



THE PARLIAMENT OF
TRINIDAD AND TOBAGO

BILL ESSENTIALS

Date Introduced: 24 November,
2023

House: Senate

Minister: Minister of Finance

Senate Bill No. 5 of 2023

Links: The links to the Bill, and its progress can be found on the Bill's home page through the Parliament's Website:

<https://www.ttparliament.org/wp-content/uploads/2023/11/b2023s05.pdf>

BILL ESSENTIALS

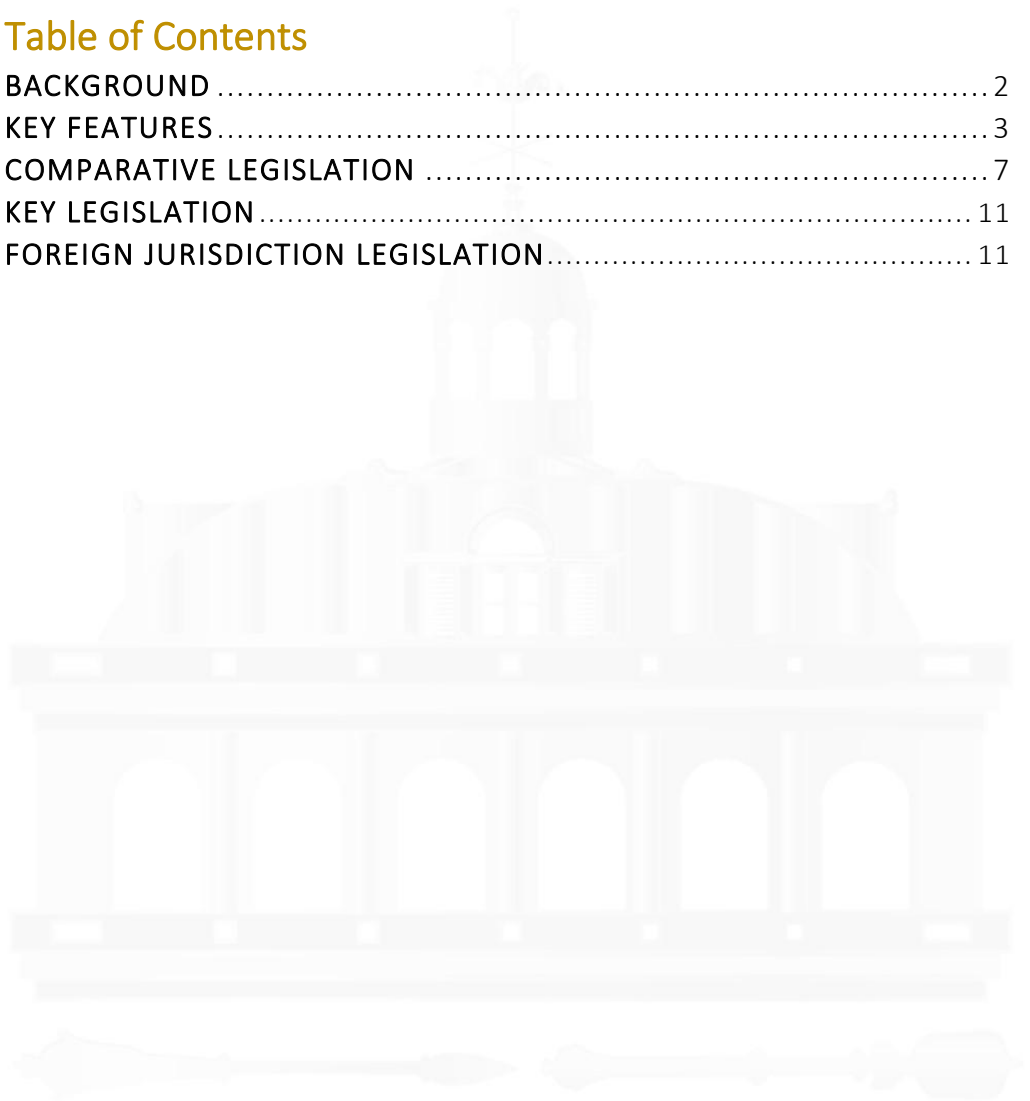
BILL ESSENTIALS NO. 5 of 2023-2024

4th SESSION, 12TH PARLIAMENT

The Base Erosion and Profit Shifting Inclusive Framework (Country-by-Country) Reporting Bill, 2023

