

# Tax Information Authority



## CAYMAN ISLANDS

# CAYMAN ISLANDS Country-by-Country Reporting GUIDELINES

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These CbCR Guidelines replace the CbCR – Guidance Notes v1.1 and CbCR – Guidance v1.1 (Amendment) previously published on the DITC's website.

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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 (**BEPS**).

CbCR requires multinational enterprises (**MNE**) which meet certain criteria to file a country-by-country report (**CbC Report**) with tax administrations or tax authorities. The CbC Report 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 not less than 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). “Fiscal Year” means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements.

CbCR does not apply to Excluded MNE Groups. An Excluded MNE Group is a Group which does not meet the above-mentioned threshold. For this purpose, “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.

All relevant materials are available on the CbCR Legislation & Resources document on the Authority’s website:

- <https://www.ditc.ky/cbcr/cbcr-legislation-resources>

#### 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 Handbooks for Tax Administrations on [Effective Implementation](#) and [Effective Tax Risk Assessment](#).

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### C. Cayman Islands Law

The [Tax Information Authority \(International Tax Compliance \(Country-by-Country Reporting\) Regulations, 2017 \(CbCR Regulations\)](#) require Reporting Entities resident in the Islands to collect, maintain and report information for exchange with partner jurisdictions and impose a notification obligation on all Constituent Entities resident in the Islands.

The CbCR Regulations are made under the Tax Information Authority Act (2021 Revision) and establish the notification and reporting obligations of Constituent Entities resident in the Islands.

### D. 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 the CbCR Regulations are in force in the Cayman Islands rather than the OECD Model Legislation and that there are some differences between the OECD Model Legislation and the CbCR Regulations, particularly because the Cayman Islands is a non-reciprocal jurisdiction.

A number of terms used in these Guidelines are defined in the CbCR Regulations, and whilst these Guidelines provide 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 in these Guidelines to the 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 these Guidelines

These Guidelines on CbCR do not extend or restrict the scope of CbCR as implemented by the CbCR Regulations save in respect of the “soft opening” described below.

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

A Constituent Entity resident in the Islands must apply the CbCR Regulations in force at the time, with reference to any OECD explanatory materials for CbCR and these Guidelines, as applicable.

Constituent Entities resident in the Islands 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 (the “Authority”) whose functions are carried out by the Department for International Tax Cooperation (DITC).

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

Constituent Entities resident in the Islands have a notification obligation under the CbCR Regulations which must be performed by the Reporting Entity (defined herein as the UPE or SPE, as applicable) of their MNE Group.

Reporting Entities resident in the Islands must 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.

### **III. Key dates under CbCR in the Cayman Islands**

The deadline for first notification, or update to existing notification in respect of any subsequent Fiscal Year, is before the end of that relevant Fiscal Year.

The deadline for reporting in respect of any subsequent Fiscal Year is within 12 months of the end of that relevant Fiscal Year.

## IV. Registration, Notification and Reporting to the Authority

### A. Registration

The Reporting Entity of an MNE Group with Constituent Entities resident in the Islands must appoint the individuals who will be the Primary Contact and the Secondary Contact for those Constituent Entities. The requirements for notification of the Primary Contact and Secondary Contact are specified in the DITC Portal User Guide.

### B. Preparations for notification and reporting on the DITC Portal

Every Entity that is resident in the Islands must determine whether or not it is a Constituent Entity of an MNE Group for the purposes of the CbCR Regulations. A Constituent Entity that is resident in the Islands must identify the Reporting Entity of the MNE Group (which may be itself). The DITC requires a single notification to be made for all Constituent Entities resident in the Islands which are in the same MNE Group. The centralisation of responsibility by Constituent Entities for notification and reporting under CbCR is essential to the efficient functioning of the CbCR compliance process for both MNE Groups and the DITC.

The Reporting Entity is generally the Ultimate Parent Entity (UPE) of an MNE Group but, in certain exceptional cases, may instead be a Surrogate Parent Entity (SPE). The UPE is the 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 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.

Generally speaking, the UPE would know whether or not the Group meets the criteria – such as annual revenue of US\$850 million (€750 million) for its relevant Fiscal Year - to be an “MNE Group” for the purposes of CbCR and whether it has sufficient interest (such as majority equity ownership) in any particular entity to treat it as a “Constituent Entity” for the purposes of CbCR. The CbC Reporting requirements are directed at MNE Groups which the OECD expects to control approximately 90% of corporate revenues and pose the greatest potential BEPS risk; the above threshold will mean that an estimated 85 to 90% of all multinational enterprises are “Excluded MNE Groups” which are not in scope for CbCR.

The UPE of a Group should be able to confirm to any Cayman Islands subsidiary whether or not it is a Constituent Entity of an MNE Group. Cayman Islands subsidiaries should be able to identify their UPE by reviewing their Register of Members (or equivalent) and AML/KYC documents in any cases where the identity of the UPE is not already understood.

