

MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT, 2003 (as amended)



**GUIDANCE NOTES ON COUNTRY BY COUNTRY REPORTING AND REQUIREMENTS OF
THE LEGISLATION IMPLEMENTING COUNTRY BY COUNTRY REPORTING IN THE
VIRGIN ISLANDS**

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Amended in Section VII, item 4: bullet point 2 and under Important Notes bullet point 3

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I. Overview of Country by Country Reporting

1. Country by Country Reporting (CbCR) is part of Action 13 of the OECD/G20 Action Plan on Base Erosion and Profit Shifting (BEPS).
2. Action 13 of the Action Plan on BEPS recognizes that enhancing transparency for tax administration by providing them with adequate information to conduct transfer pricing risk assessments and examinations is an essential part of tackling the base erosion and profit shifting problem. As such, CbCR requires multinational enterprises (MNE) which meet the criteria, to file a country by country report with the tax authority.
3. The CbC Report provides a breakdown of the amount of revenue, profits, taxes and other indicators of economic activities for each tax jurisdiction in which the MNE Group does business.
4. CbCR only applies to MNE Groups with annual consolidated group revenue of not less than seven hundred and fifty million euros, (€750 million) in the preceding fiscal year for the MNE Group.
5. For these purposes, “**Group**” means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange. And, an “**MNE Group**” means any group that includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and is not an excluded MNE Group. An “**Excluded MNE Group**” is a Group which does not meet the above-mentioned threshold.
6. For more general information and guidance on CbCR and its requirements please refer to the following websites:

❖ General Information on Country by Country Reporting

<http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/country-by-country-reporting.htm>

❖ Action 13 - 2015 Final Report:

<http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm>

❖ **Country by Country Implementation Guidance:**

<http://www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf>

<http://www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.pdf>

<http://www.oecd.org/tax/guidance-on-transfer-pricing-documentation-and-country-by-country-reporting-9789264219236-en.htm>

❖ **CbCR XML Schema User Guide:**

<http://www.oecd.org/tax/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.pdf>

❖ **Frequently Asked Questions on CbCR:**

<http://www.oecd.org/ctp/beps-frequentlyaskedquestions.htm#Action13>

7. A good understanding of the Action 13 Final Report is critical to understanding and interpreting the CbCR requirements and should be read in conjunction with the Mutual Legal Assistance (Tax Matters) Act, (No. 8 of 2018).

II. Applicable Legislation in the British Virgin Islands

1. The Government of the British Virgin Islands has implemented Country by Country Reporting by way of amendment to the Mutual Legal Assistance (Tax Matters) Act, 2003, (MLA) by way of Act No. 8 of 2018. The insertion of a new Part IV of the said Act now requires Reporting Entities resident in the British Virgin Islands to collect, maintain and report information for exchange with partner jurisdictions and impose a registration obligation on all Constituent Entities resident in the British Virgin Islands.
2. A copy of the legislation, can be found on our website: <http://www.bvi.gov.vg/aeoi-beps>

III. Purpose of this Guidance

1. This Guidance is intended to aid businesses that may have responsibilities to report information under Part IV of the Mutual Legal Assistance (Tax Matters) Act as amended for Country by Country reporting. It is also intended as a reference source for Constituent Entities resident in the British Virgin Islands, and relevant professionals for use alongside the BVI's CbCR legislation and OECD related documents.

2. Constituent Entities resident in the British Virgin Islands are encouraged to seek independent professional advice if they are uncertain in any way of their obligations under the BVI's CbCR legislation.

IV. The Competent Authority for Country by Country Reporting in the British Virgin Islands

1. The International Tax Authority (ITA) is the Competent Authority responsible for the implementation and the administration of the Country by Country Reporting in the British Virgin Islands.
2. The ITA is responsible for ensuring that relevant Constituent Entities resident in the British Virgin Islands comply with their obligations under the BVI's CbCR legislation.

