

HONG KONG TAX

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FIRST COUNTRY BY COUNTRY REPORT NOTIFICATION DUE 31 MARCH 2019



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Introduction

This is the **fourth** of a series of newsletters in connection with implementation of Base Erosion and Profit Shifting (BEPS) package in Hong Kong. Our previous Hong Kong Tax Newsletters, January 2018, May 2018 and July 2018 may be accessed at <https://www.bdo.com.hk/en-gb/insights/publications/hong-kong-tax>.

Register a CbC Reporting Account and file a written notification

A reportable group whose annual consolidated group revenue reaches HK\$6.8 billion for the year ended 31 December 2017 has country by country (CbC) reporting obligations in respect of the year 2018 with due dates falling in the year 2019.

Each Hong Kong entity of a reportable group is required to register with the Inland Revenue Department (IRD) a CbC Reporting Account and make a notification in relation to the obligation for filing a CbC return (including a CbC Report) within three months after the end of the relevant accounting period, ie for a reportable group that has an accounting year ended 31 December 2018, the notification is due by **31 March 2019**. If a reportable group has more than one Hong Kong entity, it may designate one entity to file the notification for all Hong Kong entities.

All registration of CbC Reporting Account, filing of CbC notification and submission of CbC return are to be carried out through the IRD's CbC Reporting Portal¹.

To access the portal, a Hong Kong entity must possess an e-Cert (Organisational) with AEOI Functions for authentication purposes. A reportable group may engage a service provider to register and operate a CbC Reporting Account and to file a CbC return on its behalf.

The written notification includes the provision of a full list of the reportable group's Hong Kong entities. For this purpose, a Hong Kong entity means an entity that is resident for tax purposes in Hong Kong or is a permanent establishment in Hong Kong. In other words, entities incorporated outside Hong Kong but are Hong Kong tax residents shall be included in the list of Hong Kong entities.

Secondary CbC Report filing obligation in Hong Kong

Where the reportable group's ultimate parent entity (UPE) or the surrogate parent entity (SPE) designated by the group is not resident in Hong Kong and there is no automatic exchange arrangement for CbC Report in place between the UPE's/SPE's jurisdiction and Hong Kong, a Hong Kong entity of the reportable group has a secondary obligation to file a CbC return together with the CbC Report with the IRD.

Hong Kong will exchange CbC Report for 2018 under bilateral arrangements with jurisdictions having Comprehensive Avoidance of Double Taxation Agreements (CDTA) with Hong Kong. So far, Hong Kong has made bilateral arrangements with 11 jurisdictions² to exchange CbC Report. The Hong Kong Government will continue discussions with other CDTA partners to conclude bilateral arrangements.

Actions needed

In view of the above, multinational enterprise groups are advised to take the following actions immediately:

- a. Check if consolidated group revenue for the year ended 31 December 2017 reaches HK\$6.8 billion if the UPE is Hong Kong tax resident (if the UPE is tax resident in another jurisdiction, the threshold of that jurisdiction)
- b. Determine whether the UPE or SPE will be responsible for filing the CbC Report
- c. Designate one Hong Kong entity to file the notification within three months from the accounting year end (ie on or before 31 March 2019 for accounting year ended 31 December 2018)
- d. Review and establish tax residency of each constituent entity

The CbC Report requires tax jurisdiction-wide information relating to a reportable group. It is therefore important for a reportable group to review and establish tax residency of each constituent entity to ensure proper notifications are filed with the respective jurisdictions within their stipulated time limit and correct disclosure of information in the CbC Report.

On a related matter, jurisdictions including the British Virgin Islands, the Cayman Islands and Bermuda have introduced economic substance test for tax-resident entities effective from 2019. If the substance requirements are not met, information of companies incorporated in those jurisdictions may be provided by the tax authorities there to tax authorities of other jurisdictions regardless of whether the group is a CbC reportable group. Multinational enterprise groups should review whether the new substance requirements will be met or if there is a need to re-domicile these foreign incorporated entities.

- e. Ascertain any secondary filing obligation in Hong Kong

For reportable groups with the UPE/SPE resident in a jurisdiction that has already entered into a CDTA with Hong Kong, please visit the IRD's website to check whether a bilateral exchange arrangement is in place for CbC Report covering 2018. In the absence of such an arrangement, the reportable group in Hong Kong will have an obligation to make a secondary filing in Hong Kong within 12 months from the accounting year end (ie on or before 31 December 2019 for accounting year ended 31 December 2018).

If the UPE/SPE is resident in a jurisdiction that currently has no CDTA with Hong Kong (eg Australia, Germany, Singapore and the USA), the reportable group is obliged to make secondary filing in Hong Kong for 2018.

- f. Prepare CbC report, if not already done.

If you need any assistance with respect to the CbC reporting, please feel free to contact us.

Notes:

1. https://aeoi.ird.gov.hk/cbc_portal/landing/

2. France, Guernsey, Ireland, Japan, Jersey, Korea, Malta, Netherlands, New Zealand, South Africa and United Kingdom

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