

British Virgin 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 British Virgin Islands does not yet have a legal and administrative framework in place to implement CbC Reporting. It is recommended that the British Virgin Islands finalise a domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part A: Domestic legal and administrative framework

2. The British Virgin Islands has recently joined the Inclusive Framework and is still in the early stages of implementation of BEPS Action 13. Currently, the legislation was expected to be in place before the end of 2017. It is recommended that the British Virgin Islands finalise the domestic legal and administrative framework¹ in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. The British Virgin 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 not a signatory to the CbC MCAA. As of 12 January 2018, the British Virgin Islands does not have bilateral relationships activated under the CbC MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review² process, it is recommended that the British Virgin Islands take steps to sign the CbC MCAA and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions. It is however noted that the British Virgin Islands will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. The British Virgin 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.

(a) Parent entity filing obligation

Summary of terms of reference:³ 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).

(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).

(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).

(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).

(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 (OECD, 2017)).

6. The British Virgin Islands has recently joined the Inclusive Framework and is still in the early stages of implementation of the BEPS Action 13. At this moment, the British Virgin Islands has reviewed the Model Legislation contained in the Action 13 Report (OECD, 2015) and is in the design phase of the legislation and is considering all the relevant areas to be included. As such, the British Virgin Islands' administration is in the process of seeking approval from the Government's Ministers to draft the domestic legislation. Once approval has been received, the legislation will be drafted and once the draft is finalised, it will be submitted to the Government's House of Assembly for Parliamentary approval. It is anticipated that this may take the next three to five months to complete this process. As such, the British Virgin Islands anticipated having legislation in place before the end of 2017.

7. In the interim, the British Virgin Islands will be asking any Multinational Enterprises (MNEs) that may be headquartered in the British Virgin Islands and may be subject to CbC Reporting requirements under the Action 13 framework to voluntarily identify themselves to the International Tax Authority, in order to have an early estimate of how many MNEs are concerned.

8. It is recommended that the British Virgin Islands introduce or complete its enforcement measures as soon as possible, taking into account its particular domestic legislative process.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), the British Virgin Islands does not have a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the British Virgin Islands. It is recommended that the British Virgin Islands take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

10. 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).

11. The British Virgin 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) (“the Convention”),⁴ in force since 1 March 2014 and in effect for 2016. It intends to use this instrument for sending the CbC reports to other jurisdictions. Where necessary, the British Virgin Islands will also use the Tax Information and Exchange Agreements that allow Automatic Exchange of Information.

12. The British Virgin Islands has not signed the CbC MCAA. At the moment, it is seeking for the necessary instructions from the Government’s Cabinet as to whether to sign this agreement or whether to operate on the basis of bilateral Competent Authority Agreements. As of 12 January 2018, the British Virgin Islands does not have bilateral relationships activated under the CbC MCAA. It is recommended that the British Virgin Islands take steps as soon as possible to sign the CbC MCAA and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions. It is however noted that the British Virgin Islands will not be exchanging CbC reports in 2018.

Conclusion

13. It is recommended that the British Virgin Islands take steps as soon as possible to sign the CbC MCAA and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions. It is however noted that the British Virgin Islands will not be exchanging CbC reports in 2018.

Part C: Appropriate use

14. 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).

15. The British Virgin 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 British Virgin Islands’ compliance with paragraph 12 (a) of the terms of reference (OECD, 2017) on appropriate use.

Conclusion

16. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), the British Virgin 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 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	It is recommended that the British Virgin Islands take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that the British Virgin Islands take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	Not applicable.

Notes

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

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

³ 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).

⁴ The British Virgin Islands is a Party to the Convention on Mutual Administrative Assistance in Tax Matters by way of the United Kingdom's territorial extension.

References

- 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.
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