Guernsey

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. Guernsey’s implementation of the Action 13 minimum standard meets all applicable terms of reference in relation to its domestic legal and administrative framework. The report, therefore, contains no recommendation.

Part A: Domestic legal and administrative framework

2. Guernsey has rules (primary and secondary laws as well as guidance) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group (“MNE” Group) that is resident for tax purposes in Guernsey. The first filing obligation for a CbC report in Guernsey commences in respect of reporting fiscal years beginning on or after 1 January 2016. Guernsey meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: Exchange of information framework

3. Guernsey 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, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with a large number of signatories of this agreement which provide notifications. Guernsey 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). It is noted that Guernsey has signed four bilateral Competent Authority Agreements (CAAs) with the United States, the Isle of Man, United Kingdom and Jersey. Guernsey also indicates that two additional jurisdictions have expressed interest to sign a bilateral CAA with Guernsey. As of 12 January 2018, Guernsey has 50 bilateral relationships activated under the CbC MCAA and exchanges under bilateral CAAs. Against the backdrop of the still evolving exchange of information framework, at this point in time Guernsey meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.

Part C: Appropriate use

4. There are no concerns to be reported for Guernsey. Guernsey indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD Guidance on the appropriate use of information contained in Country-by-Country reports (OECD, 2017a). It has provided details in relation to these
measures, enabling it to answer “yes” to the additional questions on appropriate use. Guernsey meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.

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. Guernsey has primary law (the “ITL”) and secondary law (the “CbCR Regulations”) in place which implements the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations. Guidance has also been published.

(a) Parent entity filing obligation

Summary of terms of reference: 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. Guernsey 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).

8. No inconsistencies were identified with respect to the parent entity filing obligation.

(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 Guernsey commences in respect of reporting fiscal years beginning on or after 1 January 2016. The CbC report must be filed by no later than 12 months after the last day of the reporting fiscal year of the MNE Group.

10. 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).

11. Guernsey has introduced local filing requirements in respect of accounting periods beginning on or after 1 January 2016.\textsuperscript{11} No inconsistencies were identified with respect to the limitation on local filing obligation.

(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).

12. Guernsey’s local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.\textsuperscript{12} No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) **Effective implementation**

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).

13. Guernsey has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to any Constituent Entity resident for tax purposes in Guernsey.\textsuperscript{13} There are also penalties in relation to the filing and notification for filing of a CbC report:\textsuperscript{14} (i) penalties for failure to file, and (ii) penalties for late filing.

14. Guernsey indicates that in addition to the overriding obligation for Reporting Entities to submit CbC reports under Regulation 4 of the CbCR Regulations, it has enforcement powers in place to compel the production of a CbC report under Regulation 5.\textsuperscript{15}
15. There are no specific processes in place that would allow the Director of Income Tax to take appropriate measures in case he 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. However, Guernsey notes that under Regulation 5, the Director could use, for example, Section 75B of the ITL (together with all other relevant provisions of the information gathering powers contained in Part VIA of the ITL) in order to compel production of information to corroborate information in the submitted report. This process is, therefore, the same process that the Director utilises when administering the Income Tax Law in respect of the domestic tax base. Having compelled a Reporting Entity to provide the required information, if it was established that incorrect/incomplete information had been provided, the CbCR Regulations then enable the Director to consider what appropriate action he may wish to take to impose sanctions for any such failures. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Guernsey has a domestic legal and administrative framework to impose and enforce CbC requirements on the UPE of an MNE Group that is resident for tax purposes in Guernsey. Guernsey 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 framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

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. Guernsey has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to (i) the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD/Council of Europe, 2011) (the “Convention”), as amended by the 2010 Protocol, (in force on 1 August 2014 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements (DTAs) and certain amended Tax Information Exchange Agreements (TIEAs), which allow Automatic Exchange of Information in the field of taxation.

19. Guernsey signed the CbC MCAA on 21 October 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 13 June 2017. It intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement and has taken steps to have Qualifying Competent Authority Agreements (QCAAs) 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). Guernsey also indicates that additional bilateral CAAs are under negotiation and Guernsey has a policy of entering into such agreements with all interested parties. It is noted that Guernsey has signed four bilateral CAAs with the United States, the Isle of Man, United Kingdom and Jersey. The intention is to have an additional bilateral CAA with Bermuda which will cover the first fiscal year beginning on or after 1 January 2016. Guernsey also indicates that two additional jurisdictions have expressed interest to sign a bilateral CAA with Guernsey. As of 12 January 2018, Guernsey has 50 bilateral relationships activated under the CbC MCAA and exchanges under bilateral CAAs. Against the backdrop of the still evolving exchange of information framework, at this point in time Guernsey meets the terms of reference.

**Conclusion**

20. Against the backdrop of the still evolving exchange of information framework, at this point in time Guernsey 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: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

22. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Guernsey indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD Guidance on the appropriate use of information contained in Country-by-Country reports (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use.

23. There are no concerns to be reported for Guernsey in respect of the aspects of appropriate use covered by this annual peer review process.
Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Guernsey. Guernsey thus meets these terms of reference.
Summary of recommendations on the implementation of Country-by-Country Reporting

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Notes

1 Paragraph 8 of the terms of reference (OECD, 2017b).

2 Paragraph 9 (a) of the terms of reference (OECD, 2017b).

3 These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

4 Paragraph 12 (a) of the terms of reference (OECD, 2017b).


6 Guernsey indicates that Regulation 10 of the CbCR Regulations has provision for the Director to issue guidance notes for practical guidance in respect of these Regulations and that the content of such guidance notes would be considered to be ‘binding’: www.gov.gg/GuernseyGuidance (accessed 20 April 2018).

