

TECHNICAL

Direct Taxation

LABUAN BUSINESS ACTIVITY TAX (COUNTRY BY COUNTRY REPORTING) REGULATIONS 2017 [P.U. (A) 409/2017]

The above Regulations were gazetted on 26 December 2017 (refer to our [e-CTIM TECH-DT 99/2017](#) dated 29 December 2017).

County-by-Country Reporting (CbC Reporting)

Please click on the following link for an overview of CbC Reporting.

<http://www.oecd.org/tax/beps/country-by-country-reporting.htm>

The table below which sets out the Contents of the above Regulations, provides an overview of these Regulations.

Regulation #	Heading	Notes
1	Citation	The citation is as shown above
2	Interpretation	Provides definitions of terms used in these Regulations. (Definitions of words which are <u>underlined</u> in this Table are found in regulation 2 .)
3	Application	These Regulations apply to an <u>MNE Group</u> which meets with the conditions that are specified in subregulations 3(a) and 3(b).
4	Country-by-Country Report (CbC Report)	The information contained in a <u>CbC Report</u> with respect to an MNE Group are stated in subregulation 4(1). This includes information relating to the MNE Group's earnings (profit or loss), capital, number of employees and assets, as well as identification of each <u>constituent entity</u> (CE) of the MNE Group and the relevant tax jurisdictions for each CE. The information is required to be reported from 1 January 2017. Reporting is done by way of a prescribed form under S21A of the Labuan Business Activity Tax Act 1990 on an electronic medium, or through an electronic transmission in extensible markup language format.
5	Filing Obligation	The <u>ultimate holding entity</u> of an MNE Group which is a Labuan entity (LE) carrying on a Labuan business activity will file a CbC Report (in accordance with regulation 4) with the Director General (DG) with respect to its <u>reporting financial year</u> within the period specified in regulation 7.
6	Notification	Any CE of an MNE Group which is a LE carrying on a Labuan business activity must notify the DG in writing if it is the ultimate holding entity on or before the last day of the reporting financial year. Where such CE is NOT the reporting entity (ultimate holding entity), it must notify the DG of the identity and tax residence of the reporting entity by the same deadline. The penalty for failing to comply with the above requirements is a fine (upon conviction of the offence) of not more than RM 1

		million, or imprisonment for a term not exceeding 2 years, or to both.
7	Time for filing	The CbC Report must be filed not later than 12 months after the last day of the reporting financial year.
8	Use and confidentiality of Country-by-Country Report information	States the ways in which the CbC Report may be used by the DG (<i>"for the purposes of assessing high level transfer pricing (TP) risks and other base erosion and profit shifting related risks in Malaysia..."</i>) and the way in which it is not to be used (<i>"as a substitute for a detailed TP analysis....."</i>) The DG must preserve confidentiality of information contained in the Report at least to the same extent that would apply if such information were provided to the DG under the provisions of the Convention on Mutual Administrative Assistance in Tax Matters.
9	Failure to file CbC Report	Any failure to comply with the requirements of regulations 4, 5 or 7 is an offence. The penalty is the same as provided in regulation 6. In addition, any person convicted of the offence may be ordered by the court to comply with the relevant provisions of these Regulations within 30 days from the date the order is made or such other period as the court deems fit.
10	Incorrect reports	Any person who makes an incorrect report by omitting information which accords with the requirements of regulation 4, or gives incorrect information in relation to the information required under regulation 4, commits an offence. The penalty is the same as provided in regulation 6.

Members may read the Regulations in full at the official website of the [Attorney-General's Chambers](#).

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