OECD/G20 Base Erosion and Profit Shifting Project

Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 13

OECD

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Foreword

The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

Following the release of the report Addressing Base Erosion and Profit Shifting in February 2013, OECD and G20 countries adopted a 15-point Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions along three key pillars: introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.

After two years of work, measures in response to the 15 actions were delivered to G20 Leaders in Antalya in November 2015. All the different outputs, including those delivered in an interim form in 2014, were consolidated into a comprehensive package. The BEPS package of measures represents the first substantial renovation of the international tax rules in almost a century. Once the new measures become applicable, it is expected that profits will be reported where the economic activities that generate them are carried out and where value is created. BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation for a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related measures, over 75 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

A better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business. Proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

As a result, the OECD established an Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework,

which already has more than 110 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on BEPS on 12 April 2018 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

AEOI	Automatic Exchange of Information
ATO	Australian Taxation Office
BEPS	Base Erosion and Profit Shifting
CAA	Competent Authority Agreement
CbC	Country-by-Country
CbCR	Country-by-Country Reporting
CFS	Consolidated Financial Statements
CITA	Corporate Income Tax Act
CRA	Canada Revenue Agency
CRS	Common Reporting Standard
CTS	Common Transmission System
DBG	Federal Direct Tax
DTA	Double Taxation Arrangement
DTC	Double Tax Convention
ECB	European Central Bank
ECF	Tax Accounting Bookkeeping (escrituração contábil fiscal)
ECI	Estimated Chargeable Income
EOI	Exchange of Information
EU	European Union
FAQ	Frequently Asked Questions
FATCA	Foreign Account Taxpayer Compliance Act
FIRSEA	Federal Inland Revenue Service Establishment Act
FRS	Financial Reporting Standard
FTA	Federal Tax Administration
FTS	Federal Tax Service
GAE	Group of Associated Enterprises
GPE	Global Parent Entity
GRS	Georgia Revenue Service

HUF	Hungarian Forint
ICG	International Corporation Group
IDX	Indonesian Stock Exchange
IGOR	Information Gateway Online Reporter
IRAS	Inland Revenue of Singapore
ISK	Iceland Krona
ITA	Income Tax Act
ITL	Income Tax Law
IAPR	Independent Authority for Public Revenue
MAAC	Convention on Mutual Administrative Assistance in Tax Matters
MCAA	Multilateral Competent Authority Agreement
MNE	Multinational Enterprise
NTA	National Tax Agency of Japan
OECD	Organisation for Economic Co-operation and Development
OHADA	Organisation for the Harmonisation of Business Law in Africa
PE	Permanent Establishment
PSAK	Indonesian Financial Accounting Standard
QCAA	Qualifying Competent Authority Agreement
SAARC	South Asian Association for Regional Cooperation
SGE	Significant Global Entity
SME	Small and Medium-sized Enterprise
SPE	Surrogate Parent Entity
STARS	System of Tax Administration and Revenue Services
SUNAT	Superintendencia Nacional de Aduanas y de Administración Tributaria (Peruvian Tax and Customs Administration)
TIEA	Tax Information Exchange Agreement
TEO	Tax Exempt Organisation
TP	Transfer Pricing
TRNC	Turkish Republic of Northern Cyprus
UBTI	Unrelated Business Taxable Income
UIT	Unidad Impositiva Tributaria (tax unit)
UPE	Ultimate Parent Entity
UVT	Tax Value Unit
XML	Extensible Mark-up Language

Executive summary

Context of Country-by-Country Reporting

1. A key component of the transparency pillar of the BEPS minimum standards is the obligation for all large multinational enterprise groups (MNE Groups) to file a Country-by-Country (CbC) report: the Action 13 Report (*Transfer Pricing Documentation and Country-by-Country Reporting – Action 13: 2015 Final Report*, OECD, 2015) provides a template for these MNE Groups to report annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued, as well as the number of employees, stated capital, retained earnings and tangible assets. MNE Groups should also identity each entity within the group doing business in a particular jurisdiction and provide an indication of the business activities each entity engages in. In 2018 for the first time, tax authorities around the world will receive information on large MNE Groups which was not previously available, enabling them to grasp the structure of the business structure while enhancing their risk-assessment capacity.

2. In general, the Ultimate Parent Entity of an MNE Group will prepare and file its CbC report with the tax administration in its jurisdiction of tax residence. That tax administration will automatically exchange the CbC report with the tax administrations in the jurisdictions listed in the CbC report as being a place in which the MNE Group has a Constituent Entity resident for tax purposes. This will be carried out under an International Agreement (such as the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) or a Double Tax Convention or a Tax Information Exchange Agreement) permitting Automatic Exchange of Information. A "Qualifying Competent Authority Agreement" which sets out the operational details of the exchange of CbC reports will need to be put in place.

3. As one of the four BEPS minimum standards, the Country-by-Country (CbC) reporting requirements contained in the 2015 Action 13 Report (OECD, 2015) are subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the Inclusive Framework on BEPS commit to implementing the Action 13 minimum standard and to participating in the peer review, on an equal footing. The peer review process focuses on three key elements of the minimum standard: (i) the domestic legal and administrative framework, (ii) the exchange of information framework and (iii) the confidentiality and appropriate use of CbC reports.

4. Implementation of CbC Reporting is well underway as the peer review process evidences: over 60 jurisdictions have now introduced an obligation for relevant MNE Groups to file a CbC report in their domestic legal framework.

Scope of this review

5. This is the first annual peer review for the Action 13 minimum standard. It covers 95 jurisdictions which provided legislation and/ or information relating to the implementation of CbC Reporting.

6. The review focused on the domestic legal and administrative framework and covered some aspects of the exchange of information framework as well as confidentiality and appropriate use.

Key findings

Peer review reports were prepared for the 95 jurisdictions which provided legislation and/or information relating to the implementation of CbC Reporting. Sixteen jurisdictions were not yet able to submit material for the peer review process, or to do so in time for phase one.

7. As of 12 January 2018, the key findings are as follows:

- ***Domestic legal and administrative framework***: 60 jurisdictions have a comprehensive domestic legal and administrative framework in place, while a few jurisdictions have final legislation awaiting official publication. In addition, a few other jurisdictions have primary law in place which needs to be completed with secondary law or guidance. With respect to the domestic legal and administrative framework, 28 jurisdictions received one or more recommendations for improvement on specific areas of their framework. For 33 jurisdictions, a general recommendation to put in place or finalise their domestic legal and administrative framework has been issued (noting that the vast majority of these jurisdictions do not apply CbC Reporting requirements for fiscal year 2016, but for later fiscal years).
- ***Exchange of information framework:*** 58 jurisdictions of the Inclusive Framework have multilateral or bilateral competent authority agreements in place, effective for taxable periods starting on or after 1 January 2016, or on or after 1 January 2017.
- ***Appropriate use:*** 39 jurisdictions provided detailed information relating to appropriate use, enabling the CbC Reporting Group to reach sufficient assurance that measures are in place to ensure the appropriate use of CbC reports.

8. The following jurisdictions have not been included in this annual report. This is due to a variety of reasons, including capacity constraints, impacts of natural disasters,[1] the fact that these jurisdictions are new joiners to the Inclusive Framework (and joined after the start of the peer review process) or have opted-out of the peer review as they have confirmed that they do not currently have any MNE Groups headquartered in their jurisdiction.[2] The OECD is engaging with these jurisdictions in order for them to participate in the CbC Reporting framework including the peer review process as soon as possible.

- Bahamas
- Botswana
- Burkina Faso
- Congo
- Djibouti

- Mongolia
- Montserrat
- Oman
- Papua New Guinea
- Saint Kitts and Nevis
- Sierra Leone
- Trinidad and Tobago
- Tunisia
- Turks and Caicos Islands
- Viet Nam
- Zambia

Next steps

9. The peer review of the Action 13 minimum standard is an annual review taking place in 2017, 2018 and 2019. The next annual peer review ("phase two") will commence during the course of 2018 and will aim at reviewing all the jurisdictions of the Inclusive Framework, focusing on progress made by jurisdictions where relevant.

Notes

[1] Turks and Caicos Islands.

[2] Botswana.

Chapter 1. The review of the BEPS Action 13 minimum standard on Country-by-Country Reporting

Background

1. The Country-by-Country (CbC) reporting requirements contained in the 2015 Action 13 Report (OECD, 2015) form one of the four BEPS minimum standards. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the Inclusive Framework on BEPS commit to implementing the Action 13 minimum standard and to participating in the peer review, on an equal footing.

2. The purpose of a peer review is to ensure the effective and consistent implementation of an agreed standard and to recognise progress made by jurisdictions in this regard.

3. The peer review is a review of the legal and administrative framework put in place by a jurisdiction to implement the CbC Reporting standard. This peer review is a separate exercise to the 2020 review to evaluate whether modifications to the CbC Reporting standard should be made.

Outline of the key aspects assessed in the annual report

4. This annual report contains the findings of the first annual peer review process ("phase one") which focuses on the domestic legal and administrative framework, as well as on certain aspects of the exchange of information network, and of appropriate use of CbC reports.

5. The structure of each individual section relating to each reviewed jurisdiction is as follows:

- Overview of implementation: current status;
- Domestic legal and administrative framework;
- Exchange of information;
- Appropriate use;
- The jurisdictions' response to the review (if any).[1]

6. Jurisdictions which have joined the Inclusive Framework later than February 2017 (i.e. when the first annual peer review commenced) have not necessarily been able to participate in this first annual peer review process. It is expected that they will be included in the following annual peer review process starting in 2018.

7. The peer review has been undertaken by an Ad Hoc Joint Working Party 6 – Working Party 10 sub-group (hereafter referred to as the "CbC Reporting Group").[2]

8. The peer review evaluates the Inclusive Framework member's implementation of the standard against an agreed set of criteria.[3] These criteria are set out in terms of

reference, which include each of the elements that a jurisdiction needs to demonstrate it has fulfilled in order to show proper implementation of the standard. The Action 13 Report (OECD, 2015) recommended that the first CbC Reports be required to be filed for fiscal years beginning on or after 1 January 2016. It was however acknowledged that some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to the law. In this respect, the peer review takes account of the specific timeline followed by certain jurisdictions, and the review will focus on the efforts taken by these jurisdictions in order to meet their commitment to implement the minimum standard.

9. The terms of reference focus on the following three key aspects of the CbC Reporting standard that a jurisdiction must meet:

A) the domestic legal and administrative framework;

B) the exchange of information framework; and

C) the confidentiality and appropriate use of CbC reports.

10. The manner in which the peer review is undertaken is set out in an agreed methodology. The methodology sets out the procedural mechanisms by which jurisdictions will complete the peer review, including the process for collecting the relevant data, the preparation and approval of reports, the outputs of the review and the follow up process.

11. The methodology recognises that the three key aspects of CbC Reporting will be implemented and become operational over the coming years, starting with the domestic legal and administrative framework being put in place generally in 2016, followed by the international exchanges of CbC reports to occur for the first time by mid-2018, and the work to ensure that CbC reports are kept confidential and used appropriately in any subsequent tax compliance actions.

12. Given the fact not all of these three key aspects are being implemented at the same time, these three key aspects will be reviewed according to a staged approach. A staged review enables the review of aspects of CbC Reporting to occur as they are implemented, starting in 2017 and allowing for the early detection of inconsistencies in implementing the minimum standard as well as providing an opportunity for early remedial action to be taken by jurisdictions, if necessary.

13. There are three phases for the peer review structured into annual reviews, starting respectively in 2017, 2018 and 2019. Each phase will focus on different key aspects of jurisdictions' implementation so as to mirror the staged introduction of the different elements that make up the CbC Reporting and exchange of information framework.

14. An annual review process will allow the CbC Reporting Group to report annually to the Inclusive Framework and to take into account any updates since the previous review, as well as follow-up actions of reviewed jurisdictions further to any recommendation made by the Inclusive Framework.

15. The review of phase one (starting in 2017) focused on the domestic legal and administrative framework. It also covered certain items of the exchange of information network and included an initial review of certain aspects of confidentiality and appropriate use, as these are prerequisites for exchange of information.

16. During phase two (starting in 2018), the review will focus on the exchange of information framework and appropriate use. During phase three (starting in 2019), the

review will cover all three key aspects of jurisdictions' implementation, including the actual exchange of CbC reports.

17. Each year's review process culminates in the production of an annual report on CbC Reporting implementation.

18. As per the agreed methodology, this phase one annual report (2017) covers only the review of the key aspects as follows:

Peer review – phase one (2017)	Components of terms of reference covered by the review
Domestic legal and administrative framework	Section A: all items
Exchange of information framework	Section B: item 9 a)
Confidentiality and appropriate use	Section C: items 11 a), 11 b), 11 c), 11 d), and 12 a)
Peer input	Section B: item 9 a)

19. In addition, the Inclusive Framework agreed to include additional questions relating to appropriate use of CbC reports in the peer review process, starting as from phase one. These additional questions were circulated in September 2017 as a separate questionnaire to the reviewed jurisdictions. The answers to these additional questions were taken into account throughout the process.

20. The Global Forum has conducted preliminary expert assessments of confidentiality and data safeguards with respect to the standard on Automatic Exchange of Information. Given its expertise in this area, the CbC Reporting Group has relied on the work and conclusions of the Global Forum. As it contains non-public information on jurisdictions' internal systems and procedures, the outcomes of that work are not published and no further details of the review of confidentiality are provided in this compilation of peer review reports.

21. The terms of reference and methodology do not alter the Action 13 minimum standard. Any terms used in the terms of reference or methodology take their meaning from the language and context of the Action 13 Report (OECD, 2015) and the references therein. Capitalised terms in this report take their meaning from the language and context of the Action 13 Report (OECD, 2015) and the references therein.

22. The jurisdictions' individual sections in this report generally reflect the status of implementation as of 12 January 2018.

Notes

[1] Reviewed jurisdictions have not all provided a response to the review: this may be because there were no issues to be commented on, or the jurisdiction did not wish to comment, or the jurisdiction's response may have been submitted too late during the peer review process.

[2] The CbC Reporting Group was formed following the decision of the CFA Inclusive Framework at its 30 June – 1 July 2016 meeting in Kyoto to set up an Ad Hoc joint Working Party No. 6 (on the Taxation of Multinational Enterprises) - Working Party No. 10 (on Exchange of Information and Tax Compliance) sub-group with representatives of either Working Party. The mandate of this Group is threefold: (i) to prepare draft terms of reference and a methodology for carrying out the CbC reporting peer reviews, (ii) to conduct the peer reviews and (iii) to consider questions of interpretation of the CbC minimum standard.

[3] www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf (OECD, 2017, approved by the Inclusive Framework on 20 January 2017).

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Chapter 2. Peer review reports

Andorra

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Andorra does not yet have a complete legal and administrative framework in place to implement CbC Reporting and indicates that it will not apply CbC requirements for the 2016 fiscal year. CbC requirements should first apply for taxable years commencing on or after 1 January 2018.

Part A: Domestic legal and administrative framework

2. Andorra has not yet implemented its complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Andorra. The first filing obligation for a CbC report in Andorra is expected to commence in respect of reporting fiscal years beginning on 1 January 2018 or later. Based on the draft legislation, it is recommended that Andorra continues the process of implementing its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, in particular in relation to the annual consolidated revenue threshold calculation rule.[1] For the moment, Andorra's draft legislation meets all the terms of reference relating to the domestic legal administrative framework.[2]

Part B: Exchange of information framework

3. Andorra is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 5 November 2013, in force on 1 December 2016). The Convention is in effect from 1 January 2017. Andorra is not a signatory to the CbC MCAA. As of 12 January 2018, Andorra does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[3] it is recommended that Andorra sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Andorra will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[4] Andorra does not yet have measures in place relating to appropriate use. It is recommended that Andorra take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Andorra will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Andorra has draft legislation in place in order to implement CbC Reporting. The draft legislation was approved by the Government on 28 June 2017 and was entered into parliamentary procedure on 30 June 2017. At this stage, the draft of the law is in parliamentary discussion with the possibility of political parties to introduce amendments. Andorra indicates that it expects the law to be approved during the first quarter of 2018.

(a) Parent entity filing obligation

Summary of terms of reference:[5] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Andorra notes that it has draft legislation in place that imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the definition of an "Excluded MNE Group", the draft legislation define this as "a group having total consolidated group revenue of less than EUR 750 million, or an amount in local currency equivalent to EUR 750 million as of January 2015, during the fiscal year immediately preceding the reporting fiscal year as reflected in its consolidated financial statements for such preceding fiscal year."[6] While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Andorra, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is tax resident in Andorra) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[7] However, Andorra indicates that it will apply this rule in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Andorra. As such, no recommendation is made but this issue will be further monitored. Andorra indicates that it will address this issue in its future guidance and it confirms that it will follow the OECD guidance.

