



BEPS Country-by-Country Reporting

British Virgin Islands

29 October 2018

The Government of the BVI has begun implementing the requirements from the *“Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report”* (the *“Report”*), published by the Organisation for Economic Co-operation and Development (*“OECD”*).

Publication of legislative amendments

The BVI is a member of the OECD’s Inclusive Framework on Base Erosion and Profit Shifting (*“BEPS”*), which brings together over 100 jurisdictions to collaborate on the implementation of the OECD BEPS Package. All OECD and G20 countries have committed to implementing Country-by-Country Reporting (*“CbCR”*).

On 4 October 2018, the Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2018 (the *“2018 Amendment”*) was published in the BVI Official Gazette. The 2018 Amendment introduces the new requirements of CbCR to the BVI as required by the Report. The BVI International Tax Authority (*“ITA”*) is the relevant competent authority.

Application of the CbCR

CbCR, as implemented by the 2018 Amendment, only applies to multinational enterprise groups resident for tax purposes in the BVI with consolidated group revenue of 750 million Euro or more during the previous fiscal year (*“MNE Groups”*). Groups with consolidated group revenue of less than 750 million Euro are excluded and do not need to take any steps to comply with CbCR.

However, BVI entities resident for tax purposes which are constituent entities of MNE Groups (*“Constituent Entities”*) will be required to take certain steps to comply.

Does CbCR apply to investment funds?

While there is no general exemption within BEPS for investment funds, the governing principle for investment funds and partnerships to determine an MNE Group is to follow the accounting consolidation rules.



For example, if investment entities do not consolidate with investee companies (for example, because the consolidated accounts for the investment entity should instead report fair value of the investment through profit and loss), then the investee companies should not form part of a Group or MNE Group 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 company.

What steps need to be taken by Constituent Entities which are Reporting Entities?

When a BVI resident Constituent Entity is also the ultimate parent entity (or, in certain circumstances, a surrogate parent entity appointed by the MNE Group as substitute) of an MNE Group (a “Reporting Entity”) it is required to notify the ITA that it is the Reporting Entity.

A BVI resident Reporting Entity must also file a Country-by-Country Report (“CbC Report”) containing specified data to the ITA which will, in turn, disseminate it to jurisdictions with which it has an agreement to exchange such information.

What steps need to be taken by Constituent Entities which are not Reporting Entities?

A Constituent Entity which is not the Reporting Entity of an MNE Group does not need to file a report. However, it is required to notify the ITA that it is a member of an MNE Group, and of the identity and tax residence of the MNE Group’s Reporting Entity.

When must notification be submitted?

Notification must be submitted no later than the last day of the reporting fiscal year of the MNE Group. Therefore (subject to any extension by the ITA), the first notifications, for entities with a 1 January 2018 fiscal year, will need to be completed by 31 December 2018.

What is the deadline for submission of a CbC Report?

A CbC Report must be submitted no later than twelve months after the last day of the reporting fiscal year of an MNE Group. Therefore (subject to any extension by the ITA), the first reports, for Reporting Entities with a 1 January 2018 fiscal year, will be due 31 December 2019.

Effective implementation

A Constituent Entity (including those that are also Reporting Entities) of an MNE which fails to register with the ITA in accordance with this section commits an offence and is liable on conviction to a fine not exceeding US\$100,000.

Next steps

Notifications and CbC Reports will need to be submitted via a dedicated ITA portal. It is anticipated the ITA will publish further guidance and practical information shortly.



Contacts

Walkers can assist with any questions you may have in relation to the above or regulatory matters more generally. For further information please speak with your usual contact at Walkers or one of the following:

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