

Financial Transaction Information Exchange Unit



Turks and Caicos Islands

GUIDANCE NOTES ON THE INTERNATIONAL TAX COMPLIANCE (COUNTRY-BY-COUNTRY REPORTING) REGULATIONS 2019

RELEASE DATE:

These Guidance Notes are issued in accordance with section 16 of the Tax Information (Exchange and Mutual Administrative Assistance Ordinance and Regulation 13 of the International Tax Compliance (Country-by-Country Reporting) Regulations by the Financial Transaction Information Exchange Unit as the Competent Authority.

It should be noted that these Guidance Notes do not have the force of law. If you are in doubt as to your obligations under the law, independent professional advice should be sought.

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Overview

- I. The Organisation for Economic Co-operation and Development (OECD) and G20 countries adopted a 15-point Action Plan to address Base Erosion and Profit Sharing (BEPS). BEPS is an OECD initiative, which refers to tax planning strategies that exploit gaps and mismatches in tax rules, to artificially shift profits to low or no-tax locations where there is little or no economic activity. These schemes undermine the fairness and integrity of tax systems, as businesses that operate across borders, can use BEPS to gain a competitive advantage over enterprises that operate at a domestic level.
- II. There are currently 135 jurisdictions that are members of the OECD/G20 Inclusive Framework on BEPS; the Turks & Caicos Islands joined the Inclusive Framework on BEPS in 2017. The OECD Forum on Harmful Tax Practices (FHTP) is the sub-body of the Inclusive Framework that sets the global standard that requires companies to have substantial activities in the jurisdiction. It is also the body that is responsible for assessing and monitoring the substantial activities for all member jurisdictions.
- III. The 15-point Action plan has outlined three key pillars: 1) introducing coherence in the domestic rules that affect cross-border activities, 2) reinforcing substance requirements to the existing international standards, and 3) improving transparency as well as certainty.
- IV. Country by Country Reporting (CbCR), is part of Action 13 within the BEPS Action Plan, the benefits that CbCR offers is the undertaking of high-level risk assessment of transfer pricing and other BEPS related tax risks as well as enhancing transparency for tax administration. The Turks and Caicos Islands introduced the ***International Tax Compliance (Country-by-Country Reporting) Regulations 2019*** to meet the requirements under the Action 13 minimum standard.
- V. CbCR compels multinational enterprises (MNE) which meet the criteria to file a country by country report with the tax authority. The criteria are that only MNE Groups with annual consolidated group revenue of not less than seven hundred and fifty million euros, (€750 million) in the preceding fiscal year or its US dollar equivalent of eight hundred and fifty million (\$850 000 000).

OECD Information on Country-by-Country Reporting

I. General Information

<http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/country-by-country-reporting.htm>

II. Action 13 Final Report

<https://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm>

III. Implementation Guidance

<https://www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf>

IV. CbCR XML Schema User Guide

<https://www.oecd.org/tax/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.pdf>

V. Frequently Asked Questions on CbCR

<http://www.oecd.org/ctp/beps-frequentlyaskedquestions.htm#Action13>

Country-by-Country Regulations of the Turks and Caicos Islands

<https://www.gov.tc/agc/component/edocman/13-of-2019-international-tax-compliance-country-by-country-reporting-regulations/viewdocument/1377?Itemid>

Purpose of the Guidance Notes

- I. These Guidance Notes are issued by the Turks & Caicos Islands Government (the TCI) and are intended to assist entities that have responsibilities to report information under the CbCR Regulations.
- II. This document does not form part of the Regulations and does not have the force of law. This document serves as a reference to use along with the CbCR Regulations and OECD documents.
- III. Financial Institutions must apply the CbCR Regulations in force at the time with reference to these Guidance Notes.
- IV. Should any queries arise regarding your obligations under the Regulations, professional advice should be sought.

The Role of the Turks and Caicos Islands Competent Authority

- I. The Financial Transactions Information Exchange Unit (“FTIE”) is the designated Competent Authority (the Authority) by virtue of the Permanent Secretary, Finance.
- II. The Authority will administer the Regulations, determine whether a relevant entity satisfies the requirements for reporting, monitor compliance and share information with other competent authorities.

Definitions

- I. **“Consolidated Financial Statements”** means the financial statements of an MNE 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 economic entity.
- II. **“Constituent Entity”** means-
 - (a) 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;
 - (b) any such business unit that is excluded from the MNE Group’s Consolidated Financial Statements solely on size or materiality grounds; and
 - (c) any permanent establishment of any separate business unit of the MNE Group included in paragraph (a) or (b) provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting.
- III. **“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.
- IV. **“Multinational Enterprises (MNE) Group”** means any Group that-
 - (a) includes two or more enterprises the tax residence for which is in different jurisdictions, or 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
 - (b) is not an Excluded MNE Group.
- V. **“Reporting Entity”** means the Constituent Entity that is required to file a country-by-country report conforming to the requirements in section 39 in its jurisdiction of tax residence on behalf of the MNE Group, and such entity may be the Ultimate Parent Entity or the Surrogate Parent Entity.
- VI. **“Ultimate Parent Entity” (UPE)** means a Constituent Entity of an MNE Group that meets the following criteria:

(a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such 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 a public securities exchange in its jurisdiction of tax residence; and

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

- VII. **“Surrogate Parent Entity” (SPE)** means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the country-by-country report in that Constituent Entity’s jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in section 37(2) applies.
- VIII. **“Fiscal Year”** means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements.
- IX. **“Reporting Fiscal Year”** means that Fiscal Year, commencing on or after the 1st January, 2018, the financial and operational results of which are reflected in the country-by-country report described in regulation 5.
- X. **Constituent Entity “resident in the Turks and Caicos Islands”** means –
- It is incorporate or established under the laws of the Turks and Caicos Islands;
 - It has its place of effective management in the Turks and Caicos Islands. This essentially means that key management and commercial decisions made which are necessary for the conduct of the entity’s business as a whole, depending on the facts, this may include certain legal persons and legal arrangements that are formed outside the Turks and Caicos Islands but have a branch office in the Turks and Caicos Islands. For more guidance on “place of effective management” see the provisions of Article 4 of the OECD Model Tax Convention and its accompanying commentaries; or
 - It is subject to financial supervision in the Turks and Caicos Islands. This would include any entity licensed and regulated by the TCI Financial Services Commission (FSC).

Guidance on Registration of Constituent Entities

- I. Every entity that is a resident in the TCI must determine if it is a Constituent Entity of an MNE Group. This is, a group of entities which are tax residents in different jurisdictions and have an annual consolidated group revenue of no less than seven hundred and fifty million euros, (€750 million) or the equivalent in USD eight hundred and fifty million (\$850,000,000) in the preceding Fiscal Year for that MNE Group.
- II. If an entity is unsure as to if it is a Constituent Entity, it should contact its parent entity to confirm. TCI Entities should be able to identify their parent entity by reviewing their Register of Members/Shareholders where the identity of the UPE is not already known. Generally, the UPE would know whether or not the Group meets the criteria to qualify as an MNE Group for the purposes of CbCR and whether it has sufficient interest in any particular entity to treat it as a Constituent Entity for the purposes of CbCR.
- III. CbCR requirements are directed at MNE Groups which controls approximately 90% of corporate revenues and pose the greatest potential BEPS risk.
- IV. A Constituent Entity that is resident in the Turks and Caicos Islands must identify the Reporting Entity of the MNE Group, regardless of the tax residence of the Reporting Entity.
- V. All identifications must be done by way of Notification in accordance with section 4 of the TCI CbCR's regulations and made to and in a form prescribed by the FTIE.
- VI. The prescribed form is highlighted in Annex I of these Guidance.

Notification

- I. All Constituent Entities resident in the TCI **MUST** notify the Authority that it is a member of an MNE Group. The notification must confirm the name and jurisdiction of the MNE Group's Reporting Entity.
- II. Notification is intended to be a one-off process and does not need to be repeated annually. Changes to notification details must be communicated to the Authority.
- III. All Notification shall be done electronically.
- IV. The Authority is currently updating the portal to accommodate CbCR. Presently ALL NOTIFICATIONS are to be submitted via email to EOI@gov.tc. Once the portal is updated, a Press Release will be published to inform the industry and all subsequent notifications shall be made via the portal.
- V. All entities must appoint a Primary User and indicate the identity of the appointee in above mentioned email correspondence. This person will be the link between the constituent entity and the Authority. This person will be responsible for the submission of information to the Authority. Notwithstanding the appointment of a Primary User, the responsibility for the submission of the information will always remain with the Constituent Entity.

Notification of Changes

- I. Changes to the primary user, Constituent Entity details e.g. updating business activities or business address should be communicated to the Authority immediately, but no later than three months within the Fiscal Year the change occurred. The email should use the subject heading "***Change to Notification details for [insert name of Constituent Entity]***".
- II. Change notifications should be communicated to the email noted in part IV above.
- III. An entity which ceases to be a Consistent Entity shall inform the Authority immediately. This notification shall include letter signed by the Director or authorized Senior Manager with subject heading "***Change of Status of Entity for [insert name of Constituent Entity]***". The notification should provide supporting documentation to the dissolution as an annex.

Notification Deadlines

- I. The deadline for notification details as it relates to the obligation under section 4, is the end of the Fiscal Year.
- II. However, the notification deadlines have been adjusted to coincide with the introduction of the TCI's Regulations as follows:
 - For MNE Groups that began during 2020 the notification shall be filed by 31st March 2022 for the Reporting Fiscal Year.

Reporting for Country-by-Country

- I. The Ultimate Parent Entity (UPE) of an MNE Group is generally the reporting entity; however, a Surrogate Parent Entity (SPE) of an MNE Group may file with the Authority.
- II. The reporting Entity should report all of the tax jurisdictions in which the Constituent Entities of the MNE Group are resident for tax purposes.
- III. Provisions should also be made to include in the CbCR, all Constituent Entities in the MNE Group deemed by the Reporting MNE not to be resident in any tax jurisdiction for tax purposes.
- IV. Where a Constituent Entity is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker should be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the Constituent Entity should be reported in the tax jurisdiction of the Constituent Entity's place of effective management. The place of effective management should be determined in accordance with the provisions of Article 4 of the OECD Model Tax Convention and its accompanying Commentary.

