BARBADOS REVENUE AUTHORITY

BEPS ACTION 13 ON COUNTRY-BY-COUNTRY REPORTING

GUIDELINES ON THE APPROPRIATE USE OF INFORMATION CONTAINED IN COUNTRY-BY-COUNTRY REPORTS

March 2022

PREFACE

The Barbados Competent Authority ("the Authority") in an effort to ensure the effective implementation of the Country-by-Country ("CbC") Reporting regime imposed under the Income Tax (Country-by-Country Reporting) Act, 2021-27 ("the Act") has developed guidelines on the appropriate use of the information contained in the CbC Reports.

Barbados' exchange of CbC Reporting Information will be facilitated through the Multilateral Competent Authority Agreement on the Exchange of Country-by-County Reports ("CbC MCAA").

INTRODUCTION

In October 2015, the Organisation for Economic Co-operation and Development ("OECD") issued reports on the Base Erosion and Profit Shifting ("BEPS") 15 actions items. One of these reports deals with Transfer Pricing Documentation and Country by Country Reporting (The BEPS Action 13 Final Report). Under the BEPS Action 13 Final Report, all large multinational enterprises ("MNEs") with annual total consolidated group revenue of €750 million or more (USD$850 million) are required to prepare a CbC report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among the tax jurisdictions in which it operates. The CbC report will be shared with tax administrations in these jurisdictions, for use in high-level transfer pricing and BEPS risk assessments.

LEGAL BACKGROUND

These Guidelines are issued per Section 21 (1) of the Act for the purpose of aiding compliance with the Act and will give effect to Barbados' commitment under the Inclusive Framework on BEPS, as well as other Exchange of Information Instruments. Under Section 11(1) of the Act, the Barbados Competent Authority shall use the CbC Reports and any other relevant information obtained pursuant to the Act for the purposes outlined in Section 5 of the CbC MCAA.

APPROPRIATE USE

The ability of Barbados to obtain and use CbC Reports is conditional upon the appropriate use of the information. This condition is outlined in paragraphs 25 and 59 of the BEPS Action

13 Final Report and Section 5 of the CbC MCAA. As a consequence, Barbados is committed to the appropriate use of the information provided on CbC Reports.

What Constitutes "Appropriate Use"?

For the purposes of the CbC Reports, appropriate use is restricted to:

a) the assessment of high-level transfer pricing risk assessment;
b) the assessment of other base erosion and profit shifting related risks; and
c) economic and statistical analysis, where appropriate.

What constitutes an "inappropriate use"?

In accordance with Paragraphs 25 and 59 of BEPS Action 13 Report and Section 5 of the CbC MCAA, the use of Country-by-Country Reports is inappropriate if the information is used:

a) 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;
b) as a conclusive evidence that transfer prices are or are not appropriate;
c) to propose transfer pricing adjustments based on a global formulary apportionment of income; and
d) to propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data obtained therefrom.

The Authority will not use CbC Reports, by itself, to make a reassessment to the income of a taxpayer for the purposes of the Act.

However, the usage of the CbC Reporting information 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 inappropriate.

Similarly, nothing in this guideline shall prevent the 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 foreign competent authorities. Further enquiries directed to foreign competent authorities, however, must meet the foreseeable relevant standard.

Can the Authority use the CbC information in planning a tax audit?

The Authority may use CbCR 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. The Authority makes no commitment that these enquiries must relate specifically to potential risks identified through the use of CbC Reporting information. For example, CbC Reporting information may be used as the basis for making enquiries into tax matters identified using other data sources or arising during the course of a tax audit. The OECD Forum on Tax Administration’s handbook on making effective use of CbCR information for the purposes of tax risk assessment is hereby incorporated for further clarity on the use of the information for tax risk assessment.

CbC Reports for economic and statistical analysis

CbC Reporting information may be used for economic and statistical analysis where appropriate. However, such use is not appropriate where it is not permitted under the relevant exchange of information agreement.

The meaning of "BEPS-related risk"

While the phrase “BEPS-related risk” is not expressly defined, the introduction to the February 2013 Report Addressing Base Erosion and Profit Shifting (the BEPS Report, OECD 2013) refers to the challenge faced by countries as

> "*planning aimed at shifting profits in ways that erode the taxable base to locations where they are subject to a more favourable tax treatment*".

The report goes on to state that:

> *“While the specific goals will vary among MNEs, in particular with respect to companies headquartered in different jurisdictions, broadly speaking BEPS focuses on moving profits to where they are taxed at lower rates and expenses to where they are relieved at higher rates. Specific strategies may also be put in place to make use of existing “tax attributes” such as tax credits, loss-carry forwards, etc. These generic goals are often achieved in a way that aligns with the overall management of the treasury operations of the group, e.g. in terms of cash management, management of foreign exchange risks and efficient repatriation strategies.”*

The BEPS Report provides 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 rules. These include the use of a low-taxed branch of a foreign company, hybrid entities, hybrid financial instruments, conduit companies, the use of derivatives to avoid withholding taxes, and profit shifting using the contractual allocation of risk and the pricing of intangibles.

The *Action Plan on Base Erosion and Profit Shifting* (the BEPS Action Plan, OECD 2013), released in July 2013, does not change this broad definition of BEPS, but identifies actions needed to address BEPS and the methodology to implement those actions. A number of the 15 Action Items set out in the BEPS Action Plan target specific arrangements (e.g. hybrid mismatch arrangements in Action 2 and treaty abuse in Action 6), but this is not the case for all of the Action Items. However, taken together and implemented consistently, the 15 Action Items represent a comprehensive response to the BEPS risks faced by countries, by improving coherency and transparency in the international tax system, and ensuring that the location of a group's taxable profit corresponds with the location of its substantial economic activity.

Thus, consistent with the BEPS Report, the term *"assessment of other BEPS-related risks"*, should be understood to refer to the high-level assessment of tax risks that may result in the erosion of a country's tax base. In practice, while CbC Reports may be used to identify indicators of possible tax risk, it will usually only be possible to understand the arrangements giving rise to that risk once further enquiries have been conducted. It remains key that CbC Reporting information should be limited to use in risk assessment and as a basis for making further enquiries in the course of a tax audit (and economic and statistical analysis, where appropriate). In the same way that CbC Reporting information on its own does not constitute conclusive evidence that transfer prices are not appropriate, it also does not constitute conclusive evidence that a group is engaged in other forms of BEPS.

CONSEQUENCES OF NON-COMPLIANCE

CbC Reporting information must be used in a manner consistent with the appropriate use conditions. Section 8 of the CbC MCAA makes it clear that any non-compliance with the appropriate use condition will be considered "significant non-compliance". Where a competent authority determines that there is or has been significant non-compliance in another jurisdiction, it may temporarily suspend the exchange of CbC Reports by giving notice in writing.

In light of the above, Barbados has made the following commitments under the CbC MCAA-

a) that appropriate use is a condition for receiving and using CbC Reports;
b) to disclose breaches of appropriate use to the Co-ordinating Body Secretariat (for exchanges pursuant to the MCAA);
c) to promptly concede inappropriate adjustments in competent authority proceedings; and
d) to temporarily suspend exchange of CbC Reports following consultation in cases of non-compliance.

REVIEW OF THE GUIDELINES

The Authority will review the Guidelines, and the procedures put in place to ensure the appropriate use of the CbC information, on an ongoing basis and make changes where necessary.

FURTHER INFORMATION

Should you have any queries about the guidelines, please direct the queries to the Global Relations Unit at compauth@bra.gov.bb. Should you need to report a matter related to data privacy, please contact the Authority via email at privacy@bra.gov.bb.

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