



Country-By-Country Reporting in the BVI

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Country-By-Country Reporting pursuant to the Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2018 amending the Mutual Legal Assistance (Tax Matters) Act, 2003 (as amended, the “Act”).

What are the country-by-country reporting requirements under the Act?

Part IV of the Act imposes reporting and registration requirements on multinational enterprises groups (“MNE Groups”) with consolidated group revenues of at least EUR750 million and one or more BVI tax resident entities. It essentially implements in the BVI the model legislation published pursuant to the OECD's Base Erosion and Profit Shifting Action 13 Report (Transfer Pricing Documentation and Country-by-Country Reporting).

Who is required to report?

An MNE Group is defined as a collection of enterprises related through ownership or control such that it is required to prepare consolidated financial statements (or would be so required if it were listed on a public stock exchange) and includes two or more enterprises which are tax resident in different jurisdictions, or includes an enterprise that is tax resident in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction. MNE Groups with a BVI entity in the group are required to report if they have total consolidated group revenue of EUR750 million during the group's preceding financial year.

Note: you will not be subject to the reporting requirements if you do not have any BVI tax resident entities in the group.

Reporting and registration requirements

Any business unit or permanent establishment of an MNE Group (a “Constituent Entity”) that is tax resident in the BVI is subject to registration and/or reporting requirements under the Act. A BVI Constituent Entity that is either an “Ultimate Parent Entity” or a “Surrogate Parent Entity” will need to register its status with the BVI International Tax Authority (the “ITA”) electronically no later than the last day of the MNE Group's reporting fiscal year which starts on or after 1 January, 2018. It will also have to file a country-by-country (“CbC”) report with the ITA by no later than 12 months after the last day of the MNE Group's reporting fiscal year.

The Ultimate Parent Entity is the entity which owns directly or indirectly a sufficient interest in one or more Constituent Entities of such 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 it were listed on a public stock exchange in its jurisdiction of tax residence), and there is no other Constituent Entity of the MNE Group which owns directly or indirectly such an interest in the first-mentioned entity. A Surrogate Parent Entity is a Constituent Entity that has been appointed by the MNE Group as the sole substitute for the Ultimate Parent Entity, to file CbC reports in its jurisdiction of tax residence, on behalf of such MNE Group.

Any BVI entity that is part of an MNE Group but is not the Ultimate Parent Entity or a Surrogate Parent Entity will have to

register with the ITA the identity and tax residence of the relevant reporting entity no later than the last day of the MNE Group's reporting fiscal year. Therefore, for example, a BVI tax resident Constituent Entity of an MNE Group with a fiscal year ending 31 December must register by 31 December, 2018. Failure to register with the ITA within the applicable timeframe is punishable on conviction by a fine not exceeding US\$100,000.

The CbC report will need to contain certain aggregate financial information with regard to each jurisdiction in which the MNE Group operates and details, including jurisdiction of tax residence and main business activities, of each Constituent Entity of the MNE Group.

The ITA will automatically exchange CbC reports with the tax authorities of other countries party to information exchange agreements to which the BVI is party. Information in the CbC reports will be kept confidential in accordance with the requirements of the Multilateral Convention for Mutual Administrative Assistance in Tax Matters.

The ITA has not yet published guidance notes on CbC reporting. If guidance notes are published by the ITA we will issue a further client update.

Commencement

Part IV of the Act implementing country-by-country reporting and registration requirements in the BVI is deemed to have come into force on 1 January, 2018.

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