**Revised Regulations of Anguilla: T3-2**

TAX INFORMATION EXCHANGE (INTERNATIONAL CO-OPERATION) ACT (R.S.A. c. T3)

# INTERNATIONAL TAX COMPLIANCE (CBC REPORTING) REGULATIONS

Note: These Regulations are enabled under section 28 of the Tax Information Exchange (International Co-operation) Act, R.S.A. c. T3.

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SCHEDULE 1: Standard Template for Country-by-Country Report

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**Interpretation**

**1.** (1) In these Regulations—

"Competent Authority" means the Comptroller of Inland Revenue;

"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 business unit referred to in paragraph (a) 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 that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory tax reporting, or internal management control purposes;

"Country-by-Country Report" means a report described in section 2;

"Excluded MNE Group" means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than US$ 850 million during the Fiscal Year immediately preceding the Reporting Fiscal Year, as reflected in its Consolidated Financial Statements for such preceding Fiscal Year;

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

"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;

"International Agreement" means the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral Tax Convention or any Tax Information Exchange Agreement to which Anguilla is a party and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including the automatic exchange of such information;

"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;

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"Qualifying Competent Authority Agreement" means an agreement that—

(a) is between authorised representatives of those jurisdictions that are parties to an International Agreement; and

(b) requires the automatic exchange of Country-by-Country Reports between the party jurisdictions;

"Reporting Entity" means a Constituent Entity that is required by section 3 to file a Country-by-Country Report in its jurisdiction of tax residence on behalf of the MNE Group;

"Reporting Fiscal Year" means the Fiscal Year, the financial and operational results of which are reflected in the Country-by-Country Report for that Fiscal Year;

"resident in Anguilla" in respect of a Constituent Entity means—

(a) being incorporated or established in Anguilla;

(b) having a place of effective management in Anguilla; or

(c) being subject to financial supervision in Anguilla;

"Systemic Failure", with respect to a jurisdiction, means that the jurisdiction has a Qualifying Competent Authority Agreement in effect with Anguilla, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise has persistently failed to automatically provide to Anguilla Country-by Country Reports in its possession in respect of MNE Groups that have Constituent Entities in Anguilla;

"Ultimate Parent Entity" 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 the 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 public securities exchange in its jurisdiction of tax residence; and

(b) there is no other Constituent Entity of the MNE Group that owns directly or indirectly an interest described in paragraph (a) in the first-mentioned Constituent Entity.

(2) In these Regulations, a word or expression used in these Regulations and defined in the OECD Final Report but not in these Regulations has the meaning assigned to it in the OECD Final Report.

(3) For the purpose of subsection (2), "OECD Final Report" means the document entitled "Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report" published by the Organisation for Economic Co-operation and Development as part of the OECD/G20 Base Erosion and Profit Shifting Project, as amended from time to time.

**Country-by-Country Report**

**2.** For the purposes of these Regulations, a Country-by-Country Report with respect to an MNE Group is a report containing—

(a) aggregate information relating to the amount of revenue, profit (or loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of

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employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates; and

(b) an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity and, if different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organised and the nature of the main business activity or activities of such Constituent Entity.

**Filing obligation**

**3.** (1) Every Ultimate Parent Entity of an MNE Group that is resident in Anguilla for tax purposes shall file with the Competent Authority a Country-by-Country Report in accordance with the requirements of these Regulations with respect to each of its Fiscal Years beginning on or after 1 January 2019.

(2) A Country-by-Country Report must be filed in a form identical to the Standard Template set out in Tables 1, 2 and 3 of Schedule 1 to these Regulations, and the Instructions in Schedule 2 to these Regulations shall apply.

(3) A Country-by-Country Report must be filed no later than 12 months after the last day of the Fiscal Year of the MNE Group.

**Manner of filing**

**4.** (1) A Country-by-Country Report must be filed in the manner specified by the Competent Authority, which may include filing electronically using an electronic filing system.

(2) The manner of filing shall be specified in guidance notes issued by the Competent Authority under section 13.

