

## Cayman Islands

### Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. The Cayman Islands implementation of the Action 13 minimum standard meets all applicable terms of reference. The report therefore contains no recommendation.

#### *Part A: Domestic legal and administrative framework*

2. The Cayman Islands has rules (primary and secondary laws) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the Cayman Islands. The first filing obligation for a CbC report in the Cayman Islands commences in respect of fiscal years starting on or after 1 January 2016. The Cayman Islands meets all the terms of reference relating to the domestic legal and administrative framework.<sup>1</sup>

#### *Part B: Exchange of information framework*

3. The Cayman Islands is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016. It is also a signatory to the CbC MCAA and has provided its notifications under Section 8 of this agreement. The Cayman Islands intends to have the CbC MCAA in effect with all other Competent Authorities which provide notifications under the same agreement As of 12 January 2018, the Cayman Islands has 44 bilateral relationships activated under the CbC MCAA or exchanges under a bilateral Competent Authority Agreement (CAA). The Cayman Islands has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time the Cayman Islands meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.<sup>2</sup>

#### *Part C: Appropriate use*

4. The Cayman Islands is a non-reciprocal jurisdiction and so will not receive CbC Reports submitted to tax authorities in other jurisdictions and will not apply local filing. As such, it is not necessary to reach any conclusions with respect to compliance with Part C.

## Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. The Cayman Islands has primary and secondary laws (hereafter the “Regulations”) in place for implementing the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.<sup>3</sup> Guidance was not published.<sup>4</sup>

### *(a) Parent entity filing obligation*

Summary of terms of reference:<sup>5</sup> Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. The Cayman Islands has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).<sup>6</sup>

8. No inconsistencies were identified with respect to the Cayman Island’s domestic legal framework in relation with the parent entity filing obligation.<sup>7</sup>

### *(b) Scope and timing of parent entity filing*

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Cayman Islands would apply in respect of fiscal years beginning on or after 1 January 2016.<sup>8</sup> The CbC report must be filed no later than 12 months after the last day of the reporting fiscal year of the MNE Group relates.<sup>9</sup> It is noted that Article 6 (3) of the Regulations extend the filing deadline with respect to the Reporting Fiscal Year that began on or before 31 March 2016 until no later than 31 March 2018. This will be monitored to ensure that the filing deadline in these cases will not impact the ability of the Cayman Islands to meet its obligations relating to the exchange of information under the terms of reference.<sup>10</sup>

10. Article 6(2) of the Regulations refers to a schedule to the regulations which also contains instructions (in part two of this schedule). These instructions notably include a definition of “Revenues”, as comprising “the sum of revenues of all Constituent Entities of the MNE Group in the relevant jurisdiction generated from transactions with associated enterprises”. However, interpretative guidance issued by the OECD in April

2017<sup>11</sup> explains that “for the third column of Table 1 of the CbC report, the related parties, which are defined as “associated enterprises” in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report”. It is expected that the Cayman Islands issue an updated interpretation or clarification of the definitions of "Revenues – Unrelated Party" and "Revenues – Related Party" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

***(c) Limitation on local filing obligation***

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. The Cayman Islands is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and confirms that it will not apply local filing.

***(d) Limitation on local filing in case of surrogate filing***

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. The Cayman Islands is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and confirms that it will not apply local filing. The Cayman Islands’ legislation requires a surrogate parent entity to file in the Cayman Islands when such surrogate parent has been appointed by the MNE Group to do so. Surrogate filing shall occur only when certain conditions are met.<sup>12</sup>

***(e) Effective implementation***

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting’s effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. The Cayman Islands has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to all Constituent Entities in the Cayman Islands.<sup>13</sup> 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,<sup>14</sup> (ii) daily default penalty<sup>15</sup> and (iii) penalties for inaccurate information.<sup>16</sup> 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 Authority for inspection within a specified time frame and failure to comply constitutes an offence liable to a fine or imprisonment.<sup>17</sup>

15. There are no specific processes in place that would allow to take appropriate measures in case the Cayman Islands is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

### Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017), the Cayman Islands has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the Cayman Islands. The Cayman Islands meets all the terms of reference relating to the domestic legal and administrative framework.

## Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. The Cayman Islands is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (“the Convention”),<sup>18</sup> in force since 1 January 2014 and in effect for 2016, and to (ii) a bilateral double taxation arrangement with the United Kingdom as well as to bilateral Tax Information Exchange Agreements with the United States, the Isle of Man and Guernsey, which allow for Automatic Exchange of Information.

19. The Cayman Islands signed the CbC MCAA on 21 June 2017 and submitted a full set of notification under section 8 of the CbC MCAA on 27 November 2017. The Cayman Islands intends to have the CbC MCAA in effect with all other Competent Authorities which provide notifications under the same agreement. As a non-reciprocal jurisdiction, the Cayman Islands does not seek for any country to send information to the

Cayman Islands pursuant to the CbC MCAA. As of 12 January 2018, the Cayman Islands has 44 bilateral relationships activated under the CbC MCAA<sup>19</sup> or exchanges under a bilateral Competent Authority Agreement (CAA).<sup>20</sup> The Cayman Islands has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time the Cayman Islands meets the terms of reference regarding the exchange of information framework.