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BACKGROUND

1. **The Base Erosion and Profit-Shifting Inclusive Framework (Country-by-Country) Reporting Bill, 2023¹** ('the Bill') was introduced in the Senate by the Honourable Colm Imbert, Minister of Finance on November 24, 2023. The Bill seeks to provide country-by-country reporting (CBCR) legislation to meet Trinidad and Tobago's obligations to the Base Erosion and Profit Shifting Inclusive Framework.
2. The object of this Bill is to enable the Board of Inland Revenue to track the income streams of multi-national enterprises (MNEs) in order to ensure tax compliance.
3. The Bill will come into effect on such day as fixed by the President by Proclamation.
4. In a Senate debate on the Miscellaneous Provisions (Trustees, Exchequer and Audit) Bill, 2023², the Minister of Finance informed that Trinidad and Tobago had been placed on the European Union's (EU) list of non-cooperative jurisdictions as a result of three criteria, namely:
 - i. A non-compliant rating under the exchange of information, common reporting standards, and the signatory and ratification of the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters;
 - ii. The Forum on Harmful Tax Practices and;
 - iii. The Inclusive Framework on Base Erosion and Profit Shifting.
5. The Organisation for Economic Co-operation and Development (OECD) defines base erosion and profit shifting (BEPS) as "*tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity or to erode tax bases through deductible payments such as interest or royalties.*"³ This creates unfair advantages for businesses operating internationally over those at a domestic level, undermines the fairness of

¹ The Base Erosion and Profit-Shifting Inclusive Framework (Country-by-Country) Reporting Bill, 2023, <https://www.ttparliament.org/wp-content/uploads/2023/11/b2023s05.pdf>

² Hansard <https://www.ttparliament.org/wp-content/uploads/2023/11/hs20231124u.pdf> pgs 48 -51

³ The Organisation for Economic Co-operation and Development (OECD), Inclusive Framework on Base Erosion and Profit Shifting <https://www.oecd.org/tax/beps/about/>


tax systems resulting in little or no corporate tax being paid, and can reduce voluntary tax compliance.⁴


6. This Bill is part of a suite of legislation required to remove Trinidad and Tobago off the EU's list of non-corporative jurisdictions and improve our legislative, administrative, and operational systems to comply with EU requirements.
7. The Bill, like many other legislation in other jurisdictions seeking to implement country-by-country reporting, closely follows the OECD model legislation in the OECD Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report.⁵

KEY FEATURES

New Definitions

8. **Clause 3** defines terms such as:

 **“Board”** means the Board of Inland Revenue established by the **Income Tax Act**⁶.

 **“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;

⁴ <https://www.oecd.org/tax/beps/flyer-inclusive-framework-on-beps.pdf>

⁵ https://read.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en#page39


⁶ Chap.75:01 <https://agla.gov.tt/downloads/laws/75.01.pdf>

- (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 purpose;*

 **“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;

 **“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;*

 **“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.*

KEY CLAUSES

9. **Clause 4** of the Bill mandates that the Ultimate Parent Entity and Constituent Entities of MNE Groups, who are resident in Trinidad and Tobago for tax purposes, must file a country-by-country report⁷. A Constituent Entity of an MNE Group, which is not the Ultimate Parent Entity, is mandated to file a country-by-country report with the Board for the Reporting Fiscal Year of the MNE Group, if it is resident in Trinidad and Tobago or one of the specified conditions is met (i.e., the Ultimate Parent Entity is not obligated to file, lacks a qualifying agreement, or there is a systemic failure).
10. **Clause 6** of the Bill mandates the Board to issue guidelines for country-by-country reports, covering content, format, and filing methods. The report must adhere to the guidelines, and if filed electronically, the Board shall establish a validation process. Failure to file in accordance with guidelines is considered as not filed or invalid.
11. **Clause 7** of the Bill establishes a 12-month timeline for the submission of the country-by-country report required by the proposed Act. The 12-month period commences after the last day of the Reporting Fiscal Year of the MNE Group.
12. **Clause 8** of the Bill mandates that the Board use the country-by-country report and other information obtained under this Act to collaborate on compliance and enforcement with other competent authorities, as specified in a qualifying competent authority agreement.
13. **Clause 9** of the Bill imposes an obligation of confidentiality on the Inland Revenue Department.
14. **Clause 11** of the Bill requires the Registrar General to provide the Board with a list of registered enterprises every six months, specifically those registered under the Companies Act Chapter 81:01, Registration of Business Names Act Chapter 82:85, and Non-Profit Organisations Act, No. 7 of 2019. The Board uses this information to verify the tax residency of these entities in Trinidad and Tobago.