V. Definition of some key terms used in this guidance

“Group” means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;

“Multinational Enterprises (MNE) Group” means any Group that

- (a) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and
- (b) is not an Excluded MNE Group;

“Excluded MNE Group” means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than 750 million Euro during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year;

IMPORTANT NOTE:

- ❖ The definition for Excluded MNE Group, is to be applied in a manner that is consistent with the OECD's guidance on currency fluctuations in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than the British Virgin Islands. A copy of the OECD CbCR Guidance on currency fluctuations is available here: <http://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf>

“Consolidated Financial Statements” means the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity;

“Constituent Entity” means

- (a) any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange;
- (b) any such business unit that is excluded from the MNE Group’s Consolidated Financial Statements solely on size or materiality grounds; and
- (c) any permanent establishment of any separate business unit of the MNE Group included in paragraph (a) or (b) provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting.

“Reporting Entity” means the Constituent Entity that is required to file a country-by-country report conforming to the requirements in section 39 in its jurisdiction of tax residence on behalf of the MNE Group, and such entity may be the Ultimate Parent Entity or the Surrogate Parent Entity.

“Ultimate Parent Entity” (UPE) means a Constituent Entity of an MNE Group that meets the following criteria:

- (a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
- (b) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in paragraph (a) in the first mentioned Constituent Entity.

“Surrogate Parent Entity” (SPE) means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the country-by-country report in that Constituent Entity’s jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in section 37(2) applies.

“Fiscal Year” means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements;

“Reporting Fiscal Year” means that Fiscal Year, commencing on or after the 1st January, 2018, the financial and operational results of which are reflected in the country-by-country report defined in section 39 of the CbCR legislation;

For the purposes of CbCR, unless the context otherwise requires, the phrases “tax residence, resident for tax purposes and jurisdiction of tax residence” shall be construed as incorporating a reference to “resident in the British Virgin Islands”.

For a Constituent Entity, **“resident in the British Virgin Islands”** means

- ❖ It is incorporated or organised under the laws of the British Virgin Islands. The word “organised” includes partnerships and trusts that are formed in the British Virgin Islands but does not include legal persons or legal arrangements formed outside the British Virgin Islands,
- ❖ It has its place of effective management in the British Virgin Islands; for instance, the place where key management and commercial decisions are made that are necessary for the conduct of the entity’s business as a whole, depending on the facts, this may include certain legal persons and legal arrangements that are formed outside the British Virgin Islands but have a branch office in the British Virgin Islands. For more guidance on “place of effective management” see the provisions of Article 4 of the OECD Model Tax Convention and its accompanying commentaries, or
- ❖ It is subject to financial supervision in the British Virgin Islands. This would include any entity licensed and regulated by the BVI Financial Services Commission (FSC).

For more definition of terms used do refer to Part IV section 2 in the Interpretation section of the BVI CbCR’s legislation.

VI. **Guidance on Registration for Constituent Entities**

1. As a first step, every Entity that is resident in the British Virgin Islands must determine whether it is a Constituent Entity of an MNE Group. That is, a group of entities tax resident in different jurisdictions and have an annual consolidated group revenue of not less than seven hundred and fifty million euros, (€750 million) in the preceding Fiscal Year for that MNE Group. (For the definition for MNE Group refer to section V, the definition section of these guidance notes)
2. If an Entity is unsure whether it is a Constituent Entity, it should contact its parent entity to confirm. BVI Entities should be able to identify their parent entity by reviewing their Register of Members/Shareholders where the identity of the UPE is not already known. Generally, the UPE would know whether or not the Group meets the criteria to qualify as an MNE Group for the purposes of CbCR and whether it has sufficient interest in any particular entity to treat it as a Constituent Entity for the purposes of CbCR.

3. CbCR requirements are directed at MNE Groups which controls approximately 90% of corporate revenues and pose the greatest potential BEPS risk.
4. A Constituent Entity that is resident in the British Virgin Islands must identify the Reporting Entity of the MNE Group, regardless of the tax residence of the Reporting Entity.
5. All identifications must be done by way of Registration in accordance with section 38 of the BVI CbCR's legislation and made to the International Tax Authority in a form prescribed by the ITA.

