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MULTINATIONAL ENTITIES FINANCIAL REPORTING ACT, 2018

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In July 2018 The Bahamas government passed the Multinational Entities Financial Reporting Act, 2018 (the "**MNE Act**"), which is deemed to have come into force on 1 January, 2018 and requires certain companies incorporated or resident in The Bahamas with revenues of at least US$850 million to annually file a country-by-country report with the Minister of Finance.The MNE Act was inspired by the Base Erosion and Profit Shifting ("**BEPS**") initiative of the Organization for Economic Co-operation and Development ("**OECD**") and has been enacted to ensure that The Bahamas is compliant with the BEPS minimum standards. (reference: 1) BEPS refers to tax avoidance strategies which exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. (reference: 2)The MNE Act outlines, inter alia, the procedure for an MNE Group to file the requisite country-by-country report. An MNE Group is defined as including "(a) ... two or more enterprises for which the tax residence is in different jurisdictions or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with a respect to the business carried out through a permanent establishment in another jurisdiction; and (b) is not an Excluded MNE Group." (reference: 3)

An Excluded MNE Group is defined as meaning, "... with respect to any fiscal year of the Group, a Group having total consolidated group revenue of less than eight hundred and fifty million United States Dollars during the fiscal year immediately preceding the reporting fiscal year as reflected in its consolidated financial statements for such preceding fiscal year."

Each MNE Group will have at least one "ultimate parent entity" and may have a "surrogate parent entity." An ultimate parent entity is an entity of an MNE Group which owns one or more entities in the MNE Group. Each ultimate parent entity of an MNE Group which is resident in The Bahamas must file a country-by-country report with the Minister of Finance.

On the other hand, a surrogate parent entity is an entity in the MNE Group which has been appointed by the group as a sole substitute for the ultimate parent entity to file the country-by-country report in the surrogate parent entity's jurisdiction of tax residence on behalf of the MNE Group. However, this only happens if the surrogate parent entity is resident in The Bahamas and one of the following conditions applies: (i) the ultimate parent entity is not required 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 an International Agreement (as defined in the MNE Act) to which The Bahamas is a party, but does not have a competent authority agreement to which The Bahamas is a party by the time specified in the MNE Act for filing the report; or (iii) there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity.

It is also noted that, where there is more than one entity resident in The Bahamas in the same MNE Group and any of the conditions set out in the previous paragraph applies, the group may designate one of those entities to file the country-by-country report on behalf of all of the Bahamian entities.

A country-by-country report shall be filed in the form attached in the First Schedule of the MNE Act and must include the following information:

1. Comprehensive financial data, i.e. the amount of revenue, 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 with regard to each jurisdiction in which the MNE Group operates.

2. Identification of each entity of the MNE Group, setting out the jurisdiction of tax residence of such entity and, where different from the jurisdiction of tax residence, the jurisdiction under the laws of which such entity is organized and the nature of the main business activity.

In addition to the provisions of the MNE Act, the Minister of Finance may issue guidelines for complying with the MNE Act. Furthermore, the Minister may require an entity to produce or make available information (whether located inside or outside The Bahamas) to determine the accuracy of the information provided by the entity. Failure to comply with the provisions of the MNE Act or to provide accurate information will

result in penalty fees. There is a right to appeal any penalty imposed under the MNE Act.

References

1 – Country-by-country reporting. OECD. Better policies for better lives. http://www.oecd.org/tax/beps/country-by-country-reporting.htm.

2 – http://www.oecd.org/tax/beps/.

3 – MNE Act, section 2.

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