



MINISTRY OF  
FINANCIAL SERVICES  
& HOME AFFAIRS  
CAYMAN ISLANDS GOVERNMENT

## INDUSTRY ADVISORY

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### Country-by-Country Reporting (CbCR): Preparations for Launch of CbCR Portal

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Industry is advised of the following points in advance of the publication of CbCR Guidance and the launch of the Cayman Islands CbCR Portal by the Department for International Cooperation (DITC), expected in early March 2018.

#### 1. Preparations for notification and reporting on the CbCR 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) because, as described in section 2 below, the DITC requires a single notification to be made for all Constituent Entities resident in the Islands which are in the same MNE Group. Centralisation of responsibility will make CbCR compliance process more manageable and efficient for both the DITC and MNE Groups. The DITC is permitting the “soft-opening” of CbCR described in sections 2 and 3 in order to allow MNE Groups time to gather the information needed to proceed on this basis.

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. 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 of a Group must identify all of its subsidiaries in order to prepare Consolidated Financial Statements and would know whether or not the Group meets the criteria – such as annual revenue of €750 million for its 2016 Fiscal Year - to be an “MNE Group” for the purposes of CbCR under the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project. Most jurisdictions participating in CbCR required their resident Constituent Entities and Reporting Entities to complete their notification and reporting obligations, as applicable, by 31 December 2017. It follows that 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.

The CbCR Regulations permit an MNE Group to select a Cayman Islands Constituent Entity as the Surrogate Parent Entity in certain exceptional circumstances.

## **2. Notification on the CbCR Portal**

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 Primary Contact may be an agent of the Reporting Entity. The Secondary Contact must be a fiduciary or management level employee of the Reporting Entity. The Primary Contact and the Secondary Contact need not be resident in the Islands.

The Primary Contact must create a single profile on the CbCR Profile for his/her MNE Group by completing the simple two-part notification process with respect to all the MNE Group’s Constituent Entities resident in the Islands. In Part 1, the Primary Contact must name the MNE Group, the UPE, the SPE (if any), provide contact information for the Primary Contact and the Secondary Contact, and upload the Reporting Entity’s Authorisation Letter appointing the Primary Contact and the Secondary Contact with respect to all the MNE Group’s Constituent Entities resident in the Islands which must be listed in the Schedule.

The DITC will review Part 1 and then provide the Primary Contact with login credentials required for Part 2, including the DITC’s unique “CbCR ID” for the MNE Group. In Part 2, the Primary Contact must upload the CSV file which lists all those Constituent Entities and include each Constituent Entity’s name, address, registration number issued by the General Registry (if applicable, type of entity, FI number issued by the DITC (if a Cayman Financial Institution), and confirm whether or not it is regulated by the Cayman Islands Monetary Authority. The DITC will publish the prescribed templates for the Authorisation Letter and CSV file when it publishes the CbCR Guidance.

The notification deadlines with respect to Constituent Entities of an MNE Group with respect to its Fiscal Year beginning on or after 1 January 2016 are as follows:

- a) 15 May 2018, if Reporting Entity is resident in the Islands; or
- b) 30 September 2018, if the Reporting Entity is not resident in the Islands.

The TIA will treat Constituent Entities as being in compliance with their notification obligation and will not initiate enforcement action provided the notification obligation is complied with by the relevant deadline stated above. This provides a grace period beyond the deadline prescribed by the CbCR Regulations.

### **3. CbC Report**

A Reporting Entity resident in the Islands must make its first CbC Report by 31 May 2018 if the CbCR Regulations require it to make its first CbC Report on or before 31 May 2018. As mentioned in the case of the notification obligation, this provides Reporting Entities with a grace period beyond the deadline prescribed by the CbCR Regulations.

The CbC Report must be made via the CbCR Portal by uploading an XML file in the format prescribed by the OECD. It will be necessary to include the unique “CbCR ID” number for the MNE Group which the DITC provides to the Primary Contact during the notification process. The CbCR Portal will not include a “Manual Entry Return” facility for making CbC Reports.

A Reporting Entity resident in the Islands must make a CbC Report via the CbCR Portal even if that results in duplication because a CbC Report for the same MNE Group has already been made to another Competent Authority, for instance where the MNE Group purported to appoint a Surrogate Parent Entity in another participating jurisdiction or where a Reporting Entity resident in the Islands is also resident for tax purposes in another participating jurisdiction.

### **4. 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 CbC reporting obligation and notification: (i) penalty for failure to comply with CbC 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 Cayman Islands is obliged to keep records of the information related to CbC for six years and to make the information available to TIA for inspection within a specified time frame and failure to comply constitutes an offence liable to a fine or imprisonment.

**5. Information on CbCR Legislation and Resources**

Please check the DITC's [CbCR Legislation and Resources](#) webpage for further information.

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