



Policy & Resources
Committee

CONSULTATION ON THE INTRODUCTION OF COUNTRY BY COUNTRY REPORTING (CbCR) IN GUERNSEY

Purpose and Type of Consultation

This consultation paper is being issued to seek feedback from business, stakeholders, consumers, industry associations, practitioners and any other interested parties (“Consultees”) on the legislation required in order for the States of Guernsey (the “States”) to introduce Country by Country Reporting (“CbCR”) (the “Proposal”).

The Policy & Resources Committee (“PRC”) is seeking feedback, comments and suggestions on the Proposal. The intention is that responses will be considered by PRC in respect of the Proposal.

Closing date: Friday 21 October 2016.

PRC would like to invite comments from all interested Consultees in respect of the Proposal.

This consultation paper is a working document and does not prejudice any final decision to be made by the PRC.

Please refer to **section 5 “Responding to the Proposal”** for full details of how to respond to this consultation paper.

Executive Summary

Guernsey has committed to support the actions being undertaken under the OECD Base Erosion and Profit Shifting (BEPS) project. The aim of this project is to reach a globally fair and modern international tax system, and one aspect of the initiative is the introduction of Country-by-Country reporting (CbCR) to improve transparency between multinational businesses and tax authorities, and to help identify aggressive tax avoidance.

The purpose of this consultation is to invite comments on how Guernsey should proceed to legislate to implement CbCR.

The consultation closes on Friday 21 October 2016.

1. Background

BEPS, an OECD initiative, is based on the premise that, in an increasingly interconnected world, national tax laws have not always kept pace with global corporations, fluid movement of capital, and the rise of the digital economy, leaving gaps and mismatches that can be exploited to generate double non-taxation, which can undermine the fairness and integrity of tax systems.

BEPS is aimed at tax planning strategies that exploit these gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is often no or little economic activity, resulting in no or little overall corporate tax being paid. BEPS is of major significance for developing countries which have a heavy reliance on corporate income tax, particularly from multinational enterprises.

The OECD's BEPS work has resulted in a number of actions, some of which are considered to be minimum standards and which committed countries are expected to implement. Others are recommendations and considered best practices.

Under Action 13 (Transfer Pricing Documentation and Country by Country Reporting) CbCR is one of the four BEPS minimum standards. Under CbCR, multinational groups over a certain size (consolidated group revenue of EUR 750 million or more) would be required to report specified data on their international operations to their tax authority which it would, in turn, disseminate to jurisdictions with which it has an agreement to exchange such information. Present indications are that due to the current level involved, only a handful of Guernsey institutions may be impacted when Guernsey introduces CbCR.

The intention is that the Country by Country Report will provide tax administrations with a high level global overview of the operations and tax risk profile of the largest multinational enterprise groups. The Report is to be prepared on an annual basis, and includes information broken down for each jurisdiction in which the MNE Group operates, the amount of revenue from unrelated parties and related parties, profit or loss before income tax, income tax paid and accrued, stated capital, accumulated earnings, number of employees and tangible assets, as well as a list of every entity in the group, its jurisdiction of tax residence and the nature of its business. In addition to confidentiality obligations that apply to any exchange of information under an international agreement, there are important provisions relating to the permitted use of the Reports. The standard provides that they can be used for high-level transfer pricing and other BEPS-related tax risk assessment purposes and, where appropriate, economic and statistical analysis. In addition, the standard requires that no tax administration will use reports received under CbCR as a replacement for undertaking a detailed transfer pricing analysis, as standalone evidence that

transfer prices are not appropriate, or to perform tax adjustments on the basis of a global formulary apportionment of income.

The BEPS Action 13 Report recommended that OECD and G20 countries introduce CbCR with respect to fiscal years on and from 1 January 2016, subject to the time necessary to complete domestic legislative processes. Consequently, the first Reports would be filed by MNE Groups by 31 December 2017 (covering the 2016 fiscal year), and exchanged with relevant other tax administrations by mid-2018.

In order to assist jurisdictions to implement CbCR in a timely manner, the Action 13 Report contains model legislation which can be used to introduce the CbCR requirements on the ultimate parent entities resident in the jurisdiction. A copy of this is reproduced as Annex 1 to this Consultation.

