



# **COUNTRY-BY-COUNTRY REPORTING GUIDELINES**

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## 1.0 INTRODUCTION

The Country-by-Country Reporting (CbCR) regulation was introduced in the Final Report on Base Erosion and Profit Shifting (BEPS) Action 13 published by the Organisation for Economic Co-operation and Development (OECD) in October 2015, as part of the three-tiered approach to transfer pricing documentation. The three-tiered standardised approach to transfer pricing documentation is represented by the Master File, Local File and CbCR. The purpose is to enhance the transparency for tax administrations, taking into consideration the compliance costs for businesses. The CbCR requires a multinational enterprise group (MNE Group) to provide all relevant tax jurisdictions with the necessary information on their global allocation of income, economic activity and taxes paid among countries according to a common template.

In Malaysia, CbCR is governed by two separate laws; one only applicable to Labuan entities carrying on a Labuan business activity in the Federal Territory of Labuan (hereinafter referred to as “Labuan”) and the other applicable to non-Labuan entities. The two relevant laws are as follows:

- b) Income Tax (Country-by-Country Reporting) Rules 2016 [P.U. (A) 357/2016] which came into force on 1 January 2017 and further amended on 27 December 2017 through Income Tax (Country-by-Country Reporting) (Amendment) Rules [P.U. (A) 416/2017] (both rules hereinafter referred to as “the Rules”); and
- b) Labuan Business Activity Tax (Country-by-Country Reporting) Regulations 2017 [P.U. (A) 409/2017] which came into force on 26 December 2017 (hereinafter referred to as “the Labuan Regulations”).

The implementation of CbCR will start from financial year 2017 onwards. The Country-by-Country Report (CbCR) will then be exchanged with relevant tax authorities which has an International Agreement and qualifying Multilateral Competent Authority Agreement (MCAA) in place with Malaysia.

## 2.0 OBJECTIVE

In order to facilitate a consistent and swift implementation of the Rules and the Labuan Regulations, the CbCR Guidelines (hereinafter referred to as the Guidelines) will provide guidance and clarification on the reporting obligation, description on how the reporting should be prepared, filing procedures and submission to the Director General of Inland Revenue (DGIR) and other administrative procedures including penalties for non-compliance.

## 3.0 APPLICATION

The Rules and Labuan Regulations provide different requirements for its application as explained below:

3.1 The Rules applies to an MNE Group that fulfils the following criteria:

- a) the total consolidated group revenue in the financial year preceding the first reporting financial year is at least three billion ringgit (RM3 Billion); and
- b) any of its constituent entities –
  - i) is an ultimate holding entity which is incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016 [Act 777], or under any written law and resident in Malaysia;
  - ii) is incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016 , or under any written law or under the laws of a territory outside Malaysia and resident in Malaysia;
  - iii) is a surrogate holding entity which is incorporated, registered or established or deemed to be incorporated, registered or established under the Companies Act 2016 , or under any written law and resident in Malaysia; or
  - iv) is a permanent establishment in Malaysia.

- 3.2 The Labuan Regulations are applicable to an MNE Group:
- a) that has a total consolidated group revenue in the financial year preceding the first reporting financial year of at least three billion ringgit (RM 3 Billion); and
  - b) its ultimate holding entity or any of its constituent entities is a Labuan entity carrying on a Labuan business activity.
- 3.3 An MNE Group that fulfils the criteria in paragraph 3.1 or 3.2 is required to prepare the CbCR beginning from financial year 2017 and furnish it to the DGIR annually. The obligation to prepare and furnish the CbCR falls under the responsibility of the reporting entity.
- 3.4 No exemption will be provided for special industry, general investment funds and non-corporate entities or non-public corporate entities.
- 3.5 MNE groups with income derived from international transportation or transportation in inland waterways that is covered by treaty provisions that are specific to such income and under which the taxing rights on such income are allocated exclusively to one jurisdiction, should include the information required by the CbCR template with respect to such income only against the name of the jurisdiction to which the relevant treaty provisions allocate these taxing rights.

