



HONG KONG TAX ALERT

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Country-by-Country (CbC) notification and reporting requirements

Summary

In 2018, Hong Kong codified its TP rules and documentation requirements and introduce a country-by-country (“CbC”) report notification requirement.

The CbC reporting notifications and reporting requirements are statutory filing obligations. Hong Kong companies that are members of a multinational enterprise group must prepare and understand the information required to fulfill their CbC notification and filing obligations. Penalties apply in cases of non-compliance.

In mid-2018, Hong Kong introduced a transfer pricing (TP) ordinance which formally codified TP rules and documentation requirements into Hong Kong tax law. An important requirement under the new TP rules is that certain Hong Kong companies will be subject to country-by-country (“CbC”) reporting requirements.

For CbC reporting purposes, there are broadly three key steps that apply to multinational enterprise (“MNE”) groups whose annual consolidated group revenue reaches the specified threshold amount of HKD6.8 billion (or EUR750 million):

- a CbC notification by at least one Hong Kong company within a reportable group;
- completion of a new Profits Tax return (Form BIR51) and supplementary form (Form S2); and
- where applicable, filing a CbC return and a CbC report.

When does CbC notification apply?

A CbC notification must be filed by a Hong Kong entity within a reportable group. A MNE group is a reportable group if it had a total consolidated group revenue of at least HKD6.8 billion for the immediately preceding accounting period where the MNE group’s ultimate parent entity (“UPE”) is resident in Hong Kong. For MNE groups whose UPE is resident outside Hong Kong, the threshold amount refers to the threshold specified by the UPE’s jurisdiction or, in any other case, is an amount equivalent to EUR750 million threshold as at January 2015.

A Hong Kong entity of a reportable group must file a written notice with the Inland Revenue Department (“IRD”) to identify the UPE or the constituent entity responsible for filing the CbC report unless:

- It is not the Hong Kong UPE of the group, the group’s surrogate parent entity (“SPE”) resident for tax purposes in Hong Kong nor the authorized entity to file a CbC return for the group; and
- By the notification deadline, another Hong Kong entity of the group has filed such a notice.

The CbC notification must be filed with the IRD electronically via the CbC reporting portal within 3 months after the accounting year-end date of the reportable group. It becomes applicable for accounting periods commencing from 1 January 2018.

The notification must include the name, address and business registration number of each of the reportable group's Hong Kong entities, the reportable group's turnover, details of the Hong Kong UPE or a SPE that is resident in Hong Kong for tax purposes.

A CbC reporting account for the reporting entity must be registered on the portal before a notification can be filed electronically with the IRD.

Any CbC notification, together with the CbC return filings (see below), must be made by either the Hong Kong entity or its tax representative in the portal. The access to the portal requires the use of e-Certificate which allows the IRD to trace the identity of the individual who operates the CbC account. Such individual (i.e. e-Certificate holder) will also be the person to declare the accuracy and completeness of the information and lodge the submission of relevant notifications and filings in the portal.

Hong Kong entities of a MNE group should therefore determine whether they have a CbC notification obligation. There are penalties for non-compliance.

Completion of the new Hong Kong Profits Tax return (Form BIR51) and supplementary form (Form S2)

The new Hong Kong Profits Tax return (Form BIR51) includes new items to reflect CbC-related changes. A new supplementary form to the Profits Tax return – Transfer Pricing (Form S2) must be completed if the Hong Kong entity belongs to a reportable group.

Supplementary Form S2 requires information about whether a CbC notification has been filed, the Hong Kong entity which filed such notification and details of the group's UPE. The supplementary form must be submitted with the Profits Tax return (Form BIR51), but this is not a substitute for completing the earlier notification.

CbC return (Form BIR81) and report filing requirements

The Hong Kong resident UPE of a reportable group has the **primary obligation** to file a CbC return (and a CbC report) with the IRD for each accounting period beginning on or after 1 January 2018.

Constituent entities of MNE groups in Hong Kong can be subject to a **secondary filing obligation** if their UPE is not resident in Hong Kong, but only if any of the following conditions is met:

- the UPE is not required to file a CbC report in its place of residence; or
- there is no exchange arrangement between Hong Kong and the UPE's place of residence for CbC reporting purposes (eg, most notably, at the time of writing, Mainland China and the US, our two significant trade counterparts still do not have valid information exchange with Hong Kong); or
- the UPE's place of residence suspends automatic exchange of information with Hong Kong.

Even if one of the above conditions is met, the Hong Kong entity is not required to file a CbC return if:

- a CbC return for the relevant accounting period is filed by another Hong Kong entity within the reportable group; or
- the reportable group has authorised a constituent entity as its SPE to file the CbC reports on behalf of the group, and the CbC report is filed by the SPE in Hong Kong or in a jurisdiction which has an exchange arrangement in place with Hong Kong.

Where primary or secondary filing obligations exists, the CbC return (Form BIR81) and CbC report must be filed via the CbC reporting portal by the Hong Kong entity or its tax representative within 12 months from the end of the group's accounting period of the reporting group. The CbC report sets out the amount of revenue, profits and tax paid, capital and assets, and business activities for each jurisdiction in which the MNE group operates.

KPMG observations

The CbC notification and reporting requirements are statutory obligations. Hong Kong companies that are members of MNE groups should therefore prepare and understand the information required by the IRD to comply with their CbC reporting notifications and filing obligations.

Hong Kong companies within a MNE group should determine whether their group's annual consolidated group revenue exceeds the HKD6.8 billion threshold and if a CbC reporting notification must be filed with the IRD. The determination of the annual consolidated group revenue will initially be for the immediate preceding year (ie, 2017 for the 2018 year).

We expect there will be a number of complexities that need to be resolved. These include:

- even if no consolidated financial statements have been prepared, the total consolidated group revenue must be determined as if the group had been required to produce them;
- where the local entity has a different balance date from that of the UPE, calculations must be made and filing deadlines must be met;
- for private MNE groups, it is important to determine who the UPE is. This is especially relevant to those groups which have private holding companies that hold the operating group companies.

The following table summarizes both the CbC notification and CbC return filing due dates:

Year-end date	CbC notification due date	CbC return filing due date
31 December 2018	31 March 2019	31 December 2019
31 March 2019	30 June 2019	31 March 2020
30 June 2019	30 September 2019	30 June 2020
30 September 2019	31 December 2019	30 September 2020

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