The UK has already legislated for CbCR. The relevant Regulations - “The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016” - may be accessed at:

http://www.legislation.gov.uk/ukxi/2016/237/pdfs/ukxi_20160237_en.pdf

(To ensure consistency in reporting, the OECD has also published an XML Schema and User Guide, which provides the electronic data structure used to exchange CbC reports in a standardised manner - see:

<http://www.oecd.org/tax/oecd-releases-standardised-electronic-format-for-the-exchange-of-beps-country-by-country-reports.htm> for details).

A peer review process will be put in place in respect of each of the four BEPS minimum standards. There will be two types of review. First, that countries’ implementation of CbCR is monitored; and second, that a review of the effectiveness of the CbCR standard be undertaken by 2020.

The purpose of the peer review is to ensure that countries are implementing the minimum standards in accordance with the agreed standard so that there is globally consistent implementation, which is crucial for both tax administrations and MNEs, and ensures the level playing field is maintained.

In order to conduct the peer reviews, terms of reference (which set out the key issues to be evaluated) and a methodology (which sets out the process for conducting the reviews) will be needed.

As regards the making of agreements with other jurisdictions to permit exchange of CbCR data, CbCR is covered by the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (“**the MAC**”), which was extended to Guernsey in 2014, at its request, by virtue of the UK’s signature to the MAC (this was done primarily to permit Guernsey to engage in exchange of information under the Common Reporting Standard (“**CRS**”)), so a legal platform permitting CbCR already exists. It is possible that some bilateral agreements may be necessary for countries that do not wish to sign the MAC. The remaining steps to implement CbCR would be to sign the Multilateral Competent Authority Agreement set up for the purpose (which will set down the mechanics of what is to be exchanged, when and with whom), any bilateral Competent Authority Agreements (if any bilateral “legal platform” agreements are required), and to implement any necessary legislation. This Proposal concerns the latter step.

2. Guernsey’s Engagement in BEPS

Guernsey has committed to support the actions being undertaken under BEPS. It participates as an Observer in the Ad-Hoc Group on the Multilateral Instrument (“**the MLI**”). The MLI is the instrument which is being designed to permit the current existing framework of DTAs (over 3000 worldwide) to be revised to meet BEPS objectives. Whilst participation in the MLI will be voluntary, the alternative would be bilateral negotiations which, for jurisdictions with extensive DTA networks, could take decades to achieve. To conduct this work, the OECD formed the Ad-Hoc Group, and Guernsey, Jersey and the Isle of Man were amongst a very small number of non-States invited to join the Group. The Group aims to have completed its work, and produce the MLI ready for signature, by the end of 2016. Whilst the complexity of ensuring that the instrument achieves its aim of adequately revising a (potentially) large number of very varied agreements is proving challenging, there is a clear will amongst participants for the work to succeed.

In addition, to ensure a consistent adoption and application of BEPS principles, by individual countries, and to formulate and manage the subsequent monitoring process, the OECD has created the BEPS Inclusive Framework (a governing body comparable to that which the Global Forum on Transparency and Exchange of information for Tax Purposes has in relation to exchange of information on both an automatic basis and on request), where all participants will work together, on an equal footing, to tackle BEPS. Guernsey has been invited to join that Framework, which it has accepted.

3. The Proposal

This consultation on proposed legislation for CbCR forms the next stage in Guernsey's commitment to support the actions being taken under BEPS.

The country-by-country report is one element of a new three-tiered standardised approach to transfer pricing documentation consisting of:

- (i) a master file containing information relevant for all members of the multinational enterprise;
- (ii) a local file containing information about material transactions of the local taxpayer; and
- (iii) the Country by Country report.

Only item (iii) is a minimum BEPS standard, and is the only aspect of CbCR to be covered by this Consultation.

The purpose of this consultation is to seek views on whether the OECD Model legislation could be used as the basis for Guernsey's CbCR legislation.

4. Detailed Questions

- Do you believe that Guernsey's CbCR legislation should be based on the OECD Model legislation, reproduced in Annex 1?
 - If not;
 - a) Which parts of the Model text should be deleted, and why?
 - b) Which parts of the Model text should be amended, why and in what manner?
 - c) Which additions should be made to the Model text, and why?
- Should the fiscal level to identify an "Excluded MNE Group" be stated in Euros or sterling?
- Under the Model text it is envisaged that the tax authorities would impose penalties for failure to comply with the legislation. Is there any reason why the penalty regime (including

rights if appeal) should not be based on that which will apply to the Common Reporting Standard? If so, please state why and what alternative you would propose.