#### **4.0 WHAT IS A COUNTRY-BY-COUNTRY REPORT**

- 4.1 The CbCR requires aggregate tax jurisdiction-wide information relating to the global allocation of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital and accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regards to each jurisdiction in which the MNE Group operates.

- 4.2 The CbCR also requires a listing of all the constituent entities (including permanent establishment) for which financial information is reported, including the tax jurisdiction of incorporation, where different from the tax jurisdiction of residence, as well as the nature of the main business activities carried out by that constituent entity.
- 4.3 The CbCR consists of three tables as set out in **Annex A**:
- (a) Table 1 provides an overview of the allocation of income, taxes and business activities by tax jurisdiction;
  - (b) Table 2 lists out all the constituent entities of the MNE Group included in each aggregation per tax jurisdiction; and
  - (c) Table 3 covers other additional information or explanation that is considered necessary or that would facilitate the understanding of the compulsory information provided in the CbCR.
- 4.4 A company/enterprise/entity having a permanent establishment in a country should report the financial data of the permanent establishment in the country it operates and not in the country of residence. Therefore, the legal entity/head office should exclude the financial data related to the permanent establishment from their jurisdiction.
- 4.5 The template should cover the financial year of the reporting entity. For constituent entities, the template should reflect on a consistent basis either information for the financial year of the relevant constituent entities ending on the same date as the financial year of the reporting entity, or ending within the 12 month period preceding such date.

## 5.0 FILING OBLIGATION

- 5.1 The CbCR should be filed by the reporting entity which is either:
- (a) the ultimate holding entity of an MNE Group that is resident in Malaysia; or
  - (b) the constituent entity of an MNE Group that is resident in Malaysia and has been appointed by the MNE Group as the surrogate holding entity.
- 5.2 However, under the Labuan Regulations, the obligation to file a CbCR lies with the ultimate holding entity (a Labuan entity carrying on a Labuan business activity) alone as the Labuan Regulations do not provide for the appointment of a surrogate holding entity.
- 5.3 A surrogate holding entity can be appointed in cases where:
- (a) the ultimate holding entity is not a resident in Malaysia and is not obligated to file a CbCR in its jurisdiction.  
  
For example, country X does not have CbCR rules in place. Therefore, the ultimate holding entity is not obliged to prepare the CbCR. As such, exchange by its tax authority in country X to countries where their subsidiaries operate will not take place. However if there is a need to file a CbCR in certain countries, the ultimate holding entity can appoint a surrogate holding entity in countries where CbCR is implemented to file the report on behalf of the MNE Group to the relevant countries.
  - (b) the ultimate holding entity is resident in a country which has an International Agreement to which Malaysia is a party of (eg, it is a member in the Convention on Mutual Administrative Assistance in Tax Matters) but does not have a Qualifying Competent Authority Agreement to exchange CbCR with Malaysia.
  - (c) there has been a systemic failure in the country of tax residence of the ultimate holding entity. "Systemic failure" is a situation where Malaysia has a Qualifying Competent Authority Agreement (QCAA) in effect with

other authorities, but, for reasons other than those that are in accordance with the terms of that agreement, the implementation/execution of which has been suspended; systemic failure may also occur when the other authority has failed to exchange with the DGIR the CbCR in their possession.

- 5.4 In cases where systemic failure occurs, the DGIR will inform the constituent entity that is resident in Malaysia for tax purposes of the incidence and the MNE Group is required to appoint a constituent entity in another tax jurisdiction who is a party to the International Agreement as a surrogate parent.
- 5.5 The CbCR must be filed no later than twelve months after the last day of the reporting financial year. For example, an MNE Group with a financial period that starts from 1 April 2017 and ends on 31 March 2018 should file the CbCR to the DGIR no later than 31 March 2019.
- 5.6 The CbCR must be prepared in the table as prescribed in paragraph 4.3 and furnished to the DGIR on an electronic medium, or through electronic transmission.
- 5.7 Information furnished in the CbCR must be complete and correct. Incomplete and/or incorrect information provided to the DGIR may lead to a penalty imposed under Section 113A of the Income Tax Act 1967 (ITA). The penalty will be a fine of not less than RM20,000 and not more than RM100,000 or imprisonment for a term not exceeding 6 months or both. Under the Labuan Regulations, the penalty for the same offence is a fine not exceeding RM1,000,000 or imprisonment for a term not exceeding two years or both may be imposed.



