

[TIA HEADING]

CAYMAN ISLANDS Country-by-Country Reporting GUIDANCE

This draft CbCR Guidance is circulated for Industry Consultation with the Department for International Tax Cooperation's Industry Advisory "Issue of CbCR Regulations & Consultation on CbCR Guidance" dated 20 December 2017.

Please email your responses to peter.stafford@gov.ky at the DITC by 5pm on Friday 12 January 2017.

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I. Overview

A. General

Country-by-Country Reporting (**CbCR**) is part of Action 13 of the OECD/G20 Action Plan on Base Erosion and Profit Shifting.

CbCR requires multinational enterprises (**MNE**) which meet certain criteria to file a country-by-country report (**CbC Report**) to tax administrations that provides a breakdown of the amount of revenue, profits, taxes and other indicators of economic activities for each tax jurisdiction in which the MNE group does business. CbCR only applies to MNE groups with annual consolidated group revenue of a specified threshold amount in the preceding fiscal year (**MNE Groups**). The Cayman Islands has specified the threshold as US\$850 million but other jurisdictions may specify the threshold in Euros (€750 million).

B. OECD Core Documents

The following OECD documents contain the core elements of CbCR and should be referred to:

- [OECD Transfer Pricing Documentation and Country-by-Country Reporting, Action 13: 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project \(OECD Final Report\)](#)
- [OECD Guidance on the Implementation of Country-by-Country Reporting – BEPS Action 13, OECD/G20 Base Erosion and Profit Shifting Project \(Implementation Guidance\)](#)
- [OECD CbCR XML Schema: User Guide for Tax Administrations and Taxpayers \(User Guide\)](#)

The OECD has also published the [OECD BEPS 2015 Final Reports Frequently Asked Questions](#) as well as Handbooks for Tax Administrations on [Effective Implementation](#) and [Effective Tax Risk Assessment](#).

C. Qualifying Competent Authority Agreements (QCAAs)

QCAAs contain the rules on the modalities of the exchange between the Competent Authorities of participating jurisdictions in CbCR. QCAAs also contain representations on confidentiality, safeguards and the existence of the necessary infrastructure for an effective exchange relationship.

The Cayman Islands, like most jurisdictions participating in CbCR, has entered into the [Multilateral Competent Authority Agreement \(MCAA\)](#) on CbCR; the OECD maintains a [list of signatories to the MCAA](#). The Cayman Islands also has a bilateral CAA with the UK regarding CbCR and will enter into bilateral CAAs to similar effect with other participating jurisdictions that are not party to the MCAA. All relevant materials available on the CbCR Legislation & Resources document on the Authority's website:

- http://www.tia.gov.ky/pdf/CbCR_Legislation.pdf

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D. Cayman Islands Law

The following legislation requires Constituent Entities resident in the Cayman Islands (Cayman Constituent Entities) to collect, maintain and report information for exchange with partner jurisdictions is as follows:

- [Tax Information Authority \(International Tax Compliance \(Country-by-Country Reporting\) Regulations, 2017 \(CbCR Regulations\)](#)

The CbCR Regulations are made under the [Tax Information Authority Law \(2017 Revision\)](#) and establish the notification and reporting obligations of Cayman Constituent Entities.

E. Interpretation

All jurisdictions participating in the BEPS project are implementing CbCR in line with the agreed CbCR implementation package. This package can be found at Annex IV to Chapter V (page 37) of the OECD Final Report and includes model legislation for the introduction of CbCR requirements (**OECD Model Legislation**). The purpose of the implementation package, and in particular, the OECD Model Legislation, is to ensure a consistent and standard approach to CbCR across all implementing jurisdictions. For this reason, the CbCR Regulations closely mirror the OECD Model Legislation to the extent its provisions apply to the Cayman Islands. A good understanding of the OECD Final Report is critical to understanding and interpreting the CbCR Regulations and should be read in conjunction with this Guidance.

Notwithstanding the above, it should be noted that there are some differences between the OECD Model Legislation and the CbCR Regulations, particularly because the Cayman Islands is a non-reciprocal jurisdiction.

Where there is a conflict, the CbCR Regulations take precedence.