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In general, the ultimate parent entity (UPE) of an MNE group should prepare a CbC Report for each Fiscal Year of the group commencing on or after 1 January 2016 and file the report within 12 months of the end of the Fiscal Year with the tax authority in the jurisdiction where it is tax resident. An exception from this general rule applies where the MNE group had total consolidated revenues of less than US\$850 million (€750 million) in the immediately preceding fiscal period (or the near equivalent in a jurisdiction's domestic currency).

### C. 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 (CbC Report) with the Authority. For the avoidance of doubt, a Reporting Entity must comply with its reporting obligation under the CbCR Regulations even if it has a similar CbC reporting obligation in another jurisdiction or another Constituent Entity made a CbC Report in another jurisdiction. The Authority recognises that there may be some instances of duplication of CbC Reports for the same MNE Group.

#### 1. Reporting deadline:

The deadline for Reporting Entities resident in the Islands to make the CbC Report for their MNE Group is within 12 months of the end of that relevant Fiscal Year.

#### 2. The CbC Report (CbC XML File):

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. Please refer to the DITC Portal User Guide for instructions on CbC Reports, which include some additional validation rules to those specified in the OECD Final Report.

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

#### 3. The Reporting Procedure on the DITC Portal

Please refer to the DITC Portal User Guide for guidance on how to submit the CbC Report to the Authority via the DITC Portal.

#### 4. Possible duplication of Reporting

For the avoidance of doubt, a Reporting Entity must comply with its reporting obligation under the CbCR Regulations even if a CbC Report has been made or might be required in another jurisdiction. The Authority recognizes that there may be some instances of duplication of CbC Reports for the same MNE Group in different jurisdictions.

### D. Electronic Transmission for Notifications and Reporting

Constituent Entities and Reporting Entities must comply with their notification and reporting obligations to the Authority via the DITC Portal.

**E. 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 in the OECD Final Report as part of the normal reporting cycle.

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.

The Authority has the power to do all things necessary or convenient to be done for or in connection with the performance of its legal obligations and international commitments. In certain cases, the Authority may require a Reporting Entity resident in the Islands to provide information of the type that would otherwise be contained in a master file and/or a local file by the issuance of a request for such information.



## 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 Islands for tax purposes; and
- A Surrogate Parent Entity of an MNE Group resident in the 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<sup>1</sup> in the Islands;
- (b) having a place of effective management<sup>2</sup> in the Islands; or
- (c) being subject to financial supervision<sup>3</sup> 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 Entity that is resident in the Islands.

A Constituent Entity which is resident for tax purposes in more than one jurisdiction should be reported in respect of each such jurisdiction.

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, not being resident in the Islands, is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker may 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 may be determined in accordance with the provisions of Article 4 of the OECD Model Tax Convention and its accompanying Commentary if the relevant jurisdictions have a treaty based on that Model.

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<sup>1</sup> The word “established” includes partnerships and trusts that are formed in the Islands but does not include legal persons or legal arrangements formed outside the Islands.

<sup>2</sup> For example, this could refer to the place where key management and commercial decisions are made that 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 Islands that have a branch office in the Islands.

<sup>3</sup> For example, supervision by the Cayman Islands Monetary Authority.

### C. Investment Funds

As stated in paragraph 55 of the Action 13 Report, there is no general exemption for investment funds.

Therefore, the governing principle to determine an MNE Group is to follow the accounting consolidation rules.

For example, if the accounting rules instruct investment entities to not consolidate with investee entities (e.g. because the consolidated accounts for the investment entity should instead report fair value of the investment through profit and loss), then, subject to the deemed listing provision below, the investee entities should not form part of a Group or MNE Group (as defined in CbCR Regulations) or be considered as Constituent Entities of an MNE Group. This principle applies even where the investment entity has a controlling interest in the investee entity.

On the other hand, if the accounting rules require an investment entity to consolidate with an investee entity, such as where that investee entity provides services that relate to the investment entity's investment activities, then the investee entity should be part of a Group and should be considered as a Constituent Entity of the MNE Group (if one exists).

It is still possible for an investee entity, 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. Deemed listing provision

The deemed listing provision in the definition of the term "Group"<sup>4</sup> in the CbCR Regulations 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, taking into account, among other things, the jurisdiction's company law and/or regulations governing the relevant public securities exchange.

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.

In accordance with paragraph 55 of the Action 13 Report, neither the deemed listing provision nor these Guidelines should be interpreted as giving rise to any exemption from the obligation to file the CbC Report

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<sup>4</sup> i.e. "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;

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other than as set out in paragraph 52 of the Action 13 Report and the CbCR Regulations in relation to Excluded MNE Group.