- 5.8 The DGIR may also impose penalty under Section 112A of the ITA or Regulation 9 of the Labuan Regulations for failure to submit the CbCR. The penalty will be a fine of not less than RM20,000 and not more than RM100,000 or imprisonment for a term not exceeding 6 months or both if convicted under the ITA, or a fine not exceeding RM1,000,000 or imprisonment for a term not exceeding two years or both if convicted under the Labuan Regulations.

## 6.0 NOTIFICATION

- 6.1 The ultimate holding entity or the surrogate holding entity has the obligation to notify the DGIR in writing of their responsibility as a reporting entity for their group. The notification has to be made on or before the last day of the reporting financial year.
- 6.2 Similarly, the constituent entity of an MNE Group that is resident in Malaysia or is a Labuan entity carrying on a Labuan business activity but is not the reporting entity, has to notify DGIR in writing the identity and tax residence of the reporting entity, on or before the last day of the reporting financial year.
- 6.3 Both the reporting entity and non-reporting entity has to notify DGIR in writing using the relevant forms which can be downloaded from the IRBM website. The signatories of the notification should be in accordance with Section 75 or Section 153 of the ITA
- 6.4 Failure to notify will lead to a penalty imposed under Section 119B of the ITA. The penalty will be a fine of not less than RM20,000 and not more than RM100,000 or imprisonment for a term not exceeding 6 months or both.
- 6.5 Under the Labuan Regulations, failure to notify will attract penalty in the form of a fine not exceeding RM1,000,000 or imprisonment for a term not exceeding two years or to both.

## **7.0 CONFIDENTIALITY AND APPROPRIATE USE**

Rule 8 of the Rules and Regulation 8 of the Labuan Regulations provides that the DGIR shall preserve the confidentiality of the information contained in the CbCR at least to the same extent that would apply if such information were provided to the DGIR under the provisions of the Convention on Mutual Administrative Assistance in Tax Matters (CMAA). The CMAA provides that any information obtained by a party under the Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that party. For the purpose of the Rules and Labuan Regulations, the domestic law applicable is section 138 of the ITA and section 20 of the Labuan Business Activity Tax Act 1990 (LBATA).

The CbCR will be used for high-level transfer pricing risk assessment purposes. It may also be used in evaluating other BEPS-related risks and, where appropriate, for economic and statistical analysis. However, the information in the CbCR will not be used as a substitute for a detailed transfer pricing analysis or to propose transfer pricing adjustments based on a global formulary apportionment.

## **8.0 TEMPLATE FOR COUNTRY-BY-COUNTRY REPORT – SPECIFIC INSTRUCTIONS**

### **8.1 The Source of Data**

The reporting entity should consistently use the same sources of data from year to year in completing the template. The reporting entity may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts. It is not necessary to reconcile the revenue, profit and tax reporting in the template to the consolidated financial statements. If statutory financial statements are used as the basis for reporting, all amounts should be translated to the stated functional currency of the reporting entity at the average exchange

rate published for the applicable year by the Inland Revenue Board of Malaysia (IRBM). The exchange rate applied has to be disclosed in Table 3 of the CbCR. Adjustments need not be made for differences in accounting principles applied from country to country to comply with the generally accepted accounting principles in Malaysia.

A brief description of the sources of data used in preparing the template should be addressed in Table 3. However, if changes are made to the source of data used in the following year, explanation for the changes and its consequences need to be provided.

