

## Bermuda

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

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

3. Bermuda is a signatory of 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 is also a signatory of the CbC MCAA and has provided its notifications under Section 8 of this agreement. Bermuda intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. As of 12 January 2018, Bermuda has 41 bilateral relationships activated under the CbC MCAA or exchanges under the bilateral Competent Authority Agreements (CAA). Bermuda 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 Bermuda 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. Bermuda 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 of CbC Reporting.

6. Bermuda has primary and secondary laws<sup>3</sup> in place for implementing the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.<sup>4</sup> Guidance has also been published.<sup>5</sup>

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

Summary of terms of reference:<sup>6</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. Bermuda 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>7</sup>

8. No inconsistencies were identified with respect to Bermuda's domestic legal framework in relation with 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 Bermuda commences in respect of reporting fiscal years starting 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>

10. Article 4(2) of the Regulations specifies that the CbC report will be based on the standard template set out at Annex III of Chapter V of the OECD's Transfer Pricing Documentation and Country-by-Country Report. This explains that "'Revenues – Unrelated Party' should be read as referring to revenues arising from transactions between independent parties and "'Revenues – Related Party' should be read as referring to revenues arising from associated enterprises. In addition, interpretative guidance issued by the OECD in April 2017,<sup>10</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 Bermuda 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 other 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. Bermuda does not apply or plan to introduce local filing. It has removed local filing requirements from its legislation in August 2017 and Bermuda has issued a Competent Authority administrative communications to MNE Groups indicating that they will not need to file a CbC report under local filing requirements.<sup>11</sup>

***(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. Bermuda does not apply or plan to introduce local filing.

***(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. Bermuda has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity and the Parent Surrogate Entity in Bermuda.<sup>12</sup> There are also penalties in place in relation to the CbC Reporting obligation and notification: (i) penalty for failure comply with CbC filing requirements,<sup>13</sup> (ii) daily default penalty<sup>14</sup> and (iii) penalties for

inaccurate information.<sup>15</sup> In addition, any Constituent Entity of a MNE Group that is resident in Bermuda is obliged to keep records of the financial position and information related to business or activity of the entity and to provide any information that is relevant for their tax position. Penalties or imprisonment may be imposed in case the obligations are not met.<sup>16</sup>

15. There are no specific processes in place that would allow to take appropriate measures in case Bermuda 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, Bermuda indicates that the penalties will be applied to any person guilty of an offence under Article 9 of the International Cooperation Act 2005. 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), Bermuda 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 Bermuda. Bermuda 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, 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. Bermuda has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (in force on 1 March 2014 and in effect for 2016) (the “Convention”).<sup>17</sup>

19. Bermuda signed the CbC MCAA on 15 April 2016 and submitted a full set of notification under section 8 of the CbC MCAA on 22 November 2016. As a non-reciprocal jurisdiction, Bermuda does not seek for any country to send information to Bermuda pursuant to the CbC MCAA. However Bermuda intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. It is also noted that Bermuda has negotiated a bilateral internal UK AEOI “Arrangement” (not technically a treaty) to provide the equivalent AEOI to CbC and CRS MCAs via a bilateral CAA annexed to the Arrangement.<sup>18</sup> As of 12 January 2018, Bermuda has 41 bilateral relationships activated under the CbC MCAA<sup>19</sup> or exchanges under the bilateral CAAs. Bermuda 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 Bermuda 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 Bermuda 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. Bermuda 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 Bermuda's compliance with paragraph 12 of the terms of reference (OECD, 2017) on appropriate use.

### *Conclusion*

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), Bermuda 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 these paragraphs 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 of the International Cooperation (Tax Information Exchange Agreements) Act 2005 Article 4B: [www.bermudalaws.bm/primaryLaws/2005.pdf](http://www.bermudalaws.bm/primaryLaws/2005.pdf) (accessed 11 April 2018). Secondary law consists of the “International Cooperation (Tax Information Exchange Agreements) Country-by-Country Reporting Regulations 2017 (the “Regulations”): [www.bermudalaws.bm/laws/pdf](http://www.bermudalaws.bm/laws/pdf) (accessed 11 April 2018).

<sup>4</sup> Bermuda has indicated that it is a voluntary non-reciprocal jurisdiction with respect to CbC Reporting requirements as it has no domestic tax need for such information presently and is devoting important resources to comply with the standard for CbC report exchanges in 2017.