9. No other inconsistencies were identified with respect to Andorra's draft legislation in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. Andorra indicates that it expects the draft legislation to be approved and to come into force during the first quarter of 2018. The CbC Reporting requirements would be applied from the 2018 fiscal year. The CbC report must be filed within 12 months after the end of the reporting fiscal year of the MNE Group.[8]

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. Andorra has introduced local filing requirements in its draft legislation.[9] No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Andorra's local filing requirements in its draft legislation will not apply if there is surrogate filing in another jurisdiction.[10] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. Andorra has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Constituent Entities in Andorra.[11] There are also penalties in place in relation to the filing of a CbC report for failure: (i) to file a CbC report, (ii) to file a complete CbC report and (iii) to submit it on time.[12]

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017), Andorra does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Andorra. Based on the current draft legislation, it is recommended that Andorra take steps to finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.

Part B: The exchange of information framework

16. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

17. On 30 November 2016, Andorra approved the Law of Automatic Exchange of Information. This law entered into force on 1 January 2017.[13] [14]

18. Andorra is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 5 November 2013, in force on 1 December 2016, not in effect for 2016). The Convention will be in effect for 2017.[15]

19. Andorra has not signed the CbC MCAA and does not have Qualifying Competent Authority Agreements (QCAAs) in effect. Andorra indicates that it expects to sign the CbC MCAA during the first semester of 2018, in line with the approval of domestic legislation about CbC Reporting. As of 12 January 2018, Andorra does not have bilateral relationships activated under the CbC MCAA. It is recommended that Andorra take steps

to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Andorra will not be exchanging CbC reports in 2018.

Conclusion

20. In respect of the terms of reference under review, it is recommended that Andorra sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Andorra will not be exchanging CbC reports in 2018.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

22. Andorra does not yet have measures in place relating to appropriate use. It is recommended that Andorra take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Andorra will not be exchanging CbC reports in 2018.

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), it is recommended that Andorra take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework – Legislation for CbC filing requirements is not yet implemented.	It is recommended that Andorra implement its legislation for CbC filing requirements as soon as possible.
Part B	Exchange of information	It is recommended that Andorra sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Andorra take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Andorra has draft legislation in place in order to implement CbC Reporting. The draft legislation was approved by the Government on 28 June 2017 and was entered into parliamentary procedure on 30 June 2017. At this stage, the draft of the law is in parliamentary discussion with the possibility of political parties to introduce amendments. Andorra indicates that it expects the law to be approved during the first quarter of 2018.

[2] Paragraph 8 of the terms of reference (OECD, 2017).

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[5] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[6] Art. 16. quarter (c) of Law 95/2010 (draft).

[7] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018).

[8] Article 16.bis (7) of Law 95/2010 (draft).

[9] Article 16.bis (2) of Law 95/2010 (draft).

[10] Article 16.bis (3) of Law 95/2010 (draft).

[11] Article 16.bis(4) of Law 95/2010 (draft).

[12] Article 16.bis(8) of Law 95/2010 (draft) in conjunction with the provisions of article 127 and article 128 of Law 21/2014, of 16 October.

[13] Andorra notes that the Andorran Fast-Track report was approved by the Peer Review Group (at its meeting in Panama City from 12-14 June 2017), concluding that the overall rating for Andorra was provisionally upgraded to Largely Compliant. This report provides the Peer Review Group's views on the ratings that would likely be assigned to Andorra as evaluated against the 2010 Terms of Reference at the present stage

[14] On 25 May 2017, Andorra introduced the international spontaneous exchange of information in tax matters into the domestic legislation by way of a revision of the Law 3/2009 for the Exchange of tax information on request, which came into force on 10 June 2017.

[15] On 12 February 2016, the EU and Andorra signed an "Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance". The agreement was approved on 20 September 2016 by the Council of the European Union and on 20 October 2016 by the Andorran General Council.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011)*: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Angola

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Angola does not have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Angola take steps to finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Angola does not have legislation in place for implementing the BEPS Action 13 minimum standard. Angola indicates that The Large Taxpayer legislation is being amended to meet the objectives required for the CbC Reporting implementation and that legislation relating to CbC Reporting requirements is currently at the early stages of drafting. At this time, Angola estimates that the legislation will come into effect by the end of the first semester of 2019. It is recommended that Angola take steps to finalise the domestic legal and administrative framework[1] to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Angola currently does not have a network for exchange of information in effect which would allow for Automatic Exchange of Information for CbC Reporting. Angola is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") and it has not signed the CbC MCAA. As of 12 January 2018, Angola does not have bilateral relationships activated under the CbC MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process,[2] it is recommended that Angola take steps to have in force the Convention and also have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Angola will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Angola does not yet have measures in place relating to appropriate use. It is recommended that Angola take steps to

ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Angola will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Angola does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Angola does not yet have its legal and administrative framework in place to implement CbC Reporting. Angola does not intend to implement CbC Reporting requirements for the 2016 fiscal year.

8. Angola indicates that in 2016, Angola started a revision process of the Transfer Pricing rules within its Large Taxpayers legislation to meet the objectives required for the CbC Reporting requirements. The CbC legislation is currently at the early stages of drafting. Angola also indicated the following timeline for the implementation of the CbC legislation:

- Drafting of the legislation is expected to be finalised in the first trimester of 2018;
- Public discussion, and stakeholders consulting (taxpayers, pressure groups), is expected to be in the second trimester of 2018;
- Submission before parliament in the third trimester of 2018;
- Legislation is expected to be published in the first trimester of 2019;
- Legislation for CbC Reporting is expected to come into effect by the end of the first semester of 2019.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), Angola has not yet implemented a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Angola. It is recommended that Angola take steps to finalise the domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

10. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

11. Angola does not have domestic legislation in place that permits the automatic exchange of CbC reports. Angola has not signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011). This means that Angola will not be able to exchange (either send or receive) CbC reports under the Convention and the CbC MCAA.

12. Angola has not signed the CbC MCAA. As of 12 January 2018, Angola does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Angola take steps to sign the Convention and the CbC MCAA and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Angola will not be exchanging CbC reports in 2018.

Conclusion

13. In respect of the terms of reference under review, it is recommended that Angola take steps to sign the Convention and the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Angola will not be exchanging CbC reports in 2018.

Part C: Appropriate use

14. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

15. Angola does not yet have measures in place relating to appropriate use. It is recommended that Angola take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Angola will not be exchanging CbC reports in 2018.

Conclusion

16. It is recommended that Angola take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Angola will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Angola finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Angola sign the Convention and the CbC MCAA and also take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions.
Part C	Appropriate use	It is recommended that Angola take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Argentina

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Argentina's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review. The report, therefore, contains no recommendations. Argentina should take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Argentina will not be exchanging CbC reports in 2018.

Part A: Domestic legal and administrative framework

2. Argentina has rules (secondary law) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in Argentina. Argentina indicates that primary law is not necessary as it relies on existing powers in the Tax Administration Act 1997 that allow the Federal Public Revenue Administration to enact laws to regulate the administration of taxes. The first filing obligation for a CbC report in Argentina commences in respect of periods commencing on or after 1 January 2017. Argentina meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Argentina is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided a full set of notifications under Section 8 of this agreement and intends to exchange information with all signatories of this agreement which provide notifications under Section 8 of this instrument. As of 12 January 2018, Argentina has 50 bilateral relationships activated under the CbC MCAA. Argentina has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. Against the backdrop of the still evolving exchange of information framework, at this point in time Argentina meets the terms of reference relating to the exchange of information framework for the year in review.[2]

Part C: Appropriate use

4. Argentina indicates that it is taking steps to have measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a).[3] It is recommended that Argentina ensures that the appropriate use

condition is met ahead of the first exchanges of information.[4] It is however noted that Argentina will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Argentina has secondary law[5] in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations. Primary law is not necessary as Argentina relies on existing powers in the Tax Administration Act 1997 that allow the Federal Public Revenue Administration to enact laws to regulate the administration of taxes.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Argentina has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have consolidated group revenues equal to or above EUR 750 million,[7] whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the CbC filing requirements, the secondary legislation states that the CbC filing requirement would be applicable to MNE Groups whose total annual consolidated revenue is equal or above EUR 750 million or its equivalent converted into local currency of the tax jurisdiction of the Ultimate Parent Entity, at the exchange rate prevailing in that jurisdiction on 31 January 2015.[8] While these provisions would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Argentina, they may be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Argentinian tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[9] However, Argentina confirms that the rule will be interpreted in line with the OECD guidance on currency fluctuations and this will be confirmed in guidance to be published. As such, no recommendation is made but this aspect will be monitored.

9. No other inconsistencies were identified with respect to Argentina's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Argentina commences in respect of periods commencing on or after 1 January 2017.[10] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[11]

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[12]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. Argentina has introduced local filing requirements in respect of income years beginning on 1 January 2017[13] or thereafter.

13. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference, OECD, 2017b), local filing is required where "*the tax jurisdiction of the Ultimate Parent Entity does not have a Qualifying Competent Authority Agreement to which Argentina is a part of, even if both jurisdictions participate in an International Agreement in force*". Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "*the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report*". This is narrower than the above condition in Argentina's legislation. Under Argentina's legislation, local filing may be required in circumstances where there is no current international agreement between Argentina and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. Argentina confirms that it will take steps to clarify in guidance to be published that local filing can only be required in circumstances set out in the terms of reference, in particular that local filing will not apply in the absence on an international agreement. Argentina indicates that it will also amend the requirements in

the secondary law accordingly, as soon as possible. As such, no recommendation is made but this will be monitored.

14. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017b), local filing may also be required in Argentina when "*there would be a Systematic Failure by the tax jurisdiction of the Ultimate Parent Entity*". Systemic failure is further defined as referring to cases where there is "*persistent non-compliance and for any reason in the automatic provision*". Although this condition does not reflect the details of paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017b) in regard of the concept of "Systemic Failure", and may be interpreted in a broader meaning than the situation of a "Systemic Failure", Argentina confirms that it will apply this provision in accordance with the wording of the terms of reference (OECD, 2017b) and will confirm this in guidance to be published. As such, no recommendation is made but this aspect will be further monitored.

15. No other inconsistencies were identified with respect to the limitation on local filing obligation.[14]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

16. Argentina's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[15] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

17. Argentina has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to all Constituent Entities in Argentina.[16] In addition, Argentina indicates that sanctions provided in Law No. 11 683/98 may also be applied for cases of non-filing.[17] In addition, it has other legal mechanisms in place to enforce compliance with the minimum standard: if the taxpayer does not comply with the CbC requirements it may (i) be classified in a category more likely to be inspected,[18] (ii) be suspended or even excluded from an eventual special tax registry to which it might be enrolled; or (iii) have the processing of eventual retentions or deduction certifications suspended.[19]

18. Argentina also provides for specific penalties for (i) non-filing, (ii) incomplete or (iii) inaccurate filing of a CbC report.[20] Argentina also states that article 39 of the Tax Procedure Law, article 28 of the Regulatory Decree of the Tax Procedure Law

(Law No. 1 397/79) and article 15 of the General Resolution No. 4130-E provide indirect room for penalties in case of non-compliance of CbC Reporting. Further details on these provisions can be found in the annex of this report.

19. As regards specific processes in place that would allow Argentina to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report, Argentina indicates that its domestic framework allows the Federal Administration of Public Revenue to take the necessary action.[21] This aspect will be further monitored once the actual exchanges of CbC reports will commence.

Conclusion

20. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Argentina has a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a MNE Group that is resident for tax purposes in Argentina. Argentina meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

21. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

22. Argentina has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 3 November 2011, in force on 1 January 2013 and in effect for 2016) and (ii) a number of bilateral Double Tax Agreements and Tax Information and Exchange Agreements.[22] Argentina signed the CbC MCAA on 30 June 2016 and has submitted a full set of notifications under section 8 of the CbC MCAA. It intends to exchange information with all signatories of this agreement which provide notifications under Section 8 of this instrument. Argentina intends to exchange CbC reports relating to fiscal years beginning on or after 1 January 2017. As of 12 January 2018, Argentina has 50 bilateral relationships activated under the CbC MCAA. Argentina indicates that it is currently negotiating other QCAAs, including with the United States, and if other jurisdictions choose to take the bilateral route, Argentina is willing to sign a bilateral CAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual review process,[23] Argentina has taken steps to have Qualifying Competent Authority Agreements (QCAAs) in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and

appropriate use conditions.[24] Against the backdrop of the still evolving exchange of information framework, at this point in time Argentina meets the terms of reference. It is however noted that Argentina will not be exchanging reports in 2018.

Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time Argentina meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

24. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

25. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Argentina indicates that is currently preparing guidance to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It is recommended that Argentina take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Argentina will not be exchanging CbC reports in 2018.

Conclusion

26. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), Argentina is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Argentina will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	Argentina is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Secondary law consists of General Resolution 4130-E of 19 September 2017.

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] Under Argentina's legislation, companies excluded from this regime are the MNE Groups, whose total annual consolidated revenues reflected in their Consolidated Financial Statements or would be so required if equity interest in any of the entities were traded on a Public Securities Exchange - attributable to the fiscal year preceding the Reporting Fiscal Year, are less than EUR 750 000 000 or its equivalent converted into local currency of the tax jurisdiction of the Ultimate Parent Entity, at the exchange rate prevailing on 31 January 2015.

[8] See Art. 2 of the secondary law.

[9] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018).

[10] See Art. 19 of the secondary law.

[11] See Article 1 and Annex II, part B, item 1a) of the secondary law.

[12] It is noted that Article 11 of the secondary law provides that: "*The information contained in the Country by Country Report does not imply, by its nature and content, the disclosure of trade, industrial or professional secrets, commercial or informational processes, which disclosure is contrary to the public interest*". Argentina explains that the purpose of this provision is to clarify that information to be provided in a CbC report should not be considered as trade, industrial or professional secrets, commercial or informational processes, which disclosure would be contrary to the public interest. Thus, taxpayers may not invoke these as a basis for refusing to provide information in a CbC report.

[13] See Article 3, part c of the secondary law.

[14] See Article 3, part c, items 1 to 3 of the secondary law.

[15] See Article 4 of the secondary law.

[16] See Article 8 of the secondary law.

[17] Article 38 of Law No. 11 683/98 establishes penalties of up to ARS 10 000 (Argentina pesos) in case of non-filing and article 39 established penalties of up to ARS 45 000 in cases of: 1. The infractions to the norms referred to the fiscal domicile foreseen in article 3 of this law, in the regulatory decree, or in the complementary norms dictated by the Federal Administration of Public Revenues in relation to the same. 2. Resistance to inspection, by the taxpayer or responsible party, consisting of repeated noncompliance with the requirements of the acting officials, only to the extent that they are not excessive or disproportionate in relation to the information and form required, and provided that the taxpayer has been granted the deadline set by the Administrative Procedures Law for his answer. 3. The omission to provide data required by the Federal Administration of Public Revenues for the control of international operations. 4. The lack of preservation of receipts and justifying elements of the agreed prices in international operations.

[18] Pursuant to General Resolution No. 3 985, which establishes the system of risk perception (SIPER).

[19] With respect to other legal mechanisms in place to enforce compliance with the minimum standard, the answers provided by Argentina can be found in the annex of this report.

[20] Argentina included the following penalties in Article 192 of Law No. 27,430/2017: b) With a fine adjustable between six hundred thousand pesos (ARS 600 000) and nine hundred thousand pesos (ARS 900 000), the omission to present the Country by Country Report, or its extemporaneous, partial, incomplete or with serious errors or inconsistencies". c) With an adjustable fine between one hundred and eighty thousand pesos (ARS 180 000) and three hundred thousand pesos (ARS 300 000), the total or partial noncompliance with the requirements made by the Federal Administration of Public Revenues, of information complementary to the sworn informative declaration of the Country by Country Report. d) With a fine of two hundred thousand pesos (ARS 200 000) the breach of the requirements established by the Federal Administration of Public Revenue, to complete the formal duties referred to in paragraphs a) and b). The fine provided in this subsection is cumulative with that of subsections a) and b). If there is a condemnatory resolution regarding the breach of a requirement, the successive reiterations that are formulated below and that have the same formal duty as their object, will be subject to independent fines, even if the previous ones were not firm or were in the process of administrative discussion or judicial.