A number of terms used in this Guidance are defined in the CbCR Regulations, and whilst this Guidance provides further information to assist with the interpretation of some of these terms, the reader is referred to the CbCR Regulations for full definitions of all relevant terms.

In addition, the hyperlinks to OECD resources are subject to change and the reader is responsible for checking that any particular resource has not been superseded so that a new hyperlink must be used.

II. Purpose of this Guidance

This Guidance on CbCR does not extend or restrict the scope of CbCR as implemented by the relevant Regulations.

This Guidance is intended to aid businesses that may have responsibilities to report information under the CbCR Regulations. It is also intended as a reference source for Cayman Islands Constituent Entities, and relevant professionals for use alongside the CbCR Regulations and OECD core documents.

A relevant Cayman Islands Constituent Entity must apply the CbCR Regulations in force at the time, with reference to any OECD explanatory materials for CbCR and this Guidance as applicable.

Cayman Islands Constituent Entities are encouraged to seek professional advice if they are uncertain in any way of their obligations under the CbCR framework.

The Cayman Islands Competent Authority is the Tax Information Authority whose functions are carried out by the Department for International Tax Cooperation (**DITC**).

The Authority is responsible for ensuring that relevant Cayman Islands Constituent Entities comply with their obligations under the CbCR Regulations.

Relevant Cayman Islands Constituent Entities will report the information required under CbCR to the Authority which will in turn exchange information with partner jurisdictions that have satisfied the requisite confidentiality and data safeguards standards, and have the appropriate legal instruments and legislative frameworks in place.

Consultation Draft 17120

III. Notification and Reporting to the Authority

A. Notification

Any Constituent Entity that is resident in the Islands **MUST** notify the Authority that it is a member of an MNE Group and confirm the name and jurisdiction of the MNE Group's Reporting Entity, if that is not itself. For the first reporting period, the deadline for notification is **31 March 2018**. Any entity which subsequently becomes a Constituent Entity must notify the Authority of that before the end of its Fiscal Year.

Notification is a one-off process and does not need to be repeated annually. Changes to notification details must, however, be advised to the Authority via Electronic Transmission.

The form of Notification is contained in **Appendix I** to this Guidance.

The template Authorisation Letter is available on the CbCR Legislation & Resources document on the Authority's website.

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B. Reporting

Any Reporting Entity, being either the Ultimate Parent Entity or the Surrogate Parent Entity, that is resident in the Islands **MUST** file a Country-by-Country Report (CbCR) with the Authority.

The CbCR **MUST** be in the form of the CbCR XML Schema, which is described in further detail in the OECD's CbCR XML User Guide:

- <http://www.oecd.org/ctp/exchange-of-tax-information/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.htm>

The Schedule to the CbCR Regulations, reproduced in **Appendix II**, includes the standard template and instructions on the CbCR.

MNE Groups may also find this information in the CbCR Status Message XML Schema User Guide useful because it describes the various validations that apply to CRS Messages:

- [CbCR Status Message XML Schema User Guide for Tax Administrations](#)

The first Fiscal Year for CbCR 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. For example, an MNE Group with a Fiscal Year that began on 1 February 2016 must file its first CbCR with the DTIC by 31 March 2018 whereas an MNE Group with a Fiscal Year that began on 1 May 2016 must file its first CbCR with the Authority by 30 April 2019.

Each Reporting Entity which is required to file a CbCR in 2018 should proceed with preparing the CbCR as soon as practicable. The Authority will be providing guidance on how Reporting Entities must electronically file their CbCR XMLs.

1. Ultimate Parent Entity

The Ultimate Parent Entity of an MNE Group is a Constituent Entity which meets the following criteria -

- (a) 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
- (b) 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.

2. Surrogate Parent Entity

The Surrogate Parent Entity is the Constituent Entity of the MNE Group that has been appointed by the 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 the said MNE Group when one or more of these conditions applies:

- (i) the Ultimate Parent Entity of the MNE Group is not obligated to file a Country-By-Country Report in its jurisdiction of tax residence;

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- (ii) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the Cayman Islands is a party but does not have a Qualifying Competent Authority Agreement in effect to which the Cayman Islands is a party by the time specified in regulation 6(3) of the CbCR Regulations for filing the Report for the Reporting Fiscal Year; or
- (iii) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Authority to the Constituent Entity resident in the Islands.