(3) A Country-by-Country Report that is filed otherwise than in accordance with this section and section 3 is considered not to have been filed for the purposes of these Regulations.

(4) A Country-by-Country Report filed on behalf of a Reporting Entity is considered to have been filed by that Entity, unless the Entity proves that the return was filed without the Entity's authority.

**Notification obligation**

**5.** (1) Every Constituent Entity of an MNE Group that is resident in Anguilla for tax purposes shall, no later than the last day of the Reporting Fiscal Year of the MNE Group, notify the Competent Authority whether it is the Ultimate Parent Entity.

(2) If a Constituent Entity of an MNE Group that is resident in Anguilla for tax purposes is not the Ultimate Parent Entity it shall, no later than the last day of the Reporting Fiscal Year of the MNE Group, notify the Competent Authority of the identity and tax residence of the Reporting Entity.

(3) A notification that is required to be given under this section must be given in the manner and form specified by the Competent Authority in guidance notes issued under section 13.

**Use and confidentiality of Country-by-Country Reports**

**6.** (1) The Competent Authority shall use a Country-by-Country Report—

(a) for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in Anguilla, including assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules; and

(b) where appropriate, for economic and statistical analysis.

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(2) For the purposes of subsection (1), transfer pricing adjustments by the Competent Authority shall not be based on the Country-by-Country Report.

(3) The Competent Authority shall preserve the confidentiality of information contained in a Country-by-Country Report at least to the same extent that would apply if such information were provided to it under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

**Records**

**7.** (1) Every Reporting Entity shall keep records that the Entity obtains or creates for the purpose of complying with these Regulations.

(2) Every Reporting Entity required to keep records that does so electronically shall retain the records in an electronically readable format for the retention period referred to in subsection (4).

(3) Every Reporting Entity that obtains or creates records in a language other than English shall, upon request, provide an English translation to the Competent Authority.

(4) Every Reporting Entity that is required to keep, obtain or create records shall retain those records for a period of at least six years following the end of the last calendar year in respect of which the record is relevant.

**Inspection of books, etc., and provision of information and assistance**

**8.** (1) The Competent Authority may, by notice in writing, require an Entity to give the Competent Authority within 14 days any information that the Competent Authority may reasonably require for any purpose related to the administration or enforcement of these Regulations.

(2) The Competent Authority may require an Entity to—

(a) produce books, records or other documentation for inspection by the Competent Authority;

(b) provide information, explanations and particulars; and

(c) give any assistance that the Competent Authority may reasonably require in relation to the administration or enforcement of these Regulations.

(3) The Competent Authority may—

(a) make extracts from or copies of all or any part of the books, records or other documents or other material made available to the Competent Authority; and

(b) require that copies of books, records or other documents be made available to the Competent Authority for any purpose related to the administration or enforcement of these Regulations.

(4) If information that is required to be provided to, or inspected by, the Competent Authority is located outside Anguilla, the Entity shall take any necessary steps to bring the information to Anguilla within the time specified in writing by the Competent Authority, to enable the Entity to comply with requirements of the Competent Authority under this section.

**Appointment and responsibility of agents**

**9.** (1) A Reporting Entity may appoint a third party as its agent to carry out the duties and obligations imposed on it by these Regulations.

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(2) If a third party is appointed by a Reporting Entity under subsection (1), the Entity is responsible for any failure of that third party to carry out the obligations of the Entity and sections 8, 10(1)(b) and 11(2)(a) apply to the Entity notwithstanding that—

(a) the actions are those of that third party; or

(b) the failure to act is the failure by that third party to act.

**Offences**

**10.** (1) A Reporting Entity that—

(a) fails to implement arrangements or procedures in order to comply with these Regulations;

(b) fails to keep and maintain books and records as required under section 7;

(c) fraudulently or negligently makes a false report, whether in its entirety or in any particular part;

(d) with intent to avoid the provisions of these Regulations, alters, destroys, mutilates, defaces, hides or removes any document or information, including documents or information electronically held;

(e) without reasonable cause, fails to file a Country-by-Country Report when required and in the manner specified under these Regulations; or

(f) fails in any other way to comply with these Regulations;

commits an offence and is liable on summary conviction to a fine of $10,000.

