



香港税务快讯

年末回顾：香港国别报告（Country-by-Country Report）年底申报期限临近

香港的第一个国别报告申报截止日期（即 2019 年 12 月 31 日）即将到来，纳税人需要留意及时对国别报告申报的义务进行评估，尤其关注次级申报义务以及双重税务居民问题的情况。同时，许多以香港为总部或在香港上市在英属维尔京群岛（BVI）、百慕大以及开曼群岛拥有实体的跨国企业集团，也需要留意这些税收管辖区的相关法规对跨国企业集团国别报告申报义务的潜在影响。

香港国别报告次级申报要求

如果以下条件的任一满足，香港成员实体必须履行次级申报义务：

- (1) 该最终母实体并无被规定在其税务居留地管辖区(最终管辖区)提交国别报告；
- (2) 在最终管辖区与香港之间，订有现行国际协议，就自动交换税务资料订定条款，但在提交国别申报表的期限前，最终管辖区与香港之间，并没有交换国别报告的安排；
- (3) 因系统失误，以致最终管辖区没有进行国别报告交换，而局长已将此事，通知有关香港实体(第 58F(1)及 58I(1)条)。

针对**条件（2）**，香港税务局在《税务条例释义及执行指引》第 58 号（DIPN58¹）中进一步确认，《税收征管互助公约》（Convention on Mutual Administrative Assistance in Tax Matters）其中的《关于国别报告信息交换的多边主管税务机关协议》（Multilateral Competent Authority Agreement，简称 MCAA²），以及大部份全面性避免双重课税协定（Comprehensive Double Taxation Agreements，简称 CDTA），可被视为有效的“国际协定”。因此，如果最终母公司所在税收管辖区与香港之间**没有** CDTA 及 MCAA（例如美国），香港成员实体则**不必**在香港履行次级申报义务。

同时，为达成 CDTA 伙伴进行国别报告自动交换，香港也在积极与各税收管辖区签订双边交换协议。截至目前，香港针对 2018 年及过往年份的国别报告信息交换已缔结生效合计 17 个双边交换安排³。

截至本税务快讯发布之日，香港尚未与中国大陆缔结生效国别报告的双边交换安排。这意味着最终母公司位于中国大陆的且在香港有成员实体的跨国企业集团，可能需要在 2019 年年底之前在香港为截至 2018 年 12 月 31 日的财务年度（“2018 财年”）的国别报告进行次级申报。据我们了解，香港税务局正与国家税务总局进行协商，以期在 2019 年 12 月之前缔结生效交换安排。因此，我们建议纳税人密切关注香港与中国大陆的国别报告交换关系的协商状态，来决定其香港的次级申报义务。

英属维尔京群岛、百慕大以及开曼群岛的国别报告法规

英属维尔京群岛政府近期为国别报告的交换签署了 MCAA，自 2018 年起任何英属维尔京群岛的最终母公司所申报的国别报告将得以透过 MCAA 与 30 余个伙伴税收管辖区进行自动交换⁴。第一批将自动交换的国别报告（即 2018 财年）的申报截止日期为 2019 年 12 月 31 日，将会在 2020 年 6 月 30 日之前与伙伴税收管辖区进行自动交换。

而拥有更广泛交换网络（超过 50 个伙伴辖区）的百慕大⁵和开曼群岛⁶已分别于 2016 年和 2017 年签署了 MCAA，并且已经完成了过往年度国别报告的交换。

鉴于上述地方的国别报告法规已正式生效⁷，英属维尔京群岛、百慕大以及开曼群岛也针对国别报告通知及/或申报的不合规情况出台处罚机制。

税收管辖区	处罚措施
英属维尔京群岛	<ul style="list-style-type: none">未能履行国别报告的注册义务的处罚高达 100,000 美元；或经简易程序定罪，高达 5,000 美元及/或高达 2 年监禁的处罚；或针对其他任何国别报告义务不合规情况，一旦被控定罪，高达 100,000 美元及/或高达 5 年监禁的处罚。
百慕大	<ul style="list-style-type: none">国别报告中提供信息不准确将受到 4,000 美元且上至 5,000 美元的民事处罚；或经简易程序定罪，高达 10,000 美元及/或高达 6 个月监禁的刑事处罚。
开曼群岛	<ul style="list-style-type: none">国别报告中提供信息不准确将受到 4,000 美元且上至 5,000 美元的民事处罚；或经简易程序定罪，高达 10,000 美元及/或高达 6 个月监禁的刑事处罚。