C. Electronic Transmission for Notifications and Reporting

Constituent Entities and Reporting Entities must comply with their notification and reporting obligations via electronic transmission (**Electronic Transmission**) to the Authority.

[The Authority anticipates issuing instructions regarding Electronic Transmission in early 2018. These instructions will be incorporated into this section of this Guidance.]

As mentioned above, the Cayman Islands reporting schema for the CbC Report will be the published CbCR XML Schema.

Each jurisdiction which receives a CbCR Message from the Authority will transmit a CbCR Status Message in response to the Authority.

D. Master Files and Local Files not required

The Cayman Islands does not require a Reporting Entity to submit the “master file” and “local file” referred to the OECD Final Report.

Generally speaking, participating jurisdictions will require their MNEs to provide a master file and a local file in order for their tax administrations to perform transfer pricing analysis. The master file would include high-level global information regarding an MNE Group’s global business operations and transfer pricing policies. The local file would include transactional transfer pricing documentation for each jurisdiction, identifying relevant related party transactions, the amounts involved in those transactions, and the company’s analysis of the transfer pricing determinations they have made with regard to those transactions.

IV. Confidentiality

The Cayman Islands is participating in the CbCR on a non-reciprocal basis. Accordingly, the Authority will use CbC Reports and any other information obtained pursuant to the CbCR Regulations for purposes of collaboration on compliance and enforcement with other Competent Authorities pursuant to a Qualifying Competent Authority Agreement.

Other Competent Authorities may use the CbC Reports for the purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in the Cayman Islands, including assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules. However, Competent Authorities will not conduct transfer pricing adjustments based solely on the CbC Reports.

The Cayman Islands will exchange information under CbCR with partner jurisdictions which have in place adequate measures to ensure the required confidentiality and data safeguards are met.

The OECD has published [Guidance on the appropriate use of information contained in CbC Reports](#). This is designed to assist jurisdictions comply with the requirement to have in place the necessary framework and infrastructure to ensure the appropriate use of CbCR information.

Consultation Draft 1/2/20

V. Guidance on Technical Issues

A. Constituent Entities Required to Report

The following types of Constituent Entities will be required to file CbC Reports in the Cayman Islands:

- An Ultimate Parent Entity of an MNE Group resident in the Cayman Islands for tax purposes
- A Surrogate Parent Entity of an MNE Group resident in the Cayman Islands for tax purposes (in certain circumstances)

A Cayman Islands Constituent Entity of an MNE Group, that is neither an Ultimate Parent Entity nor a Surrogate Parent Entity, is not required to file a CbC Report in the Cayman Islands.

B. Resident in the Islands

For the purposes of the CbCR Regulations, unless the context otherwise requires, the words “jurisdiction of tax residence”, “tax residence” and “resident for tax purposes” shall each be considered as incorporating a reference to “resident in the Islands”. “Resident in the Islands” for a Constituent Entity means -

- (a) being incorporated or established in the Islands;
- (b) having a place of effective management in the Islands; or
- (c) being subject to financial supervision in the Islands;

The Reporting Entity should report all of the tax jurisdictions in which Constituent Entities of the MNE Group are resident for tax purposes; this would be the Cayman Islands in the case of any Constituent Entities that is resident in the Islands.

Reporting Entities should note that a ‘non-resident’ designation under the Companies Law or Trusts Law is not a determining factor in whether a Constituent Entity is resident for tax purposes in the Cayman Islands.

A separate line should be included in the report for all Constituent Entities in the MNE Group deemed by the Reporting MNE not to be resident in any tax jurisdiction for tax purposes.

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.

C. Investment Funds

The Implementation Guidance confirms that the application of CbCR to investment funds depends on the relevant accounting treatment and that the governing principle is to follow the accounting consolidation rules.

If, applying accounting rules, an investment entity does not consolidate investee companies (for example the investment entity reports fair value of the investee companies through profit and loss rather than consolidation), then those investee companies should not form part of an MNE Group and should not be considered Constituent Entities. However, if the accounting rules require that the investment entity

consolidates with an investee company, the investee company should be part of an MNE Group (where one exists) and should therefore be considered a Constituent Entity.