(2) A Reporting Entity that wilfully obstructs an inspection by the Competent Authority under section 8 commits an offence and is liable on summary conviction to a fine of $5,000.

(3) A person who makes a false statement or omission, in respect of any information that is required to be included in a Country-by-Country Report, or for any other reason under these Regulations, commits an offence and is liable on summary conviction to a fine of $5,000.

**Defences**

**11.** (1) A person or a Reporting Entity does not commit an offence under section 10 if the court is satisfied that there is a reasonable excuse for the breach.

(2) For the purposes of these Regulations neither of the following is a reasonable excuse—

(a) that the person or the Reporting Entity relies upon another person to do something in relation to these Regulations; or

(b) that there is an insufficiency of funds to comply with these Regulations.

**Anti-avoidance**

**12.** (1) No person shall enter into an arrangement for the purpose of avoiding any obligation under these Regulations.

(2) If a person enters into an arrangement for the purpose of avoiding any obligation under these Regulations, these Regulations have effect as if the arrangement had not been entered into.

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**Issue of guidance notes**

**13.** (1) The Competent Authority may issue guidance notes from time to time for the purposes of aiding compliance with these Regulations.

(2) Guidance notes may be issued—

(a) generally, in which case they must be posted on an official website of the Government of Anguilla; or

(b) in respect of a particular Constituent Entity, in which case the Entity must be given notice of the guidance notes.

**Citation**

**14.** These Regulations may be cited as the International Tax Compliance (CBC Reporting) Regulations, Revised Regulations of Anguilla, T3-2.

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**SCHEDULE 1**

(Section 3)

**STANDARD TEMPLATE FOR COUNTRY-BY-COUNTRY REPORT**

<table>
<tr><th colspan="11">Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction</th></tr>
<tr><td>Name of the MNE Group</td><td colspan="10"></td></tr>
<tr><td>Address of Reporting Entity</td><td colspan="10"></td></tr>
<tr><td>TIN for Reporting Entity</td><td colspan="10"></td></tr>
<tr><td>Fiscal year concerned</td><td colspan="10"></td></tr>
<tr><td>Currency used</td><td colspan="10"></td></tr>
<tr><td rowspan="2">Tax Jurisdiction</td><td colspan="3">Revenues</td><td rowspan="2">Profit (Loss) before Income Tax</td><td rowspan="2">Income Tax Paid (on Cash Basis)</td><td rowspan="2">Income Tax Accrued - Current Year</td><td rowspan="2">Stated Capital</td><td rowspan="2">Accumulated Earnings</td><td rowspan="2">Number of Employees</td><td rowspan="2">Tangible Assets other than Cash and Cash Equivalents</td></tr>
<tr><td>Unrelated Party</td><td>Related Party</td><td>Total</td></tr>
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| **Table 2. List of all the Constituent Entities of the MNE Group included in each aggregation per tax jurisdiction** | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 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 or Activities | | | | | | | | | | | | |
| | | | 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[1] |
| | 1 | | | | | | | | | | | | | | |
| | 2 | | | | | | | | | | | | | | |
| | 3 | | | | | | | | | | | | | | |
| | 1 | | | | | | | | | | | | | | |
| | 2 | | | | | | | | | | | | | | |
| | 3 | | | | | | | | | | | | | | |

1. Please specify the nature of Other Activity of the Constituent Entity in Table 3.

| **Table 3. Additional Information** | |
|---|---|
| Name of the MNE Group | |
| Fiscal year concerned | |
| Please include any further brief information or explanation you consider necessary | |

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## SCHEDULE 2

(Section 3)

## INSTRUCTIONS FOR COMPLETING STANDARD TEMPLATE FOR COUNTRY-BY-COUNTRY REPORT

### A. General Instructions

**1. Purpose**

Schedule 1 sets out a standard template for the Country-by-Country Report, including the reporting of the allocation of income, taxes and business activities of a multinational enterprise group (MNE Group) on a tax jurisdiction-by-tax jurisdiction basis. These instructions form an integral part of the Standard Template.

