

BRIEFING NOTE

Cayman Islands: BEPS Country by Country Reporting (A Recap)

Following the launch of the Base Erosion and Profit Shifting (“**BEPS**”) project in February 2013, the OECD and the G20 countries released a comprehensive Action Plan comprised of 15 measures¹ in order to address efficient and effective implementation of BEPS and to support three (3) key pillars being at the root of the program²: (i) ensuring coherence in the national rules that affect cross-border international activities, (ii) reinforcing most relevant general requirements in the underlying international standards, and (iii) improving transparency of international and domestic economic markets.

This Briefing is a high-level summary of issues arising from the implementation of various changes in Cayman Islands domestic laws through the Tax Information Authority (International Tax Compliance) (Country-by- Country Reporting) Regulations, 2017 as amended (“**CbCR Regulations**”).

The quantitative impact of BEPS’ efficiency and of the steps developed by the adhering countries is being evaluated on an annual basis by the OECD/G20 Inclusive Framework³ on BEPS (“**Inclusive Framework**”). The Inclusive Framework, which involves not only BEPS member countries but also international organizations and tax bodies, is handling regular peer reviews of the efficiency of implementation of the minimum standards and provides feedback on the outcome of the project.

The Cayman Islands is a member of the OECD’s Inclusive Framework on BEPS. The CbCR Regulations were introduced in the Cayman Islands to implement BEPS Action 13, namely Country by Country Reporting (“**CbCR**”), in the Cayman Islands.

Country-by-Country Reporting

BEPS called for Action 13 - Transfer Pricing Documentation and CbCR as one of four (4) minimum standards addressed to large multinational enterprise groups (“**MNE Groups**”). By virtue of CbCR, MNE Groups are required to file a Country-by-Country annual report on a template for each tax jurisdiction in which they exercise economic activity, including information on their revenue and profit before income tax and income tax paid and accrued, further, stated capital, tangible assets, retained earnings and the number

of employees. Moreover, all MNE Groups have been requested to list each jurisdiction and relevant entity doing business and also to specify the nature and substance of its activities. Action 13 is therefore considered to be the most significant element of tax transparency improvement, which is one of BEPS' core pillars. For the purpose of implementation of CbCR in a standard and consistent way across all jurisdictions, the participating countries such as the Cayman Islands agreed to implement national means in line with CbCR implementation package which includes model legislation for the introduction of CbCR requirements and can be found in Annex IV to Chapter V (page 37) of the OECD Final Report.

The CbCR Regulations have implemented the requirements of Action 13 in the Cayman Islands.

Terms and obligations under CbCR

One crucial aspect of determining whether or not a Cayman entity is the subject of the notification requirements under BEPS is identification of the Constituent Entity. According to the CbCR Regulations, the following units or establishments shall be construed as a "Constituent Entity" for purposes of the CbCR Regulations:

1. any separate business unit of an MNE Group that is included in the consolidated financial statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange;
2. any such business unit that is excluded from the MNE Group's consolidated financial statements solely on size or materiality grounds; and
3. any permanent establishment of any separate business unit of the MNE Group included in (1) above or (2) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

As emphasized above, CbCR is addressed to groups of multinational enterprises, whereby "**Group**" means 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. "**MNE Group**" means any Group that includes two or more enterprises for which:

1. the tax residence is in different jurisdictions; or

2. includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction,

and at the same time is not an Excluded MNE Group. An “Excluded MNE Group” is, with respect to any fiscal year of the Group, a Group having total consolidated group revenue of less than eight hundred and fifty million United States Dollars (US\$850 million) during the fiscal year immediately preceding the Reporting Fiscal Year as reflected in its consolidated financial statements for such preceding fiscal year. In light of these definitions, as indicated above and as stated in the Guidance issued by Cayman Islands Tax Information Authority⁴ **every entity residing in the Cayman Islands must determine whether or not it is a Constituent Entity of an MNE Group.** Thereafter such Constituent Entity must identify the Reporting Entity of the MNE Group.

The Constituent Entity filing the report is either the Ultimate Parent Entity of an MNE Group, or will be classified as the Surrogate Parent Entity. The Ultimate Parent Entity (“**UPE**”) means a Constituent Entity of an MNE Group that meets the following criteria:

1. it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of the MNE Group such that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on public securities exchange in its jurisdiction of tax residence; and
2. there is no other Constituent Entity of the MNE Group that owns directly or indirectly an interest described in paragraph (a) in the first mentioned Constituent Entity.

A Surrogate Parent Entity (“**SPE**”) means one Constituent Entity of the MNE Group that has been appointed by the MNE Group as a substitute for the Ultimate Parent Entity in order to file the report in that Constituent Entity’s jurisdiction of tax residence on behalf of MNE Group, if at least one condition set out in paragraph 4(2)(b) of the CbCR Regulations is met.