## **8.2 Below are the specific instructions in preparing Table 1 of the CbCR template:**

### *Tax Jurisdiction*

This column shall contain a list of all the tax jurisdictions in which constituent entities of the MNE Group are resident for tax purposes. A tax jurisdiction is defined as a State as well as a non-State jurisdiction which has fiscal autonomy. A separate line should be included for all constituent entities in the MNE Group deemed by the reporting entity not to be resident in any tax jurisdiction for tax purposes. Where a constituent entity is resident in more than one tax jurisdiction, the applicable tax treaty tie-breaker should be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the constituent entity should be reported in the tax jurisdiction of the constituent entity's place of effective management.

### *Revenues*

The following information should be reported under the Revenues column:

- (i) the sum of revenues of all the constituent entities of the MNE Group in the relevant tax jurisdiction generated from transactions with associated enterprises;
- (ii) the sum of revenues of all the constituent entities of the MNE Group in the relevant tax jurisdiction generated from transactions with independent parties; and
- (iii) the total of (i) and (ii).

Revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. However, revenues should exclude payments received from other constituent entities that are treated as dividends in the taxpayer's jurisdiction.

### *Profit (Loss) before Income Tax*

This column shall contain the sum of the profit (loss) before income tax for all the constituent entities resident for tax purposes in the relevant tax jurisdiction. The profit (loss) before income tax should include all extraordinary income and expense items.

### *Income Tax Paid (on Cash Basis)*

This column shall contain the total amount of income tax actually paid during the relevant financial year by all the constituent entities resident for tax purposes in the relevant tax jurisdiction. Taxes paid should include cash taxes paid by the constituent entity to the tax jurisdiction of residence and to all other tax jurisdictions and also withholding taxes paid by other entities (associated enterprises and independent enterprises) with respect to payments to the constituent entity. For example, if entity A, a resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B should be reported by entity A.

### *Income Tax Accrued (Current Year)*

This column shall contain the accrued current tax expense recorded on taxable profits or losses of the reporting financial year of all the constituent entities resident for tax purposes in the relevant tax jurisdiction. The current tax expense should reflect only operations in the current year and should not include deferred taxes or provisions for uncertain tax liabilities.

### *Stated Capital*

This column shall contain the sum of the stated capital of all the constituent entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital should be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement for regulatory purposes in the tax jurisdiction where the permanent establishment is situated.

### *Accumulated Earnings*

This column shall contain the sum of the total accumulated earnings of all the constituent entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings should be reported by the legal entity of which it is a permanent establishment.

### *Number of Employees*

The reporting entity should report the total number of employees on a full-time equivalent (FTE) basis of all the constituent entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions and from year to year. For this purpose, independent contractors participating in the ordinary operating activities of the constituent entity may be reported as employees. Reasonable rounding or approximation of the number of employees is permissible, provided that such rounding or approximation does not materially distort the relative distribution of

employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.

#### *Tangible Assets other than Cash and Cash Equivalents*

The reporting entity should report the sum of the net book values of tangible assets of all the constituent entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, assets should be reported by reference to the tax jurisdiction in which the permanent establishment is situated. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

### **8.3 Below are the specific instructions in preparing Table 2 of the CbCR template:**

#### *Constituent Entities Resident in the Tax Jurisdiction*

The reporting entity should list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name, all the constituent entities of the MNE Group which are resident for tax purposes in the relevant tax jurisdiction. However, a permanent establishment (PE) should be listed by reference to the tax jurisdiction in which it is situated. The legal entity of which it is a permanent establishment should be noted. (e.g. XYZ Corp – Tax Jurisdiction A PE)

#### *Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence*

The reporting entity should report the name of the tax jurisdiction under whose laws the constituent entity of the MNE Group is organised or incorporated if it is different from the tax jurisdiction of residence.

*Main Business Activity(ies)*

The reporting entity should determine the nature of the main business activity(ies) carried out by the constituent entity in the relevant tax jurisdiction, by selecting one or more of the appropriate boxes.

