of the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information Decree of 2016 is repealed as from the entry into force of this Decree.

Issued on 26 May, 2017

(SGD) CHARIS GEORGIADES
Minister of Finance

I hereby certify that this text is a true translation of the attached document

*I hereby certify that the signature of the translator is that of Emmanouil Tyrakis (Sgd).....
for Director
Press and Information Office
REPUBLIC OF CYPRUS
01/06/2017*