VII. Means of Registration

1. All registrations shall be done electronically. The registration portal shall be the BVI Financial Account Reporting System (BVIFARS).
2. The International Tax Authority is in the process of updating BVIFARS to accommodate Country by Country Reporting. **In the interim, ALL REGISTRATIONS are to be submitted via email, to the address set out below in point 4.** Once BVIFARS has been updated and ready to receive registration applications, a Press Release will be published to advise of same and thereafter all registration applications shall be made via BVIFARS.
3. As part of the registration process, the Constituent Entity must appoint a Primary User for the system. This person will be the link between the Constituent Entity and the International Tax Authority. This person will also be the one responsible for the actual submission of the information to the International Tax Authority. The Primary user need not be resident in or have an address in the British Virgin Islands. **Notwithstanding the appointment of a Primary user, the responsibility for the submission of the information as required by the CbCR Legislation will always remain with the Constituent Entity.**
4. Registration applications via Email shall:
 - ❖ be sent to email address: BVIFARS@gov.vg
 - ❖ use the following wording for the subject of the email applications: **“Registration application in compliance with section 38 (insert whether subsection (1) or (2)) of the MLA for ...(Insert name of BVI Constituent Entity)...”** OR where the application is for multiple BVI Constituent Entities, instead of inserting a single BVI Constituent Entity Name in the subject line, insert the words *“Multiple BVI Constituent Entities”*.
 - ❖ ensure that the following is attached to each email registration application:

- letter of authorization appointing a Primary User for BVIFARS. The letter must be signed by a Director or authorized Senior Manager of the Reporting Entity or Constituent Entity. The name and position of signatory must be clearly identified on the letter. See **Annex I** for the CbCR letter of authorisation templates. Whilst, each Constituent Entity has an obligation to register individually with the ITA, the ITA will permit a single authorization letter to be used for multiple Constituent Entities, where these Entities form part of the same MNE Group, provided that the letter is completed in accordance with **Template 2 of Annex I** and in such circumstances, the letter shall be signed by a Director or Senior Manager of the Reporting Entity for the MNE Group. In the case where the Constituent Entity is preparing its own authorization letter, that Constituent Entity should use **Template 1 of Annex I**. The letter shall be submitted in a pdf format only. The Template letters are available on the ITA website: www.bvi.gov.vg-beps
 - The table attached to this Guidance as **Annex II** is the Template for the Information required to be provided for Registration under section 38 of the MLA as amended. This table shall be created, completed and submitted in an excel format only. An excel template is available on the ITA's website www.bvi.gov.vg-beps for your convenience.
 - A copy of the bio page of the Primary User's passport or other Government issued picture identification card. The ID provided must be a valid identification document and the copy shall be submitted in a pdf format only.
5. This email registration will serve as your formal registration and once the system comes online an account will be created for the entity and you will be sent your log in details via the email address provided and any additional information that may be required will be requested via the email address provided for the Primary User.

IMPORTANT NOTES:

- ❖ Failure to provide all the required attachments as set out in item 4 above with the Registration application email shall result in the application being delayed or declined.
- ❖ Failure to respond to any emails from ITA requesting additional information or clarification on any information submitted may result in your account not being created and your application ultimately being declined.
- ❖ The information contained in the **Template in Annex II** is required for each Constituent Entity registering with the BVI International Tax Authority to satisfy their obligations for Registration under the BVI Country by Country Reporting Legislation. **In the interim while registration applications are being submitted via email, the International Tax Authority shall allow Constituent Entities of the same MNE Group, to submit their registration information in a single email, with a single excel file attached, provided that each**

Constituent Entity of the MNE Group, provides its information in a separate sheet within that Excel file. Each sheet within the file shall be named to correspond with the Constituent Entity's name and where necessary the name can be abbreviated; provided it is clear which Constituent Entity the tab is referring to.

- ❖ Once the database has been completed and applications are submitted via the electronic portal, BVIFARS, applications are to be submitted individually for each Constituent Entity but Constituent Entities of the same MNE Group, will still be allowed to use a single letter using the format as set out in **Template 2 in Annex I**, which can be found on our website: www.bvi.gov.vg-beps.