### *Conclusion*

20. Against the backdrop of the still evolving exchange of information framework, at this point in time the Cayman Islands meets the terms of reference regarding the exchange of information framework.

## **Part C: Appropriate use**

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) Jurisdictions should have in place mechanisms (such as legal or administrative measures) to ensure that CbC reports which are received through exchange of information or by way of local filing are used appropriately (paragraphs 12 (a) of the terms of reference).

22. The Cayman Islands is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and will not apply local filing. As such, it is not necessary for this peer review evaluation to reach any conclusion with respect to the Cayman Islands' compliance with paragraph 12 (a) of the terms of reference (OECD, 2017) on appropriate use.<sup>21</sup>

### *Conclusion*

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), the Cayman Islands is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and will not apply local filing. As such, it is not necessary for this peer review evaluation to reach any conclusion with respect to this paragraph of the terms of reference.

## Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	Not applicable.

### Notes

<sup>1</sup> Paragraph 8 of the terms of reference (OECD, 2017).

<sup>2</sup> Paragraph 9 (a) of the terms of reference (OECD, 2017).

<sup>3</sup> Primary law consists the Tax Information Authority Law which gives effect to the terms of scheduled Agreements, which include the Convention on Mutual Administrative Assistance in tax matters (as amended by the Protocol) and bilateral agreements for the provision of information for tax purposes including the Automatic Exchange of Information.

Secondary law consists of the “Tax Information Authority (International Tax Compliance) (Country-by-Country Reporting) Regulations, 2017” (hereafter the “Regulations”): “Industry Advisory: Issue of CbCR Regulations & Consultation on CbCR Guidance”, [www.tia.gov.ky](http://www.tia.gov.ky) (accessed 11 April 2018).

<sup>4</sup> As per the Tax Information Authority, the domestic CbCR Guidance Notes is in the process of being finalised: [www.tia.gov.ky/pdf/CbCR\\_Legislation.pdf](http://www.tia.gov.ky/pdf/CbCR_Legislation.pdf) (accessed 11 April 2018).

<sup>5</sup> The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

<sup>6</sup> See Article 4 of the Regulations.

<sup>7</sup> It is noted that the term “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 Cayman Islands indicates that these provisions would cover the cases of fiscally transparent entities (e.g. partnerships). This would also apply in the context of parent entity filing as a “Ultimate Parent Entity” is a Constituent Entity.

<sup>8</sup> See Article 3 of the Regulations.

<sup>9</sup> See Articles 6(3) of the Regulations.

<sup>10</sup> Paragraph 9 (d) of the terms of reference (OECD, 2017).

<sup>11</sup> [www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf](http://www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf) (OECD, 2018).

<sup>12</sup> See Article 4 (2) of the regulations: the conditions under this article reflect the conditions set in paragraphs 8 c) iv. a) b) and c) of the terms of reference (OECD, 2017) for local filing requirements.

<sup>13</sup> See Article 5 of the Regulations.

<sup>14</sup> See Article 16 of the Regulations. A person who fails to comply with any CbC obligation under these Regulations is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of six months, or to both. Article 17 of the Regulations may also impose an administrative penalty of four thousand dollars.

<sup>15</sup> See Article 19 of the Regulations. Failure to pay the administrative penalty imposed under Regulation 17 shall be liable to an additional penalty of an amount of two hundred dollars for each day during which the penalty imposed under regulation 17 remains unpaid.

<sup>16</sup> See Article 20 of the Regulations. A person is liable to an administrative penalty of 5,000 dollars, if the person provides inaccurate information when filing a CbC report and condition A or B is met: (A) the person knows of the inaccuracy at the time it is provided but does not inform the Authority of the inaccuracy at that time or (B) the person discovers the inaccuracy after the information is provided in the Report to the Authority and fails to take reasonable steps to inform the Authority of the inaccuracy.

<sup>17</sup> See Articles 10 and 16 of the Regulations.

<sup>18</sup> The Cayman Islands is a Party to the Convention on Mutual Administrative Assistance in Tax Matters by way of the United Kingdom's territorial extension.

<sup>19</sup> It is noted that some Qualifying Competent Authority agreements are not in effect for fiscal year 2016 with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notification under Section 8 of the CbC MCAA.

<sup>20</sup> Bilateral CAA with the United Kingdom.

<sup>21</sup> Article 7 of the Regulations states that (1) the Authority shall use the CbC Report and any other information obtained pursuant to these Regulations for purposes of collaboration on compliance and enforcement with other Competent Authorities pursuant to a Qualifying Competent Authority Agreement and (2) the Authority shall preserve the confidentiality of the information contained in the Country-by-Country Report at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

## References

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**From:**  
**Country-by-Country Reporting – Compilation of  
Peer Review Reports (Phase 1)**  
Inclusive Framework on BEPS: Action 13

**Access the complete publication at:**  
<https://doi.org/10.1787/9789264300057-en>

**Please cite this chapter as:**

OECD (2018), “Cayman Islands”, in *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1): Inclusive Framework on BEPS: Action 13*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264300057-21-en>

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