[21] Argentina indicates that the administrative mechanisms are carried out by the Federal Administration of Public Revenue: in case of non-compliance with filing obligations, an automatic fine may be applied (Tax Procedure Law No. 11,683 and its amendments), as well as other sanctions according to Article 15 of the CbC regulation. To enforce compliance, a specific request would be sent in order to the Reporting Entity to comply with the obligation of filing the Country by Country Report. If the non-fulfilment persists, a higher fine would be applied. The Federal Administration of Tax Revenue has broad powers in accordance to Article 35 of the Tax Procedure Law (No. 11,683 and its amendments) to verify, in any moment, the compliance of laws, regulations and resolutions overseeing the situation of any presumed taxpayer or responsible (notably issuing summons to the presumed taxpayer or responsible, or any third party; recording minutes of the existence of any elements which may serve as evidence in trials). Argentina affirms that in case it is notified by another jurisdiction that it has reason to believe that an error may have led to incorrect or incomplete information of the CbC Report, the Tax Administration, according to the auditing powers that are legally granted, will verify the said situation and the taxpayer can

be summoned to provide explanations, and can be asked to correct the error and to file the CbC report once again in a correct way, in addition to paying the fines and being subject of the sanctions already exposed.

[22] Argentina lists bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions: Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Russia, Spain, Sweden, Switzerland and United Kingdom. In addition, a bilateral tax treaty with Mexico has already been signed and it will become effective on 23 August 2017, to be applicable for fiscal years starting after 1 January 2018. The bilateral tax treaty with Uruguay allows only the Exchange of Information by previous request. Argentina also has Tax Information Exchange Agreements that allow for the Automatic Exchange of Information with Azerbaijan, Ecuador, Peru and Venezuela. Argentina also lists Tax Information Exchange Agreements that require previous request with the following jurisdictions: Andorra, Armenia, Aruba, Bahamas, Bermuda, Cayman Islands, China (People's Republic of), Costa Rica, Curaçao, Former Yugoslav Republic of Macedonia, Guernsey, India, Ireland, Isle of Man, Italy, Jersey, Macao (China), Monaco, San Marino, South Africa, Turkmenistan and United Arab Emirates. In addition, Argentina and the United Stated of America have signed an agreement for the exchange of tax information, including automatic exchange, on 23 December 2016. This agreement is not yet in force and steps are taken to bring it into force promptly.

[23] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[24] It is noted that a few Qualifying Competent Authority agreements are not in effect for the first reporting period of Argentina (fiscal year 2017) with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered to not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

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OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Annex A - Enforcement measures

Article 39 of the Tax Procedure Law states that:

Article 39: "*Violations of the provisions of this law, of the respective tax laws, of the regulatory decrees and of any other mandatory compliance rule, will be sanctioned with fines. that establish or require the fulfilment of formal duties tending to determine the tax obligation, to verify and supervise the compliance of the responsible parties.*

In the cases of breaches that are indicated below, the fine provided for in the first paragraph of this article shall be graduated between the minor provided therein and up to a maximum of PESOS FORTY-FIVE THOUSAND (ARS 45 000):

3. The omission to provide data required by the Federal Administration of Public Revenues for the control of international operations."

Article 39.1: "*It will be sanctioned with penalties of PESOS FIVE HUNDRED (ARS 500) to PESOS FORTY-FIVE THOUSAND (ARS 45 000) the breach of the requirements established by the Federal Administration of Public Revenues to present the informative affidavits -original or rectifying- provided in the added article following article 38 and those provided for in the taxpayer or responsible party's own information regimes, or third-party information, established by General Resolution of the Federal Administration of Public Revenues*."

In addition, Article 28 of the Regulatory Decree of the Tax Procedure Law states that:

Article 28: "*The sworn statements must be presented in paper format, and signed in their main part and annexed by the taxpayer, responsible or authorized representative, or by electronic or magnetic means that reasonably assure the authorship and inalterability of the same and in the forms, requirements and conditions established for this purpose by the FEDERAL ADMINISTRATION OF PUBLIC REVENUES, self-sufficient entity within the MINISTRY OF ECONOMY. In all cases, they will contain a formula by which the declarant claims to have made them without omitting or falsifying any data that must contain and be a true expression of the truth*."

Finally, the sanctions provided in Article 15 of General Resolution No. 4130-E will also apply in case of non-compliance of the obligations stated in that CBC legal framework:

Article 15*: Failure to comply with the obligations established herein shall result in the application of the sanctions provided in Law No. 11,683, text ordered in 1998 and its amendments. In addition, those responsible may be liable - jointly or separately - for one or more of the following actions:*

The classification in an increasing category of risk of being fiscalised, as foreseen in the General Resolution N ° 3.985 - System of Perception of Risk.

The suspension or exclusion, as appropriate, of the Special Tax Registers of the Federal Administration of Public Revenue in which the Taxpayer is registered.

The suspension of the processing of Certificates of Exclusion or Non-Retention requested by the responsible, in accordance with the provisions in force.

Australia

Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of Country-by-Country (CbC) reports. Australia's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one substantive issue. The report, therefore, contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. Australia has rules (primary law, as well as guidance) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in Australia. The first filing obligation for a CbC report in Australia commences in respect of income tax years commencing on or after 1 January 2016. Australia meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the local filing mechanism which may be triggered in circumstances that are wider than those set out in the minimum standard.[2]

Part B: Exchange of information framework

3. Australia is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the Multilateral Competent Authority Agreements for exchanges of CbC reports (CbC MCAA); it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. Australia also signed a bilateral competent authority agreement with the United States on 1 August 2017. As of 12 January 2018, Australia has 51 bilateral relationships activated under the CbC MCAA. Australia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Australia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[3]

Part C: Appropriate use

4. There are no concerns to be reported for Australia. Australia indicates that measures are in place to ensure the appropriate use of information in all six areas

identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[4] Australia meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[5]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Australia has primary law in place which implements the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[6] Guidance has also been published and updated.[7]

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Australia has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. Australia's legislation refers to the concepts of a "Significant Global Entity" (SGE) and of a "Global Parent Entity".[9] These concepts do not mirror the definition of an "Ultimate Parent Entity" as reflected in paragraph 18 i. of the terms of reference (OECD, 2017b) as they do not include the situation of an Ultimate Parent Ultimate that does not prepare Consolidated Financial Statements, but would be required to do so if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence ("deemed listing provision"). However, the legislation includes a provision which confers on the Commissioner the authority to make a determination with respect to a "global parent entity" if the Commissioner reasonably believes that, if such statements had been prepared for the period, the entity's annual global income for the period would have been above the threshold for the filing obligation.[10] As the effectiveness of the framework relies on the Commissioner being able to identify such situations, this will be monitored.

9. With respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference, OECD, 2017b), the legislation makes reference to an annual global income threshold of AUD 1 billion (Australian dollars)[11] which may apply to a SGE member of an MNE Group whose Ultimate Parent Entity is resident in jurisdiction other than Australia.[12] While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Australia, it may

however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is an Australia tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[13] However, in the guidance which has been published,[14] this situation is considered in the sections relating to "exemptions" and an example is included for "differing currency thresholds": where the annual income of a global group would exceed Australia's threshold of AUD 1 billion, but however the currency exchange rates are such that the foreign global parent entity falls slightly below its local CbC Reporting threshold, an exemption from lodging the CbC report and master file would be considered. As such, no recommendation is made, but this aspect will be monitored to ensure that this proposed guidance is published.

10. The concepts of a "Significant Global Entity" (SGE) and of a "Global Parent Entity" also do not automatically capture entities that are included in the Consolidated Financial Statements of the MNE group or would be so included if equity interests in the entity were traded on a public securities exchange, as well as entities that are excluded from the MNE Group's Consolidated Financial Statements solely on size or materiality grounds, as well as any permanent establishment of any entity mentioned previously provided it prepares separate financial separate financial statement for such permanent establishment for financial, regulatory, tax reporting, or internal management control purposes. However, Australia notes that it is expected that these circumstances would be exceptional for an Australian headquartered MNE Group and that the Commissioner may exercise his powers to determine that an entity is to be considered as an SGE for CbC purposes in such circumstances.[15] As the effectiveness of the framework relies on the Commissioner being able to identify such situations, this will be monitored.

11. With respect to paragraph 8 a) iv. of the terms of reference (OECD, 2017b),[16] it is noted that according to Australia's legislation,[17] the Commissioner has the discretion to grant individual or class exemptions from filing a CbC report. There have been no class exemptions provided for to date in Australia. As regards individual exemptions, it is found that these would largely be used to relieve an Australian Constituent Entity from local filing requirements, being noted that local filing applies in Australia as a default rule.[18] In its guidance relating to exemptions,[19] Australia states that it will generally not grant an exemption to an SGE that is an Australian resident and a GPE. Australia confirms that it is its policy not to provide an exemption to an Australian headquartered MNE from filing a CbC report in any case where the CbC report would be subject to exchange with another jurisdiction.[20] As the main purpose of providing exemptions from filing a CbC report appears to be to deactivate local filing or to exempt "purely domestic" Australian groups or stand-alone companies, no recommendation is made but this aspect will be monitored (in particular since the effectiveness of the framework relies on the Australian tax administration to provide exemptions consistently with the terms of reference, and because Australia's primary law gives the Commissioner the discretion to grant class exemptions from filing a CbC report).

12. With respect to paragraph 8 a) iv. of the terms of reference (OECD, 2017b),[21] it is noted that according to Australia's draft guidance,[22] superannuation funds which could potentially exceed the annual global income threshold in the income year which ended on 30 June 2016 - when they would not have met that threshold if the accounting standard AASB 1056, applicable from 1 July 2016, had applied to that income year - are allowed to calculate the annual global income in a manner consistent with AASB 1056 for the income year prior to the first income year commencing on or after 1 January 2016. Given

that AASB 1056 (which excludes member contributions from the calculation of income for superannuation entities) may be applied on a retrospective basis and that it is applicable as from 1 July 2016, no recommendation is made in relation to the potential exemptions granted in respect of this transitional situation.

13. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

14. The first filing obligation for a CbC report in Australia commences in respect of income tax years commencing on or after 1 January 2016.[23] The CbC report must be filed within 12 months after the end of the income year or the replacement reporting period[24] to which the CbC report of the MNE Group relates.[25]

15. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

16. Australia has introduced local filing requirements in respect of income tax years commencing on or after 1 January 2016. Local filing applies in Australia as a default rule and exemptions may be granted (e.g. an exemption would be granted when a CbC report is filed by the Ultimate Parent Entity in its country of residence and the CbC report is exchanged with Australia).[26]

17. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. a) of the terms of reference, OECD, 2017b), local filing is required without relief in the situation where the Ultimate Parent Entity has not filed its CbC report in its jurisdiction of residence.[27] Paragraph 8 (c) iv. a) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if the Ultimate Parent Entity of the MNE Group is not obligated to file a CbC report in its jurisdiction of tax residence. This is narrower than the above condition in Australia's legislation. Under Australia's legislation, local filing may be required in circumstances where an Ultimate

Parent Entity is obligated to file a CbC report in its jurisdiction of tax residence but fails to do so. Australia indicates that while local filing could be required in circumstances where an Ultimate Parent Entity is obligated to file a CbC report in its jurisdiction of residence and fails to do so, Australia's administrative practice would be that local filing would not be pursued immediately and would not occur until the tax authority of the foreign jurisdiction has had the opportunity to enforce filing by the Ultimate Parent Entity. Australia expects local filing to be required only in exceptional circumstances, such as where the filing obligation in the foreign jurisdiction is not enforced or is substantially not enforced. In this context, it is recommended that Australia amend its rules or otherwise ensures that its administrative practice operates in a way whereby local filing is only required in the circumstances contained in the terms of reference.

18. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference, OECD, 2017b), local filing is also required without relief (except where surrogate parent filing occurs) in the situation where Australia does not have an International Agreement in effect to exchange information with the jurisdiction of tax residence of the Ultimate Parent Entity.[28] Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in Australia's legislation. Under Australia's legislation, local filing may be required in circumstances where there is no current international agreement between Australia and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. However, Australia confirms that it will administer the law in a way that provides an outcome that is consistent with the terms of reference. As such, no recommendation is made but this aspect will be monitored.

19. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference, OECD, 2017b), local filing is required without relief in the situation where a CbC report is not available to be exchanged for whatever reason, or has not been received by Australia within a reasonable time via automatic exchange.[29] This condition does not mirror the concept of "Systemic Failure" as reflected in paragraph 21 of the terms of reference (OECD, 2017b). In particular, the fact that one single CbC report cannot be obtained through exchange of information or is obtained late is unlikely to constitute a "Systemic Failure".[30] However, Australia confirms that it will administer the law in a way that provides an outcome that is consistent with the terms of reference. As such, no recommendation is made but this aspect will be monitored.

20. No other inconsistencies were identified with respect to the limitation on local filing obligation.[31]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

21. Australia's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[32]

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

22. Australia has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to taxpayers in Australia.[33] There are also penalties in place in relation to the filing of a CbC report:[34] (i) penalties for failure to file a CbC report, (ii) penalty for late filing and (iii) penalties for filing inaccurate information. In addition to these penalties, Australia indicates that there are general offence provisions in Australian tax law covering a failure to provide information or failure to give information in the manner it is required under taxation law.[35] There are also a range of other tax offences that may be relevant to enforcing the obligations of Ultimate Parent Entities or other Constituent Entities with filing obligations.[36]

23. There are no specific processes to take appropriate measures in case Australia is notified by another jurisdiction that it has reason to believe with respect to a Reporting Entity that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. Australia notes that notifications may be provided under relevant Competent Authority Agreements and identified errors, incorrect information or other non-compliance would be subject to action using the enforcement powers mentioned above. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

24. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Australia has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Australia. Australia meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the local filing conditions (paragraphs 8 (c) iv. a) of the terms of reference, OECD 2017b).

Part B: The exchange of information framework

25. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

26. Australia has sufficient legal basis in its domestic legislation to automatically exchange information on CbC reports: it is part of (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 3 November 2011, in force on 2 December 2012 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements (TIEAs).[37] Australia indicates that negotiations will occur to update TIEAs where necessary to facilitate automatic exchanges.

27. Australia signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 30 November 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under paragraph (1) (e) of Section 8 of the same agreement. Australia also signed a bilateral competent authority agreement (CAA) with the United States on 1 August 2017. As of 12 January 2018, Australia has 51 bilateral relationships activated under the CbC MCAA[38] or exchanges under a bilateral CAA. Australia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Australia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

28. Against the backdrop of the still evolving exchange of information framework, at this point in time Australia meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

29. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

30. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Australia indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use. It has also provided a copy of its internal guidance on appropriate use.

31. There are no concerns to be reported for Australia in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

32. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Australia. Australia thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Limitation on local filing obligation, conditions to require local filing	It is recommended that Australia amend its rules or otherwise ensures that its administrative practice operates in a way whereby local filing is only required in the circumstances contained in the terms of reference.
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (c) iv. a) of the terms of reference (OECD, 2017b).

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[4] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] Primary law consists of the Country-by-Country reporting obligations imposed by Subdivision 815-E of the Income Tax Assessment Act 1997. The CbC Reporting obligations are dependent on the concept of being a "significant global entity" (SGE) as provided by Subdivision 960-U of the Income Tax Assessment Act 1997.

[7] Guidance consists of the following guidance released by the Australian Taxation Office (ATO):

(i) the Law Companion Guideline (LCG) 2015/3, Subdivision 815-E of the Income Tax Assessment Act 1997: Country-by-Country reporting (17 Dec 2015); (ii) Country-by-Country Reporting: Exemption Guidance (26 Sept 2016); (iii) Country-by-Country reporting: Questions and Answers (30 Nov 2016) and (iv) "Country-by Country reporting" guidance (which was released for consultation purposes to a range of taxpayers and tax adviser firms on 7 July 2017, and was shared with the OECD Secretariat. The finalised guidance was released on 19 December 2017 and is now therefore considered a publicly available document). Australian indicates that the guidance relating to exemptions and the draft guidance supersede the guidance provided in the Law Companion Guideline.

[8] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[9] See sections 960-555 and 960-560 of Subdivision 960-U of the Income Tax Assessment Act 1997.

[10] See section 960-555 (3) of the Income Tax Assessment Act 1997.

[11] See section 960-555 (1) and (2) of the Income Tax Assessment Act 1997.

[12] See section 815-355 (1) (a) of the Income Tax Assessment Act 1997.