VIII. Registration Deadline Dates

1. The Registration deadlines as it relates to the obligations under section 38 of the BVI CbCR Legislation have been adjusted accordingly:
 - ❖ for those Constituent Entities where the Reporting Fiscal Year of the MNE Group ends on or before 30th April, 2019 the registration deadline is 30th April, 2019.
 - ❖ For all other Constituent Entities where the Reporting Fiscal Year of the MNE Group ends on or after 1st May, 2019, the registration deadline is as prescribed by the legislation, which is no later than the last day of the Reporting Fiscal Year of such MNE Group.
2. All BVI Constituent Entities are required to take note of the dates as stated above and provided, the Constituent Entity complies with the dates as stated herein, notwithstanding the legislation the Constituent Entity shall be deemed to be in compliance.

IX. Notification of Changes to Registration details: *Change of registration details including change of Primary User or Change of Status of Entity or request for deactivation*

1. Registration is intended to be a one off process and does not need to be repeated annually. However, it is recommended that changes to your registration details be communicated to the International Tax Authority immediately but no later than three (3) months within the Fiscal Year in which the change occurred.
 - ❖ Any changes to the Primary User shall be communicated by the Entity Director or authorized Senior Manager via email. Such emails should use the following as its subject heading: “**Request for Change of Primary User for** *insert name of BVI Constituent Entity* ”. This email should have a letter attached clearly

identifying the name of the current primary user and asking for their permissions to be removed and provide the details of the new Primary User and attach a copy of the bio page of the new Primary User's passport to this email as well.

- ❖ In the interim while BVIFARS is being updated, changes to registration details *e.g. updating your actual place of business address or business activities*, should be communicated by the Primary User or Entity Director or authorized Senior Manager via email. Such emails should use the following as its subject heading: **“Changes to Registration Details for insert name of BVI Constituent Entity.....”**
 - ❖ An Entity which ceases to be a Constituent Entity shall inform the ITA immediately. In the interim all such notifications shall be made via email. Such emails should use the following as its subject heading: **“Change of Status of Entity forinsert name of BVI Constituent Entity.....”**
2. All changes submitted via email shall include a letter signed by the Director or authorized Senior Manager of the Entity and it should be on the Entity's letter head and the name and position of the signatory clearly identified. The letter should state the reason(s) for the change and provide any supporting documentation to support the request for the change, such as a Company Resolution and/or Certificate of Dissolution in particular where the entity is seeking to have its current account deactivated, as the entity no longer exists.
 3. All emails shall be sent to BVIFARS@gov.vg and once the system comes online all changes will be made via the electronic portal.

IMPORTANT NOTES:

- ❖ **Each Constituent Entity is required to register individually with the International Tax Authority whether or not it forms part of the same MNE Group in order to satisfy the registration requirements under section 38.**
- ❖ **The ITA recognizes that there may be some instances of duplication of CbCR registration for the same Constituent Entity in different jurisdictions. Constituent Entities must comply with its registration requirement in the British Virgin Islands, notwithstanding it may have a similar registration requirement in another jurisdiction that has also implemented Country by Country Reporting.**
- ❖ **Where a Constituent Entity is part of an MNE Group and it is not the Reporting Entity, that Constituent Entity still have an obligation to register with the International Tax Authority and identify the name and the Reporting Entity and the tax residence of the Reporting Entity for the MNE Group that it is a part of.**
- ❖ This registration requirement under section 38 of the CbCR Legislation applies to all Constituent Entities resident in the British Virgin Islands, including struck off entities and

even those entities that are in the process of liquidation. This registration obligation for Constituent Entities shall not apply where a Constituent Entity has been liquidated or dissolved or ceases to be a Constituent Entity.

X. Guidance on Reporting for Country by Country

1. The Reporting Entity is generally the Ultimate Parent Entity (UPE) of an MNE Group but, in certain circumstances, this can be a Surrogate Parent Entity (SPE). See section 37 (2) of the BVI CbCR legislation for these circumstances.

