



COUNTRY BY COUNTRY REPORTING (“CbCR”)

Guidelines for the Appropriate Use of Information contained in CbC Reports

These Guidelines are issued for the benefit of MRA staff, Multinational Enterprises (MNEs) operating in Mauritius, all taxpayers, taxpayers’ representatives or advisers and the general public on the appropriate use of information contained in the Country-by-Country (CbC) Reports.

January 2019

1. Introduction

Globalisation has provided international groups an opportunity to lessen their tax liabilities by artificially shifting their profits to low/no-tax jurisdictions or by reducing their taxable income using the gaps and mismatches between the tax systems of different jurisdictions. The governments of various jurisdictions have decided to act together in order to combat Base Erosion and Profit Shifting (BEPS) and reinstate faith in domestic and international tax systems.

At the request of the G20 leaders, the OECD delivered the BEPS package in October 2015. One of these measures (Action 13) is standardised Country-by-Country Reporting (“CbCR”) which is intended to give tax administrations a global picture of where multinational enterprises (“MNEs”) derive their profits, pay tax and carry out economic activities.

The Action 13 Report requires CbC Reporting to be adopted by all participating countries as a “minimum standard” and implemented in a consistent manner.

The purpose of CbCR is to provide local tax authorities with visibility regarding a multinational enterprise’s (“MNE”) revenue, profit, tax paid and accrued, stated capital, accumulated earnings, number of employees, tangible assets and activities.

CbCR applies to MNEs with annual consolidated group revenue equal to or higher than EUR 750 million. The deadline for filing the CbC Report is by no later than 12 months from the last day of the Reporting Fiscal Year of the MNE group. The tax authority with which the CbC Report is filed will exchange the CbC Report with the tax authority in other jurisdictions where the group has operations, under bilateral or multilateral tax treaties or tax information exchange agreements (TIEAs) that permit the automatic exchange of information. This is subject to conditions, including the jurisdictions having a legal framework for CbC Reporting in place and meeting conditions concerning confidentiality, consistency and the appropriate use of CbCR information.

These Guidelines cover Mauritius’ approach to the requirement of CbCR that information exchanged is to be used by the recipient tax administration appropriately.

All documents relating to CbCR are available on the MRA website on;

<http://www.mra.mu/index.php/business-corporation/country-by-country-reporting>

2. Legal background

Mauritius participates in CbCR through its general political commitment to meet international standards in tax transparency. Mauritius joined the BEPS Inclusive Framework in 2016, thereby committing to implement the minimum standards of BEPS which includes CbCR amongst others.

In view of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (“CbC MCAA”) that has been signed by Mauritius in January 2017, the Income Tax (Country-by-Country Reporting) Regulations 2018 (hereinafter referred to as “Regulations”) have been proclaimed on 22 February 2018.

According to the Regulations, CbC Reports are required to be filed by MNEs having their Ultimate Parent Entity or Surrogate Parent Entity in Mauritius as from fiscal year starting on or after 01 July 2018.

Failure to comply with the Regulations shall entail a fine not exceeding MUR 5,000 and imprisonment not exceeding a term of 6 months.

These Guidelines are given to supplement the Regulations issued by the MRA pursuant to Section 76 (5B) of the Income Tax Act and paragraph 2 of Section 5 of the CbC MCAA. The Guidelines will give effect to Mauritius’ commitment under the Inclusive Framework on BEPS, as well as other Exchange of Information Instruments.

3. Appropriate Use

3.1 The information obtained through CbC Reports shall be appropriately used by the MRA during Transfer Pricing audit and for these purposes, appropriate use is restricted to:

- (i) high level transfer pricing risk assessment
- (ii) assessment of other BEPS related risks
- (iii) economic and statistical analysis, where appropriate

3.1.1 High Level Transfer Pricing Risk Assessment

The evaluation of CbC Reports by the Tax Risk Management Unit (TRMU), a centralised and dedicated risk assessment team of the MRA, may provide perspectives of potential risks on the transfer pricing arrangements between the Mauritian taxpayer and its related parties, which may necessitate further examination by the MRA. For that purpose, a tax audit may be planned through selection of the case of the Mauritian taxpayer for scrutiny for the relevant assessment year.

The MRA may use CbC Report information in planning a tax audit or as the basis for making further enquiries, into the group's transfer pricing arrangements or other tax matters, in the course of an audit. There is no obligation that these enquiries must relate specifically to potential risks identified through the use of CbCR information.

The information contained in CbC Reports may also be used as a basis for making enquiries into tax matters taking into account other data sources or other information gathered during the course of a tax audit.

The information contained in CbC Reports may be used for high level transfer pricing risk assessment, but would not be used by itself as a basis for proposing changes to transfer prices or adjusting a taxpayer's income using global formulary apportionment.

3.1.2 Assessment of other BEPS related risks

BEPS is an unethical practice of international groups aiming to shift their profits arising in one jurisdiction to another jurisdiction for a favourable tax treatment in such other jurisdiction. The BEPS Action 13 report gives a number of examples of how tax rules in place at the time could be used to achieve low or no taxation, based around existing rules on jurisdiction to tax, transfer pricing, the tax treatment of debt and anti-avoidance. These include the use of a low-taxed branch of a foreign company, hybrid entities, hybrid financial instruments, conduit companies, derivatives to avoid withholding taxes, resorting to profit shifting using the contractual allocation of risk, pricing of intangibles, interest deductions, etc.