[13] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018).

[14] "Country-by Country reporting" guidance which was released to a range of identified taxpayers and tax advisers in Australia on 19 December 2017 and is therefore considered a publicly available document.

[15] In addition, Australia's update guidance published on 19 December 2017 includes instructions to file a CbC report. It provides that the structure and content of the CbC report can be found in Annex III of the Action 13 Report (OECD, 2015, paragraph 94 of the guidance). The guidance summarises the main points that need to be considered and provides some Australian context. It also provides for definitions and instructions for CbC Reporting in the Australian context. The guidance notably includes the definition of a "Constituent Entity" is reflected in this draft guidance and includes the reference to (1) "*any separate business unit of the group that is included in the Consolidated Financial Statements of the group for financial reporting purposes, or would be so included if equity interests in such business unit of the group were traded on a public securities exchange; (2) any such business unit that is excluded from the group's Consolidated Financial Statements solely on size or materiality grounds; and any permanent establishment of any separate business unit of the group included in (1) or (2) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes*".

[16] It is noted that the minimum standard does not envisage any exemptions from filing the CbC report (paragraph 55 of the Action 13 Report, OECD 2015).

[17] See section 815-365 and 815-355 (1) (c) of the Income Tax Assessment Act 1997.

[18] For example, an exemption would be granted when a CbC report is filed by a UPE in its country of residence and the CbC report is exchanged with Australia. Individual exemptions may also be granted where a parent company is not engaged in cross border dealings with other Constituent Entities resident in other jurisdictions and thus a CbC report would not be exchanged with any other jurisdiction (being noted that CbC requirements are also imposed on standalone companies in Australia).

[19] Country-by-Country Reporting: Exemption Guidance (26 September 2016)

[20] It is also noted that dormant entities may be eligible for a filing exemption under certain conditions: this would apply to a dormant entity for a reporting period when the entity is the only Australian presence (entity or PE) of the global group and the entity has notified the tax authorities that no income tax return is required for the income year (section 3.10 of the Country-by-country reporting guidance). Australia indicates that section 3.10 of the guidance is directed solely at MNE Groups with a foreign (non-Australian) Ultimate Parent Entity (local filing). The criteria specified in the guidance would, in an Australian context, exclude Australian Ultimate Parent Entities. An MNE Group with an Australian Ultimate Parent Entity is very unlikely to be both a dormant and sole presence of the group in Australia, but in any case even if such a scenario could be imagined the entity would still be required to lodge an Australian income tax return and would therefore not qualify for the concession. It is therefore not possible that an Australian Ultimate Parent Entity group can qualify for this CbC lodgement concession. Australia indicates that should any confusion be detected in this area, the text of the guidance would be made more explicit in a future revision of the guidance. This will be monitored.

In addition, it is noted that a filing exemption can be requested by an entity, with a foreign global parent entity, which is an SGE in an income year and it is wound up during the year or, if the Australian presence was a PE, it ceased to be a PE during the year. Australia indicates that section 3.11 of the guidance is also solely directed at MNE Groups with a foreign (non-Australian)

ultimate parent entity (local filing). This is very explicit in the text by addressing it to "an entity with a foreign global parent entity". This concession is also not available to an MNE group with an Australian Ultimate Parent Entity.

[21] It is noted that the minimum standard does not envisage any exemptions from filing the CbC report (paragraph 55 of the Action 13 Report, OECD, 2015).

[22] See paragraphs 41 and 42 of the "Country-by Country reporting" guidance which was released for consultation purposes to a range of taxpayers and tax adviser firms on 7 July 2017, and was shared with the OECD Secretariat.

[23] See Schedule 4 – CbC Reporting part 2 'Application" of the "Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015.

[24] It is noted that the Commissioner may allow an Australian resident entity to use a 12 month period other than its income year (a "replacement reporting period"). If requested in writing, the Commissioner may approve the use of a 12 month period aligned with the foreign GPE's income year.

[25] See paragraph (2) of section 815-355 of Subdivision 815-E of the Income Tax Assessment Act 1997 and Law Companion Guideline 2015/3 paragraph 23.

[26] See paragraph (1) of section 815-355 of Subdivision 815-E of the Income Tax Assessment Act 1997; Law Companion Guideline 2015/3 paragraph 34; Country-by-Country reporting - Questions and Answers, question 2.1.; and Country-by-Country Reporting: Exemption Guidance.

[27] See Country-by-Country Reporting: Exemption Guidance, paragraph 20, first item.

[28] See Law Companion Guideline 2015/3 paragraph 34; Country-by-Country reporting - Questions and Answers, question 2.1.; and Country-by-Country Reporting: Exemption Guidance, paragraph 20, second item.

[29] See Country-by-Country Reporting: Exemption Guidance, paragraph 20, second item.

[30] Systemic Failure" in paragraph 21 of the terms of reference (OECD, 2017) refers to a suspension of automatic exchange for reasons other than those in accordance with the terms of the agreement or persistent failure to automatically provide the CbC reports.

[31] According to Australia's legislation, local filing may apply to a foreign resident who operates an Australian permanent establishment (See paragraph (1) (iv) of section 815-355 of Subdivision 815-E of the Income Tax Assessment Act 1997): it is however unclear whether permanent establishments in Australia are considered "resident for tax purposes", as per paragraph 8 (c) i. of the terms of reference (OECD, 2017).

[32] See Country-by-Country reporting - Questions and Answers, question 2.4.: if a surrogate entity's jurisdiction exchanges information with Australia automatically, and the surrogate entity has filed the CbC report in that jurisdiction, Australia will not seek the CbC report from the entity in Australia.

[33] See question 2.1. of the Guidance "Country-by-Country reporting - Questions and Answers" (17 December 2015 and updated on 30 November 2016). Australia also indicates that taxpayers must, from 2017, notify in their tax return whether they are an SGE. Those notifications will be used as an indication of an obligation to file a CbC report and this data will be periodically checked against CbC report lodgements (or receipt of CbC reports on exchange). In addition, data analysis has been done and will continue to be updated to identify the total population of SGEs including any that might not notify the ATO as such.

[34] Australia indicates that from 1 July 2017 the failure to lodge penalty for an SGE is AUD 105 000 for each period of 28 days or part of a period of 28 days delay, to a maximum of AUD 525 000. Also from 1 July 2017, the administrative penalty for a false or misleading statement starts from AUD 4 200 when no tax shortfall is caused by the statement or, if a tax shortfall arose as a result of the statement, a percentage of the tax shortfall at standard tiers ranging up to 75% of the tax as a penalty.

[35] See section 8C of the Taxation Administration Act 1953. Penalties apply on conviction and penalties escalate on multiple convictions to potential imprisonment for a period up to 12 months. Persons involved in the management of an offending corporation may be deemed liable for the offence. These general offences are regularly prosecuted for more egregious failures to comply with tax obligations. There is no experience in relation to CbC reports to date.

[36] For example, making false or misleading statements or recklessly making false or misleading statements. A court order may be obtained to order compliance, with penalties for not complying with court orders potentially including imprisonment.

[37] Australia reports Tax Treaties with: Argentina, Austria, Belgium, Canada, Chile, China (People's Republic of), Czech Republic, Denmark, Fiji, Finland, France, Germany, Hungary, India, Indonesia, Ireland, Italy, Japan, Kiribati, Korea, Malaysia, Malta, Mexico, Netherlands, New Zealand, Norway, Papua New Guinea, Philippines, Poland, Romania, Russia, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Thailand, Turkey, United Kingdom, United States and Viet Nam.

[38] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed Australia in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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Austria

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Austria's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one definitional issue in relation to its domestic legal and administrative framework. The report, therefore, contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. Austria has rules (primary law) that impose and enforce CbC requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Austria. The first filing obligation for a CbC report in Austria commences in respect of fiscal years beginning on 1 January 2016 or later. Austria meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the definition of an "MNE Group" which should be clarified.[2]

Part B: Exchange of information framework

3. Austria is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and is also a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. As of 12 January 2018, Austria has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Austria has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Austria meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[3]

Part C: Appropriate use

4. There are no concerns to be reported for Austria. Austria indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it

to answer "yes" to the additional questions on appropriate use.[4] Austria meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[5]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Austria has primary law in place which implements the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[6] Austria issued explanatory remarks to the government bill which has now become the Federal Act containing the primary legislation pertaining to CbC Reporting.[7] It has also issued guidance.[8]

(a) Parent entity filing obligation

Summary of terms of reference:[9] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Austria has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities[10] of MNE Groups which have a consolidated group revenue above a certain threshold, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. There is no definition of "Group" in Austria's legislation but there is a definition of an "MNE Group" which refers to any "*group of Constituent Entities that includes two or more enterprises the tax residence for which is in different countries or jurisdictions and which are related through ownership or control (…)*". It is unclear whether this definition captures the situation where a MNE Group would include 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,[11] as described in paragraph 15 of the terms of reference (OECD, 2017b). It is thus recommended that Austria amend or otherwise clarify the definition of an MNE Group to include the situation of 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.[12]

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Austria commences in respect of periods commencing on or after 1 January 2016.[13] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[14]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[15]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Austria has introduced local filing requirements as from the reporting period starting on or after 1 January 2017.[16]

12. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference, OECD, 2017b), under Austria's legislation,[17] local filing applies where an MNE group has a Constituent Entity resident in Austria which is not the Ultimate Parent Entity of the group, and the jurisdiction of residence of the ultimate parent entity of the MNE group does not have a Qualifying Competent Authority Agreement (QCAA) in effect to which Austria is a Party on or before the end of 12 months after the end of the reporting fiscal year. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "*the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report*". This is narrower than the above condition in Austria's legislation. Under Austria's legislation, local filing may be required in circumstances where there is no current international agreement between Austria and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. However, Austria has clarified in its guidance published on 4 December 2017 that where there "*is not only a lack of a qualifying competent authority agreement regarding exchange of a CbC report (e.g. in the form of the Multilateral Competent Authority Agreement on the Exchange of CbC Reports; (…), but rather there is also a lack of a legal basis for an Automatic Exchange of Information (e.g. in the form of a DTC or the Convention on Mutual Administrative Assistance in Tax Matters, i.e. if a country has not yet acceded to it, then there will be no sufficient grounds present to trigger the reporting obligations (see EU Mutual Assistance Directive, Annex III, Section II, 1.b.ii. in conjunction with Section II, 12*)". As such, no recommendation is made.

13. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference, OECD, 2017b), under Austria's

legislation, local filing applies where an MNE group has a Constituent Entity resident in Austria which is not the Ultimate Parent Entity of the group, and "there has been a systemic failure of the jurisdiction of tax residence of the Ultimate Parent Entity [i.e.] although there was a Qualifying Competent Authority Agreement in place requiring the automatic exchanges of the CbC report with that state or jurisdiction, such Automatic Exchange of Information has been suspended (…)". Paragraph 21 of the terms of reference (OECD, 2017b) refers to suspension "for reasons other than those that are in accordance with the terms of that agreement". This is narrower than the above condition in Austria's legislation. Under Austria's legislation, local filing may be required in circumstances where a suspension in accordance with the QCAA occurs. However, Austria has clarified in its guidance published on 4 December 2017 that where the Automatic Exchange of Information has been discontinued based on the options provided in the qualifying competent authority agreement regarding exchange of a CbC report (e.g. in the form of the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (…), then this is not deemed to be a "failure" to exchange information (…). Thus, to trigger the reporting obligation of a Constituent Entity of an MNE group with its ultimate parent entity in the country which has discontinued reporting, what would be required is a discontinuation of the automatic exchange of CbC reports for reasons other than those provided in the terms of the qualifying agreement (see EU Mutual Assistance Directive, Annex III, Section I, 14). However, the country which "has failed to a significant extent or entirely failed" to comply with the qualifying agreement, for example because it has breached the duties of confidentiality or it has made inappropriate use of the information will be deemed to suffer a systemic failure".[18]

14. No other inconsistencies were identified with respect to the limitation on local filing obligations.[19] [20]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Austria's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE Group.[21] It is noted that Austria's legislation provides for a number of conditions when a Surrogate Parent Entity is resident in a jurisdiction outside the European Union, which notably reflect the conditions under paragraphs 8 (d) i. ii. iii. v. and vi. of the terms of reference (OECD, 2017b). However, the term "Jurisdiction of Tax Residence" is then defined by Austrian rules as the "*country or jurisdiction in which the registered office or headquarters of a Constituent Entity is located. For the purpose of this Federal Act, a permanent establishment is deemed to have its residence in the jurisdiction in which it is physically located*".[22] When applying to the conditions for Surrogate filing which is not an Austrian entity, these provisions may however limit the concept of tax residency for the Surrogate Parent Entity, which should usually be defined by the jurisdiction of which the Surrogate Parent Entity is a tax resident. This may result in unintended consequences (see comments above in the section relating to limitation on local filing). However, to address this issue, Austria has clarified in its guidance published on 4 December 2017 that where a Constituent Entity's registered office and management headquarters are located in different countries (dual residence), then the tie-breaker rule under the applicable double taxation convention (DTC) will be used to

determine the jurisdiction of tax residence. Where there is no applicable DTC, then residence will be determined based on the place of effective management. As such, no recommendation is made.

16. No other inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

17. Austria has legal mechanisms in place to enforce compliance with the minimum standard. There are notification mechanisms in place that apply to the Ultimate Parent Entity and the Surrogate Parent Entity.[23] There are also penalties in place in relation to the filing of a CbC report:[24] (i) penalties for failure to file (ii) penalty for late filing and (iii) penalties for filing inaccurate information.

18. There are no specific processes in place that would allow Austria to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. Austria indicates that audit processes would apply in cases where no CbC Report was transmitted. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Austria has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Austria. Austria meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the definition of an MNE Group (paragraphs 8 (a) i. and iii. and paragraph 15 of the terms of reference, OECD, 2017b).

Part B: The exchange of information framework

20. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

21. Austria has domestic legislation that permits the automatic exchange CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 29 May 2013, in force on 1 December 2014 and in effect for 2016) and (ii) multiple Double Tax Conventions (DTC) and tax information exchange agreements (TIEA) which provide for Automatic Exchange of Information.[25] It also implemented the Council

Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation (DAC4).[26]

22. Austria signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 20 April 2017. It intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. As of 12 January 2018, Austria has 53 bilateral relationships activated under the CbC MCAA. Austria has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[27] Against the backdrop of the still evolving exchange of information framework, at this point in time, Austria meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time Austria meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

24. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

25. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Austria indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports*

(OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

Conclusion

26. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Austria. Austria thus meets the terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation definition of "MNE Group"	It is recommended that Austria amend or otherwise clarify the definition of an MNE Group to include the situation of 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.
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraphs 8 a) i. and iii. and paragraph 15 of the terms of reference (OECD, 2017b).

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[4] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] Primary law consists of the Federal Act on Standardised Transfer Pricing Documentation in its version of 8 March 2017, including three annexes.

[7] Austria specifies that, with respect to CbC Reporting, those explanatory remarks draw on the General instructions for filling in the CbC report of the EU Directive: no translation in English was provided, but Austria confirmed that the core part of these explanatory remarks in respect of CbC Reporting are a copy of the "General Instructions for filling in the CbC report of the respective EU Directive. Therefore, for the purposes of this review, the Annex (including Sections I, II and III) of the European Union (EU) Council Directive 2016/881/EU has been taken into account.

[8] See "Guidance on Transfer Pricing Documentation" published on 4 December 2017 (BMF-010221/0519-IV/8/2017).

[9] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[10] It is noted that the definition of an "Ultimate Parent Entity" refers to the requirement on the Ultimate Parent Entity to prepare Consolidated Financial Statements under accounting principles generally applied in its "country or Jurisdiction of Tax Residence". The definition of a Jurisdiction of Tax Residence refers to the "country or jurisdiction of the registered head office or headquarters". However, Austria confirms that (i) an entity which has its registered office outside Austria, but is tax resident in Austria, would be required to file a CbC Report in Austria; and (ii) an entity which has its registered office in Austria, but is tax resident in another country that applies CbC Reporting, would not be required to file a CbC Report in Austria.

[11] See paragraph 2.1. of the Federal Act on Standardised Transfer Pricing Documentation for the definition of "MNE Group".

[12] Paragraphs 8 (a) i. and iii. and paragraph 15 of the terms of reference (OECD, 2017b).

[13] See paragraph 15 of the Federal Act on Standardised Transfer Pricing Documentation.

[14] See paragraph 8 of the Federal Act on Standardised Transfer Pricing Documentation.