与经济实质法以及双重税务居民的关系

多个离岸税收管辖区（包括英属维尔京群岛、百慕大以及开曼群岛等）均已引入经济实质法。出于遵从经济实质法，纳税人可能考虑将该地的成员实体作为其他辖区（例如其实际管理和控制所在地）的税务居民。尤其值得注意的是，如果集团最终母公司在一个离岸税收管辖区成立（例如英属维尔京群岛）但是同时在其他地方属于税务居民（例如在香港上市），则很可能被视为双重税务居民，受到两地国别报告义务的双重管辖。换言之，这些最终母公司必须在英属维尔京群岛和香港均提交国别报告通知以及国别报告，从而为纳税人带来额外的税务合规性负担。

从英属维尔京群岛/ 百慕大/ 开曼群岛角度而言，我们理解当地政府已经收到建议，希望可以降低上述情况所造成的国别报告合规性负担，但目前为止当地实体仍需遵循当地的国别报告法规。

从香港角度而言，为了简化双重税收居民的合规性问题，香港税务局在《税务条例释义及执行指引》第 59 号 (DIPN59) 中指出，在决定一个实体的税务居民身份时，可参考香港与其他税收管辖区之间的 CDTA 中规定的“加比原则”进行判断。然而，当缺乏 CDTA 及相关“加比原则”规定的情况下，则无法提供宽免，即认定为双重税务居民的实体必须在两个税收管辖区履行国别报告义务。

在财务年度结束之前，跨国企业集团需要尽早理解其在各税收管辖区的国别报告合规义务。同时，在国别报告交换网络不断扩展以及国际税收透明度日益增强的背景下，跨国企业集团需要进一步评估其在国别报告信息披露所产生的潜在转让定价以及其他税基侵蚀与利润转移风险。

参考资料：

¹ DIPN 58 <https://www.香港税务局.gov.hk/eng/pdf/dipn58.pdf>

² All MCAAs concluded by Hong Kong will be only effective for the accounting period starting on or after 1 January 2019, <https://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm>

³ 香港税务局 website https://www.香港税务局.gov.hk/eng/tax/dta_cbc.htm

^{4,6} OECD website <https://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm>

⁵ Bermuda tax authority's publication <https://www.gov.bm/sites/default/files/CBC-2018-Reportable-Jurisdictions-List-Updated-1.31.2019.pdf>

⁷ Deloitte tax analysis on the 英属维尔京群岛 CbC reports rule <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/tax/ta-2019/deloitte-cn-tax-tap2902019-zh-190227.pdf>

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Hong Kong Tax Newsflash: Hong Kong's upcoming Country-by-Country ("CbC") reporting obligations - Stocktaking before year-end

Hong Kong is fast approaching its first CbC Report filing deadline (i.e. 31 December 2019), and taxpayers should be reminded to assess their reporting obligations, in particular the secondary filing requirements as well as the dual residency issue. Also of note is that many Hong Kong based or listed multinational enterprise (MNE) groups have entities in the British Virgin Islands (BVI), Bermuda and the Cayman Islands;

it is thus important to understand the relevant rules in these jurisdictions and how they may impact the MNE groups.

CbC Reports Secondary Filing Requirements in Hong Kong

A Hong Kong constituent entity is required to perform CbC report secondary filing if any of the following conditions is met:

- (1) The ultimate parent entity (UPE) is not required to file a CbC report in its jurisdiction of tax residence;
- (2) UPE's jurisdiction has entered into an *international agreement with Hong Kong providing a legal basis for automatic exchange of tax information* but has **no exchange arrangement in effect** with Hong Kong by the Hong Kong CbC reports filing due date; **or**
- (3) UPE's jurisdiction has an exchange arrangement in effect with Hong Kong, but there has been a systemic failure to exchange the CbC report, which has been notified by the Inland Revenue Department (IRD).

Essentially for **condition (2)**, the IRD has further confirmed in the Departmental Interpretation and Practice Note (DIPN) 58¹ that in general, the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) – specifically the Multilateral Competent Authority Agreement (MCAA)² and most comprehensive double taxation agreements (CDTA) would be considered as qualified "international agreements". Therefore, a Hong Kong constituent entity with the UPE located in a jurisdiction **without** a CDTA and MCAA with Hong Kong (e.g. United States, etc.) **is not required** to perform secondary filing in Hong Kong.

Furthermore, under the automatic exchange of CbC reports with CDTA partners, Hong Kong is also required to enter into bilateral agreements in order to facilitate the exchange. To date, Hong Kong has 17 bilateral arrangements³ in effect for the exchange of CbC reports for years 2018 and earlier.