The Ultimate Parent Entity is required to collect the data and determine whether the Group meets the **threshold of total consolidated group annual revenue of at least \$850 million (or the near equivalent in the relevant jurisdiction's domestic currency)** and consequently, whether the Group falls into the definition of MNE Group.

Constituent Entities in the Cayman Islands must complete notification by 31 December of each fiscal year. This allows the Cayman Islands Department of International Tax Cooperation (DITC) to determine in the

next stage, whether or not the entity holds the status of a Constituent Entity of an MNE Group in line with the above definition. If the multinational enterprise had total consolidated revenues of less than \$US850 million in the immediately preceding fiscal period (or the near equivalent in the relevant jurisdiction's domestic currency), then it does not constitute a MNE Group for purposes of CbCR and as a consequence, is not required to file the CbC report within 12 months of the end of the fiscal year with the tax authority in the jurisdiction where it is tax resident (in the case of Cayman, with the TIA).

Step 1: Notification process

Constituent Entities which are resident in the Cayman Islands are required to appoint a Primary Contact and a Secondary Contact. The Primary Contact is responsible for making the Notification on behalf of the MNE Group's Cayman Islands Constituent Entities via regional CbCR Portal (Cayman Islands CbCR Portal available on: caymanaeoportal.gov.ky), using the Authorization Letter and Constituent Entities File. The Secondary Contact needs to be a fiduciary or an employee of the Reporting Entity on a management level and acts rather as a reserve point of contact for the relevant authority (i.e. the TIA). The Secondary Contact will not be granted with separate credentials to the CbCR portal.

The DITC has imposed an obligation on all Constituent Entities of the same MNE Group to file one, centralized notification.

The Primary Contact provides the name of the Ultimate Parent Entity, its country of residence and company registration number or equivalent, if the UPE is not a company, as well as the same data for SPE. Notification has to be followed by a signed Authorization Letter and Constituent Entity File – both templates are available on the DITC's website. The Primary Contact creates a single profile on the CbCR portal for each relevant MNE Group. Accordingly, no matter how many Constituent Entities are resident in the Cayman Islands, the same single profile will be used on their behalf. For next steps, once the profile is set-up and the Authorization Letter signed, the Primary Contact uploads the MNE Group's Constituent Entities File listing all Constituent Entities with a residence in the Cayman Islands.

Notification is a one-off process. Entities which became or ceased to be a Constituent Entity after 31 March 2018 are required to update the TIA before the end of the fiscal year of the MNE Group. It needs to be emphasized that the notification obligation will arise in respect of a Constituent Entity even if it has similar duties in different jurisdiction[5]. Such circumstances does not waive the Constituent Entity's responsibilities to submit notification to the DITC. Where the Constituent Entity is not an UPE or a SPE, it is required to

notify the DITC of the identity of the Reporting Entity and its tax residence within the same deadline as described above.

In order to determine if the total consolidated group revenue of an MNE Group is less than US\$ 850 million the entities should use all of the revenue that is (or would be) reflected in the consolidated financial statements of MNE Group in which the assets, liabilities, income, expenses and cash flows of the UPE and the Constituent Entity are presented as those of a single economic entity.

Step 2: CbCR Reporting obligation

An Ultimate Parent Entity or Surrogate Parent Entity (if any) that is resident in the Cayman Islands is required to file a CbC report, even if another Constituent Entity already submitted CbC report in another jurisdiction.

The CbC report must be filed not later than within 12 months after the last day of the Reporting Fiscal Year of the MNE Group and should contain aggregate information relating to the:

- amount of revenue,
- profit or loss before income tax,
- income tax paid,
- income tax accrued,
- stated capital,
- accumulated earnings,
- number of employees,
- tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates,
- an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organized and the nature of the main business activity or activities of such constituent Entity.

The Cayman Islands in light of 2020 CbCR Peer Review

According to the 2020 peer review report, the implementation of the Action 13 minimum standards in the Cayman Islands meets all applicable terms of reference.

¹ Read more on all BEPS Actions: www.oecd.org/tax/beps/beps-actions.

² Learn more about BEPS and its pillars: www.oecd.org/tax/beps.

³ More about the Inclusive Framework on: www.oecd.org/tax/beps/flyer-inclusive-framework-on-beps.pdf.

⁴ Guidance available on: https://www.dtc.ky/wp-content/uploads/2020/06/Cayman_CbCR_Guidance.pdf.

⁵ See p. 10 of the Guidance to CbCR.

This publication is not intended to be a substitute for specific legal advice or a legal opinion. For specific advice on the application of BEPS in the Cayman Islands and CbCR, please contact:

Gary Smith

Tel: +1 (345) 749 7590

E: gary.smith@loebsmith.com

Sandra Korybut

Tel: +1 (345) 749 7491

E: sandra.korybut@loebsmith.com

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