

International Tax Compliance: Country-by-Country Reporting Regulations Introduced in the Cayman Islands

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This alert is intended to aid businesses that may have obligations to report information under the *Tax Information Authority (International Tax Compliance) (Country-by-Country Reporting) Regulations, 2017* (“CbCR Regulations”), which were issued by the Cayman Islands on 15 December 2017 as part of its ongoing commitment to international tax transparency.

The Cayman Islands is party to the OECD Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports and the Inclusive Framework on Base Erosion and Profit Shifting (“BEPS”). The CbCR Regulations implement, in the Cayman Islands, the OECD’s model legislation published pursuant to the OECD’s BEPS Action 13 Report (Transfer Pricing Documentation and Country-by-Country Reporting), which sets out the BEPS minimum standards.

Is the Cayman Entity part of a Qualifying Multinational Enterprise Group?

The CbCR Regulations apply to qualifying multinational enterprise groups (“MNE Groups”). Broadly, a qualifying MNE Group is a collection of enterprises (“Constituent Entities” and each a “Constituent Entity”) that: (i) are tax resident in two or more jurisdictions and are related through ownership or control; (ii) had a total consolidated group revenue of US\$850 million or more in the preceding fiscal year; and (iii) prepare, or would be expected to prepare, consolidated financial statements in at least one tax jurisdiction in which it operates. Any business unit or permanent establishment of an MNE Group will have notification and/or reporting requirements in the Cayman Islands if it is “resident in the Cayman Islands”, meaning: (a) incorporated or established in the Cayman Islands; (b) having a place of effective management in the Cayman Islands; or (c) subject to financial supervision in the Cayman Islands.

Notification Requirements

Constituent Entities that are resident in the Cayman Islands are required to notify the Tax Information Authority of the Cayman Islands (“TIA”) that they are members of an MNE Group and to confirm the name and jurisdiction of the MNE Group’s Reporting Entity (defined below), if not itself. Notification is a one-off process and does not need to be repeated annually. Any Cayman Islands entity which subsequently becomes a Constituent Entity must notify the TIA before the end of its fiscal year.

Reporting Requirements

A Cayman Islands’ Constituent Entity is only required to file a Country-by-Country Report if it is the ‘Ultimate Parent Entity’ (owning a sufficient interest in the MNE Group to require it to prepare consolidated financial statements for the group in certain circumstances) or the ‘Surrogate Parent Entity’ (an appointed sole substitute of the Ultimate Parent Entity) of an MNE Group (each a “Reporting Entity”). Reporting Entities must report the information set out in the model legislation annually for each tax jurisdiction in which they operate. The Schedule for the CbCR Regulations includes the standard template and instructions on Country-by-Country reporting.

Exchange of Information

Once collated, the TIA will exchange the Country-by-Country Reports filed by qualifying MNE Groups in the Cayman Islands with competent authorities in partner jurisdictions that have satisfied the requisite confidentiality and data safeguards and have the appropriate legal instruments and legislative framework in place. This is intended to promote greater transparency by providing tax authorities with information to assess high-level transfer pricing risks and other base erosion and profit shifting related risks.

Timeframes for Reporting

The first fiscal year for Country-by-Country reporting purposes is the fiscal year which began during 2016. The deadline is 31 March 2018 in respect of fiscal years which began from 1 January to 31 March 2016 and within 12 months of the end of any fiscal year beginning after those dates. Each Reporting Entity which is required to file a Country-by-Country Report in 2018 should proceed with preparing such a report as soon as practicable.

Next Steps

Cayman Islands entities should, together with their affiliated group companies, assess whether they fall into the category of an MNE Group. Where a Cayman Islands entity is part of an MNE Group but not an Ultimate Parent Entity or Surrogate Parent Entity, a notification is required to be filed with the TIA. Where a Cayman Islands entity is the Ultimate Parent Entity or Surrogate Parent Entity of the MNE Group, a detailed report will need to be filed with the TIA. The first notification and reporting deadline is 31 March 2018.

Further Information

The TIA is expected to issue further Country-by-Country reporting Guidance on the TIA website (www.tia.gov.ky) later this month and we will provide further information at that time. The OECD's Guidance on the Implementation of Country-by-Country reporting is available here: <https://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf>

This alert is intended to provide a very high level summary of the CbCR Regulations and, given the complexity of the subject, it is recommended that clients seek specific legal advice if they think that the CbCR Regulations may be relevant to them.

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