IMPORTANT NOTE:

- ❖ **Currently section 37 (2) of the Legislation provides for “A Constituent Entity” which is not the Ultimate Parent Entity to file a Country by Country Report in certain circumstances, however, this section will be amended to remove the requirement for a Constituent Entity in general to file such a report and make provision for a Surrogate Parent Entity ONLY in the circumstances as described in the legislation at section 37 (2) to file a report. In light of this Constituent Entities will NOT be required to submit a CbC Report unless they are the UPE or an SPE. Therefore, notwithstanding the legislation as currently drafted at the time of issuing this guidance, Constituent Entities shall be deemed to be in compliance with the legislation if they comply with the guidance as provided herein.**
2. The Reporting Entity should report information pertaining to all of the tax jurisdictions in which Constituent Entities of the MNE Group are resident for tax purposes.
 3. Provision should also be made to include in the CbCR all Constituent Entities in the MNE Group deemed by the Reporting MNE not to be resident in any tax jurisdiction for tax purposes.
 4. Where a Constituent Entity is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker should be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the Constituent Entity should be reported in the tax jurisdiction of the Constituent Entity’s place of effective management. The place of effective management should be determined in accordance with the provisions of Article 4 of the OECD Model Tax Convention and its accompanying commentaries, if the relevant jurisdictions have a treaty based on that Model.

IMPORTANT NOTE:

- ❖ Any Reporting Entity, being either the Ultimate Parent Entity or the Surrogate Parent Entity, that is resident in the BVI MUST file a Country-by-Country Report

(CbC Report) with the ITA. For the avoidance of doubt, a Reporting Entity must comply with its reporting obligation under the CbCR Legislation even if it has a similar CbC reporting obligation in another jurisdiction or another Constituent Entity made a CbC Report in another jurisdiction. The ITA recognises that there may be some instances of duplication of CbC Reports for the same MNE Group.

XI. Reporting Fiscal year

1. The **reporting fiscal year** is that Fiscal Year, commencing **on or after the 1st January, 2018**. As such, in the British Virgin Islands, CbC Reports will be required to be filed for all accounting periods commencing on or after 1st January, 2018.

XII. Time for filing

1. In accordance with section 40 of the BVI CbCR's Legislation the CbC Report shall be filed no later than twelve (12) months after the last day of the Reporting Fiscal Year of the MNE Group. **For instance, those MNE Group's that have a Reporting Fiscal Year which commenced on 1st January, 2018, they have an obligation to file a CbC Report no later than 31st December, 2019.**

XIII. Source of Data used for preparing Reports

1. The Reporting Entity should consistently use the same source of data from year to year in satisfying its reporting obligations.

XIV. Main Business activities

1. The Reporting Entity should determine the nature of the main business activities carried out by the Constituent Entity in the relevant tax jurisdiction, for example:
 - ❖ Research and Development
 - ❖ Holding or managing intellectual property
 - ❖ Purchasing or Procurement
 - ❖ Manufacturing or Production
 - ❖ Sales, Marketing or Distribution
 - ❖ Administrative, Management or Support Services
 - ❖ Provision of services to unrelated parties
 - ❖ Internal Group finance
 - ❖ Regulated Financial Services
 - ❖ Insurance
 - ❖ Holding shares or other equity instruments
 - ❖ Dormant
 - ❖ Other (*if other please specify the nature of the business activity. Other should only be selected, in case the business activities of the Constituent Entity cannot be accurately reflected through the selection of one or more of the other options.*)

XV. Means of Reporting

1. The International Tax Authority will issue further guidance on the reporting requirements when the Electronic Portal is available, as it is intended that all reporting will be done via the BVIFARS.
2. The British Virgin Islands reporting schema for the CbCR will be the published CbCR XML Schema that is available on the OECD website. The link is available under section I - “Overview of Country by Country Reporting”, item 6 in this Guidance.
3. The electronic portal will only accept reports that are submitted in compliance with the OECD CbCR XML Schema format.
4. To assist Reporting Entities in preparing to submit its report, see the attached model templates as proposed by the OECD in its CbCR Guidance and reproduced here in the form of 3 tables in **Annex III** to provide a guide as to the information that shall be reported and **Annex IV** provides specific instructions on the correct use of the terms used in the template.

