EXPLANATORY NOTES ON COUNTRY BY COUNTRY REPORTING OBLIGATIONS – EU DIRECTIVES 2011/16 AND 2016/881

Introduction

The Income Tax Act 2010 (Amendment) Regulations 2017, which came into operation on 5 June 2017, transposed into the Income Tax Act 2010 (the "Act") Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory exchange of information in the field of taxation in relation to Country-by-Country Reporting ("CbCR") for entities of MNE groups.

The Income Tax Office uses terms and definitions that are taken from the OECD guidance:

(http://www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-bycountry-reporting-beps-action-13.htm) and therefore that guidance is a useful tool when complying with CbCR obligations.

Notification obligations

The first step in the CbCR process is the obligation to notify the Commissioner of Income Tax which entity within an MNE group will file the CbC report and where.

Under section 10R. of the Act all constituent entities that are resident in Gibraltar are required to notify the Commissioner whether they are:

An ultimate parent entity;

A surrogate parent entity;

A constituent entity required to file a CbC report; or

A constituent entity not filing a CbC report – in this case that entity must notify the Commissioner who is filing the CbC report on behalf of its MNE group and where this is to be done.

The first forthcoming deadline for this notification is 30 September 2017.

In addition to the above, there are also notification obligations arising in the following instances:

Under section 10P.(2)(b) where an MNE group designates a constituent entity resident in Gibraltar to be the surrogate parent entity; and

Under section 10O.(3)(a) where a constituent entity resident in Gibraltar is required to file a CbC report by virtue of meeting one of the conditions contained in section 10O.(1) of the Act and is unable to obtain necessary information from its ultimate parent to complete the CbC report.

The first forthcoming deadline for such notifications is 31 December 2017.

Notification template

In order to assist you with your obligations under this regime, the Income Tax Office has prepared a spreadsheet for you to complete in respect of all entities within an MNE group that are resident in Gibraltar (including permanent establishments within Gibraltar of overseas group entities). This template can be downloaded from our webpage:

https://www.gibraltar.gov.gi/new/corporate# or https://www.gibraltar.gov.gi/new/downloads-ito

When completing this spreadsheet please select the classification for each entity on the basis of a drop down menu that provides you with the 4 options referred to above.

Once the relevant data for each constituent entity has been inputted, the identity of the person(s) completing the CbCR notification should be recorded. The drop down menus provided can be used to state in what capacity the notification is made. There is also a box to provide any comments or remarks you feel may be necessary and relevant to the notification being made.

Please send the completed notification spreadsheet to CbCR@gibraltar.gov.gi.

CbC Reporting

The Income Tax Office will issue a further communication on CbCR reporting including details of the dedicated portal through which reports are to be uploaded.

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