⁷ Under BEPS Action 13, all large multinational enterprises (MNEs) are required to prepare a country-by-country (CbC) report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. This CbC report is shared with tax administrations in these jurisdictions, for use in high level transfer pricing and BEPS risk assessments. <https://www.oecd.org/tax/beps/beps-actions/action13/>

15. **Clause 12** of the Bill empowers the Board to request a Constituent Entity to provide necessary information, including relevant documents or electronically stored data, to determine compliance with the Act. Additionally, the Constituent Entity is obligated to retain relevant books, documents, electronically stored information, or records for six years pertaining to the information required by the Board under this Act.
16. **Clause 13** of the Bill requires the Board to notify the Reporting Entity in writing if an error is discovered in the country-by-country report. The Board must then instruct the entity to correct the error and submit a corrected report within fourteen days.
17. **Clause 14** establishes that attempts to circumvent the obligations of the Act through agreements or practices designed for that purpose, will not exempt the person from compliance.
18. The following table illustrates the offences under this Act:

CLAUSE	OFFENCE	PENALTY
13	Failure to correct an error in the country-by-country report and submit a corrected country-by-country report	Liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for ten years .
15	Knowingly making or submitting a false country-by-country report	Liable on conviction on indictment to a fine of five hundred thousand dollars and imprisonment for ten years .
16	Indirectly alter, destroy, mutilate or obliterate a country-by-country report	Liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for ten years .
17	Hinder the Board in performing its functions under the Act	Liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for ten years .

19. **Clause 19** authorises the Board to administer fines for breaches of the proposed Act in accordance with the Regulations made under the proposed Act.
20. **Clause 21** empowers the Minister to make Regulations to give effect to the proposed Act.
21. **Clause 22** of the Bill empowers the Board to issue Guidelines in the Gazette to assist with compliance of the proposed Act.

COMPARATIVE LEGISLATION

Filing Obligation

UNITED KINGDOM The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2016	BAHAMAS Multinational Entities Financial Reporting Act, 2018	IRELAND Taxes Consolidation Act, 1997 (Number 39 of 1997) Taxes (Country-By-Country Reporting) Regulations, 2016
<p>Regulation 3 requires the Ultimate Parent Entity of an MNE Group, as well as a United Kingdom Entity of MNE Group (UKEG), file a country-by-country report. A UKEG is a Constituent Entity, resident in the United Kingdom for tax purposes, or has a permanent establishment in the United Kingdom, that is required to prepare consolidated financial statements.</p>	<p>Section 3 requires the Ultimate Parent Entity of an MNE Group, as well as a surrogate parent entity of an MNE group, file a country-by-country report. A surrogate parent entity is a constituent entity appointed as the sole substitute of the ultimate parent entity.</p>	<p>Regulation 3 requires the domestic constituent entity to provide a country by country report where the ultimate parent entity of the MNE Group is not required to do so in its tax jurisdiction, or where the ultimate parent entity is resident for tax purposes in a country which does not a qualifying competent authority agreement that provides for the exchange of country-by-country reports, or where there has been a systemic failure by the jurisdiction of the tax residence of the ultimate parent entity.</p> <p>Regulation 4 prescribes the conditions in which the surrogate parent entity shall provide a country-by-country report.</p>

Country-by-country report

<p>UNITED KINGDOM</p> <p>Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2016</p>	<p>BAHAMAS</p> <p>Multinational Entities Financial Reporting Act, 2018</p>	<p>IRELAND</p> <p>Taxes Consolidation Act, 1997 (Number 39 of 1997)</p> <p>Taxes (Country-By-Country Reporting) Regulations, 2016</p>
<p>Regulation 2 defines a country-by-country report as a report about an MNE Group and its Constituent Entities containing the information specified in specific or general directions given by the Commissioners.</p>	<p>Section 5 states that a country-by-country report is one which contains aggregate information relating to the amount of revenue, profit (or loss) before income tax, income taxes paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates; and an identification of each constituent entity of the MNE Group setting out the jurisdiction of tax residence of such constituent entity and, where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such constituent entity is organized and the nature of the main business activity or activities of such constituent entity.</p>	<p>Regulation 2 provides that a country-by-country shall be defined as in section 891H of the Taxes Consolidation Act 1997 (No. 39 of 1997). Section 891H states that a country by country report shall contain the following information in respect of the MNE group concerned with regard to each jurisdiction in which the MNE group concerned operates, aggregate information relating to the amount of its revenue, including such further information in relation to such revenue as is necessary to complete the Model Template for the Country-by-Country Report set out in Annex III to Chapter V of the OECD Report of 2015, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents. It shall also contain information setting out the identification and TIN of each constituent entity of the MNE group concerned, the jurisdiction of tax residence of such constituent entity and, where 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.</p>