5. Responding to the Proposal

Please provide your comments by Friday 21 October 2016, in writing and preferably in a format that can be read by Microsoft Word. PRC requests responses to be made by email to the following address:

Email: rob.gray@gov.gg

Alternatively they may be posted to:

**Rob Gray,
Director of International Tax Policy,
C/O Income Tax Office,
PO Box 37,
2 Cornet Street,
St Peter Port,
Guernsey
GY1 3 AZ**

The consultation closes on 21 October 2016.

1. When submitting your views please indicate whether you are responding on behalf of an organisation.
2. PRC is also interested in receiving general comments and feedback on the Proposal, and on any other related matters. Please feel free to respond to all, or some, of the questions.
3. Unless specifically requested otherwise, any responses received may be published either in part or in their entirety. Please mark your response clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any summary of comments received.
4. The purpose of the consultation is to gather information, views and evidence which will allow an informed decision to be made regarding the Proposal. As in any consultation exercise, the responses received do not guarantee changes will be made in accordance with what has been proposed.

Name	<hr/> <hr/>
Address	<hr/> <hr/> <hr/> <hr/>

Annex 1

OECD BEPS ACTION 13: Model legislation related to Country-by-Country Reporting

Article 1 - Definitions

For purposes of this [title of the law] the following terms have the following meanings:

1. The term “Group” means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange.
2. The term “MNE Group” means any Group that
 - (i) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and
 - (ii) is not an Excluded MNE Group.
3. The term “Excluded MNE Group” means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than [750 million Euro]/ [insert an amount in local currency approximately equivalent to 750 million Euro as of January 2015] during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year.
4. The term “Constituent Entity” means
 - (i) any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange;
 - (ii) any such business unit that is excluded from the MNE Group’s Consolidated Financial Statements solely on size or materiality grounds; and

- (iii) any permanent establishment of any separate business unit of the MNE Group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.
- 5. The term “Reporting Entity” means the Constituent Entity that is required to file a country-by-report conforming to the requirements in Article 4 in its jurisdiction of tax residence on behalf of the MNE Group. The Reporting Entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or any entity described in paragraph 2 of Article 2.
- 6. The term “Ultimate Parent Entity” means a Constituent Entity of an MNE Group that meets the following criteria:
 - (i) it owns directly or indirectly a sufficient interest in one or more other 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 its equity interests were traded on public securities exchange in its jurisdiction of tax residence; and
 - (ii) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in subsection (i) above in the first mentioned Constituent Entity.
- 7. The term “Surrogate Parent Entity” means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the Country-by-Country Report in that Constituent Entity’s jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in subsection (ii) of paragraph 2 of Article 2 applies.
- 8. The term “Fiscal Year” means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements.
- 9. The term “Reporting Fiscal Year” means that Fiscal Year the financial and operational results of which are reflected in the Country-by-Country Report defined in Article 4.

10. The term “Qualifying Competent Authority Agreement” means an agreement
- (i) that is between authorised representatives of those jurisdictions that are parties to an International Agreement and
 - (ii) that requires the automatic exchange of Country-by-Country Reports between the party jurisdictions.
11. The term “International Agreement” shall mean the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral Tax Convention, or any Tax Information Exchange Agreement to which [Country] is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information.
12. The term “Consolidated Financial Statements” means the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity.
13. The term “Systemic Failure” with respect to a jurisdiction means that a jurisdiction has a Qualifying Competent Authority Agreement in effect with [Country], but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to [Country] Country-by Country Reports in its possession of MNE Groups that have Constituent Entities in [Country].

Article 2 - Filing Obligation

1. Each Ultimate Parent Entity of an MNE Group that is resident for tax purposes in [Country] shall file a Country-by-Country Report conforming to the requirements of Article 4 with the [Country Tax Administration] with respect to its Reporting Fiscal Year on or before the date specified in Article 5.
2. A Constituent Entity which is not the Ultimate Parent Entity of an MNE Group shall file a Country-by-Country Report conforming to the requirements of Article 4 with the [Country Tax Administration] with respect to the Reporting Fiscal Year of an MNE Group of which it is a Constituent Entity, on or before the date specified in Article 5, if the following criteria are satisfied:
 - (i) the entity is resident for tax purposes in [Country]; and

- (ii) one of the following conditions applies:
 - a) the Ultimate Parent Entity of the MNE Group is not obligated to file a Country-by-Country Report in its jurisdiction of tax residence; or,
 - b) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which [Country] is a party but does not have a Qualifying Competent Authority Agreement in effect to which [Country] is a party by the time specified in Article 5 for filing the Country-by-Country Report for the Reporting Fiscal Year; or,
 - c) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the [Country Tax Administration] to the Constituent Entity resident for tax purposes in [Country].

Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in [Country] and one or more of the conditions set out in subsection (ii) above apply, the MNE Group may designate one of such Constituent Entities to file the Country-by-Country Report conforming to the requirements of Article 4 with [Country Tax Administration] with respect to any Reporting Fiscal Year on or before the date specified in Article 5 and to notify the [Country Tax Administration] that the filing is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in [Country].

- 3. Notwithstanding the provisions of paragraph 2 of this Article 2, when one or more of the conditions set out in subsection (ii) of paragraph 2 of Article 2 apply, an entity described in paragraph 2 of this Article 2 shall not be required to file a Country-by-Country Report with [Country Tax Administration] with respect to any Reporting Fiscal Year if the MNE Group of which it is a Constituent Entity has made available a Country by-Country Report conforming to the requirements of Article 4 with respect to such Fiscal Year through a Surrogate Parent Entity that files that Country-by-Country Report with the tax authority of its jurisdiction of tax residence on or before the date specified in Article 5 and that satisfies the following conditions:
 - a) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of Country-by-Country Reports conforming to the requirements of Article 4;

- b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which [Country] is a party by the time specified in Article 5 for filing the Country-by-Country Report for the Reporting Fiscal Year;
- c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the [Country Tax Administration] of a Systemic Failure;
- d) the jurisdiction of tax residence of the Surrogate Parent Entity has been notified in accordance with paragraph 1 of Article 3 by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity; and
- e) a notification has been provided to [Country Tax Administration] in accordance with paragraph 2 of Article 3.

Article 3 - Notification

1. Any Constituent Entity of an MNE Group that is resident for tax purposes in [Country] shall notify the [Country Tax Administration] whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, no later than [the last day of the Reporting Fiscal Year of such MNE Group].
2. Where a Constituent Entity of an MNE Group that is resident for tax purposes in [Country] is not the Ultimate Parent Entity nor the Surrogate Parent Entity, it shall notify the [Country Tax Administration] of the identity and tax residence of the Reporting Entity, no later than [the last day of the Reporting Fiscal Year of such MNE Group].

Article 4 - Country-by-Country Report

1. For purposes of this [title of the law], a Country-by-Country Report with respect to an MNE Group is a report containing:
 - (i) Aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates;

- (ii) An identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organised, and the nature of the main business activity or activities of such Constituent Entity.
2. The Country-by-Country Report shall be filed in a form identical to and applying the definitions and instructions contained in the standard template set out at [Annex III of Chapter V of the OECD Transfer Pricing Guidelines as the same may be modified from time to time] / [Annex III of the Report *Transfer Pricing Documentation and Country-by-Country Reporting* on Action 13 of the OECD/G20 Action Plan on Base Erosion and Profit Shifting] / [the Appendix to this law].

Article 5 - Time for filing

1. The Country-by-Country Report required by this [title of the law] shall be filed no later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group.

Article 6 - Use and Confidentiality of Country-by-Country Report Information

1. The [Country Tax Administration] shall use the Country-by-Country Report for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in [Country], including assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules, and where appropriate for economic and statistical analysis. Transfer pricing adjustments by the [Country Tax Administration] will not be based on the CbC Report.
2. The [Country Tax Administration] shall preserve the confidentiality of the information contained in the Country-by-Country Report at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Article 7 - Penalties

1. This model legislation does not include provisions regarding penalties to be imposed in the event a Reporting Entity fails to comply with the reporting requirements for the Country-by-Country Report. It is assumed that jurisdictions would wish to extend their

existing transfer pricing documentation penalty regime to the requirements to file the Country-by-Country Report.

Article 8 - Effective Date

1. This [title of the law] is effective for Reporting Fiscal Years of MNE Groups beginning on or after [1 January 2016].