[15] It is noted that Austria's "Guidance on Transfer Pricing Documentation" published on 4 December 2017 includes a general statement stating that "*the OECD "Guidance on the Implementation of Country-by-Country Reporting" (which may be downloaded from www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf) should be used as an aid in interpretation and application. These documents are updated on an ongoing basis at OECD level*".

[16] See paragraphs 5 (1) and (2) and 15 of the Federal Act on Standardised Transfer Pricing Documentation.

[17] See paragraphs 5.1. (2) of the Federal Act on Standardised Transfer Pricing Documentation.

[18] It is noted that the breach of confidentiality or appropriate use conditions would rather constitute cases of "significant non-compliance". Guidance from the OECD is currently being developed and it would be expected that Austria would update its guidance if necessary, to ensure consistency with OECD guidance.

[19] It is noted that Austria's legislation provides that, in order to satisfy its reporting obligations, the Constituent Entity shall request its Ultimate Parent Entity to provide it with all information required to enable it to meet its obligations to file a country-by-country report. If despite this the Ultimate Parent Entity does not provide such information, the Constituent Entity must report this to the tax administration and must file a country-by-country report containing all information available to it.

[20] With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. a) of the terms of reference (OECD, 2017)), under Austria's legislation, local filing applies to any Constituent Entity resident in Austria if the Ultimate Parent Entity is not obligated to file a Country-by-Country Report in its Jurisdiction of Tax Residence. However, the term "Jurisdiction of Tax Residence" is defined by Austrian rules as the "country or jurisdiction in which the registered office or headquarters of a Constituent Entity is located. For the purpose of this Federal Act, a permanent establishment is deemed to have its residence in the jurisdiction in which it is physically located". This may result in unintended consequences whereby an Ultimate Parent Entity may be a resident for tax purposes in a jurisdiction A based on the criteria of effective place of management, but may have its registered office in another jurisdiction B. This Ultimate Parent Entity would be a tax resident of Jurisdiction A which (as an assumption) has CbC requirements in place; however, because the Austrian rules refer to the Jurisdiction B where the entity has its office registered (as an assumption, Jurisdiction B does not have CbC requirements in place), the Constituent Entity of the MNE Group may suffer local filing requirements in Austria due to the fact that its Ultimate Parent Entity is considered a tax resident in Jurisdiction B (which does not have CbC requirements in place) from the perspective of Austria.

In addition, although the wording used is not the same, a similar issue may also exist in the context of the second condition for local filing stated in Austria's legislation (which reads as follows: "*As of the time of the obligation to submit a Country-by-Country Report within the meaning of § 8 (1), there is no Qualifying Competent Authority Agreement regarding exchange of a Country-by-Country Report in the jurisdiction in which the Ultimate Parent Entity is resident*".

Finally, the same type of issue was identified in respect of the third condition for local filing in Austria's legislation (which reads as follows "*There has been a systemic failure of the Jurisdiction of Tax Residence of the Ultimate Parent Entity. This will be the case where, although there was a Qualifying Competent Authority Agreement in place requiring automatic exchange of the Country-*

by-Country Report with that state or jurisdiction, such Automatic Exchange of Information has been suspended or the automatic forwarding of Country-by-Country Reports otherwise failed to take place for an extended period of time"). This wording may result in unintended consequences whereby an Ultimate Parent Entity of an MNE Group may be resident for tax purposes in a jurisdiction A based on the criteria of effective place of management, but may have its registered office in another jurisdiction B. This Ultimate Parent Entity would be a tax resident of Jurisdiction A which has a QCAA with Austria and where no systemic failure occurs (as an assumption); however, because the Austrian rules refer to the Jurisdiction B where the entity has its office registered (as an assumption, Jurisdiction B has systemic failure), the Constituent Entity of the MNE Group may suffer local filing requirements in Austria due to the fact that its Ultimate Parent Entity is considered as tax resident in Jurisdiction B (which has systemic failure) from the perspective of Austria.

To address these issues, Austria has clarified in its guidance published on 4 December 2017 that where a Constituent Entity's registered office and management headquarters are located in different countries (dual residence), then the tie-breaker rule under the applicable double taxation convention (DTC) will be used to determine the jurisdiction of tax residence. Where there is no applicable DTC, then residence will be determined based on the place of effective management.

[21] See paragraph 5 (3) of the Federal Act on Standardised Transfer Pricing Documentation.

[22] See paragraph 2 (5) of the Federal Act on Standardised Transfer Pricing Documentation

[23] See paragraph 4 of the Federal Act on Standardised Transfer Pricing Documentation which also applies to all Constituent Entities resident in Austria.

[24] See paragraph 9 of the Federal Act on Standardised Transfer Pricing Documentation which states that the rules applicable to the collection of taxes shall apply mutatis mutandis. Austria makes reference to Sec. 49a Finanzstrafgesetz (Austrian Financial Criminal Code): violation of the obligation to transmit the CbC Report (i.e.: late/no or incorrect filing): a deliberate violation triggers a fine up to EUR 50 000; a grossly negligent violation triggers a fine up to EUR 25 000. In addition to Sec. 49a Finanzstrafgesetz, Austria indicates that there is a general rule in the Austrian Federal Fiscal Code (Sec. 111(1) Bundesabgabenordnung) providing for the compulsory enforcement of legal obligations by tax authorities. According to that general provision each "penalty" must not exceed EUR 5 000.

[25] Austria indicates that the Federal Ministry of Finance maintains a list of jurisdictions with which an exchange of information instruments exists in tax matters: https://english.bmf.gv.at/taxation/The-Austrian-Tax-Treaty-Network.html (accessed 10 April 2018).

[26] This is also the purpose of the Federal Act on Standardised Transfer Pricing Documentation.

[27] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed Austria in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Barbados

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Barbados does not yet have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Barbados finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Barbados does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Barbados. Barbados notes that it is currently in the initial process of drafting legislation and expects this to come into effect in October 2018. It is recommended that Barbados take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. Barbados is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 28 October 2015, in force on 1 November 2016). It is not a signatory to the CbC MCAA. Barbados does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference (OECD, 2017) under review,[2] it is recommended that Barbados take steps to sign the CbC MCAA or bilateral CAAs and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Barbados will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Barbados does not yet have measures in place relating to appropriate use. It is recommended that Barbados take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Barbados will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Barbados does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Barbados does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year.

8. Barbados notes that it is currently in the initial process of drafting legislation. The process for passing the legislation is as follows:

- The initial request with drafting instructions will be sent to the drafters (Chief Parliamentary Counsel);
- Upon receipt of the drafting instructions, the drafters will review them and draft the legislation;
- The proposed legislation will be sent to the Barbados Revenue Authority who will consult should any discrepancies arise until an agreement is reached; and
- Thereafter the agreed draft would be submitted for approval and passed by Parliament.

9. Barbados expects the draft legislation to come into effect in October 2018.

10. It is recommended that Barbados finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Conclusion

11. In respect of paragraph 8 of the terms of reference (OECD, 2017), Barbados does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Barbados. It is recommended that Barbados finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

12. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

13. Barbados does not have a domestic, legal basis to automatically exchange information on CbC reports. Barbados is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 28 October 2015, in force on 1 November 2016, not in effect for 2016). It is not a signatory to the CbC MCAA. Barbados reports that it has 36 bilateral Double Tax Agreements (DTAs) and five Tax Information Exchange Agreements (TIEAs).[5]

14. As of 12 January 2018, Barbados does not yet have bilateral relationships activated under the CbC MCAA or under bilateral CAAs. It is recommended that Barbados take steps to sign the CbC MCAA or bilateral CAAs and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Barbados will not be exchanging CbC reports in 2018.

Conclusion

15. In respect of the terms of reference under review, it is recommended that Barbados take steps to sign the CbC MCAA or bilateral CAAs and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Barbados will not be exchanging CbC reports in 2018.

Part C: Appropriate use

16. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

17. Barbados does not yet have measures in place relating to appropriate use. It is recommended that Barbados take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Barbados will not be exchanging CbC reports in 2018.

Conclusion

18. It is recommended that Barbados take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Barbados will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Barbados finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information	It is recommended that Barbados take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Barbados take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[5] See https://investbarbados.org/treaties_home.php (accessed 10 April 2018) for the list of DTAs and TIEAs.

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Belgium

Summary of key findings

1. Consistent with the agreed methodology**,** this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Belgium's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Belgium has rules (primary and secondary law, as well as guidance) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in Belgium. The first filing obligation for a CbC report in Belgium commences in respect of periods commencing on or after 1 January 2016. Belgium meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Belgium is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Belgium has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Belgium has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Belgium meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for the Belgium. Belgium indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Belgium meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Belgium has primary law and secondary laws[5] in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations. Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Belgium has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on UPEs of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to Belgium's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Belgium commences in respect of periods commencing on or after 1 January 2016.[8] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[9]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[10]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the

confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Belgium has introduced local filing requirements as from the reporting period starting on or after 1 January 2016.[11]

12. No inconsistencies were identified with respect to the limitation on local filing obligation.[12]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Belgium's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[13] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. Belgium has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place to ensure that all Ultimate Parent Entities and Surrogate Parent Entities that are to file a CbC report do so.[14] There are also penalties in place in relation to the filing of a CbC report in cases of (i) non-filing, (ii) incorrect filing or (iii) incomplete filing.[15] Belgium further states that the risk of a tax audit rises significantly on cases of non-compliance with the CbC report filing obligation.

15. There are no specific processes in place that would allow to take appropriate measures in case Belgium is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Belgium has a domestic legal and administrative framework to impose and enforce CbC requirements on

MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Belgium. Belgium meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Belgium has legal basis in its domestic legislation to automatically exchange information on CbC reports: it has signed the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (CbC MCAA) on 27 January 2016 and has ratified it (the law ratifying this agreement was published in the Belgian Official Gazette on 24 November 2017).

19. Belgium is part of (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 4 April 2011, in force on 1 April 2015 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements allowing for Automatic Exchange of Information.[16] It has also implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation (DAC4) (Law of 31 July 2017, published in the Belgian Official Gazette on 11 August 2017).

20. Belgium signed the CbC MCAA on 27 January 2016 and has submitted a full set of notifications under section 8 of the CbC MCAA on 1 December 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under section 8(1)(e) of the same agreement. Belgium also signed a bilateral Competent Authority Agreement (CAA) with the United States in July 2017. Belgium indicates that it is also open for other similar negotiations. As of 12 January 2018, Belgium has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Belgium has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[17] Against the backdrop of the still evolving exchange of information framework, at this point in time Belgium meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time Belgium meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Belgium indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

24. There are no concerns to be reported for Belgium in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Belgium. Belgium thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of the Program Law of 1 July 2016 (www.ejustice.just.fgov.be,accessed 10 April 2018). Relevant articles start from page 10 under "Section 3. – Prix de transfert". Secondary law consists of a Royal Decree of 28 October 2016 (relevant pages: 18-46 and 132-144).

[6] Guidance can be accessed by logging in to www.fisconetplus.be and subsequently opening the following URL: https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/income-taxes/administrative-directives-and-comments/circular-letters/circular-letters-procedure/4d0cb7b9-14ef-4e43-ba9d-7edbdd1abcb5 (accessed 19 April 2018).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] See Art. 64 (2°) of the aforementioned Program Law of 1 July 2016.

[9] See Art. 321/2 para. 1 of the Belgian Income Tax Code.

[10] Belgium has published on its official website ("Service Public Fédéral Finances") the updated OECD guidance as of April 2017 and indicates that it intends to apply it in Belgium. This will be monitored.

[11] According to Art. 321/2, para. 2 of the Belgian Income Tax Code, local filing is required when 12 months after the end of the fiscal year, a QCAA is not in effect between Belgium and the jurisdiction of the ultimate parent entity , which may be interpreted as being wider than permitted under the terms of reference (i.e. in the absence of an international agreement). Belgium however clarified in an official guidance that local filing is required in the circumstances contained in the terms of reference (see Circular 2017/C/56 relating to the additional transfer pricing filing requirements published on 4 September 2017, paragraph 14: "the Ultimate Parent Entity shall prepare and file a CbC report for its group but there is, no later than by 12 months after the last day of the reporting period, an international agreement but no QCAA providing for the Automatic Exchange of Information of such CbC report with Belgium").

[12] It is noted that the Belgian rules provide, in accordance with the provisions of European Union (EU) Council Directive 2016/881/EU (Annex III, Section II), that where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the EU, the MNE Group may designate one of such Constituent Entities to file the country-by-country report conforming to the requirements that would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the EU. Where a Constituent Entity cannot obtain or acquire all the information required to file a country-by-country report, then such Constituent Entity shall not be eligible to be designated to be the Reporting Entity for the MNE Group. Belgium indicates that this provision applies in all situations where there is more than one Constituent Entity resident in Belgium, including when the MNE Group has no other Constituent Entities in another EU Member State. The operation of this rule will be monitored to ensure its consistency with Terms of Reference 8(c) v.

[13] See art. 321/2, para. 3 of the Belgian Income Tax Code.

[14] See art. 321/3 of the Belgian Income Tax Code.

[15] See art. 445, para. 3 of the Belgian Income Tax Code: a penalty ranging from EUR 1 250 to EUR 25 000 may be imposed.

[16] Belgium reports agreements that allow for the Automatic Exchange of Information with the following jurisdictions: Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of Congo, Denmark, Ecuador, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Gabon, Germany, Georgia, Ghana, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Kazakhstan, Korea, Kosovo, Latvia, Lithuania, Luxembourg, Macau (China), Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Tajikistan, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela and Viet Nam.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[17] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Belize

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Belize does not yet have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Belize finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Belize does not have a legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. It is recommended that Belize finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. Belize is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 28 October 2015, in force on 1 November 2016). Belize signed the CbC MCAA on 20 June 2017, but did not submit a full set of notification under section 8 of the CbC MCAA. As of 12 January 2018, Belize does not yet have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that Belize take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions. It is however noted that Belize will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Belize does not yet have measures in place relating to appropriate use. It is recommended that Belize take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Belize will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Belize does not yet have legislation in place in order to implement CbC Reporting.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Belize does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year.

8. It is recommended that Belize finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Conclusion

9. In respect of paragraph 8 of the terms of reference, Belize does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Belize. It is recommended that Belize take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

10. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

11. Belize does not have a domestic, legal basis for the exchange of information in place. Belize is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 28 October 2015, in force on 1 November 2016, not in effect for 2016).

12. Belize signed the CbC MCAA on 20 June 2017, but did not submit a full set of notification under section 8 of the CbC MCAA. As of 12 January 2018, Belize does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Belize take steps to have Qualifying Competent Authority Agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions.

Conclusion

13. In respect of the terms of reference under review, it is recommended that Belize take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Belize will not be exchanging CbC reports in 2018.

Part C: Appropriate use

14. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

15. Belize does not yet have measures in place relating to appropriate use. It is recommended that Belize take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Belize will not be exchanging CbC reports in 2018.

Conclusion

18. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), it is recommended that Belize take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Belize will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Belize finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information	It is recommended that Belize take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions.
Part C	Appropriate use	It is recommended that Belize take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Benin

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Benin does not have a legal and administrative framework in place to implement CbC Reporting. CbC requirements should first apply for taxable years commencing on or after 1 January 2019. It is recommended that Benin finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process, as well as an exchange of information framework and measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Benin indicates that legislation is in drafting stage and under development. It should be submitted to the Parliament for approval in October 2018, in the framework of the adoption of the fiscal annex to the State Budget for 2019. The draft legislation should be adopted in the framework of the fiscal tax annex to the State Budget for 2019, which is likely entry into force in January 2019. Benin indicates that CbC requirements will apply for taxable years commencing on or after 1 January 2019. It is recommended that Benin finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. Benin is not a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), and is also not a signatory to the CbC MCAA. As of 12 January 2018, Benin does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that Benin take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Benin will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Benin does not yet have measures in place relating to appropriate use. It is recommended that Benin take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Benin will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Benin does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference (OECD, 2017)).

7. Benin indicates that legislation is in drafting stage and under development.

8. Benin indicates that the implementation steps are the following: (i) Design and validation of the project at the tax administration level (ongoing); (ii) Validation of the project in the Council of Government; (iii) Submission of the draft to the National Assembly at the opening of the next parliamentary budgetary session (October 2018); Adoption of the project in the fiscal annex to the budget for the year 2019; (v) Entry into force of the text in January 2019. Benin indicates that the implementation steps are the following: The CbC legislation project is under discussion and development. A draft will need to be prepared by the committee for codification and legislation and will have to be validated by the ministerial authority. Once it is approved, the draft will be inserted in the draft finance bill and submitted for adoption to the parliament. The legislation will come into force after adoption by parliament and promulgation by the president of the republic. CbC requirements should apply for taxable years commencing on or after 1 January 2019. Benin reports that there are no MNE groups headquartered in Benin (only subsidiaries and branches of foreign MNE groups). This information has been obtained from the national company file held by the directorate of larger companies.

