

*Legal Supplement Part C to the “Trinidad and Tobago Gazette”, Vol. 63,
No. 25, 20th February, 2024*

No. 5 of 2023

Fourth Session Twelfth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to provide for the Country-by-Country
Reporting (CBCR) by Multinational entities
relative to the Base Erosion and Profit Shifting
Inclusive Framework and to provide for matters
related thereto

THE BASE EROSION AND PROFIT SHIFTING INCLUSIVE
FRAMEWORK (COUNTRY-BY-COUNTRY) REPORTING
BILL, 2023

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to provide country-by-country reporting (CBCR) legislation to meet Trinidad and Tobago's obligations to the Base Erosion and Profit Shifting (BEPS) Inclusive Framework and assist with compliance with one criteria of the list of non-cooperative jurisdictions for tax purposes of the European Union.

The Bill contains 22 clauses.

Clause 1 of the Bill would provide the title of the Act for which this is the Bill.

Clause 2 of the Bill would provide that the Act would come into operation on such day as the President fixes by Proclamation.

Clause 3 of the Bill would provide for the interpretation of certain words and phrases used in the Bill.

Clause 4 of the Bill would outline the filing obligations of the various reporting entities to the Board of Inland Revenue (the Board).

Clause 5 of the Bill would set out the notification obligations of entities of eligible MNEs.

Clause 6 of the Bill would provide the details that are to be included in the country-by-country report and the specific documentation that is to be used for its preparation.

Clause 7 for the Bill would provide the time frame by which country-by-country reports are to be filed.

Clause 8 of the Bill would provide that a country-by-country report and any information obtained under the Act may be used for the purposes of collaboration on compliance and enforcement with other competent authorities under a competent authority agreement.

Clause 9 of the Bill would require the Board to keep confidential information contained in the country-by-country report.

Clause 10 of the Bill would require a reporting entity to establish and keep a record of certain items and requires the reporting entity to keep such records of a period of six years.

Clause 11 of the Bill would require the Registrar General to provide the Board with information in respect of enterprises under three pieces of legislation for which the Registrar General has a supervisory role, once every six months. The section continues to require the Board to utilise the lists and information so as to verify whether enterprises are registered in Trinidad and Tobago for tax purposes.

Clause 12 of the Bill would require the Board to require a Constituent Entity provide certain information in its possession. The clause also requires the Constituent Entity to retain any book, document electronically-stored information or other record required to be provided to the Board.

Clause 13 of the Bill would provide that where the Board discovers an error in the country-by-country report, it is required to notify the relevant Reporting Entity, to require the Reporting Entity to correct the error and submit a corrected report within fourteen days after the date of service of the notice and state that failure to comply with the requirements of the notice can attract a penalty.

Clause 14 of the Bill would provide for where a person enters into an agreement in order to avoid any obligation under the Act.

Clause 15 of the Bill would provide for those instances where a person with intent makes or submits a false country-by-country report. In those instances, the person commits an offence and is liable on summary conviction to a penalty of five hundred thousand dollars and to imprisonment for ten years.

Clause 16 of the Bill would provide that where a person alters, destroys, mutilates, obliterates, hides or removes a country-by-country report which is submitted to the Board, or causes another person to do so, he is liable to a penalty on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment of ten years.

Clause 17 of the Bill would make it an offence of a person to hinder or obstruct the Board from performing under the Act. The penalty for this offence would be fine of two hundred and fifty thousand dollars and imprisonment for one year.

Clause 18 of the Bill would provide for the right of appeal from a decision of the Board.

Clause 19 of the Bill would empower the Board to administer administrative fines under this Act.

Clause 20 of the Bill would provide for the penalties, including administrative fines that would be imposed where a reporting entity fails to comply with the reporting requirements of country-by-country reporting of the Bill.

Clause 21 of the Bill would empower the Minister to make Regulations for the purpose of giving effect to the Act.

Clause 22 would empower the Board to make Guidelines for the purpose of assisting with compliance with this Act. Guidelines would be required to be published in the *Gazette*.

The Schedule would contain the Form to be used for the country-by-country report.