Of note, as at the date of this Newsflash, Hong Kong has not yet effected the bilateral exchange of CbC reports with Mainland China. This means that MNE groups with UPE in Mainland China and constituent entities in Hong Kong, may be required to perform secondary filing of CbC reports for the year ended 31 December 2018 (YE2018) by the end of 2019. We understand the IRD are in negotiations with the PRC State Taxation Administration (SAT), with the objective of entering into an agreement before December 2019. Taxpayers are thus advised to monitor the status of the Hong Kong-Mainland China exchange relationship of CbC reports, to determine their Hong Kong secondary filing obligations.

CbC Rules in the BVI, Bermuda and Cayman Islands

The BVI Government has earlier signed the MCAA on exchange of CbC reports, which provides that any CbC reports filed by the BVI UPE commencing from YE2018 are to be automatically exchanged with 30+ partner jurisdictions covered under the MCAA.⁴ The first batch of CbC reports to be exchanged (i.e. YE2018) are due for filing by 31 December 2019, and will be exchanged with the MCAA partner jurisdictions by 30 June 2020.

Bermuda⁵ and Cayman Islands⁶, with a wider exchange network (50+ partner jurisdictions), have signed the MCAA since 2016 and 2017 respectively, and have already completed the exchanges for these prior years reports.

With formal CbC reporting rules now in place⁷, the BVI, Bermuda and Cayman Islands have also introduced penalty regime on failure to comply with the local CbC report notifications and/ or filing.

Jurisdiction	Penalty Policy
BVI	<ul style="list-style-type: none">• Penalty up to USD100,000, if the registration requirement of CbC report is not complied; or• On summary conviction, penalty up to USD5,000 and/ or imprisonment up to two years; or on conviction on indictment, penalty up to USD100,000 and/ or imprisonment up to five years, if any other requirements of CbC report is not complied
Bermuda	<ul style="list-style-type: none">• Civil penalty of USD4,000, and up to USD5,000 if inaccurate information is provided in filing the CbC report; or• On summary conviction, penalty up to USD10,000 and/ or imprisonment up to six months, if an offense is committed
Cayman Islands	<ul style="list-style-type: none">• Administrative penalty of USD4,000, and up to USD5,000 if inaccurate information is provided in filing the CbC report; or• On summary conviction, penalty up to USD10,000 and/ or imprisonment up to six months, if an offense is committed

Interaction with Economic Substance Rule and Dual Residency

The Economic Substance Rule (ES Rule) has been introduced in some off-shore jurisdictions (e.g. the BVI, Bermuda and Cayman Islands), and taxpayers are now considering whether these entities may also be considered as tax residents in another jurisdiction (e.g. where they are managed and controlled, etc.) as one of the solutions to address such ES Rule. In particular, UPEs incorporated in say the BVI but with residency elsewhere (e.g. listed on the Hong Kong Stock Exchange) may be considered to have dual residency, and hence subject to CbC obligations in both jurisdictions. In other words, these UPEs must submit the CbC notification as well as CbC reports to tax authorities in the BVI and Hong Kong, which result in additional compliance burden for taxpayers.

From BVI/ Bermuda/ Cayman Islands perspective, we understand the relief of the CbC obligation under such circumstance has been put to the relevant authorities as a suggestion, but nevertheless at the current stage those entities are still subject to the local CbC reporting rules.

From Hong Kong perspective, in an effort to simplify the issue, the IRD have stated in DIPN 59 that reference can be made to the 'tie-breaker rule' under the relevant CDTA between Hong

Kong and the other jurisdiction, in determining the tax residency of the entity. However, in the absence of a CDTA and relevant tie-breaker rules, no relief will be provided and the entities with dual residency will be required to comply with the CbC requirements in both jurisdictions.

Before the fiscal year end, MNE groups should be conscious of their compliance with CbC reporting requirements in jurisdictions where they have presence. In the context of the expanding international CbC exchange network and tax transparency, it is of paramount importance to assess the transfer pricing and other Base Erosion and Profit Shifting (BEPS) related risks disclosed in the CbC report.

Reference

¹ DIPN 58 <https://www.ird.gov.hk/eng/pdf/dipn58.pdf>

² All MCAAs concluded by Hong Kong will be only effective for the accounting period starting on or after 1 January 2019, <https://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm>

³ IRD website https://www.ird.gov.hk/eng/tax/dta_cbc.htm

^{4,6} OECD website <https://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm>

⁵ Bermuda tax authority's publication <https://www.gov.bm/sites/default/files/CBC-2018-Reportable-Jurisdictions-List-Updated-1.31.2019.pdf>

⁷ Deloitte tax analysis on the BVI CbC reports rule <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/tax/ta-2019/deloitte-cn-tax-tap2902019-zh-190227.pdf>

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