

## Jersey

### 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. Jersey'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. Jersey 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 Jersey. The first filing obligation for a CbC report in Jersey commences in respect of reporting fiscal years beginning on or after 1 January 2016. Jersey meets all the terms of reference relating to the domestic legal and administrative framework.<sup>1</sup>

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

3. Jersey 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 other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. Jersey has also signed a bilateral Competent Authority Agreement (CAA) with the United States, the United Kingdom and with Guernsey. As of 12 January 2018, Jersey has 49 bilateral relationships activated under the CbC MCAA or exchanges under the bilateral CAAs. Jersey 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 Jersey meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.<sup>2</sup>

#### *Part C: Appropriate use*

4. There are no concerns to be reported for Jersey. Jersey 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.<sup>3</sup> Jersey meets the terms of

reference relating to the appropriate use aspects<sup>4</sup> 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. Jersey has primary and secondary law in place which implements the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.<sup>5</sup> No guidance has been published.

#### *(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. Jersey 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.<sup>7</sup>

#### *(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 Jersey commences in respect of accounting periods beginning on or after 1 January 2016.<sup>8</sup> The CbC report must be filed by no later than 12 months after the end of the accounting period of the MNE Group.<sup>9</sup>

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.<sup>10</sup>

*(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. Jersey has introduced local filing requirements in respect of accounting periods beginning on or after 1 January 2016.<sup>11</sup>

12. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), local filing is required where “the appropriate authority of the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has not entered into exchange agreement with the Comptroller in respect of the accounting period to which the report relates (...)” which is defined under Regulation 6(b). Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if “the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report”. This is narrower than the above condition in Jersey's legislation. Under Jersey's legislation, local filing may be required in circumstances where there is no current international agreement between Jersey and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. Although this condition does not reflect the details of paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) to refer to a “Qualifying Competent Authority in effect” to which Jersey is a Party “by the time for filing the Country-by-Country Report” (as the date when the condition relating to a QCAA may be tested), Jersey confirms that it will apply this provision in accordance with the wording of these terms of reference. It confirms that it has already taken steps to amend its regulations: the new regulations are currently at the drafting stage and are expected to be presented for parliamentary approval in the spring of 2018. As such, no recommendation is made but this aspect will be monitored.

13. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017b)), local filing requirements can be required if “the Comptroller has notified the Jersey entity that the arrangements are not operating effectively (...) or if the Constituent Entity has requested the Comptroller to confirm whether or not the arrangements are operating effectively and the Comptroller has indicated that they are not”. However, this condition does not reflect the details of paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017b) in particular in regard of the concept of “Systemic Failure”, and be interpreted in a broader meaning than the situation of a “Systemic Failure”. It is however noted that Jersey has published updated interpretation on Jersey government website to clarify that for the purposes of Regulations 5 and 6, the Comptroller will assess whether exchange

relationships are operating effectively in line with the references to “systemic failure” in the MCAA and OECD’s guidance.<sup>12</sup> As such, no recommendation is issued but this aspect will be monitored.

14. No other 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).

15. Jersey’s local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.<sup>13</sup> 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).

16. Jersey has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Jersey entity.<sup>14</sup> There are also penalties in relation to the filing and notification for filing of a CbC report: (i) penalties for failure to file,<sup>15</sup> (ii) daily default penalties<sup>16</sup> and (iii) penalties for inaccurate information.<sup>17</sup> Jersey also indicates that work is underway to amend the annual company tax return to require Jersey companies to declare the consolidated revenues of the group of which they are a member. This will be used as a compliance mechanism and will be reviewed in the course of the normal audit / investigation process.

17. Jersey indicates that it also has enforcement powers in place to compel the production of a CbC report. In addition to the financial penalties for late filing of reports, officers are also permitted to enter business premises, examine and copy business documents in order to investigate any issue relating to compliance with the CbC Regulations.<sup>18</sup>

18. There are no specific processes in place that would allow Jersey to take appropriate measures in case Jersey 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. It is noted that Jersey has indicated tentative measures as follows, based on the approach applied in respect of

its FATCA agreement with the United States since 2015: (i) contact the entity in writing to determine the position. (ii) review the response provided by the entity for reasonableness, (iii) if unsatisfied, seek further information, which could include exercising powers to search premises, (iv) consult with the other jurisdiction as necessary, (v) if the other jurisdiction's complaint proves well-founded, agree appropriate rectification action by the reporting entity and the timescale by which this will be completed and (vi) consider the appropriate penalty or enforcement action to take, depending on the severity of the breach. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

### Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Jersey 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 Jersey. Jersey meets all the terms of reference relating to the domestic legal and administrative framework.