XVI. Deemed Listing Provision:

1. The deemed listing provision in the definition of the term "Group" (*See the definitions section in this Guidance and the BVI CbCR Legislation*) is only relevant where an enterprise would otherwise be the Ultimate Parent Entity (UPE), but it is not required to prepare Consolidated Financial Statements in the jurisdiction where it is a resident for tax purposes. In this case, the Group includes all entities that would be included in the Consolidated Financial Statements that the relevant enterprise would be required to prepare if it was listed on a public securities exchange. In applying the deemed listing provision, it is irrelevant whether or not a particular type of entity is in fact able to be listed, taking into account, among other things, the jurisdiction’s company law and/or other legislation governing the relevant public securities exchange.
2. For instance, some jurisdictions differentiate between public entities and non-public entities (or private entities) in determining whether Consolidated Financial Statements are required to be prepared (e.g. the United States and Canada). In this case, the deemed listing provision would be relevant in determining the Constituent Entities in an MNE Group where the UPE is a non-public entity. The term “public entities” refers to entities which have instruments listed on a public securities exchange and the expression “non-public entities” refers to entities which have no instruments traded on a public securities exchange. The term “public entity” does not refer to an entity held by public sector bodies.
3. In accordance with paragraph 55 of the Action 13 Report, neither the deemed listing provision nor this guidance should be interpreted as giving rise to any exemption from

the obligation to file the CbC Report other than as set out in paragraph 52 of the Action 13 Report and the BVI CbCR Legislation in relation to Excluded MNE Group.

XVII. Confidentiality of information provided in CbCRs

1. The British Virgin Islands is participating in the CbCR on a non-reciprocal basis and as such the International Tax Authority will use CbC Reports and any other information obtained pursuant to the BVI CbCR Legislation for purposes of collaboration on compliance and enforcement with other Competent Authorities pursuant to a Qualifying Competent Authority Agreement.
2. The OECD has published Guidance on the appropriate use of information contained in CbC Reports. This is designed to assist jurisdictions to comply with the requirement to have in place the necessary framework and infrastructure to ensure the appropriate use of CbCR information. These confidentiality obligations are evaluated by the Global Forum on Transparency and Exchange of Information for Tax Purposes through its implementation and monitoring programmes. Information provided to or received by the Authority for the facilitation of the automatic exchange of information or otherwise for tax purposes shall be kept confidential as provided in section 41 of the BVI CbCR Legislation.

XVIII. Master Files and Local Files

1. The British Virgin Islands does not require a Reporting Entity to submit the Master File and the Local File referred to in the OECD Final Report as part of the normal reporting cycle.

XIX. Penalties for failure to comply with the requirement of the CbCR Legislation

1. Failure to comply with the Registration requirement under the CbCR Legislation is an offence and can result in a Constituent Entity being liable to a fine not exceeding one hundred thousand dollars.
2. Failure to comply with any other requirements under the CbCR Legislation is an offence and can result in the Entity being liable on summary conviction to a fine not exceeding five thousand dollars. The legislation also provides on summary conviction for imprisonment for a term not exceeding two years or both, or on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both. This penalty is in accordance with the general penalty section in the MLA.

ANNEX I

TEMPLATES FOR AUTHORISATION LETTERS FOR
COUNTRY BY COUNTRY REPORTING REGISTRATION APPLICATIONS IN THE
BRITISH VIRGIN ISLANDS

TEMPLATE 1 OF 2

**[USE THIS LETTER IF A SINGLE CONSTITUENT ENTITY IS APPOINTING ITS
PRIMARY USER]**

Use official Letterhead of the Constituent Entity with contact details: Address, telephone number, email and website if available

[Insert Date]

Director
International Tax Authority
2nd Floor Omar Hodge Building
Road Town, Tortola
The Virgin Islands VG 1110

Dear Sir/Madam,

Re: Authorisation Letter for the appointment of Primary User to use BVIFARS in accordance with the BVI Country by Country Reporting Legislation

Reference is made to the captioned matter.

This letter is to support my application for registration under section 38 *[insert (1) or (2) whichever is relevant]* of the Mutual Legal Assistance Tax Matters Act, 2003 as amended by Act No. 8 of 2018 (BVICbC Legislation).