9. It is recommended that Benin finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Conclusion

10. In respect of paragraph 8 of the terms of reference (OECD, 2017), Benin does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Benin. It is recommended that Benin finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

11. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

12. Benin is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention") and is also not a signatory to the CbC MCAA. Benin does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.

13. As of 12 January 2018, Benin does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Benin take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Benin will not be exchanging CbC reports in 2018.

Conclusion

14. In respect of the terms of reference under review, it is recommended that Benin take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Benin will not be exchanging CbC reports in 2018.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. Benin has not yet provided information on measures relating to appropriate use. It is recommended that Benin take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Conclusion

17. It is recommended that Benin take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Benin will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Benin finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Benin take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Benin take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Bermuda

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Bermuda's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report therefore contains no recommendation.

Part A: Domestic legal and administrative framework

2. Bermuda has rules (primary and secondary laws, as well as guidance) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Bermuda. The first filing obligation for a CbC report in Bermuda commences in respect of fiscal years starting on or after 1 January 2016. Bermuda meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Bermuda is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the CbC MCAA and has provided its notifications under Section 8 of this agreement. Bermuda intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. As of 12 January 2018, Bermuda has 41 bilateral relationships activated under the CbC MCAA or exchanges under the bilateral Competent Authority Agreements (CAA). Bermuda has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Bermuda meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. Bermuda is a non-reciprocal jurisdiction and so will not receive CbC Reports submitted to tax authorities in other jurisdictions and will not apply local filing. As such, it is not necessary to reach any conclusions with respect to compliance with Part C.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Bermuda has primary and secondary laws[3] in place for implementing the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[4] Guidance has also been published.[5]

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Bermuda has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[7]

8. No inconsistencies were identified with respect to Bermuda's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Bermuda commences in respect of reporting fiscal years starting on or after 1 January 2016.[8] The CbC report must be filed no later than 12 months after the last day of the reporting fiscal year of the MNE Group relates.[9]

10. Article 4(2) of the Regulations specifies that the CbC report will be based on the standard template set out at Annex III of Chapter V of the OECD's Transfer Pricing Documentation and Country-by-Country Report. This explains that "'Revenues – Unrelated Party' should be read as referring to revenues arising from transactions between independent parties and "'Revenues – Related Party' should be read as referring to revenues arising from associated enterprises. In addition, interpretative guidance issued by the OECD in April 2017,[10] explains that "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the*

Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report". It is expected that Bermuda issue an updated interpretation or clarification of the definitions of "Revenues – Unrelated Party" and "Revenues – Related Party" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

11. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. Bermuda does not apply or plan to introduce local filing. It has removed local filing requirements from its legislation in August 2017 and Bermuda has issued a Competent Authority administrative communications to MNE Groups indicating that they will not need to file a CbC report under local filing requirements.[11]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Bermuda does not apply or plan to introduce local filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. Bermuda has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity and the Parent Surrogate Entity in Bermuda.[12] There are also penalties in place in relation to the CbC Reporting obligation and notification: (i) penalty for failure comply with CbC filing requirements,[13] (ii) daily default penalty[14] and (iii) penalties for

inaccurate information.[15] In addition, any Constituent Entity of a MNE Group that is resident in Bermuda is obliged to keep records of the financial position and information related to business or activity of the entity and to provide any information that is relevant for their tax position. Penalties or imprisonment may be imposed in case the obligations are not met.[16]

15. There are no specific processes in place that would allow to take appropriate measures in case Bermuda is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. However, Bermuda indicates that the penalties will be applied to any person guilty of an offence under Article 9 of the International Cooperation Act 2005. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017), Bermuda has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Bermuda. Bermuda meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Bermuda has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (in force on 1 March 2014 and in effect for 2016) (the "Convention").[17]

19. Bermuda signed the CbC MCAA on 15 April 2016 and submitted a full set of notification under section 8 of the CbC MCAA on 22 November 2016. As a non-reciprocal jurisdiction, Bermuda does not seek for any country to send information to Bermuda pursuant to the CbC MCAA. However Bermuda intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. It is also noted that Bermuda has negotiated a bilateral internal UK AEOI "Arrangement" (not technically a treaty) to provide the equivalent AEOI to CbC and CRS MCAAs via a bilateral CAA annexed to the Arrangement.[18] As of 12 January 2018, Bermuda has 41 bilateral relationships activated under the CbC MCAA[19] or exchanges under the bilateral CAAs. Bermuda has taken steps to have Qualifying Competent Authority agreements in effect with

jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Bermuda meets the terms of reference regarding the exchange of information framework.

Conclusion

20. Against the backdrop of the still evolving exchange of information framework, at this point in time Bermuda meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) Jurisdictions should have in place mechanisms (such as legal or administrative measures) to ensure that CbC reports which are received through exchange of information or by way of local filing are used appropriately (paragraphs 12 (a) of the terms of reference).

22. Bermuda is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and will not apply local filing. As such, it is not necessary for this peer review evaluation to reach any conclusion with respect to Bermuda's compliance with paragraph 12 of the terms of reference (OECD, 2017) on appropriate use.

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), Bermuda is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and will not apply local filing. As such, it is not necessary for this peer review evaluation to reach any conclusion with respect to these paragraphs of the terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	Not applicable.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Primary law consists of the International Cooperation (Tax Information Exchange Agreements) Act 2005 Article 4B: www.bermudalaws.bm/primaryLaws/2005.pdf (accessed 11 April 2018). Secondary law consists of the "International Cooperation (Tax Information Exchange Agreements) Country-by-Country Reporting Regulations 2017 (the "Regulations"): www.bermudalaws.bm/laws/pdf (accessed 11 April 2018).

[4] Bermuda has indicated that it is a voluntary non-reciprocal jurisdiction with respect to CbC Reporting requirements as it has no domestic tax need for such information presently and is devoting important resources to comply with the standard for CbC report exchanges in 2017.

[5] Guidance on Country-by-Country Reporting has been published on 11 April 2017 on the Government of Bermuda site: www.gov.bm/sites/default/files/V5Bermuda-CbCR-Guidance-wlb-7-Apr-17.pdf (accessed 11 April 2018).

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[7] See Article 4B of the International Cooperation (Tax Information Exchange Agreements) Act 2005 and Article 3 of the Regulations.

[8] See Articles 6(1) and 7 of the Regulations.

[9] See Articles 6(1) and 7 of the Regulations.

[10] See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

[11] Under Article 6(2) of the Regulations, Bermuda requires a Bermuda Reporting entity to file CbC reports in Bermuda only when such a Bermuda Reporting entity has been appointed by the MNE Group to do so as a Surrogate Parent Entity. Bermuda has indicated that this requirement will be further emphasised in the published guidance by adding the following clause: "Pursuant to the International Cooperation (Tax Information Exchange Agreements) Country-by-Country Reporting Amendment Regulations 2017, under regulation 6(2) the definition of a Bermuda reporting entity means that a Constituent Entity as a Bermuda reporting entity (other than Ultimate Parent Entity) is only required to file under regulation 6(2) when it has been appointed by the MNE Group to do so (as a Surrogate Parent Entity)". Bermuda's legislation allows Surrogate Parent filing only when certain conditions are met that reflect the conditions set in paragraphs 8 c) iv. a) b) and c) of the terms of reference (OECD, 2017) for local filing

requirements. See also the definition of Surrogate Parent Entity in the guidance published on 11 April 2017.

[12] See Article 5 of the Regulations.

[13] See Article 17 of the Regulations. A person who fails to comply with any CbC obligation under Article 5, 6 or 9 of the Regulations is liable to a civil penalty not exceeding BMD 4 000 (Bermudian dollars).

[14] See Article 18 of the Regulations. Failure to pay the civil penalty will result in further penalty not exceeding BMD 200 for each day during which the first penalty remains unpaid. A

[15] See Article 19 of the Regulations. A person is liable to a civil penalty not exceeding BMD 5 000, if the person provides inaccurate information when filing a CbC report and condition A or B is met: (A) the person knows of the inaccuracy at the time it is provided but does not inform the Minister or (B) the person discovers the inaccuracy after the information is provided to the Minister and fails to take reasonable steps to inform the Minister.

[16] See Article 15 of the Regulations. A person who commits an offence is liable to a fine not exceeding BMD 10 000 or to imprisonment for a term not exceeding six months or to both.

[17] Bermuda, as an Overseas British Territory, is party to the Convention on Mutual Administrative Assistance in Tax Matters (the "Convention") by way of the UK's territorial extension

[18] Bermuda also indicated with respect to the international transmission method for CbC report exchanges that Deloitte/Vizor are contracted to build Bermuda's reporting Portal that will interface with the OECD's Common Transmission System (CTS), and that the Portal is on track to be operational well before the 2017 reporting date for MNEs to report their CbC information to the Bermuda competent authority. Bermuda confirms it will use CTS for AEOI for exchanging CRS and CbC reports (Bermuda has already signed the User Agreement for Bermuda to use the CTS).

[19] It is noted that some Qualifying Competent Authority agreements are not in effect for fiscal year 2016 with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or the reviewed jurisdiction may not have listed all signatories of the CbC MCAA as of 12 January 2018. Bermuda has taken steps to further update the list of jurisdictions it intends to exchange CbC reports with, before the first exchanges of information in June 2018.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Brazil

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Brazil's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that it raises one interpretative issue in relation to its domestic legal and administrative framework. The report, therefore, contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. Brazil has rules (primary and secondary laws, as well as guidance) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Brazil. The first filing obligation for a CbC report in Brazil commences in respect of fiscal years commencing on or after 1 January 2016. Brazil meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of:

- the annual consolidated revenue threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than Brazil[1] which may deviate from the guidance issued by the OECD. Although such deviation may be unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 minimum standard.

Part B: Exchange of information framework

3. Brazil is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which came into force on 1 October 2016. The Convention is therefore not in effect with respect to the fiscal year starting 1 January 2016. Brazil has submitted a Unilateral Declaration to align the effective date of the Convention with the first intended exchanges of CbC Reports under the CbC MCAA (as permitted under paragraph 6 of Article 28 of the Convention), in order to enable exchanges of CbC reports relating to the reporting fiscal year 2016 with other jurisdictions that also provide the same Unilateral Declaration. Brazil is also a signatory to the CbC MCAA (signed on 21 October 2016). It has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. Brazil has also signed a bilateral competent authority agreement (CAA) with the United States. As of 12 January 2018, Brazil has 51 bilateral relationships activated under the CbC MCAA or bilateral exchanges under bilateral CAAs. Brazil has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions

(including legislation in place for fiscal year 2016). It is noted that a number of Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place, in particular because the partner jurisdictions did not submit a Unilateral Declaration (in regard of the fact that Brazil does not have the Convention in effect for the first reporting period). Since Brazil has taken a number steps including by lodging a Unilateral Declaration, no recommendation is made. Against the backdrop of the still evolving exchange of information framework, at this point in time Brazil meets the terms of reference relating to the exchange of information framework for the year in review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Brazil. Brazil indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Brazil meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Brazil has primary law in place for implementing the BEPS Action 13 minimum standard which consists on a general legal basis for the establishment of any new filing obligations[5] and secondary law establishing the necessary requirements,[6] including the filing and reporting obligations. Guidance addressing the main topics related to the filing and reporting obligations has also been published.[7] In addition, Brazil has also published guidance in a FAQ format providing further explanations to taxpayers with respect to CbC Reporting, and which includes the provisions contained in the OECD's *Guidance on the Implementation of CbC Reporting* (OECD, 2018) translated into Portuguese.[8]

(a) Parent entity filing obligation

Summary of terms of reference:[9] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Brazil has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups[10] above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. According to Brazil's secondary law, the filing of a CbC report is not requested with respect to MNE Groups with annual consolidated group revenue in the preceding fiscal year which is lower than BRL 2 260 billion if the final controller (Ultimate Parent Entity) is resident in Brazil for tax purposes, or lower than EUR 750 million or an equivalent amount converted in the local currency of the jurisdiction of residence of the final controller (translated at the 31 January 2015 exchange rate), as reflected in their Consolidated Financial Statements.[11] While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Brazil, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is tax resident in Brazil) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[12] The operation of the annual consolidated group revenue threshold calculation rule will be further monitored. It is recommended that if the operation of the rule becomes an issue, Brazil will at that time take steps to ensure that it applies in a manner consistent with the OECD guidance on currency fluctuations.

9. No other inconsistencies were identified with respect to Brazil's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Brazil commences in respect of periods commencing on or after 1 January 2016.[13] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[14]

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[15]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. Brazil has introduced local filing requirements as from the reporting period starting on or after 1 January 2016.[16] No inconsistencies were identified with respect to the limitation on local filing obligation.[17] [18]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Brazil's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[19] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. Brazil has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Constituent Entities in Brazil. There are also penalties in place in relation to the filing of a CbC report for failure:[20] (i) to file a CbC report, (ii) to completely file a CbC report and (iii) to submit it on time. In addition, any Constituent Entity of a MNE Group that is resident in Brazil is obliged to keep records of the financial position and information related to business or activity of the entity and to provide any information that is relevant for their tax position. Penalties may be imposed in case the obligations are not met.

15. Brazil indicates that they will make use of mechanisms in place for request of information and risk assessment process to take appropriate measures in case Brazil is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reported by a Reporting Entity or that a Reporting Entity is failing to comply with respect to CbC Reporting obligations. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Brazil has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Brazil. Brazil meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the annual consolidated group revenue threshold (paragraphs 8 (a) ii. of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Brazil has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 3 November 2011, in force on 1 October 2016 and in effect for 2017) and (ii) multiple bilateral Double Tax Agreements and a Tax Information and Exchange Agreement which allow Automatic Exchange of Information.[21] The Convention is not in effect with respect to the fiscal year starting on 1 January 2016. This means that Brazil would not be able in theory to exchange (either send or receive) CbC reports with respect to 2016 fiscal year and would not send or receive CbC reports under the Convention and CbC MCAA on the first exchange date in mid-2018. Brazil has submitted a Unilateral Declaration on the effective date for exchanges of information under the CbC MCAA. This Unilateral Declaration enables exchanges of CbC reports relating to the fiscal year 2016 (by aligning the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention)[22] with other jurisdictions that have provided the same Unilateral Declarations.

19. Brazil signed the CbC MCAA on 21 October 2016 and submitted a full set of notification under section 8 of the CbC MCAA on 20 March 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. Brazil also signed a bilateral CAA with the United States. As of 12 January 2018, Brazil has 51 bilateral relationships activated under the CbC MCAA and exchanges with the United States under a bilateral agreement. Brazil indicates that it has no further other intended QCAAs, but if other jurisdictions choose to take the bilateral route, Brazil is willing to sign a bilateral CAA. Brazil has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). It is noted that a number of Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this is because the partner jurisdictions did not submit a Unilateral Declaration (in regard of the fact that Brazil does not have the Convention in effect for the first reporting period), or the partner jurisdictions considered do not have the Convention in effect for the first fiscal period or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA. Since Brazil has taken a number steps including by lodging a Unilateral Declaration, no recommendation is made. Against the backdrop of the still evolving exchange of information framework, at this point in time Brazil meets

the terms of reference relating to the exchange of information framework for the year in review.

Conclusion

20. Against the backdrop of the still evolving exchange of information framework, at this point in time Brazil meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

> Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

22. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Brazil indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the Appropriate Use of Information contained in CbC Reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

23. There are no concerns to be reported for Brazil in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Brazil. Brazil thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	The operation of the annual consolidated group revenue threshold calculation rule will be further monitored, including by Brazil. It is recommended that if the operation of the rule becomes an issue, Brazil will at that time take steps to ensure that it applies in a manner consistent with the OECD guidance on currency fluctuations.
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Brazil's primary law consists of a general provision in the federal legislation granting power to the Secretariat of the Brazilian Federal Revenue to establish the necessary requirements related to taxes it manages, including the filing and reporting obligations (article 16 of Federal Law No. 9,779/1999).

[6] Brazil's secondary law consists of a Normative Instruction regulating the obligation of CbC Reporting (Normative Instruction No. 1,681/2016).