<sup>5</sup> Guidance on Country-by-Country Reporting has been published on 11 April 2017 on the Government of Bermuda site: [www.gov.bm/sites/default/files/V5Bermuda-CbCR-Guidance-wlb-7-Apr-17.pdf](http://www.gov.bm/sites/default/files/V5Bermuda-CbCR-Guidance-wlb-7-Apr-17.pdf) (accessed 11 April 2018).

<sup>6</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>7</sup> See Article 4B of the International Cooperation (Tax Information Exchange Agreements) Act 2005 and Article 3 of the Regulations.

<sup>8</sup> See Articles 6(1) and 7 of the Regulations.

<sup>9</sup> See Articles 6(1) and 7 of the Regulations.

<sup>10</sup> See [www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf](http://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf) (OECD, 2018).

<sup>11</sup> Under Article 6(2) of the Regulations, Bermuda requires a Bermuda Reporting entity to file CbC reports in Bermuda only when such a Bermuda Reporting entity has been appointed by the MNE Group to do so as a Surrogate Parent Entity. Bermuda has indicated that this requirement will be further emphasised in the published guidance by adding the following clause: “Pursuant to the International Cooperation (Tax Information Exchange Agreements) Country-by-Country Reporting Amendment Regulations 2017, under regulation 6(2) the definition of a Bermuda reporting entity means that a Constituent Entity as a Bermuda reporting entity (other than Ultimate Parent Entity) is only required to file under regulation 6(2) when it has been appointed by the MNE Group to do so (as a Surrogate Parent Entity)”. Bermuda’s legislation allows Surrogate Parent filing only when certain conditions are met that reflect the conditions set in paragraphs 8 c) iv. a) b) and c) of the terms of reference (OECD, 2017) for local filing

requirements. See also the definition of Surrogate Parent Entity in the guidance published on 11 April 2017.

<sup>12</sup> See Article 5 of the Regulations.

<sup>13</sup> See Article 17 of the Regulations. A person who fails to comply with any CbC obligation under Article 5, 6 or 9 of the Regulations is liable to a civil penalty not exceeding BMD 4 000 (Bermudian dollars).

<sup>14</sup> See Article 18 of the Regulations. Failure to pay the civil penalty will result in further penalty not exceeding BMD 200 for each day during which the first penalty remains unpaid. A

<sup>15</sup> See Article 19 of the Regulations. A person is liable to a civil penalty not exceeding BMD 5 000, 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 Minister or (B) the person discovers the inaccuracy after the information is provided to the Minister and fails to take reasonable steps to inform the Minister.

<sup>16</sup> See Article 15 of the Regulations. A person who commits an offence is liable to a fine not exceeding BMD 10 000 or to imprisonment for a term not exceeding six months or to both.

<sup>17</sup> Bermuda, as an Overseas British Territory, is party to the Convention on Mutual Administrative Assistance in Tax Matters (the “Convention”) by way of the UK’s territorial extension

<sup>18</sup> Bermuda also indicated with respect to the international transmission method for CbC report exchanges that Deloitte/Vizor are contracted to build Bermuda’s reporting Portal that will interface with the OECD’s Common Transmission System (CTS), and that the Portal is on track to be operational well before the 2017 reporting date for MNEs to report their CbC information to the Bermuda competent authority. Bermuda confirms it will use CTS for AEOI for exchanging CRS and CbC reports (Bermuda has already signed the User Agreement for Bermuda to use the CTS).

<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 the reviewed jurisdiction may not have listed all signatories of the CbC MCAA as of 12 January 2018. Bermuda has taken steps to further update the list of jurisdictions it intends to exchange CbC reports with, before the first exchanges of information in June 2018.

## References

- OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, [www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm](http://www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm).
- OECD (2017), “Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting” in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. [www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf).
- OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264241480-en>.
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264115606-en>.





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), “Bermuda”, 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/10.1787/9789264300057-14-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to [rights@oecd.org](mailto:rights@oecd.org). Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at [info@copyright.com](mailto:info@copyright.com) or the Centre français d'exploitation du droit de copie (CFC) at [contact@cfcopies.com](mailto:contact@cfcopies.com).