**2. Interpretation**

*General*

The definitions in section 1 of the Regulations apply.

*Treatment of Permanent Establishments*

A permanent establishment is an establishment of a separate business unit of an MNE Group where the business unit prepares a separate financial statement for such establishment, for financial reporting, regulatory tax reporting, or internal management control purposes.

Permanent establishment data should be reported by reference to the tax jurisdiction in which the permanent establishment is situated, and not by reference to the tax jurisdiction of residence of the business unit of which the permanent establishment is a part. Residence tax jurisdiction reporting for the business unit, of which the permanent establishment is a part, should exclude financial data related to the permanent establishment.

**3. Period covered by the annual Template**

The Template should cover the fiscal year of the Reporting Entity. For Constituent Entities, at the discretion of the Reporting Entity, the Template should reflect on a consistent basis either—

(i) information for the fiscal year of the relevant Constituent Entities ending on the same date as the fiscal year of the Reporting Entity, or ending within the 12-month period preceding such date, or

(ii) information for all the relevant Constituent Entities reported for the fiscal year of the Reporting Entity.

**4. Source of data**

The Reporting Entity should consistently use the same sources of data from year to year in completing the Template. The Reporting Entity may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts. It is not necessary to reconcile the revenue, profit and tax reporting in the Template to the consolidated financial statements. If statutory financial statements are used as the basis for reporting, all amounts should be translated to the stated functional currency of the Reporting Entity at the average exchange rate for the year stated in Table 3 of the Template.

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Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

The Reporting Entity should provide a brief description of the sources of data used in preparing the Template in Table 3 of the Template. If a change is made in the source of data used from year to year, the Reporting Entity should explain the reasons for the change and its consequences in Table 3.

## B. Specific Instructions

### 1. Overview of allocation of income, taxes and business activities by tax jurisdiction (Table 1 of Schedule 1)

*Tax Jurisdiction*

In the first column of Table 1, the Reporting Entity should list all 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 that has fiscal autonomy. A separate line should be included for all Constituent Entities in the MNE Group deemed by the Reporting Entity not to be resident in any tax jurisdiction for tax purposes.

If 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.

If 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 Table 1 under the heading Revenues, the Reporting Entity 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 Table 1, the Reporting Entity should report the sum of the profit (loss) before income tax for all Constituent Entities that are 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 Table 1, the Reporting Entity should report the total amount of income tax actually paid during the relevant fiscal year by all Constituent Entities that are 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.

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*Income Tax Accrued (Current Year)*

In the seventh column of Table 1, the Reporting Entity should report the sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all Constituent Entities that are 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 Table 1, the Reporting Entity should report the sum of the stated capital of all Constituent Entities that are 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 Table 1, the Reporting Entity should report the sum of the total accumulated earnings of all Constituent Entities that are 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 Table 1, the Reporting Entity should report the total number of employees on a full-time equivalent (FTE) basis of all Constituent Entities that are 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, provided 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 Table 1, the Reporting Entity should report the sum of the net book values of tangible assets of all Constituent Entities that are 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.

**2. List of all the Constituent Entities of the MNE Group included in each aggregation per tax jurisdiction (Table 2 of Schedule 1)**

*Constituent Entities Resident in the Tax Jurisdiction*

The Reporting Entity should list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name, all Constituent Entities of the MNE Group that are resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, a 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 ABC).

*Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence*

The Reporting Entity should report the name of the tax jurisdiction under whose laws a Constituent Entity is organised or incorporated if it is different from the tax jurisdiction of residence.

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*Main Business Activity or Activities*

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

| Business Activities |
|---|
| 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 (please specify in Table 3 of Schedule 1) |

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