The registering entity qualifies as a Constituent Entity; it is resident in the British Virgin Islands and forms a part of the MNE Group – *[Insert Name of MNE Group]*. As such, it authorises, *[insert name of the individual]* as its Primary User for the BVI Financial Account Reporting System to satisfy its obligations under the BVICbC Legislation.

Details of Primary User

Position	
Email address	
Telephone number	
Physical address	

The Primary User is authorised to represent this Constituent Entity for the purposes of compliance with the BVICbC Legislation and also to provide any change notice in respect of any subsequent change to the information required under the Legislation.

We will promptly provide you with an updated version of this authorisation letter in the event there is any change in the information contained herein.

Sincerely yours,

[Sign here]

Print Name

Position [must be a Director / Senior Manager]

Constituent Entity - [Insert name of Constituent Entity]

TEMPLATE 2 OF 2

[USE THIS LETTER IF THE MNE GROUP IS APPOINTING A SINGLE PRIMARY USER FOR MORE THAN ONE CONSTITUENT ENTITY]

Use official Letterhead of MNE Group with contact details: Address, telephone number, email and website if available of MNE Group

[Insert Date]

Director
International Tax Authority
2nd Floor Omar Hodge Building
Road Town, Tortola
The Virgin Islands VG 1110

Dear Sir/Madam,

Re: Authorisation Letter for the appointment of Primary User to use BVIFARS in accordance with the BVI Country by Country Reporting Legislation

Reference is made to the captioned matter.

This letter is to support my application for registration under section 38 *[insert (1) or (2) whichever is relevant]* of the Mutual Legal Assistance Tax Matters Act, 2003 as amended by Act No. 8 of 2018 (BVICbC Legislation).

Attached as **Appendix 1** are the Constituent Entities that are resident in the British Virgin Islands and form part of this MNE Group. Each of these Constituent Entities has authorised, *[insert name of the individual]* as their Primary User for the BVI Financial Account Reporting System to satisfy their obligations under the BVICbC Legislation.

Details of Primary User:

Position	
Email address	
Telephone number	
Physical address	

Each of our British Virgin Islands Constituent Entities has authorised the Primary User to represent it in that capacity for the purpose of compliance with the BVICbC Legislation and also to provide any change notice in respect of any subsequent change in the information required under the Legislation.

We will promptly provide you with an updated version of this authorisation letter in the event there is any change in the information contained herein.

Sincerely yours,

[Sign here]

Print Name

Position [must be a Director / Senior Manager]

Reporting Entity of MNE Group – [Insert name of Reporting Entity]

Annex II – Template for Registration

Information required for Registration under section 38 of the MLA as amended.

MNE Group Name	Constituent Entity Name	Identify whether Entity is the UPE/SPE/Other Constituent Entity	Reporting Entity Name	Reporting Entity Tax Residence	Constituent Entity Classification	Incorporation Number of Constituent Entity	TIN or GIIN of Constituent Entity	Fiscal Year End	Email Address of Constituent Entity	Actual Place of Business Address of Constituent Entity	Identify Main Business Activities of Constituent Entity	Primary User First Name	Primary User Last Name	Primary User Email Address	Primary User Telephone Number	Primary User ID document No.	Expiration Date of ID document
					Identify whether the Entity is a BVI Business Company, Partnership, Trust, or other (if other, please specify)			Insert the year that concludes the MNE Group’s annual accounting period. The relevant year must be a year, commencing 2018 and after.	If available	Insert the address of the Constituent Entity, that is where it conducts its day to day operations or maintains its records.	See item XIV in Guidance Notes						

***See Excel Template on ITA website for more details regarding the information to be provided in each column.**

Annex III: Model Template for Country by Country Report

*** When fulfilling the reporting obligations, please refer back to the OECD Guidance on Implementation, the XML Schema and User Guide on Country by Country Reporting. The link to these documents are available on page 5 of this guidance.**

Table 1 - Overview of Allocation of Income, taxes and business activities by tax jurisdiction.