THE BASE EROSION AND PROFIT SHIFTING INCLUSIVE
FRAMEWORK (COUNTRY-BY-COUNTRY) REPORTING
BILL, 2023

Arrangement of Clauses

Clause

1. Short title
2. Commencement
3. Interpretation
4. Filing Information
5. Notification requirement
6. Country-by-country report
7. Time for filing
8. Country-by-country report may be used
9. Confidentiality
10. Records
11. Information to be forwarded to the Board by Registrar
12. Provision of information to the Competent Authority
13. Errors in CBC Reporting
14. Avoidance of Obligation
15. False country-by-country report
16. Alteration, Destruction, mutilation, obliteration etc. of country-by-country report
17. Hindering or obstructing Board
18. Right of Appeal
19. Power of Board to administer fines
20. Penalties
21. Regulations
22. Guidelines

BILL

AN ACT to provide for the Country-by-Country Reporting (CBCR) by Multinational entities relative to the Base Erosion and Profit Shifting Inclusive Framework and to provide for matters related thereto

[, 2023]

ENACTED by the Parliament of Trinidad and Tobago as Enactment follows:

PART I

1. This Act may be cited as the Base Erosion and Short title Profit-Shifting Inclusive Framework (Country-by-Country) Reporting Act, 2023.

- Commencement **2.** This Act shall come into operation on such day as is fixed by the President by Proclamation.
- Interpretation **3.** In this Act, unless the context otherwise requires—
- Chap. 75:01 “Board” means the Board of Inland Revenue established under section 3 of the Income Tax Act;
- “Consolidated Financial Statements” means the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flow 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, regulatory, tax reporting, or internal management control purposes;

“Excluded MNE Group” means, with respect to any Fiscal Year of the Group, a group having total consolidated group revenue of less than the equivalent of eight hundred and fifty million United States dollars in Trinidad and Tobago dollars 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 Trinidad and Tobago is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information;

“Minister” means the Minister with responsibility for finance;

“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;

“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;

“Reporting Entity” means the Constituent Entity that is required to file a country-by-country report conforming to the requirement in section 4 in its jurisdictions of tax residence on behalf of the MNE Group and the Reporting Entity may be the Ultimate Parent Entity, the Surrogate Parent Entity or entity described in section 4(2);

“Reporting Fiscal Year” means that Fiscal Year the financial and operational results of which are reflected in the country-by-country report defined in section 6;

“Surrogate Parent Entity” 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 the jurisdiction of tax residence of that Constituent Entity, on behalf of the MNE Group, when one or more of the conditions set out in section 4(2)(b) applies;

“Systemic Failure”, with respect to a jurisdiction, means that a jurisdiction has—

- (a) a Qualifying Competent Authority Agreement in effect with Trinidad and Tobago, but has suspended automatic exchange, for reasons other than those that are in accordance with the terms of that Agreement; or
- (b) otherwise persistently failed to automatically provide to Trinidad and Tobago country-by-country reports in its possession of MNE Groups that have Constituent Entities in Trinidad and Tobago; and

“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 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 directly described in paragraph (a) in the first mentioned Constituent Entity.

Filing Obligation

4. (1) Each Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Trinidad and Tobago shall file a country-by-country report, conforming to the requirements of section 6, with the Board, with respect to its Reporting Fiscal Year on or before the date specified in section 7.

(2) A Constituent Entity, which is not the Ultimate Parent Entity of an MNE Group, shall file a country-by-country report that conforms to the requirements of section 6 with the Board, with respect to the Reporting Fiscal Year of a MNE Group of which it is a Constituent Entity, on or before the date specified in section 7, if the following criteria are satisfied:

(a) the entity is resident for tax purposes in Trinidad and Tobago; and

(b) one of the following conditions applies:

(i) the Ultimate Parent Entity of the MNE group is not obligated to file a country-by-country report in its jurisdiction of tax residence;

(ii) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which Trinidad and Tobago is a party but does not have a Qualifying Competent Authority Agreement in effect to which Trinidad and Tobago is a party by the date specified in section 7 for filing the country-by-country report for the Reporting Fiscal Year; or

(iii) there has been a Systemic Failure of the jurisdiction of tax

residence of the Ultimate Parent Entity that has been notified by the Board to the Constituent Entity resident for tax purposes in Trinidad and Tobago.

