

Country by Country Reporting - Channel Island Legislation

Publication - 02/06/2020

Background

The Channel Islands have demonstrated their commitment to the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Sharing project (BEPS) which included the Transfer Pricing Documentation and Country-by-Country Reporting – Action 13: Final Report (the **OECD Final Report**) which recommended the introduction of country-by-country reporting (**CbC Reporting**).

Both Jersey and Guernsey introduced in late 2016 local regulations to ensure that CbC Reporting is conducted in each island in accordance with the minimum requirements prescribed by the BEPS agenda.

CbC Reporting is one limb of a three tiered reporting approach recommended by the OECD with the aim of creating a transparent, coherent, modern international tax regime. The tiers comprise of CbC Reporting, the Master File, and the Local File.

Country-by-Country Report

Companies are required to provide details on an annual basis for each jurisdiction in which they do business and collate information relating to the global allocation of the Multinational Enterprise Group (MNEs) income and taxes.

MNEs are in summary, any group that has a consolidated annual turnover of no less than €750million which includes at least two 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 it carries out through a permanent establishment in another jurisdiction.

Master File

The master file's purpose is to provide a high-level overview of the MNE group business, including the nature of its global business operations with standardised information on all group members.

Local File

The local file is designed to supplement the master file by providing detailed information relating to transactions between local entities and affiliates and would be prepared by each local entity.

The obligation to file a Master File and Local File has not been introduced in either Jersey or Guernsey.

Jersey

The States of Jersey passed the Taxation (Implementation) (International Tax Compliance) Country-by-Country Reporting: BEPS) (Jersey) Regulations on 14 December 2016 (the **Jersey**

Regulations) which introduces an obligation on:

- any Jersey Entity (as defined in the Jersey Regulations); and
- where applicable Constituent Entities (as defined in the Jersey Regulations) in respect of which the Jersey Entity is required to prepare consolidated financial statements or would be so required if its equity interests were traded on a public securities exchange,

to notify and if required file a CbC Report.

Reporting

The reporting obligations under the Jersey Regulations apply to MNEs with an annual consolidated group revenue of €750million or more for an accounting period of 12 months prior to the filing of the CbC Report. There is therefore no obligation under the Jersey Regulations for companies which are part of a group with less than €750million in turnover to submit a CbC Report.

Filings

The Jersey Regulations state that CbC Reports are required to be filed with the Comptroller of Taxes in Jersey (the **Comptroller**) in respect of the accounting period beginning on or after 1 January 2016 no later than 12 months after the end of the accounting period to which a CbC Report relates.

All CbC Reports are required to be filed in accordance with Annex III of the OECD Final Report which sets out the model template for CbC Reports.

Notifications

Regardless of whether a Jersey Entity is required to submit a CbC Report or not, any Jersey Entity that is a member of an MNE group is required to notify the Comptroller of its intention to either submit a CbC Report or if no CbC Report will be filed in Jersey, where the CbC Report will be filed. The filing deadline for those entities that will file a CbC Report is by the end of the accounting period to which the CbC Report relates.

Penalties

The penalty for failing to comply with the filing obligation or failing to notify the Comptroller of the intention to file a CbC Report is £300. A further penalty is imposed if the breach has not been rectified for each subsequent day on which the failure continues at an amount not exceeding £60 each day but may increase to an amount not exceeding £1,000 per day if the default is continuing beyond 30 days. A penalty not exceeding £3,000 is reserved for the situation where a person has knowingly provided inaccurate information when filing the CbC Report and has failed to inform the Comptroller of such inaccuracy or where the person discovers the inaccuracy after the information has been provided to the Comptroller and fails to take reasonable steps to inform the Comptroller.

Guernsey

The States of Guernsey passed the Income Tax (Approved International Agreements) (Implementation) Country by Country Reporting) Regulations 2016 on 20 December 2016 (the **Guernsey Regulations** and together with the Jersey Regulations, the **Regulations**) which introduces an obligation on Constituent Entities (as defined in the Guernsey Regulations) which are resident for tax purposes in Guernsey to notify and if required file a CbC Report.

Reporting

The reporting obligations under the Guernsey Regulations apply to MNEs with an annual consolidated group revenue of €750million or more for an accounting period of 12 months prior to the filing of the CbC Report. There is therefore no obligation under the Guernsey Regulations for companies which are part of a group with less than €750million in turnover to submit a CbC Report.

Filings

The Guernsey Regulations state that CbC Reports are required to be filed with the Director of Income Tax in Guernsey (the **Director**) in respect of the accounting period beginning on or after 1 January 2016 and every annual accounting period thereafter no later than 12 months after the end of the accounting period to which a CbC Report relates.

All CbC Reports are required to be filed in accordance with Annex III of the OECD Final Report which sets out the model template for CbC Reports.

Notifications

Regardless of whether a Constituent Entity is required to submit a CbC Report or not, they are required to notify the Director of its intention to either submit a CbC Report or if no CbC Report will be filed in Guernsey, the name and country of residence of the reporting entity which will be filing the CbC Report by 30 November in the year following the last day of the accounting period. The filing deadline for those entities that will file a CbC Report is no later than 12 months after the end of the accounting period to which the CbC Report relates.

Penalties

A Reporting Entity (as defined in the Guernsey Regulations) which without reasonable excuse fails to comply with the filing obligation of a CbC Report is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.

The penalty for failing to comply with the filing obligation or notify the Director of the intention to file a CbC Report is £300. A further penalty is imposed if the breach has not been rectified for each subsequent day on which the failure continues at an amount not exceeding £50 each day. There are also penalties for providing false, deceptive or misleading information.

Conclusion

The impact of the Regulations has not been far reaching and in our experience has not impinged on the way Jersey and Guernsey companies report, given that there will be very few companies in the Channel Islands that:

- are part of a group with an annual turnover of €750million;
- are the ultimate parent in a Group such that they would have to file a CbC Report; and
- are part of a Group where another entity would not be better placed to make a CbC Report filing in a separate jurisdiction.

The entities affected by the Regulations are likely to be those financial and insurance institutions which form part of large multinational groups. However, even then, those entities are unlikely to be entities who would generally be expected to make the filing and their obligation under the Regulations is likely to be limited to notifying the Comptroller (in the case of Jersey) and the Director (in the case of Guernsey) as to where the CbC Report for its group will ultimately be filed.

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Meet the Authors



Marcus Leese
Partner
Guernsey, Hong Kong
marcus.leese@ogier.com
T+44 1481 737152
M+44 7797 819856



Matthew Shaxson
Group Partner, Ogier Legal L. P.
Jersey
matthew.shaxson@ogier.com
T+44 1534 514064



Rebekah Agyeman
Senior Associate
Jersey
rebekah.agyeman@ogier.com
T+44 1534 514039
M+44 7797 778526



Michaela Jesson
Consultant
Guernsey
michaela.jesson@ogier.com
T+44 1481 721672

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