It is also possible for a company, which is owned by an investment fund, to control other entities such that, in combination with these other entities, it forms an MNE Group. In this case, and if the MNE Group exceeds the revenue threshold, it would need to comply with the requirement to file a CbC Report.

D. Partnerships

As with Investment Funds, the Implementation Guidance confirms that for partnerships the governing principle to determine an MNE Group is to follow the accounting consolidation rules. If the accounting consolidation rules apply to a partnership, then that partnership may be a Constituent Entity of an MNE Group subject to CbCR.

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VI. Completion of CbC Reports

CbC Reports apply to a multitude of entity types across a broad range of industries. This Guidance does not address issues pertaining to every type of entity or industry in regards to the completion of CbC Reports.

The OECD Final Report (page 31) includes detailed instructions and guidance on how to complete CbC Reports and should be reviewed in full in advance of completing CbC Reports.

The Reporting Entity should adopt a reasonable, practical and consistent approach to completion of CbC Reports.

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VII. Exchange of CbC Reports by the Authority

The Authority will annually exchange on an automatic basis the CbC Report received from each Reporting Entity that is resident in the Islands with all such other Competent Authorities of jurisdictions with respect to which the Cayman Islands has an agreement in effect, and in which, on the basis of the information in the CbC Report, one or more Constituent Entities of the MNE Group of the Reporting Entity are resident in the Islands.

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Appendix I: CbCR Notification

Each MNE Group with one or more Constituent Entities that is resident in the Cayman Islands must submit the following information to the Authority by the prescribed deadline in the form of an Excel file available on the CbCR Legislation & Resources document on the Authority’s website.

The following table provides a description of the fields to be included in the Excel file.

Field Name	Description
MNE Group	<i>Name of the MNE Group</i>
Fiscal Year End	<i>Fiscal Year End of MNE Group in format MM/DD</i>
Primary Contact	<i>The MNE Group must appoint a director or senior management-level employee of the MNE Group or its agent as the Primary Contact for all purposes of communication between the Authority and the MNE Group and/or its Constituent Entities resident in the Islands</i>
Last name	
First name	
Name of employer (if not within the MNE Group)	
Business address	
Email address	
Telephone	
Position within MNE Group or agent	
Authorization letter	<i>Upload contact’s letter of authorization from the MNE Group (in prescribed format)</i>

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Field Name	Description
Secondary Contact	<i>The MNE Group must appoint a director or senior management-level employee as the Secondary Contact in the event the Authority is unable to reach the Primary Contact</i>
Last name	
First name	
Business address	
Email address	
Telephone	
Position within MNE Group	
Ultimate Parent Entity (UPE)	<i>Complete for the MNE Group's single UPE</i>
UPE name	
UPE address	
UPE jurisdiction of tax residence*	
Surrogate Parent Entity (SPE)	<i>Complete for the MNE Group's single SPE, if any</i>
SPE name	
SPE address	
SPE jurisdiction of tax residence*	

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Field Name	Description
Constituent Entity(ies) (CE) resident in the Islands	<i>Complete for each of the MNE Group's Constituent Entities which resident in the Cayman Islands</i>
CE name	
CE address	<i>Provide the CE's registered office in the Islands</i>
CE registration number	<i>If the CE has been issued an Entity registered with the Cayman Islands General Registry provide the CE's registration number otherwise respond "NA"</i>
CE type	Select one: <ul style="list-style-type: none">• Company• Partnership• Trust
CE's FI number	<i>If the CE is a Cayman Financial Institution registered with the Authority on the AEOI Portal provide its FI number otherwise respond "NA"</i>
Is the CE regulation by CIMA?	Select one: <ul style="list-style-type: none">• Yes• No

**The words "jurisdiction of tax residence" is considered as incorporating a reference to "resident in the Islands" which for a Constituent Entity means:*

- (a) being incorporated or established in the Islands;*
- (b) having a place of effective management in the Islands; or*
- (c) being subject to financial supervision in the Islands.*

Appendix II: CbC Report template and instructions

The CbC Report must be submitted to the Authority electronically in the CbCR XML Schema prescribed by the OECD.

[TO BE INSERTED]

[The CbC Report template and instructions will be reproduced in this Guidance directly from the Schedule to the CbCR Regulations.]

*** END ***

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