



8 February 2018

## Base Erosion and Profit Shifting Regulations in the Cayman Islands

### Action 13: Country by Country Reporting for Cayman funds

Country by Country reporting regulations have been introduced in the Cayman Islands which require certain Cayman entities to notify and/or submit reports to the Cayman Department of International Cooperation (the “**Department**”)<sup>1</sup>. These reports will be shared with other jurisdictions participating in the automatic exchange of country by country reports in line with OECD recommendations<sup>2</sup>.

An that entity which is established, has a place of effective management or is subject to financial supervision in the Cayman Islands (a “**Cayman Entity**”) will need to comply with these regulations if it is a member of a group of enterprises that:

- ❑ are required to prepare consolidated financial statements (or would be so required if the equity interests of any group member were traded on a public securities exchange);
- ❑ has enterprises that are tax resident or subject to tax through permanent establishment rules in more than one jurisdiction; and

<sup>1</sup> The Tax Information Authority (International Tax Compliance) (Country-by-Country Reporting) Regulations, 2017 made under The Tax Information Authority Law (2017 Revision).

<sup>2</sup> The jurisdictions that currently have active exchange relationships with the Cayman Islands are: Argentina; Australia; Austria; Belgium; Brazil; Bulgaria; Canada; Chile; Colombia; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Iceland; India; Indonesia; Ireland; Italy; Japan; Korea; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; Mexico; Netherlands; New Zealand; Norway; Poland; Portugal; Russia; Slovak Republic; Slovenia; South Africa; Spain; Sweden; Switzerland; and Uruguay.

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- had a total consolidated group revenue of USD 850m during its most recent fiscal year.

Where the Cayman Entity is the ultimate parent entity of such a group it will be required to file a report containing financial information with regard to each jurisdiction in which the group operates and details of each of its members including their tax residence, place of establishment and main business activities. The first reports are expected to be required to be filed by 31 May 2018 and will be in respect of the group fiscal year that began on or before 31 March 2016. Thereafter reports are required to be filed within twelve months of each group fiscal year end. Cayman reporting entities are expected to be required appoint primary and secondary contacts to liaise with the Department (these contacts will not need to be resident in Cayman).

If a Cayman fund holds investments directly or indirectly in underlying entities that are tax resident outside the Cayman Islands, is required to consolidate its accounts with those entities (or would be so required if it or any them were listed) and group revenues are USD850m or more the Cayman fund may be the ultimate parent entity of the group and may have reporting obligations.

Where the regulations apply, the group may be required to appoint one of its members to file reports as a “surrogate parent entity” under certain circumstances. If the surrogate parent entity is a Cayman Entity it will be required to report to the Department where the ultimate parent is not obliged to file a report in its own jurisdiction of tax residence, the jurisdiction of its tax residence has not entered into a competent authority agreement with the Cayman Islands or there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent which has been notified to the Cayman Entity by the Department.

If a Cayman fund has an investor which is tax resident outside the Cayman Islands and has sufficient ownership or control of the Cayman fund such that it is required under its own accounting standards to consolidate its accounts with those of the Cayman fund and group revenues are USD 850m or more the Cayman fund may be appointed as surrogate parent entity by its group and thereby have reporting obligations.

Whether a Cayman fund is part of a relevant group by virtue of the account consolidation rules applicable to its investors may initially be challenging to determine. Advice may need to taken from auditors or accountants operating in the jurisdictions where investors are tax resident in to determine whether they are likely to have sufficient ownership or control of the fund. It will be important to obtain a confirmation from new investors as to whether their account consolidation rules will bring the Cayman fund within the Country by Country reporting regulations. It would also be sensible for Cayman funds to obtain representations from any new investors that if account consolidation requirements arise after their subscription this will be notified to the fund.

All Cayman Entities that are members of a relevant group are required to notify the Department of whether they are the ultimate or surrogate parent within their group and, if they are not, provide the details of the reporting group entity that will be filing reports in its jurisdiction of tax residence. The first notifications are expected to be required by 15 May 2018 if the ultimate or surrogate parent is resident in Cayman or by 30 September 2018 if it is resident outside Cayman. Thereafter notifications are expect be required before the last day of the relevant group fiscal year.

Each group entity will need to retain all records relating to information required to be reported to the

Cayman Department of International Cooperation for a period of six years. Reporting, notification and record keeping requirements can be delegated to an agent and the auditor or accountant of a Cayman fund might be ideally placed to take on this role if it is part of their service offering.

Whether a Cayman fund falls within these Cayman regulations is best determined in consultation with its auditors or accountants but where any further advice is required on the application of the Country by Country reporting regulations or the reporting or notification obligations arising under them the Dillon Eustace Cayman team will be able to assist.

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