

Cayman Islands Country-by-Country Reporting Regulations

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Introduction

All Cayman Islands entities are required to determine if they are part of a group with annual revenue exceeding US\$850 million. If this is true for any entity in respect of its fiscal year immediately preceding its fiscal year that commenced in 2016, that entity must notify the Cayman Islands Tax Information Authority (“TIA”) by 15 May 2018 (if its group reporting entity is resident in the Cayman Islands) or otherwise, by 30 September 2018. Any reporting entity must submit its first report to TIA by 31 May 2018.

Country-by-Country Reporting (“CbC Reporting”) is the outcome of the OECD/G20 Base Erosion and Profit Shifting Project, and is a continuation of their efforts to improve international tax transparency. The Cayman Islands has agreed to implement CbC Reporting and will automatically exchange reported information with other jurisdictions that are party to the Multilateral Convention for Mutual Administration in Tax Matters or any other tax convention or tax information exchange agreement to which the Cayman Islands is a party, which have also agreed to the automatic exchange of reported information.

CbC Reporting in the Cayman Islands is required by The Tax Information Authority (International Tax Compliance) (Country-by-Country Reporting) Regulations, 2017 (“CbC Regulations”) that were published on 15 December 2017, in respect of fiscal years commencing on or after 1 January 2016.

Constituent entities

The CbC Reporting regime only applies to Cayman Islands entities that are members of an MNE Group in respect of an applicable fiscal year (“Constituent Entities”). An “MNE Group” is a collection of enterprises related through ownership or control that fulfils each of the following criteria:

- a member of the group is: (i) required to prepare consolidated financial statements for the group under accounting principles generally applied in its jurisdiction of tax residence; or (ii) would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
- the group includes: (i) two or more enterprises for which the tax residence is in different jurisdictions; or (ii) an enterprise resident for tax purposes in one jurisdiction and also subject to tax in respect of a permanent establishment in another jurisdiction; and
- the group has consolidated revenues for the fiscal year immediately preceding the applicable fiscal year of at least US\$850 million.

For purposes of the CbC Regulations, a Constituent Entity will be resident in the Cayman Islands (which for such purposes, also means tax resident) if it is incorporated or established, has its place of effective management or is subject to financial supervision in the Cayman Islands.

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Reporting entities

A Constituent Entity will be a “Reporting Entity” if it is one of the following:

- a Constituent Entity that: (i) is or would be required to prepared consolidated financial statements under the criteria stated above; and (ii) does not have any interest owned directly or indirectly by another Constituent Entity that satisfies such test (“Ultimate Parent Entity”); or
- a Constituent Entity appointed by its MNE Group as sole substitute for the Ultimate Parent Entity for CbC Reporting (“Surrogate Parent Entity”).

An MNE Group may be required to appoint a Surrogate Parent Entity as its Reporting Entity in certain circumstances where the Ultimate Parent Entity is not required to report in its own jurisdiction, or where such reports are not required to be automatically exchanged with the Cayman Islands, or where TIA has notified a systemic failure of such reporting.

Notification obligations

Generally, a Constituent Entity must notify TIA by the last day of its current fiscal year that it is a Constituent Entity and the identity of its group’s Reporting Entity. For fiscal years commencing in 2016 the notification deadline has been extended by TIA to 15 May 2018 if the group’s Reporting Entity is resident in the Cayman Islands and otherwise, 30 September 2018.

TIA has established an online portal for notifications and reporting, which is expected to be launched in early March 2018. The first step in the notification process is for Constituent Entities to appoint individuals as their Primary and Secondary Contacts. The Primary Contact will be provided with login credentials and can complete the notification process simultaneously for all Constituent Entities of the group resident in the Cayman Islands.

Reporting Obligations

A Reporting Entity resident in the Cayman Islands is generally required to submit reports to TIA within 12 months of the end of the applicable fiscal year. TIA has extended the first reporting deadline to 31 May 2018.

CbC Reporting is effected by uploading XML files in the form of the standard templates attached to the CbC Regulations. The following information is required to be reported in respect of an MNE Group:

- aggregate information relating to revenue, profit (loss) before income tax, income tax paid and accrued, capital, accrued earnings, number of employees and tangible non-cash assets for each jurisdiction in which the MNE Group operates; and

- the identity of each Constituent Entity, its jurisdiction of tax residence (and, if different, jurisdiction of organisation) and the nature of its main business activity.

Record Keeping

Constituent Entities must retain for at least 6 years all information and records relating to information required to be reported under the CbC Regulations.

Anti-avoidance

Any arrangements entered into with the main purpose of avoiding an obligation under the CbC Regulations are deemed, for purposes of the CbC Regulations, not to have been entered into.

Enforcement

TIA has additional powers to require production of information and documents by Constituent Entities to determine the accuracy of information reported to it. Failure to comply with the CbC Regulations is an offence punishable on summary conviction by CI\$10,000 (US\$12,500) fine and/or 6 months imprisonment. TIA also has the option of imposing administrative penalties of CI\$4,000 (US\$5,000) for such failures or CI\$5,000 (US\$6,250) for knowingly filing inaccurate information.

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