7 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, 2017b).

8 See Regulation 1 and Schedule 1 of the CbCR Regulations.

9 See Regulation 4(1) of the CbCR Regulations.

10 See Regulation 4(3) of the CbCR Regulations.

11 See paragraph 2 of Schedule 1 and Regulation 4(3) of the CbCR Regulations.

12 See paragraph 3 of Schedule 1 of the CbCR Regulations.

13 See Regulation 4(1) and paragraph 2 of Schedule 1 of the CbCR Regulations. Guernsey indicates that a reporting entity will be required to register with the Guernsey reporting portal (the Information Gateway Online Reporter “IGOR”) and a similar suite of administrative tools that is currently being used for all FATCA and CRS Reporting, will be developed for CbC Reporting to ensure that all CbC reports are filed by their filing deadline.

14 Under Regulation 4(4) - Reporting Entities that fail to comply with the CbC filing requirements are guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one year and to a fine not exceeding twice level 5 of the uniform scale, or both.
Regulation 6 provides for civil enforcement sanction for failing to make timely returns – the civil penalties being applied in accordance with section 193 of the ITL, which equates to an initial penalty of up to GBP 300 (pounds) and continuing daily penalties of up to GBP 50 for each subsequent day of non-compliance. The result of this, being that, penalties of GBP 18 500 would accrue per annum in the case of continuing non-compliance.

Regulation 7 provides a criminal sanction where a Reporting Entity for failing to comply with the CbC Reporting Obligations, including fraudulent filings cross referencing to section 201 of the ITL (where the provisions include, on summary conviction imprisonment for a term not exceeding two years and to a fine not exceeding twice level 5 of the uniform scale, or both; and on indictment, imprisonment for a term not exceeding five years and to a fine not exceeding four times level 5 of the uniform scale, or both).

15 Regulation 5 provides that Section 75A of the ITL (“power to call for documents, etc., from taxpayer”) and 75B of the same (“power to call for documents, etc., relating to taxpayer”) applies to these Regulations, together with all other relevant elements of the Information Gathering Powers contained in Part VIA of the ITL. The Directors powers under 75B are used routinely to obtain information from financial institutions, most frequently for EOIR purposes, however, will be used as necessary to ensure any non-compliant person provided required information under the FATCA, CRS and CbCR regimes.

16 Guernsey, as a British Crown Dependency, is party to the Convention on Mutual Administrative Assistance in Tax Matters (the “Convention”) by way of the UK’s territorial extension. It is considered, therefore, that Guernsey’s participation in the Multilateral Convention does not extend to permitting exchange of information as between Guernsey and the United Kingdom or the British Crown Dependencies (the Isle of Man and Jersey) or the Overseas Territories (including Bermuda).

17 See https://gov.gg/tiea (accessed 20 April 2018) for a list of Guernsey’s TIEAs and https://gov.gg/dta (accessed 20 April 2018) for a list of DTAs. Guernsey indicated that under the Convention, exchange is not possible with the other British Crown Dependencies, Overseas Territories and the UK itself. See below.

18 Guernsey indicates that it participates in the Convention and therefore the Multilateral Competent Authority Agreement, by virtue of Guernsey’s government having requested the United Kingdom to extend to Guernsey its participation in the Convention. It is considered, therefore, that Guernsey’s participation in the Multilateral Convention does not extend to permitting exchange of information as between Guernsey and the United Kingdom or the British Crown Dependencies (the Isle of Man and Jersey) or the Overseas Territories (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Montserrat and Turks and Caicos Islands). Exchange of information between Guernsey and these jurisdictions will be effected by way of other bilateral international agreements/competent authority agreements. It is for that reason that, although it is Guernsey’s intention to exchange CbC Reports with all currently committed jurisdictions and those that will commit in the future it will be necessary for Guernsey to update the list of exchange partners in accordance with section 8(1)(e)(i) of the MCAA. For the purpose of the CRS, Guernsey has been amending/negotiating DTAs and TIEAs that allow for Automatic Exchange of Information which will be used to facilitate exchange with some of these jurisdictions as and when bilateral QCAAs are entered into. In order to meet the FATCA, UK equivalent of FATCA and CRS reporting requirements (which are not covered by the MAAC and MCAA) Guernsey indicates that it has the following bilateral CAAs which sit under an amended TIEA or DTA which permit AEOI: (i) UK-Guernsey Agreement to improve international tax compliance – under an amended TIEA, (ii) Agreement Between the Government of the United States of America and the Government of the States of Guernsey to Improve International Tax Compliance and to Implement FATCA – under an amended TIEA, (iii) Multilateral Competent Authority Agreement signed 29 October 2014 (permitting CRS)– under the MAAC and (iv) CAAs for AEOI with
British Virgin Islands (under amended TIEA); Cayman Islands (under amended TIEA); Isle of Man (under DTA); Jersey (under DTA); United Kingdom (under amended TIEA); Gibraltar (under amended TIEA); Switzerland (under the MAAC); with Hong Kong (China) (under DTA) and Turks and Caicos Islands (under amended TIEA).

It is noted that a few Qualifying Competent Authority agreements are not in effect 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 notifications under Section 8 of the CbC MCAA, or the reviewed jurisdiction may not have listed all signatories of the CbC MCAA. Guernsey indicates that it will further update the list of jurisdictions it intends to exchange CbC reports with, before the first exchanges of information in June 2018.

References