CbC Reports may be used to identify indicators of possible tax risks unrelated to transfer pricing, which will lead to examination of such risks through further enquiries during assessment and for closer analysis to arrive at a conclusion on potential tax base erosion and profit shifting.

However, the information gathered from CbC Reports cannot constitute conclusive evidence that an international group is engaged in other forms of BEPS.

3.1.3 Economic and statistical analysis

CbCR information may be used for economic and statistical analysis where appropriate. However, using the information for such economic and statistical analysis shall be consistent with the provisions of the tax treaties.

4. Instances of Inappropriate Use

The Action 13 Report also clarifies instances where the use of CbCR Reports is considered to be inappropriate. This will arise if the information is used:

- (i) 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;
- (ii) as a conclusive evidence that transfer prices are or are not appropriate;
- (iii) to propose transfer pricing adjustments based on a global formulary apportionment of income;
- (iv) to propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data obtained therefrom.

However, the usage of the CbC Reports data as a basis for making further enquiries into the MNE's transfer pricing arrangements or into other tax matters in the course of a tax audit will not be considered as inappropriate.

Similarly, nothing in this guideline shall prevent the Mauritius Revenue Authority from using intelligence obtained from CbC Reports for the purposes of planning tax audits or other compliance actions, or as a basis for making further enquiries to taxpayers or to other tax authorities. Further enquiries directed to another tax authority, however, must meet the foreseeable relevance standard.

5. Consequences of Non-Compliance with the Appropriate Use Condition

CbCR information must be used in a manner consistent with appropriate use conditions, always bearing in mind that Mauritius's failure to do so would trigger the Action 13 Report's consequences for non-compliance with the appropriate use condition.

For that purpose, Mauritius has the following commitments under the CbC MCAA:

- (i) that appropriate use is a condition for receiving and using CbC Reports;
- (ii) to disclose breaches of appropriate use to the Co-ordinating Body Secretariat (for exchanges pursuant to the MCAA) or other competent authority (for exchanges pursuant to the model bilateral CAAs);
- (iii) to promptly concede inappropriate adjustments in competent authority proceedings; and
- (iv) to temporarily suspend exchange of CbC Reports following consultation in cases of non-compliance.

In addition to the above, there is a serious risk that inappropriate use of CbC Reports could result in entities being issued incorrect tax assessments.

6. Measures to monitor, control and restrict access to CbC Reports

The MRA commits to restrict access to CbC Reports and to put in place adequate measures to ensure effective control and monitoring of the use of CbCR information to ensure appropriate use. To this end:

- (i) only staff handling the exchange of CbCR and members of a compliance team involved in risk assessment shall have access to the Reports;
- (ii) risk assessment staff should be located separately from other staff;
- (iii) password protected computers should be used to access electronic data relating to CbC Reports;

- (iv) physical copies of CbC Reports should be stored in locked rooms or locked filing cabinets with access for authorised persons only;
- (v) CbCR information (including complete CbC Reports, extracts from CbC Reports or analyses based on CbC Reports) may be provided to staff in the compliance function, to the extent that this is covered by the appropriate use conditions;
- (vi) the MRA will put in place, mechanisms that may be used to monitor or record which staff access CbCR information;
- (vii) the TRMU shall maintain a record of what information was shared, the reason for sharing it, and the staff with whom it was shared;
- (viii) the MRA shall ensure that appropriate use is adequately evidenced;
- (ix) the MRA shall incorporate the appropriate use condition into its existing work procedures; and
- (x) the MRA shall continually review and monitor the measures put in place to ensure appropriate use of CbC information, and where necessary, introduce control, or expand existing controls, to ensure that CbC Reports are available to staff involved in activities covered by the appropriate use conditions, but restrict access to other staff.

7. General and Miscellaneous provisions

7.1 Policies on Appropriate Use

These Guidelines communicate the policies of the MRA on the appropriate use of CbCR information. The Guidelines will be communicated to all officers of the MRA that are likely to have access to CbCR information in the course of their work and will be published on the intranet and website of the MRA.

7.2 Training on Appropriate Use

The MRA shall regularly train staff whose job is or may become relevant to transfer pricing and BEPS related risk assessment on appropriate use of CbCR information. Such training will clearly set out MRA's obligations and commitments:

- (i) to notify the Co-ordinating Body Secretariat pursuant to the MCAA immediately of any cases of non-compliance with the appropriate use condition; and
- (ii) to promptly concede any competent authority proceeding that involves a tax adjustment using an income allocation formula based on CbCR information.

7.3. Review of the Guidelines

The MRA will review these Guidelines, and the procedures put in place to ensure appropriate use of CbCR data, on an ongoing basis, and make changes that are considered desirable as appropriate.

7.4. Enquiries

All enquiries on any aspect of these guidelines should be directed to the:

International Taxation Section
Large Taxpayers Department
Mauritius Revenue Authority
5th Floor, Eham Court
Cnr Sir Virgil Naz & Mgr Gonin Streets
Port Louis

Tel: (230) 207 6000

Email: cbcreporting@mra.mu

Or

Visit our website: www.mra.mu

These Guidelines aim at communicating the policies of the Mauritius Revenue Authority on the appropriate use of CbCR information. They should be used as a reference source alongside the OECD CbCR Guidance reports, for the purposes of the implementation of CbCR into Mauritius' domestic framework.