## Part B: The exchange of information framework

20. 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).

21. Jersey 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 June 2014 and in effect for 2016)<sup>19</sup> and (ii) multiple bilateral Double Tax Agreements,<sup>20</sup> which allow Automatic Exchange of Information in the field of taxation.

22. Jersey signed the CbC MCAA on 21 October 2016 and 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. Jersey has also signed a bilateral CAA with the United States, United Kingdom and Guernsey. As of 12 January 2018, Jersey has 49 bilateral relationships activated under the CbC MCAA<sup>21</sup> or exchanges under the bilateral CAAs. Jersey has taken steps to have bilateral 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, Jersey meets the terms of reference regarding the exchange of information framework.

### Conclusion

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

### Part C: Appropriate use

24. 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) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and 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; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

25. 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), Jersey indicates that measures are in place to ensure the appropriate use of information in the 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.

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

### Conclusion

27. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Jersey. Jersey 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

<sup>1</sup> Paragraph 8 of the terms of reference (OECD, 2017b).

<sup>2</sup> Paragraph 9 (a) of the terms of reference (OECD, 2017b).

<sup>3</sup> 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.

<sup>4</sup> Paragraph 12 (a) of the terms of reference (OECD, 2017b).

<sup>5</sup> Primary law consists of the Taxation (Implementation) (Jersey) Law 2004, Article 2: [www.jerseylaw.je/laws/revised/PDFs/17.850.pdf](http://www.jerseylaw.je/laws/revised/PDFs/17.850.pdf) (accessed 23 April 2018). Secondary law consists of Taxation (Implementation) (International Tax Compliance) (Country-by-Country Reporting: BEPS) (Jersey) Regulations 2016 (hereafter referred to as the “Regulations”): [www.jerseylaw.je/laws/revised/PDFs/17.850.37.pdf](http://www.jerseylaw.je/laws/revised/PDFs/17.850.37.pdf) (accessed 23 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, 2017b).

<sup>7</sup> It is noted that Jersey has clarified through interpretation published on the Jersey government website that the annual consolidated group revenue threshold calculation would apply in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Jersey. See [www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/CountrybyCountryReporting.aspx](http://www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/CountrybyCountryReporting.aspx) (accessed 20 April 2018).

<sup>8</sup> See Regulation 5(2). Jersey refers to the period for which the CbC report has to be filed as “AP+1” where AP (Accounting Period) refers to the year in which the threshold requirement is met, i.e. the consolidated revenue of the MNE Group is at least EUR 750 million.

<sup>9</sup> See Regulation 5(3) which requires the CbC report to be filed by the filing deadline which is defined in Regulation 1 to be 12 months after the end of the relevant accounting period.

<sup>10</sup> Jersey has published updated interpretation on the Jersey government website to clarify that the definitions of “Revenues – Unrelated Party” and “Revenues – Related Party” are to be interpreted in accordance with guidance published in April 2017. See: [www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/CountrybyCountryReporting.aspx](http://www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/CountrybyCountryReporting.aspx) (accessed 20 April 2018).

<sup>11</sup> See Regulation 5(4) and 6.

<sup>12</sup> See [www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/CountrybyCountryReporting.aspx](http://www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/CountrybyCountryReporting.aspx) (accessed 20 April 2018).

<sup>13</sup> See Regulation 5(8).

<sup>14</sup> See Regulation 5(9).

<sup>15</sup> See Regulation 7. There is a penalty of GBP 300 (pounds) for failure to file a CbC report or notification.

<sup>16</sup> See Regulation 8 and 14. 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 14, 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 of Appeal.

<sup>17</sup> 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.

<sup>18</sup> See Regulation 17 and 18.

<sup>19</sup> Jersey, as a British Crown Dependency, is a Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the “Convention”) by way of the United Kingdom’s territorial extension.

<sup>20</sup> Jersey indicates that it will exchange CbC reports under existing bilateral Double Tax Agreements with Guernsey, Hong Kong (China), Isle of Man, Qatar, and Rwanda under Tax Information Exchange Agreements with United Kingdom and United States.

<sup>21</sup> 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. Jersey 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

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