Business Activities
Research and Development
Holding or Managing Intellectual Property
Purchasing or Procurement
Manufacturing or Production
Sales, Marketing or Distribution
Administrative, Management or Support Services
Provision of Services to Unrelated Parties
Internal Group Finance
Regulated Financial Services
Insurance
Holding Shares or Other Equity Instruments
Dormant
Other <sup>1</sup>

<sup>1</sup> Please specify the nature of the activity of the constituent entity in the “Additional Information” section in Table 3 of the CbCR.

**8.4 Below are the specific instructions in preparing Table 3 of the CbCR template:**

Table 3 is for any information or explanation that is considered necessary to facilitate the understanding of the compulsory information provided in the CbCR.

## ANNEX A

## A. MODEL TEMPLATE FOR THE COUNTRY –BY –COUNTRY REPORT

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group : Financial year concerned : <u>Currency used :</u>										
Tax Jurisdiction	Revenues			Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalent
	Unrelated Party	Related Party	Total							



**Table 2. List of all the constituent entities of the MNE Group included in each aggregation per tax jurisdiction**

Name of the MNE Group : Financial Year concerned :														
Tax jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity (ies)											
			Research and Development	Holding or Managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant
	1.													
	2.													
	3.													
	1.													
	2.													
	3.													

<sup>1</sup>Please specify the nature of the activity of the constituent entity in the “Additional Information” section

**Table 3. Additional Information**

Name of the MNE Group : Financial year concerned :
<i>Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report.</i>

## GLOSSARY

### Constituent entity

- (a) Any separate business unit of an MNE group that is included in the consolidated financial statements of the MNE group or would be so included if equity interests in such business unit were traded on a public securities exchange; or
- (b) Any separate business unit that is excluded from the MNE group's consolidated financial statements solely on grounds of size or materiality; or
- (c) Any permanent establishment of any separate business unit of the MNE group mentioned in paragraph (a) or (b), provided that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

### Financial year

An annual accounting period with respect to which the ultimate holding entity of the MNE Group prepares its financial statements.

### International Agreement

- (a) the Convention on Mutual Administrative Assistance in Tax Matters;
- (b) any bilateral or multilateral tax convention;
- (c) any tax information exchange agreement,

to which the Government is a party and that by its terms provides legal authority for the exchange of tax information between the Government and the government of any territory outside Malaysia, including automatic exchange of such information.

### MNE Group

A collection of enterprises related through ownership or control which includes—

- (a) two or more enterprises the tax residence for which is in different jurisdictions; or
- (b) an enterprise that is resident in Malaysia or is a Labuan entity carrying on a Labuan business activity and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, or is resident in another jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in Malaysia or Labuan.

**Qualifying Competent Authority Agreement**

An agreement which requires the automatic exchange of CbCR made between authorized representatives of the Government and authorized representatives for the government of any territory outside Malaysia where both governments are parties to an International Agreement.

**Reporting entity**

The ultimate holding entity, or where paragraph 5(2)(a), (b) or (c) of the Rules applies, the surrogate holding entity.

**Reporting financial year**

That financial year the financial and operational results of which are reflected in the CbCR.

**Surrogate holding entity**

A constituent entity of an MNE group that is resident in Malaysia and appointed by the MNE group as a sole substitute for the ultimate holding entity to file the Country-by-Country Report under subrule 5(2) of the Rules.

**Systemic failure**

In relation to a jurisdiction, means where a jurisdiction who has a Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports in effect with Malaysia but—

- (a) has suspended automatic exchange of CbCR for reasons other than those that are in accordance with the terms of that Agreement; or
- (b) persistently failed to automatically provide to Malaysia the CbCR in its possession of MNE Groups that have constituent entities in Malaysia.

**Ultimate holding entity**

A constituent entity of an MNE Group that owns directly or indirectly a sufficient interest in one or more other constituent entities of such MNE Group and there is no other constituent entity of such MNE Group that owns directly or indirectly such interest in the first mentioned constituent entity.