References in the CbCR Regulations to “public securities exchange” shall include the Cayman Islands Stock Exchange (CSX).<sup>5</sup>

### E. 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.

### F. Definition of total consolidated group revenue

In determining whether the total consolidated group revenue of an MNE Group is less than US\$850 million (or near equivalent amount in local currency as of the end of the relevant Fiscal Year, all of the revenue that is (or would be) reflected in the consolidated financial statements should be used. A jurisdiction where the Ultimate Parent Entity resides is allowed to require inclusion of extraordinary income and gains from investment activities in total consolidated group revenue if those items are presented in the consolidated financial statements under applicable accounting rules.

For financial entities, which may not record gross amounts from transactions in their financial statements with respect to certain items, the item(s) considered similar to revenue under the applicable accounting rules should be used in the context of financial activities. Those items could be labelled as ‘net banking product’, ‘net revenues’ or others depending on accounting rules. For example, if the income or gain from a financial transaction, such as an interest rate swap, is appropriately reported on a net basis under applicable accounting rules, the term ‘revenue’ means the net amount from the transaction.

An MNE Group that complies with the rules of the jurisdiction of the Ultimate Parent Entity or the Surrogate Parent Entity on the calculation of consolidated group revenue for purposes of determining its CbC filing obligations, should not be exposed to local filing in any other jurisdiction provided the rules of the jurisdiction where the Ultimate Parent Entity/Surrogate Parent Entity is resident for tax purposes are consistent with the Action 13 minimum standard, as supplemented by the Implementation Guidance.

An MNE Group which is not required to prepare Consolidated Financial Statements in its residence jurisdiction, for example because it does not have its equity interests traded on a public securities exchange, may still prepare Consolidated Financial Statements. These may be, for example, for use by investors and lenders. In some cases, these may be prepared using generally accepted accounting principles other than those that must be used for the purposes of determining the existence and membership of a “Group” in regulation 2 of the CbCR Regulations.<sup>6</sup> In these cases, the MNE Group is still required to calculate total consolidated group revenue for the purposes of the definition of “Excluded

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<sup>5</sup> <https://www.csx.ky/>

<sup>6</sup> The definition of “Group” in regulation 2 of the CbCR Regulations corresponds to Article 1.1 of the OECD Model Legislation.

MNE Group” in regulation 2 of the CbCR Regulations<sup>7</sup> based on the accounting standards to be used for identifying a Group for the purposes of regulation 2.

## VI. Effective Implementation

The Cayman Islands has legal mechanisms in place to enforce compliance with the OECD minimum standard regarding CbCR, including the notification mechanisms that apply to all Constituent Entities. There are also penalties in place in relation to the registration of a CbC reporting obligation and notifications in relation thereto: (i) penalty for failure to comply with CbCR filing requirements, (ii) daily default penalty, and (iii) penalties for inaccurate information. In addition, any Constituent Entity of a MNE Group that is resident in the Islands is obliged to keep records of the information related to CbCR for six years and to make the information available to the Authority for inspection within a specified time frame and failure to comply constitutes an offence liable to a fine or imprisonment.

## 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. The CbC Report will be included in the Cayman Islands’ CbC Message transmitted to any other jurisdiction in which a Constituent Entity contained in the CbC Report is resident for tax purposes if the Cayman Islands has a Qualifying Competent Authority Agreement in effect with that jurisdiction.

### A. 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, such as the US, that are not party to the MCAA.

### B. The Common Transmission System (CTS)

The Authority will transmit a separate CbC Message to each Receiving Country which has Constituent Entities in the CbC Reports it contains. Each Receiving Country will transmit a CbC Status Message to the Authority confirming whether the CbC Message is accepted or declined and, if accepted, whether there are any record level errors that must be corrected by the relevant Reporting Entities. With the exception of transmissions to and from the United States Internal Revenue Service, all transmission of CbC Messages and CbC Status Messages will be made via the OECD’s Common Transmission System (CTS). Transmissions to and from the IRS will be made via the IRS International Data Exchange Service (IDES).

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<sup>7</sup> The definition of “Excluded MNE Group” in regulation 2 of the CbCR Regulations corresponds to Article 1.3 of the Model Legislation.

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### C. Confidentiality

The Cayman Islands is a participating jurisdiction 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.

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 20A of the Tax Information Authority Act (2021 Revision).

## VIII. DITC Portal

All Cayman Islands entities which have obligations under the CbCR Regulations must fulfill their notification and reporting obligations via the DITC Portal in accordance with the procedures set out in the DITC Portal User Guide.

The DITC Portal User Guide is available here:

- <https://www.ditc.ky/cbcr/cbcr-legislation-resources/>

The DITC Portal can be accessed here:

- <https://ditcportal.secure.ky/login>

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