[7] Guidance has been added to the generic guidance for filling the Tax Accounting Bookkeeping obligation (ECF) and can be accessed at: "Manual de orientação do leiaute da escrituração contábil fiscal (ECF)", http://sped.rfb.gov.br/estatico (accessed 11 April 2018) and "Manual de orientação do leiaute 4 da escrituração contábil fiscal (ECF), http://sped.rfb.gov.br/estatico (accessed 11 April 2018; pages 371-407 specifically refer to CbC Reporting). The guidance provides links to the OECD internet page on the BEPS project including the Action 13 Minimum Standard.

[8] The questions and answers can be accessed at: "Perguntas e respostas", http://sped.rfb.gov.br/estatico (accessed 11 April 2018).

[9] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[10] The CbC requirement has been added to the ECF (the Brazilian Digital Tax Bookkeeping), which encompasses the annual tax return and other general and economic information to be disclosed.

[11] Article 4, main clause of Normative Instruction No. 1,681/2016.

[12] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018).

[13] See Article 5, paragraph 2 of Normative Instruction No. 1,681/2016.

[14] Article 6 of Normative Instruction No. 1,681/2016.

[15] It is noted that in Brazil's guidance related to source of data, taxpayers must report in table III which accounting principles have been used.

[16] See article 3, paragraph 1 of Normative Instruction No. 1,681/2016.

[17] See article 3, paragraph 2 of Normative Instruction No. 1,681/2016. It is noted that in case there is more than one Constituent Entity of the same MNE Group that is resident for tax purposes in Brazil, these entities will have to designate which will be the responsible entity in relation to the reporting Fiscal Year and to notify it to the Federal Revenue Authority. However, Article 2 of the Model Legislation in the Action 13 Report (OECD, 2015) states that the MNE Group "may" designate one such Constituent Entities to file the CbC report. However, this does not seem to create a substantive issue.

[18] Brazil took steps regarding the first filing deadline in 2017 when local filing applies. See www.oecd.org/tax/beps/country-by-country-reporting-update-on-exchange-relationships-and-implementation.htm (accessed 11 April 2018). The measure taken by Brazil regarding the local filing applicability in cases involving the absence of a QCAA in effect for 2016 consisted in providing targeted transitional relief from local filing for fiscal years commencing in 2016. Under this relief, where a QCAA is in place for fiscal years commencing from 1 January 2017, a Brazilian constituent entity in a foreign MNE group will not be required to comply with local filing for fiscal years commencing in 2016. However, the constituent entity may subsequently be required to comply with local filing in Brazil for such a fiscal year if: i) by 31 December 2017, there was no QCAA in place to enable retroactively automatic exchange of 2016 CbC reports (e.g. by lodging a unilateral declaration or entering into a bilateral QCAA), and ii) the jurisdiction of the MNE group's UPE applies local filing to constituent entities in Brazilian MNE groups.

[19] See article 3, paragraph 3 of Normative Instruction No. 1,681/2016, based on Article 2, paragraph 3 of the Model Legislation.

[20] See article 11 of Normative Instruction No. 1,681/2016: Art. 11 The Brazilian constituent entity which does not comply with the obligations established in this Normative Instruction, or that comply with omitted or inaccurate information, will be notified to properly comply with it or to provide clarifications, and it will be subject to the following penalties: I – in case of untimely filling:

a) BRL 500 for each month or fraction, in case of starting activities, or for those which have determined the profit in the last filed tax return based on the presumed profit; or

b) BRL 1 500 for each month or fraction in other situations;

II – in case of fail to comply with a notification related to the obligations established in this Normative Instruction by the appropriate deadline: BRL 500 for each month; and

III – in case of omitted or inaccurate information: 3%, not less than BRL 100 of the omitted or inaccurate value.

§ 1º With regard to the item I, in case of corporate restructuring or the application of more than one way to verify the profit in the last tax return, it will be applied the penalty established in "a)".

§ 2º The penalty provided in the item I will be reduced to half where the obligation established in this Normative Instruction is fulfilled before any fiscal procedure.

[21] Brazil lists a tax agreement with the United States as well as bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions: Argentina, Austria, Belgium, Canada, Chile, China (People's Republic of), Czech Republic, Denmark, Ecuador, Finland, France, Hungary, India, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Norway, Netherlands, Peru, Philippines, Portugal, Slovak Republic, South Africa, Spain, Sweden, Trinidad and Tobago, Turkey, Ukraine and Venezuela.

[22] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] *Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax*."

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

British Virgin Islands

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. The British Virgin Islands does not yet have a legal and administrative framework in place to implement CbC Reporting. It is recommended that the British Virgin Islands finalise a domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part A: Domestic legal and administrative framework

2. The British Virgin Islands has recently joined the Inclusive Framework and is still in the early stages of implementation of BEPS Action 13. Currently, the legislation was expected to be in place before the end of 2017. It is recommended that the British Virgin Islands finalise the domestic legal and administrative framework[1] in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. The British Virgin Islands is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016. It is not a signatory to the CbC MCAA. As of 12 January 2018, the British Virgin Islands does not have bilateral relationships activated under the CbC MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review[2] process, it is recommended that the British Virgin Islands take steps to sign the CbC MCAA and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions. It is however noted that the British Virgin Islands will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. The British Virgin Islands is a non-reciprocal jurisdiction and so will not receive CbC Reports submitted to tax authorities in other jurisdictions and will not apply local filing. As such, it is not necessary to reach any conclusions with respect to compliance with Part C.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

(a) Parent entity filing obligation

Summary of terms of reference:[3] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference (OECD, 2017)).

6. The British Virgin Islands has recently joined the Inclusive Framework and is still in the early stages of implementation of the BEPS Action 13. At this moment, the British Virgin Islands has reviewed the Model Legislation contained in the Action 13 Report (OECD, 2015) and is in the design phase of the legislation and is considering all the relevant areas to be included. As such, the British Virgin Islands' administration is in the process of seeking approval from the Government's Ministers to draft the domestic legislation. Once approval has been received, the legislation will be drafted and once the draft is finalised, it will be submitted to the Government's House of Assembly for Parliamentary approval. It is anticipated that this may take the next three to five months to complete this process. As such, the British Virgin Islands anticipated having legislation in place before the end of 2017.

7. In the interim, the British Virgin Islands will be asking any Multinational Enterprises (MNEs) that may be headquartered in the British Virgin Islands and may be subject to CbC Reporting requirements under the Action 13 framework to voluntarily identify themselves to the International Tax Authority, in order to have an early estimate of how many MNEs are concerned.

8. It is recommended that the British Virgin Islands introduce or complete its enforcement measures as soon as possible, taking into account its particular domestic legislative process.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), the British Virgin Islands does not have a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the British Virgin Islands. It is recommended that the British Virgin Islands take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

10. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

11. The British Virgin Islands is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"),[4] in force since 1 March 2014 and in effect for 2016. It intends to use this instrument for sending the CbC reports to other jurisdictions. Where necessary, the British Virgin Islands will also use the Tax Information and Exchange Agreements that allow Automatic Exchange of Information.

12. The British Virgin Islands has not signed the CbC MCAA. At the moment, it is seeking for the necessary instructions from the Government's Cabinet as to whether to sign this agreement or whether to operate on the basis of bilateral Competent Authority Agreements. As of 12 January 2018, the British Virgin Islands does not have bilateral relationships activated under the CbC MCAA. It is recommended that the British Virgin Islands take steps as soon as possible to sign the CbC MCAA and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions. It is however noted that the British Virgin Islands will not be exchanging CbC reports in 2018.

Conclusion

13. It is recommended that the British Virgin Islands take steps as soon as possible to sign the CbC MCAA and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions. It is however noted that the British Virgin Islands will not be exchanging CbC reports in 2018.

Part C: Appropriate use

14. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) Jurisdictions should have in place mechanisms (such as legal or administrative measures) to ensure that CbC reports which are received through exchange of information or by way of local filing are used appropriately (paragraphs 12 (a) of the terms of reference).

15. The British Virgin Islands is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and will not apply local filing. As such, it is not necessary for this peer review evaluation to reach any conclusion with respect to the British Virgin Islands' compliance with paragraph 12 (a) of the terms of reference (OECD, 2017) on appropriate use.

Conclusion

16. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), the British Virgin Islands is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and will not apply local filing. As such, it is not necessary for this peer review evaluation to reach any conclusion with respect to these paragraphs of the terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that the British Virgin Islands take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that the British Virgin Islands take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	Not applicable.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[4] The British Virgin Islands is a Party to the Convention on Mutual Administrative Assistance in Tax Matters by way of the United Kingdom's territorial extension.

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Brunei Darussalam

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Brunei Darussalam does not have a legal and administrative framework in place to implement CbC Reporting and indicates that it will not apply CbC requirements for the 2016 fiscal year. It is recommended that Brunei Darussalam take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Brunei Darussalam does not yet have legislation in place for implementing the BEPS Action 13 minimum standard. Brunei Darussalam indicates that its CbC legislation has been drafted and is currently under review. At this time, Brunei Darussalam estimates that the legislation will come into effect by the second half of 2018. Brunei Darussalam indicates that it will apply CbC requirements as of 1 January 2019 with respect to the 2018 fiscal year. It is recommended that Brunei Darussalam take steps to implement a domestic legal and administrative framework[1] to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Brunei Darussalam is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") which is in the process of being ratified. The Convention is not in effect with respect to the fiscal year starting 1 January 2018. This means that Brunei Darussalam will not be able to exchange (either send or receive) CbC reports with respect to 2018 fiscal year under the Convention and CbC MCAA on the first exchange date in 2020. Brunei Darussalam has in place a network for exchange of information which would allow for Automatic Exchange of Information for CbC Reporting: it has multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements. Brunei Darussalam indicates that both Multilateral and Bilateral Competent Authority Agreements models are currently under review. As of 12 January 2018, Brunei Darussalam does not have bilateral relationships activated under the CbC MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review[2] process, it is recommended that Brunei Darussalam take steps to enable exchanges under existing international agreements of CbC reports relating to the fiscal year 2018 (e.g. lodging a Unilateral Declaration in order to align the effective date of the

Convention with first intended exchanges of CbC reports under the CbC MCAA, or relying on Double Tax Agreements or Tax Information and Exchange Agreements), sign the CbC MCAA or bilateral CAAs, and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. With respect to terms of reference under review for this first annual peer review,[3] Brunei Darussalam does not yet have measures in place relating to appropriate use. It is recommended that Brunei Darussalam take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Brunei Darussalam does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction

meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Brunei Darussalam does not yet have a legal and administrative framework in place to implement CbC Reporting and it indicates that it will implement CbC Reporting requirements as of 1 January 2019 with respect to the 2018 fiscal year. Brunei Darussalam has confirmed that it has not implemented local filing requirements on resident Constituent Entities of MNE Groups headquartered in another jurisdiction in the meantime.

8. Brunei Darussalam indicates that that the legislation for CbC Reporting is has already been drafted and is currently under review. At this time, Brunei Darussalam estimates that the legislation will come into effect by the second half of 2018.

9. Brunei Darussalam indicates that there are no MNE Groups currently headquartered in Brunei Darussalam. The Ministry of Finance confirmed that it will verify this information on an ongoing basis through the Estimated Chargeable Income (ECI) and audited Financial Statements submitted by all companies in Brunei Darussalam through the System of Tax Administration and Revenue Services (STARS).

Conclusion

10. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Brunei Darussalam does not have a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Brunei Darussalam. It is recommended that Brunei Darussalam take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

11. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

12. Brunei Darussalam will have sufficient legal basis that permits the automatic exchange of CbC reports. Brunei Darussalam is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) (the "Convention", signed on 12 September 2017) which is in the process of being ratified. The Convention is not in effect with respect to the fiscal year starting 1 January 2018. This means that Brunei Darussalam will not be able to exchange (either send or receive) CbC reports with respect to 2018 fiscal year under the Convention and CbC MCAA on the first exchange date in 2020. It is recommended that Brunei Darussalam take steps to enable exchanges of CbC reports relating to the fiscal year 2018, e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention,[5] or relying on Double Tax Agreements or Tax Information and Exchange Agreements. Brunei Darussalam also has multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements.

13. Brunei Darussalam indicates that both Multilateral and Bilateral Competent Authority Agreements models are currently under review. As of 12 January 2018, Brunei Darussalam does not have bilateral relationships activated under the CbC MCAA or under bilateral CAAs. It is recommended that Brunei Darussalam sign the CbC MCAA or bilateral CAAs and take steps to complete its exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

Conclusion

14. In respect of the terms of reference under review, it is recommended that Brunei Darussalam take steps to enable exchanges under existing international agreements of CbC reports relating to the fiscal year 2018 (e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, or relying on Double Tax Agreements or Tax Information and Exchange Agreements), sign the CbC MCAA or bilateral CAAs, and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Brunei Darussalam indicates that measures are not yet in place to ensure the appropriate use of information in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It had however provided details on the next steps which are being planned to put appropriate measures in place. It is recommended that Brunei Darussalam take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

Conclusion

17. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), it is recommended that Brunei Darussalam take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Brunei Darussalam take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Brunei Darussalam take steps to enable exchanges under existing international agreements of CbC reports relating to the fiscal year 2018 (e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, or relying on Double Tax Agreements or Tax Information and Exchange Agreements), sign the CbC MCAA or bilateral CAAs, and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Brunei Darussalam take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[5] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Bulgaria

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Bulgaria's implementation of the Action 13 minimum standard meets all applicable terms of reference. This report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Bulgaria has rules (primary law) in place that impose and enforce CbC requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Bulgaria. The first filing obligation for a CbC report in Bulgaria commences in respect of reporting fiscal years beginning on 1 January 2016 or later. Bulgaria meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Bulgaria is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which came into force on 1 July 2016. The Convention is therefore not in effect with respect to the fiscal year starting 1 January 2016. Bulgaria has submitted a Unilateral Declaration to align the effective date of the Convention with the first intended exchanges of information on CbC reports under the CbC MCAA (as permitted under paragraph 6 of Article 28 of the Convention), in order to enable exchanges of CbC reports relating to the reporting fiscal year 2016 with other jurisdictions that also provide the same Unilateral Declaration. Bulgaria is also a signatory to the CbC MCAA (signed on 17 November 2017). It has submitted notifications under Section 8 of this agreement and it intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under paragraph 1(e) of Section 8 of the same agreement. As of 12 January 2018, Bulgaria has 45 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Bulgaria has taken steps to have QCAAs in effect with other jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions. Against the backdrop of the still evolving exchange of information framework, at this point in time Bulgaria thus meets the terms of reference relating to the exchange of information network aspects under review for this first annual peer review process.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Bulgaria. Bulgaria indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Bulgaria meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Bulgaria has primary law (hereafter the "Tax Code") in place to implement BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5] Secondary law is not foreseen as all relevant provisions are covered by the primary law.[6] Guidance has also been published.[7]

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Bulgaria has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have consolidated group revenues equal to or above EUR 750 million,[9] whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to the parent entity filing obligation.[10]

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Bulgaria commences in respect of reporting fiscal years starting on or after 1 January 2016.[11] The CbC report must be filed within 12 months after the end of the reporting fiscal year of the MNE Group.[12]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[13]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Bulgaria has introduced local filing requirements in respect of reporting fiscal years beginning on or after 1 January 2017.[14]

12. No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Bulgaria's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[15] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. Bulgaria has legal mechanisms in place to enforce compliance with the minimum standard. There are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any Constituent Entity.[16] There are also penalties in place in relation to the filing and notification obligations under CbC Reporting:

(i) penalties for failure to file,[17] (ii) penalties for providing false or incomplete data[18] and (iii) penalties for failure to provide appropriate notifications.[19]

15. It is noted that there are no specific process to take appropriate measures in case Bulgaria is notified by another jurisdiction that it has reason to believe with respect to a Reporting Entity that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored in the next annual peer review process.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), has implemented its domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Bulgaria. Bulgaria meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Bulgaria has domestic legislation that permits the automatic exchange of CbC reports: it is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") (signed on 26 October 2015 and in force on 1 July 2016) and (ii) multiple bilateral Double Tax Agreements.[20] It also implemented the EU Council Directive 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation. The Convention is not in effect with respect to the fiscal year starting on 1 January 2016. This means that Bulgaria would not be able in theory to exchange (either send or receive) CbC reports with respect to 2016 fiscal year and would not send or receive CbC reports under the Convention and CbC MCAA on the first exchange date in mid-2018. Bulgaria has however lodged a Unilateral Declaration to align the effective date of the Convention with the first intended exchanges of information on CbC reports under the CbC MCAA. This Unilateral Declaration enables exchanges of CbC reports relating to the fiscal year 2016 (by aligning the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention[21]) with other jurisdictions that have provided the same Unilateral Declaration**.**

19. Bulgaria is also a signatory of the CbC MCAA (signed on 17 November 2017) and has submitted a full set of notifications under Section 8. It intends to have the

CbC MCAA in effect with all other Competent Authorities that provide a notification under paragraph 1(e) of Section 8 of the same agreement. As of 12 January 2018, Bulgaria has 45 bilateral relationships activated under the CbC MCAA[22] or exchanges under the EU Council Directive (2016/881/EU). Bulgaria has taken steps to have QCAAs in effect with other jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions. Against the backdrop of the still evolving exchange of information framework, at this point in time Bulgaria meets the terms of reference.