Reporting Fiscal Year

- I. The reporting fiscal year, is the fiscal year beginning on or after 1 January 2020. Therefore, CbC Reports will be required to be files for all accounting periods beginning on or after 1st January 2020.

Time for Filing

- I. The CbC Report shall be filed no later than twelve (12) months after the last day of the Reporting Fiscal year of the MNE Group. For example, those MNE Groups that have Reporting fiscal year that began on or before 31 March 2020 they have an obligation to file no later than 31 March 2022.

Source of Data Used for Preparing Reports

- I. The Reporting Entity should consistently use the same source of data from year to year in satisfying its reporting obligations.

Means of Reporting

- I. The Authority will issue further guidance on the reporting requirements when the Electronic Portal is available, as all reporting will be done electronically.
- II. The CbC reporting schema for the TCI will be the published XML Schema that is available on the OECD website. The link is available under section 1, part B, item IV of this Guidance.
- III. The electronic portal will only accept reports that are submitted in compliance with the OECD CbCR XML Schema format.

Deemed Listing Provision

- I. The deemed listing provision in the definition of the term "Group" (*See the definitions section in this Guidance and the TCI CbCR Regulation*) is only relevant where an enterprise would otherwise be the Ultimate Parent Entity (UPE), but it is not required to prepare Consolidated Financial Statements in the jurisdiction where it is a resident for tax purposes. In this case, the Group includes all entities that would be included in the Consolidated Financial Statements that the relevant enterprise would be required to prepare if it was listed on a public securities exchange. In applying the deemed listing provision, it is irrelevant whether or not a particular type of entity is in fact able to be listed, considering, among other things, the jurisdiction's company law and/or other regulations governing the relevant public securities exchange.
- II. For instance, some jurisdictions differentiate between public entities and non-public entities (or private entities) in determining whether Consolidated Financial Statements are required to be prepared (e.g. the United States and Canada). In this

case, the deemed listing provision would be relevant in determining the Constituent Entities in an MNE Group where the UPE is a non-public entity. The term “public entities” refers to entities which have instruments listed on a public securities exchange and the expression “non-public entities” refers to entities which have no instruments traded on a public securities exchange. The term “public entity” does not refer to an entity held by public sector bodies.

- III. In accordance with paragraph 55 of the Action 13 Report, neither the deemed listing provision nor this guidance should be interpreted as giving rise to any exemption from the obligation to file the CbC Report other than as set out in paragraph 52 of the Action 13 Report and the TCI CbCR Regulations. in relation to Excluded MNE Group.

Confidentiality

- I. The Turks and Caicos Islands is participating in the CbCR on a non-reciprocal basis and as such the FTIE will use CbC Reports and any other information obtained pursuant to the TCI CbCR Regulations for purposes of collaboration on compliance and enforcement with other Competent Authorities pursuant to a Qualifying Competent Authority Agreement.
- II. The OECD has published Guidance on the appropriate use of information contained in CbC Reports. This is designed to assist jurisdictions to comply with the requirement to have in place the necessary framework and infrastructure to ensure the appropriate use of CbCR information. Information provided to or received by the Authority for the facilitation of the automatic exchange of information or otherwise for tax purposes shall be kept confidential as provided in section 8 of the TCI CbCR Regulations.

Master File and Local Files

- I. The TCI does not require a Reporting Entity to submit the “master file” and “local file” referred to in the OECD Final Report.

Failure to comply penalties

- I. Failure to comply with the Registration requirement under the CbCR Regulations is an offence and can result in fine not exceeding ten thousand dollars, a term of two (2) years imprisonment or both.

ANNEX I – Notification Template

TEMPLATES FOR NOTIFICATION LETTERS FOR COUNTRY BY COUNTRY REPORTING IN THE TURKS & CAICOS ISLANDS

Use official Letterhead of the Constituent Entity with contact details: Address, telephone number, email and website if available

[Insert Date]

Director
Financial Transactions Information Exchange Unit
Wilma House
Grand Turk
Turks & Caicos Islands

Dear Sir/Madam,

Re: Notification under Regulation 4(2) International Tax Compliance (Country-by-Country Reporting) Regulations 2019

This letter is to notify the competent Authority that *[insert company name]* is a Constituent Entity resident in the Turks & Caicos Islands at *[insert address]*.

[insert company name] forms a part of the MNE Group – *[Insert Name of MNE Group]*. As such, it authorises, *[insert name of the individual]* as its Primary User, see details below. The Primary User is authorised to represent this Constituent Entity for the purposes of compliance with the Regulations and also to provide any change notice required under the Regulations.

This company is not the Ultimate Parent Entity nor the Surrogate Parent Entity of the group. For the purposes of country-by-country reporting the Ultimate Parent Entity is *[insert name]* which is tax resident of *[insert country of tax residence]* business operation is conducted at *[insert address]*.

Details of Primary User

Position
Email address
Telephone number
Physical address

Sincerely yours,

[insert name]
[insert position]