Name of the MNE Group Fiscal year concerned: Currency Used:										
Tax Jurisdiction	Revenues			Profit (Loss) before Income Tax	Income Tax Paid (on Cash Basis)	Income Tax Accrued Current Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 2: List of all the Constituent Entities of the MNE Group included in each aggregation per tax jurisdiction

Name of the MNE Group: Fiscal Year concerned:												
Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of residence	Main Business Activity(ies)									
			Research & Development	Holding or Managing of Intellectual Property	Purchasing or Procurement	Manufacturing or Products	Sales, Marketing or Distribution	Administrative Management or Support Services	Provision of Services to Unrelated parties	Insurance	Holding Shares or other Equity Instruments	Dormant

Table 3: Additional Information

Name of the MNE Group: Fiscal year concerned:
Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the Country by Country Report.

Annex IV

Specific instructions for Tables produced in Annex III of this Guidance

Table 1: Overview of allocation of income, taxes and business activities by tax jurisdiction

Tax Jurisdiction: In the first column of the template, the Reporting MNE should list all of the tax jurisdictions in which Constituent Entities of the MNE group are resident for tax purposes. A tax jurisdiction is defined as a State as well as a non-State jurisdiction which has fiscal autonomy. A separate line should be included for all Constituent Entities in the MNE group deemed by the Reporting MNE not to be resident in any tax jurisdiction for tax purposes. Where a Constituent Entity is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker should be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the Constituent Entity should be reported in the tax jurisdiction of the Constituent Entity's place of effective management. The place of effective management should be determined in accordance with the provisions of Article 4 of the OECD Model Tax Convention and its accompanying Commentary.

Revenues: In the three columns of the template under the heading Revenues, the reporting MNE should report the following information: (i) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with associated enterprises; (ii) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with independent parties; and (iii) the total of (i) and (ii). Revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenues should exclude payments received from other Constituent Entities that are treated as dividends in the payor's tax jurisdiction.

Profit (Loss) Before Income Tax: In the fifth column of the template, the Reporting MNE should report the sum of the profit (loss) before income tax for all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The profit (loss) before income tax should include all extraordinary income and expense items.

Income Tax Paid (on Cash Basis): In the sixth column of the template, the Reporting MNE should report the total amount of income tax actually paid during the relevant fiscal year by all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. Taxes paid should include cash taxes paid by the Constituent Entity to the residence tax jurisdiction and to all other tax jurisdictions. Taxes paid should include withholding taxes paid by other entities (associated enterprises and independent enterprises) with respect to payments to the Constituent Entity. Thus, if company A resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B should be reported by company A.

Income Tax Accrued (Current year): In the seventh column of the template, the Reporting MNE should report the sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The current tax expense should reflect only operations in the current year and should not include deferred taxes or provisions for uncertain tax liabilities.

Stated capital: In the eighth column of the template, the Reporting MNE should report the sum of the stated capital of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital should be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes.

Accumulated earnings: In the ninth column of the template, the Reporting MNE should report the sum of the total accumulated earnings of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings should be reported by the legal entity of which it is a permanent establishment.

Number of Employees: In the tenth column of the template, the Reporting MNE should report the total number of employees on a full-time equivalent (FTE) basis of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions and from year to year. For this purpose, independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees. Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.

Tangible Assets other than Cash and Cash Equivalents: In the eleventh column of the template, the Reporting MNE should report the sum of the net book values of tangible assets of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, assets should be reported by reference to the tax jurisdiction in which the permanent establishment is situated. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

Table 2: List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Constituent Entities resident in the Tax Jurisdiction: The Reporting MNE should list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name, all the Constituent Entities of the MNE group which are resident for tax purposes in the relevant tax jurisdiction. As stated above with regard to permanent establishments, however, the permanent establishment should be listed by reference to the tax jurisdiction in which it is situated. The legal entity of which it is a permanent establishment should be noted (e.g. XYZ Corp – Tax Jurisdiction A PE).

Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence: The Reporting MNE should report the name of the tax jurisdiction under whose laws the Constituent Entity of the MNE is organised or incorporated if it is different from the tax jurisdiction of residence.

Main business activity(ies): The Reporting MNE should determine the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes.

Table 3: Additional Information

If the business activity is identified as “Other” in Table 3 you should also specify the nature of the activity of the Constituent Entity in this section along with any other information or explanation you consider necessary.