

# Changes to the BVI Mutual Legal Assistance (Tax Matters) Act, 2003

December 2018

The BVI Mutual Legal Assistance (Tax Matters) Act, 2003 (the "Act") was further amended in October 2018, creating country-by-country reporting obligations for BVI companies that are part of multi-national groups, as well as new CRS obligations for BVI Financial Institutions. The country-by-country reporting obligations are time-sensitive with a 31 December deadline that is likely to affect many BVI entities.

## Introduction of Base Erosion and Profit Shifting Prevention Measures - Country-by-Country Reporting

- The Act has inserted provisions which aim to implement the OECD's Base Erosion and Profit Shifting framework and Country-by-Country Reporting (CbCR).
- The International Tax Authority (ITA) has been designated as the Competent Authority for monitoring compliance with the CbCR obligations and the effective implementation of the framework. The BVI ITA will use the CbCR to assess high-level transfer pricing risks and other base erosion and profit shifting related risks in the Territory. It will assess the risk of non-compliance by individual members of Multi-National Enterprise Groups (MNE Groups) with the relevant transfer pricing rules. It is also envisaged that the ITA will use information

gleaned from the reports to facilitate collaboration with other foreign competent authorities on compliance monitoring and enforcement, if there is an appropriate agreement in place between the BVI and the foreign jurisdiction.

- For the purpose of CbCR compliance, a group of companies will qualify as a MNE Group if it meets the following criteria:
  - it is a group of entities which are tax resident, or subject to tax, in more than one jurisdiction and are related through common ownership or control;
  - the group is required to prepare consolidated financial statements under accounting principles or would be required to do so if the equity interests of any of its group members were traded on a public exchange; and
  - the group generates €750 million or more per year in group revenue.
- Where an MNE Group has constituent entities that are tax resident in the BVI, each constituent entity must register with the ITA no later than the last day of the MNE Group's annual accounting period starting on or after 1 January 2018. This means that if the MNE Group's financial year is from 1 January to 31 December, its entities that are tax resident in the BVI will need to register with the ITA by 31 December 2018.

- The CbCR obligation attaches to the ultimate parent entity or surrogate parent entity (together "Parent Entity") of the MNE Group. The Parent Entity must file a country-by-country report with the ITA with respect to its reporting fiscal year no later than 12 months after the last day (the "Deadline") of the group's reporting fiscal year which started after 1 January 2018.
- If a BVI entity is not the ultimate Parent Entity of the MNE Group but is resident in the Territory for tax purposes, it will be required to file a country-by-country report by the Deadline if:
  - the Parent Entity of the MNE Group does not have to file a country-by-country report in its jurisdiction of tax residence; or
  - the jurisdiction in which the Parent Entity is tax resident does not have an appropriate agreement in place with the BVI; or
  - the jurisdiction in which the Parent Entity is tax resident has persistently failed to automatically provide country-by-country reports or has suspended automatic exchange with the BVI.
- The CbCR must identify each of its constituent entities and their jurisdiction of tax residence, the jurisdiction of incorporation and main business activities, together with: aggregate information relating to the revenue; profit or loss before income tax; income tax paid; income tax accrued; stated capital; accumulated earnings; number of employees; and tangible assets other than cash or cash equivalents.
- Any information shared with a foreign competent authority will be treated with the same measure of confidentiality as would be applied under the Multilateral Convention on Mutual Administrative Assistance on Tax Matters.

It is critical for BVI companies which are members of a larger group to determine whether that group qualifies as an MNE Group for the purposes of the Act. If it is, it must ensure that it registers with the ITA by 31 December 2018 to avoid the imposition of penalties ranging up to US\$100,000.

It is expected that the ITA will publish guidance on the CbCR registration and reporting procedures in due course.

### Key Changes to the CRS Regime

- The Act now makes a definitive statement that the Common Reporting Standard (CRS) applies in instances where the Act is silent.
- Virgin Islands Financial Institutions (FIs) are required to maintain policies and procedures for:
  - (i) identifying the various jurisdictions in which Account Holders or Controlling Persons are resident for income tax or corporation tax purposes;
  - (ii) applying CRS due diligence procedures; ensuring that records of information collected or steps taken to comply with the Act are maintained for at least six (6) years from the end of the year to which the information relates or the steps were taken. Failure to comply can result in a fine of up to US\$100,000.
- All existing FIs (including those that are non-reporting) must register with the BVI ITA by 30 April 2019. New FIs must register by 30 April of the calendar year following the date that it becomes an FI. Failure to register may be liable to a fine of up to \$100,000.
- All FIs that did not maintain reportable accounts in a given year are now required to submit nil returns by 31 May in the following calendar year to which the returns relate. Failure to file a return can result in a fine of up to \$100,000.
- The Act also creates the following new offences:
  - willfully or knowingly signing or otherwise affirming a false self-certification; and
  - filing a return that which is reliant on a self-certification or documentary evidence which the FI knows or has reason to believe is inaccurate.
- The ITA is empowered to conduct inspections or make inquiries regarding the due diligence procedures implemented by an FI. The ITA can also advise the BVI Financial Services Commission of an FI's non-compliance.

We expect the ITA to issue a revised BVIFARS User Guide and to provide updated CRS Guidance Notes in due course.

For additional information on the Act, please contact Mary Kimberly Cua at [mkcua@tridenttrust.com](mailto:mkcua@tridenttrust.com) or Shelly Bend at [sbend@tridenttrust.com](mailto:sbend@tridenttrust.com).

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