Time for filing

UNITED KINGDOM	BAHAMAS	IRELAND
Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2016	Multinational Entities Financial Reporting Act, 2018	Taxes Consolidation Act, 1997 (Number 39 of 1997) Taxes (Country-By-Country Reporting) Regulations, 2016
Regulation 2 establishes that the country-by-country report must be filed no later than 12 months after the accounting period to which the report relates.	Section 5 requires the country-by-country report to be filed no later than 12 months after the last day of the reporting of the fiscal year of the MNE Group.	Section 891H(2) and Regulation 8 require country-by-country reports to be provided no later than 12 months after the last day of the fiscal year to which the country-by-country report or equivalent country-by-country report, relates.

Avoidance of obligation

UNITED KINGDOM	BAHAMAS	IRELAND
Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2016	Multinational Entities Financial Reporting Act, 2018	Taxes Consolidation Act, 1997 (Number 39 of 1997) Taxes (Country-By-Country Reporting) Regulations, 2016
Regulation 21 establishes that where a person enters into any arrangement where one of the main purposes or the main purpose is to avoid any obligations under the Regulations, the Regulations are to have effect as if the arrangement had not been entered into.	Section 10 establishes that where a person enters into an arrangement for which a main purpose is to avoid any obligation under the Act, the arrangement shall be deemed to be one which was not entered into and the Act shall have effect as if the arrangement had never been made.	N/A

Penalties

UNITED KINGDOM Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2016	BAHAMAS Multinational Entities Financial Reporting Act, 2018	IRELAND Taxes Consolidation Act, 1997 (Number 39 of 1997) Taxes (Country-By-Country Reporting) Regulations, 2016
<p>Regulation 13 prescribes a £300 for failure to file a CBC report or provide information to Commissioners for Her Majesty’s Revenue and Customs.</p> <p>Regulation 14 prescribes a penalty not exceeding £3000 for the provision of inaccurate information in respect of each CBC report to which the inaccuracy relates.</p>	<p>Section 11 makes it an offence not to comply with the sections regarding the filing of a country-by-country report.</p> <p>Section 12 makes it an offence to alter, destroy, mutilate, deface, hide or remove information in contravention of this Act.</p> <p>Section 13 provides for the offence of Hindering the Authority in performing its functions under the Act.</p> <p>Section 14 provides a reasonable excuse defence.</p> <p>Section 15 states that offences under this Act are punishable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of six months, or to both.</p>	<p>Section 891H(7) establishes that the penalty for filing an incomplete or incorrect country-by-country Report is €19,045, as stipulated by Section 898O.</p>

KEY LEGISLATION



The Income Tax Act, Chapter 75:01 (Act 34 of 1938)

<https://agla.gov.tt/downloads/laws/75.01.pdf><https://agla.gov.tt/downloads/laws/75.01.pdf>



The Mutual Administrative Assistance in Tax Matters Act (Act 7 of 2020)

<http://news.gov.tt/sites/default/files/EGazette/Gazette%202020/Acts/Act%20No.%207%20of%202020%20Mutal%20Administrative%20Assistance%20in%20Tax%20Matters%20%20Act,%202020.pdf>



The Companies Act, Chapter 81:01 (Act 35 of 1995)

<https://www.finance.gov.tt/wp-content/uploads/2019/07/The-Companies-Act.pdf>



The Registration of Business Names Act, Chapter 82:85 (Act 7 of 1923)

<https://agla.gov.tt/downloads/laws/82.85.pdf>



The Non-Profit Organisations Act (Act 7 of 2019)

<https://www.ttparliament.org/wp-content/uploads/2022/01/a2019-07.pdf>

FOREIGN JURISDICTION LEGISLATION



Taxes (Base Erosion and Profit Sharing) (Country-by-Country Reporting) (Amendment) Regulations 2016 (United Kingdom)

<https://www.legislation.gov.uk/uksi/2016/237/made/data.pdf>



Multinational Entities Financial Reporting Act, 2018 (The Bahamas)

https://www.taxreporting.finance.gov.bs/wpcontent/uploads/2019/05/MultinationalEntitiesFinancialReportingAct2018_1.pdf



Taxes Consolidation Act 1997 (No. 39 of 1997) (Ireland)

<https://www.irishstatutebook.ie/eli/1997/act/39/enacted/en/html>



Taxes (Country-by-Country Reporting) Regulations 2016 (Ireland)

<https://www.irishstatutebook.ie/eli/2016/si/653/made/en/pdf>



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