(3) Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in Trinidad and Tobago and one or more of the conditions set out in subsection (2) apply, the MNE Group may designate one of such Constituent Entities to file the country-by-country report conforming to the requirements of section 6 with the Board that is intended to satisfy the filing requirements of all the Constituent Entities of such MNE Group that are resident for tax purposes in Trinidad and Tobago.

(4) Notwithstanding subsection (2), a Constituent Entity shall not be required to file a country-by-country report with the Board, for a Reporting Fiscal Year where the MNE Group of which it is a Constituent Entity files a country-by-country report with respect to the Fiscal Year Reporting on or before the period specified in section 7 and that satisfies the following conditions:

- (a) the jurisdiction of tax residence of the Surrogate Parent Entity requires the filing of country-by-country reports conforming to the requirements of section 7;
- (b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which Trinidad and Tobago is a party by the time specified in section 7 for filing the country-by-country report for the Reporting Fiscal Year;
- (c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Board of a Systemic Failure;

(d) the jurisdiction of tax residence of the Surrogate Parent Entity has been notified, in accordance with section 5(1), by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity; and

(e) a notification has been provided to the Board in accordance with section 5(2).

Notification
requirements

5. (1) Any Constituent Entity of an MNE Group that is resident for tax purposes in Trinidad and Tobago shall notify the Board whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, not later than the last day of the Reporting Fiscal Year of such MNE Group.

(2) Where a Constituent Entity of an MNE Group that is resident for tax purposes in Trinidad and Tobago is not the Ultimate Parent Entity nor the Surrogate Parent Entity, it shall notify the Board of the identity and tax residence of the Reporting Entity no later than the last day of the Reporting Fiscal Year of such MNE Group.

Country-by-country
report

6. (1) The Board shall, in accordance with section 22, issue guidelines in respect of the—

(a) content and format of a country-by-country report; and

(b) method for filing a country-by-country report.

(2) For the purposes of subsection (1), a country-by-country report with respect to an MNE Group is a report in the form which shall be set out in Guidelines made under this Act.

(3) Where the Board makes provision for an electronic method of filing a country-by-country report, the Board shall cause an electronic validation process to be established.

(4) Where the Board specifies an electronic method for filing a country-by-country report, unless the contrary is proved—

- (a) the use of an electronic method is presumed to have resulted in the filing of the country-by-country report only if it has been successfully recorded by the electronic validation process;
- (b) the time of filing the of the country-by-country report is presumed to be the time as recorded by the electronic validation process; and
- (c) the person who forwards the country-by-country report is presumed to be the person identified as such any relevant feature of the electronic system.

(5) A country-by-country report which is not filed in accordance with the guideline issued under section 19 shall be treated as not having being filed or invalidly filed.

7. (1) The country-by-country report required by this ^{Time for filing} Act shall be filed no later than twelve months after the last day of the Reporting Fiscal Year of the MNE Group.

(2) The first Reporting Fiscal Year for the purposes of this Act is any fiscal year beginning on or after the date of the coming into force of this Act.

8. The Board shall use the country-by-country report ^{Country-by- country report may be used} and any other information obtained pursuant to this Act for the purposes of collaboration on compliance and enforcement with other competent authorities pursuant to a qualifying competent authority agreement.

9. The Inland Revenue Department shall preserve ^{Confidentiality} the confidentiality of the information contained in the country-by-country report at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters Act.

Records

10. (1) A reporting entity shall establish and keep a record of—

- (a) the steps undertaken for the performance of the obligations under section 4;
- (b) any evidence relied upon for the performance of its obligations under section 4; and
- (c) the information submitted to the Board for the purposes of section 4.

(2) A reporting entity under subsection (1) shall, before disposing of any records made pursuant to subsection (1), ensure that the records are kept for a period of six years.

(3) For the purposes of this section, the period referred to in subsection (2) shall commence after the end of the Reporting Fiscal Year to which the records pertain.

