

Isle of Man

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 Isle of Man's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. The Isle of Man has rules (primary and secondary laws) 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 the Isle of Man. The first filing obligation for a CbC report in the Isle of Man commences in respect of reporting fiscal years beginning on or after 1 January 2017, with a voluntary parent surrogate filing mechanism available for reporting fiscal years beginning on 1 January 2016. The Isle of Man meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework

3. The Isle of Man is a signatory 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. The Isle of Man also indicates that it has signed three bilateral Competent Authority Agreements (CAAs). As of 12 January 2018, the Isle of Man has 47 bilateral relationships activated under the CbC MCAA or exchanges under bilateral CAAs. The Isle of Man 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 Isle of Man meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.²

Part C: Appropriate use

4. There are no concerns to be reported for the Isle of Man. The Isle of Man 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.³ The Isle of Man meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.⁴

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 Isle of Man has primary and secondary law (hereafter referred to as the “Regulations”) in place which implements the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.⁵ Guidance has also been published.⁶

(a) Parent entity filing obligation

Summary of terms of reference:⁷ 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 Isle of Man 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

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 the Isle of Man commences in respect of reporting fiscal years beginning on or after 1 January 2017.⁹ In addition, the Isle of Man has allowed reporting entities to file a CbC report under a voluntary parent surrogate filing mechanism for reporting fiscal years beginning on or after 1 January 2016.¹⁰ The CbC report must be filed by no later than 12 months and a day after the last day of the reporting fiscal year of the MNE Group.¹¹

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.¹²

(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. The Isle of Man has introduced local filing requirements in respect of accounting periods beginning on or after 1 January 2017.¹³ 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. The Isle of Man's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.¹⁴ 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. The Isle of Man 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 the Isle of Man.¹⁵ There are also penalties in relation to the filing and notification for filing of a CbC report:¹⁶ (i) penalties for failure to file,¹⁷ (ii) daily default penalty¹⁸ and (iii) penalties for inaccurate information.¹⁹

14. There are no specific processes in place that would allow the Isle of Man to take appropriate measures in case it 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, the Isle of Man indicates that it intends to follow the same compliance measures for CbCR as it does for other AEOI reporting (FATCA & the CRS) to resolve any errors/inaccuracies notified to it by a receiving jurisdiction, which involves engaging with Reporting Entities to amend any such errors, and where necessary apply penalties under see Regulations 11, 12, 13 and 18. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017b), the Isle of Man has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the Isle of Man. The Isle of Man meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

16. 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).

17. The Isle of Man 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 Matter (the “Convention”), as amended by the 2010 Protocol, (in force on 1 March 2014 and in effect for 2016)²⁰ and (ii) multiple bilateral Double Tax Agreements and certain amended Tax Information Exchange Agreements (TIEAs) which allow Automatic Exchange of Information in the field of taxation.²¹

18. The Isle of Man signed the CbC MCAA on 21 October 2016 submitted a full set of notifications under section 8 of the CbC MCAA on 30 March 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 bilateral 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). The Isle of Man also indicates that it has signed three bilateral CAAs and that it expects to bring into effect more bilateral CAAs in the current and coming year. As of 12 January 2018, the Isle of Man has 47 bilateral relationships activated under the CbC MCAA²² or

exchanges under bilateral CAAs. Against the backdrop of the still evolving exchange of information framework, at this point in time the Isle of Man meets the terms of reference.

Conclusion

19. Against the backdrop of the still evolving exchange of information framework, at this point in time the Isle of Man meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

20. 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).

21. 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), the Isle of Man 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.

22. There are no concerns to be reported for the Isle of Man in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for the Isle of Man. The Isle of Man thus meets these 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 - | |

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).

⁵ Primary law consists of Section 104B of the Income Tax Act 1970: https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1970/1970-0003/IncomeTaxAct1970_25.pdf (accessed 20 April 2018).

Secondary law consists of the Income Tax (Country-by-Country Reporting) Regulations 2017 (the “Regulations”): www.gov.im/media/1355956/2017-sd-0091.pdf (accessed 20 April 2018).

⁶ See: www.gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance/international-agreements/base-erosion-and-profit-shifting/action-13-country-by-country-reporting/ (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 5.

⁹ See Regulation 2.

¹⁰ See Regulation 9.

¹¹ See Regulation 8. The Isle of Man indicates that the time frame for filing the CbC report of 12 months and a day aligns with the filing date of the company’s Isle of Man income tax return and the additional day will not impact on the Isle of Man’s ability to exchange information with other Jurisdictions by the relevant date. This does not seem to raise a significant concern and it should not impact the timeframe for exchanges of CbC reports. This will however be monitored.

¹² It is noted that Regulation 7(2) specifies that the CbC report will be based on the standard template set out at Annex III 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, 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 (OECD, 2015), should be interpreted as the Constituent Entities listed in Table 2 of the CbC report”. The Isle of Man has issued a clarification of the definitions of “Revenues – Unrelated Party” and “Revenues – Related Party” in its published guidance to ensure consistency with the OECD guidance issued in April 2017: www.gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance/international-agreements/base-erosion-and-profit-shifting/action-13-country-by-country-reporting/

[money/income-tax-and-national-insurance/international-agreements/base-erosion-and-profit-shifting/action-13-country-by-country-reporting/](#) (accessed 20 April 2018).

¹³ See Regulation 5(2) and 8.

¹⁴ See Regulation 5(4).

¹⁵ See Regulation 6.

¹⁶ Isle of Man also indicates that the penalties described above are consistent with the penalties for failures by Isle of Man Financial Institutions in respect of reporting under the Common Reporting Standard. The Isle of Man also has extensive experience issuing penalties for late filing in respect of individual, company and employer's annual returns, and penalties for omitting/under-declared income.

¹⁷ See Regulation 11. There is a penalty of GBP 300 (pounds) for failure to file a CbC report or notification.

¹⁸ See Regulation 12 and 15. For each subsequent day on which the failure to file continues, penalties in the amount (not exceeding) of GBP 60 per day. Subject to Regulation 15, the daily default penalty may be increased to GBP 1 000 if the failure continues for more than 30 days following notification of the penalty and with the permission of the Commissioners.

¹⁹ See Regulation 9. A person is liable to a penalty not exceeding GBP 3 000 if the person provides inaccurate information knowingly, without informing the Comptroller or if the person does not take reasonable steps to inform the Comptroller upon discovery of the inaccuracy.

²⁰ The Isle of Man, 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 expected that the Convention will be the legal instrument under which most CbCR exchanges take place and where a QCAA is also put in place. The Isle of Man understands that exchange, under the Convention, is not possible with the other British Crown Dependencies, Overseas Territories and the UK itself. For the purpose of the CRS, the Isle of Man has been amending/negotiating agreements (Double Taxation Agreements/Tax Information Exchange Agreements) that allow for Automatic Exchange of Information which will be used to facilitate exchange with some of these jurisdictions as and when bilateral QCAs are entered into.

²¹ The Isle of Man indicates the following: The Convention – 84 exchange partners, subject to entry into force into in the coming months with five of those jurisdictions; TIEAs – five additional exchange partners not party to, or able to exchange with, using the Convention; and DTAs – five additional exchange partners not party to, or able to exchange with, using the Convention.

²² 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. The Isle of Man 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

- OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.
- OECD (2017b), “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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