Information to be forwarded to the Board by Registrar

11. (1) The Registrar General shall forward to the Board at least once every six months a list of enterprises registered under the—

- (a) Companies Act, Chap. 81:01;
- (b) Registration of Business Names Act, Chap. 82:85; and
- (c) Non-Profit Organisations Act, No. 7 of 2019.

(2) Subject to subsection (1), the Board shall utilise the list and information to verify whether enterprises specified in the list or information received are constituent entities resident in Trinidad and Tobago for tax purposes.

Provision of information to the Board

12. (1) The Board may, in writing and within such times as it may require, require a Board provide or make available to it, information including—

- (a) copies of relevant books, records or other documents; or

(b) electronically stored information,

in its possession or control as the Board may reasonably require to determine whether the Constituent Entity is compliant within this Act.

(2) Where any information which is required to be provided to the Board is located outside of Trinidad and Tobago, the Constituent Entity shall take all necessary steps to bring the information to Trinidad and Tobago, within the time specified by the Board.

(3) A Constituent Entity shall retain for six years any book, document, electronically-stored information or other record that relates to the information required to be reported to the Board under this Act.

13. Where the Board discovers an error in a country-^{Errors in CBC Reporting} by-country report, the Board shall, in writing—

- (a) notify the relevant Reporting Entity of an error;
- (b) require the Reporting Entity to correct the error and submit a corrected report within fourteen days after the date of service of the notice; and

state that failure to comply with the requirements of the notice amounts to a breach of the Act and such breach may render the Reporting Entity subject on summary conviction to a fine of two hundred and fifteen thousand dollars and imprisonment for ten years.

14. Where a person enters into an agreement or^{Avoidance of Obligation} engages in a practice, for which the main purpose or one of the main purposes of the person entering in the agreement or engaging in the practice is to avoid any obligation under this Act, the person is subject to the obligation as if the person had not entered into the agreement or engaged in the practice.

Fake country-by-country report

15. Where a person knowingly makes or submits a false country-by-country report, whether in its entirety or in part thereof, he commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for a term of ten years.

Alter, destroy, mutilate or obliterate a country-by-country report

16. Where a person, without written authorisation from the Board—

(a) alters, destroys, mutilates, obliterates, hides or removes a country-by-country report which is submitted to the Board pursuant to this Act; or

(b) causes another person to do anything referred to in paragraph (a),

he commits an offence is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for ten years.

Hindering or obstructing Board

17. Any person who hinders or obstructs the Board from performing a function under this Act, commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for ten years.

Right of Appeal

18. A person aggrieved by a decision of the Board under this Act, may appeal that decision to the High Court.

Power of Board to administer administrative fines

19. The Board may administer administrative fines for breaches under this Act in accordance with the procedures set out in Regulations made under this Act.

Penalties

20. (1) Where a Reporting Entity fails to comply with the reporting requirements for the country-by-country report, as required under this Act, it commits an offence and is liable on summary conviction to a two hundred and fifty thousand dollars and to imprisonment for ten years.

(2) Notwithstanding subsection (1), a Reporting Entity which contravenes sections 4, 5, 6, 7 and 10 and Guidelines made under section 22 may be liable to an administrative fine not exceeding twenty thousand dollars in the manner provided for Regulations made under this Act.

21. (1) The Minister may make Regulations for the ^{Regulations} purpose of giving effect to this Act.

(2) Regulations made under section 53 may carry an administrative fine of one hundred thousand dollars and a fine of two hundred and fifty thousand dollars.

22. (1) The Board may issue Guidelines in such form ^{Guidelines} as it considers appropriate for the purpose of assisting with compliance with this Act.

(2) Guidelines under subsection (1), shall be published in the *Gazette*.

Passed in the Senate this day of ,
2023.

Clerk of the Senate (Acting)

I confirm the above.

President of the Senate

Passed in the House of Representatives this day
of , 2023.

Clerk of the House

I confirm the above.

Speaker

No. 5 of 2023

FOURTH SESSION
TWELFTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to provide for the Country-by-Country Reporting (CBCR) by Multinational entities relative to the Base Erosion and Profit Shifting Inclusive Framework and to provide for matters related thereto

Received and read the

First time

Second time

Third time