Conclusion

20. Against the backdrop of the still evolving exchange of information framework, at this point in time Bulgaria meets the terms of reference relating to the exchange of information framework.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

22. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Bulgaria indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

23. There are no concerns to be reported for Bulgaria in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Bulgaria. Bulgaria thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of the amended Tax and Social Security Procedure Code in relation to the CbC Reporting (adopted by Parliament on 20 July 2017 and published in the State Gazette on 4 August 2017) (hereafter the "Tax Code"). See Articles 143s to 143z, Article 268a, Paragraph 1, items 33-45 of the Additional provisions and paragraphs 25-26 of the Transitional and final provisions of the Tax Code. An amendment to the Tax Code was published in the State Gazette on 17 November 2017 which amends Article 143w only. See http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=119626 (accessed 11 April 2018).

[6] Secondary legislation is not foreseen but nevertheless, according to Art. 143u, para 3 of the Tax Code, the country-by-country report will be filed electronically on an annual basis and under a procedure and in a format approved by an order of the executive director of the National Revenue Agency, which shall be published on the webpage of the National Revenue Agency.

[7] Guidance including instructions for filling in and filing a CbC report under Article 143t of the Tax Code was published on the website of the National Revenue Agency: http://nap.bg/document?id=15669 (accessed 11 April 2018).

[8] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[9] Under Bulgaria's legislation, Bulgarian Ultimate Parent Entities that are tax residents in Bulgaria and which have a total consolidated group revenue in the fiscal year immediately preceding the reporting fiscal year of BGN 100 000 000 (approximately equivalent to EUR 50 million) are required to file a CbC report. Bulgaria will only exchange CbC reports submitted by Bulgarian Parent Entities of MNE Groups which have a total consolidated group revenue in the fiscal year immediately preceding the reporting fiscal year of BGN 1 466 872 500 (approximately equivalent to EUR 750 million). Bulgaria indicates that the CbC reports for groups below this threshold will be used for domestic risk assessment purposes only and will not be exchanged with other jurisdictions.

[10] As per amended Article 143w of the amended Tax Code gazetted on 17 November 2017, the rule for the threshold calculation for currency fluctuations for MNE groups whose Ultimate Parent Entity is located in a jurisdiction other than Bulgaria is to be applied in accordance with OECD guidance.

[11] See Paragraph 25(1) of the Tax Code.

[12] See Paragraph 17 Article 143u.(1) of the Tax Code.

[13] In the Bulgarian instructions for filling in and filing a CbC Report, it is noted that there is a requirement to indicate the exchange rate used and the calculation methodology in Table 3 where the Consolidated Financial Statements of an MNE Group are prepared in a foreign currency and the revenue is converted into BGN. In addition, the "number of employees" to be reported should include those hiring out of labour relationship.

[14] See Paragraph 25(2) of the Tax Code.

[15] See Paragraph 17 Article 143w (5) of the Tax Code.

[16] See Paragraph 17 See Article 143y of the Tax Code.

[17] See Paragraph 21 Article 278a. (1) of the Tax Code.

[18] See Paragraph 21 Article 278a. (2) of the Tax Code.

[19] See Paragraph 21 Article 278a. (3) and (4) of the Tax Code.

[20] Bulgaria reports 68 Double Tax Conventions (DTCs) in force with: Albania, Algeria, Armenia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malta, Moldova, Mongolia, Montenegro, Morocco, Netherlands, Norway, Poland, Portugal, Qatar, Romania, Russia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Viet Nam and Zimbabwe. Bulgaria indicated that all DTCs of Bulgaria permit AEOI and no restrictions apply.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[21] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] *Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax*."

[22] It is noted that some Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or the partner jurisdiction has the Convention in effect for the first reporting period but did not submit a Unilateral Declaration (in regard of the fact that the reviewed jurisdiction does not have the Convention in effect for the first reporting period), or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Cameroon

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Cameroon does not have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Cameroon finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Cameroon does not have a legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. Cameroon indicates that it intends to implement the CbC Reporting requirements and has sought technical assistance from the OECD for a consistent implementation of the minimum standard into its domestic legal framework: an evaluation mission was launched in the fourth quarter of 2017 and will continue in 2018. The legislation could be adopted State Budget for 2019. It is recommended that Cameroon finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. Cameroon is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011). It is not a signatory to the CbC MCAA. As of 12 January 2018, Cameroon does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that Cameroon take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Cameroon will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Cameroon does not yet have measures in place relating to appropriate use. It is recommended that Cameroon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Cameroon will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and ((e) the effective implementation.

6. Cameroon does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Cameroon does not have a legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. Cameroon indicates that it intends to implement the CbC Reporting requirements and has sought technical assistance from the OECD for a consistent implementation of the minimum standard into its domestic legal framework: an evaluation mission was launched in the fourth quarter of 2017 and will continue in 2018. The legislation could be adopted State Budget for 2019.

8. The implementation steps would be as follows: 1. Evaluation of the internal legislative framework through the OECD's technical assistance mission; 2. Integration of legislative measures adapted to the country-by-country reporting process in the Finance Bill (which would be effective immediately after promulgation of the law in accordance with domestic procedures). Taking into account the timeframe needed to carry out these steps and to draft the law, proposals for introducing CbC Reporting requirements could be incorporated in the Finance Bill for 2019.

9. According to Cameroon's estimates, there is no MNE Group headquartered in Cameroon whose annual consolidated revenue would be above EUR 750 million (or XAF 491 250 million). Cameroon indicates that it has not implemented local filing requirements on resident Constituent Entities of MNE Groups headquartered in another jurisdiction.

10. It is recommended that Cameroon finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Conclusion

11. In respect of paragraph 8 of the terms of reference (OECD, 2017), Cameroon does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Cameroon. It is recommended that Cameroon finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

12. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

Cameroon does not have a domestic legal basis to automatically exchange information on CbC reports. Cameroon is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention") (signed on 25 June 2014, in force on 1 October 2015 and in effect for 2016). It is not a signatory to the CbC MCAA. Cameroon does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.

13. As of 12 January 2018, Cameroon does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Cameroon take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Cameroon will not be exchanging CbC reports in 2018.

Conclusion

14. In respect of the terms of reference under review, it is recommended that Cameroon take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Cameroon will not be exchanging CbC reports in 2018.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use conditions. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. Cameroon does not yet have measures in place relating to appropriate use. It is recommended that Cameroon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Cameroon will not be exchanging CbC reports in 2018.

Conclusion

17. It is recommended that Cameroon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Cameroon will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Cameroon finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Cameroon take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Cameroon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Canada

Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Canada's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one substantive issue in relation to its domestic legal and administrative framework. The report, therefore, contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. Canada has legislation in place that imposes and enforces CbC requirements on MNE Groups whose UPE is resident for tax purposes in Canada. The filing obligation for a CbC report in Canada commences in respect of fiscal years commencing after 2015 (i.e. on or after 1 January 2016). Canada meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the following exception:

- the local filing mechanism which may be triggered in circumstances that are wider than those set out in the minimum standard.[2]

Part B: Exchange of information framework

3. Canada is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the CbC MCAA. It has provided its notifications under Section 8 (e) (i) of this agreement and intends to exchange information with a large number of signatories. It is noted that Canada has signed a bilateral QCAA with the United States. As of 12 January 2018, Canada has 46 bilateral relationships activated under the CbC MCAA. Canada has taken steps to have Qualifying Competent Authority Agreements (QCAA) in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Canada meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[3]

Part C: Appropriate use

4. There are no concerns to be reported for Canada. Canada indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[4] Canada meets the terms

of reference relating to the appropriate use aspects under review for this first annual peer review.[5]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Canada has legislation in place which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning after 2015.[6] The Canada Revenue Agency also issued Guidance in 2017.[7]

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Canada has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have consolidated group above a certain threshold,[9] whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Canada applies in respect of reporting fiscal years commencing after 2015 (i.e. on or after 1 January 2016). The CbC report must be filed by the later of (i) 12 months after the last day of the reporting fiscal year, and (ii) if notification of systemic failure has been received by a constituent entity, 30 days after receipt of the notification. Notifications of systemic failure are only relevant where local filing is triggered. Therefore the filing deadline for Ultimate Parent Entities resident in Canada should always be within 12 months of the last day of the reporting fiscal year.

10. Guidance issued by the CRA includes a description of the items to be included in a CbC Report. This explains that '"Revenues – Unrelated Party' should be read as referring to revenues arising from transactions between unrelated entities which deal at arm's length" and

'"Revenues – Related Party' should be read as referring to revenues arising from entities not dealing at arm's length". However, interpretative guidance issued by the OECD in April 2017,[10] subsequent to the CRA guidance, explains that "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report*". It is expected that Canada issue an updated interpretation or clarification of the definitions of "Revenues – Unrelated Party" and "Revenues – Related Party" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

11. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. Canada has introduced local filing requirements which apply to reporting fiscal years commencing after 2015 (i.e. on or after 1 January 2016).[11]

13. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), under Canada's legislation, local filing applies where an MNE group has a Constituent Entity resident in Canada which is not the Ultimate Parent Entity of the group, and the jurisdiction of residence of the ultimate parent entity of the MNE group does not have a qualifying competent authority agreement in effect to which Canada is a Party on or before the end of 12 months after the end of the reporting fiscal year. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in Canada's legislation. Under Canada's legislation, local filing may be required in circumstances where there is no current international agreement between Canada and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. In its response to the CbC peer review questionnaire for the reviewed jurisdiction, Canada explained that it is party to the Convention on Mutual Administrative Assistance in Tax Matters and has 93 bilateral tax conventions which provide for Automatic Exchange of Information. As such, there will be relatively few cases where Canada does not have a current international agreement with the residence jurisdiction of the Ultimate Parent Entity of an MNE group. Nevertheless, it is recommended that Canada amend the above condition or otherwise

take steps to ensure that the CbC Reporting local filing obligation will apply only in the circumstances contained in the terms of reference.

14. No other inconsistencies were identified with respect to the limitation on local filing obligations.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Canada's local filing requirements will not apply if there is surrogate filing in another jurisdiction. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

16. Canada has mechanisms in place to identify MNE groups whose Ultimate Parent Entity is resident in Canada and to enforce compliance with the minimum standard. The International and Large Business Directorate of the CRA will catalogue large MNE groups with their Ultimate Parent Entity resident in Canada; 100% of these groups are subject to risk assessment in multiple areas of potential non-compliance, and may be selected for audit or other compliance actions as a result. There are also penalties in cases of (i) non-filing or (ii) inaccurate or incomplete filing of a CbC Report.[12] In addition, Canada indicates that section 233 of the Act authorizes the Minister of National Revenue to demand information from persons required to file information returns. Failure to comply with demands under this section can affect the level of penalties assessed under subsection 162(10) of the Act.

17. Canada notes the following specific processes in place that would allow it to take appropriate measures in case Canada is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report: in Canada, section 231.2 of the Act provides that, notwithstanding any other provision of the Act, the Minister of National Revenue may, by notice, require that any person provide information or any document for any purpose relating to the administration or enforcement of the Act. When a taxpayer refuses to produce the information in response to a request under the requirements provision set out in section 231.2 of the Act, a compliance order pursuant to section 231.7 of the Act can be sought. Provisions of section 231.7 of the Act are used to obtain compliance with the Minister's request for any access, assistance, information or

documents sought by the Minister under section 231.1 or section 231.2 of the Act.[13] No inconsistencies were identified with respect to the effective implementation.

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Canada has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Canada. Canada meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the local filing conditions (paragraphs 8 (c) iv. b) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

19. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

20. Canada has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 3 November 2011, in force on 1 March 2014 and in effect for 2016), and (ii) 93 bilateral tax conventions which allow Automatic Exchange of Information.[14]

21. Canada signed the CbC MCAA on 11 May 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 6 February 2017. It intends to have the CbC MCAA in effect with the Competent Authorities of a large number of signatories to the CbC MCAA that provide a notification under Section 8(1)(e) of the same agreement. It is noted that Canada has signed a bilateral QCAA with the United States. As of 12 January 2018, Canada has 46 bilateral relationships activated under the CbC MCAA or exchange under the bilateral CAA.[15] Canada has taken steps to have QCAAs in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). It is noted that some QCAAs are not in effect for fiscal year 2016 with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or the reviewed jurisdiction may not have listed all signatories of the CbC MCAA. Canada indicates that it will further update the list of intended exchange partners. Against the backdrop of the still evolving exchange of information framework, at this point in time Canada meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

22. Against the backdrop of the still evolving exchange of information framework, at this point in time Canada meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

23. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

24. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Canada indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

25. There are no concerns to be reported for Canada in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

26. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Canada. Canada thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Canada amend the local fling condition or otherwise take steps to ensure that the CbC Reporting local filing obligation will apply only in the circumstances contained in the terms of reference.
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b).

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[4] These questions were circulated to all members of the Inclusive Framework following the release of the *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a) on 6 September 2017, further to the approval of the Inclusive Framework.

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] Primary law consists of the Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.)), Section 233.8 – Country-by-country report.

[7] Guidance RC4651 released on 2 March 2017.

[8] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[9] With respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017)), where the MNE Group draws up, or would draw up, its Consolidated Financial Statements in a currency other than euros, consolidated group revenues must be converted into euros at the prevailing exchange rate at the date of transactions or, if this is not practical, using an average exchange rate for the period as published by the Bank of Canada. Consistent with OECD guidance, where the Ultimate Parent Entity of a group is resident in another jurisdiction, and that jurisdiction has implemented a reporting threshold that is a near equivalent of EUR 750 million as at 1 January 2015, an MNE group that complies with this local threshold will not be subject to local filing in Canada.

[10] See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

[11] These local filing requirements apply only to Constituent Entities that are resident in Canada.

[12] Penalties may be applicable to the filing of an RC4649 in Canada under the following legislative provisions: (1) **Subsection 162(5) of the Act:** Subsection 162(5) of the Act (http://laws-lois.justice.gc.ca/eng/acts/I-3.3/, accessed 11 April 2018) provides a penalty for the failure of any person to provide any information required on a prescribed form made pursuant to the Act or the Regulations. The penalty for the failure to provide the information is $100, and is applicable to each such failure; (2) **Subsection 162(7) of the Act:** Subsection 162(7) of the Act provides a

penalty for the failure to file an information return as and when required by the Act and for the failure to comply with a duty or obligation imposed under the Act or the Regulations. The penalty is equal to CAD 25 (Canadian dollars) per day of default, subject to a CAD 100 minimum and a CAD 2 500 maximum; (3) **Paragraphs 162(10)(a) and (b) of the Act:** The penalty under subsection 162(10) of the Act applies in two mutually exclusive situations described by paragraphs 162(10)(a) and (b). The first situation arises where a person or partnership, knowingly or under circumstances amount to gross negligence, fails to file an information return as and when required by any of sections 233.1 to 233.4 or section 233.8. Where no demand has been served for the return under section 233, the penalty is CAD 500 per month for up to 24 months. If a demand is served and not complied with, the penalty is CAD 1 000 per month. It begins to run from the month in which the return was required to be filed. The second situation arises where a person or partnership that is required to file a return under any of sections 233.1 to 233.4 or section 233.8 has, knowingly or under circumstances amounting to gross negligence, failed to comply with a demand served under section 233 to file the return. The penalty in this case is CAD 1 000 per month for up to 24 months. It begins to run from the month in which the demand was served. The maximum penalty for failure to file a CbC report is therefore CAD 24 000.

[13] These provisions came into force in June 2001 and provide a civil court remedy with regard to obtaining compliance. This allows the CRA to file an application to the court seeking a compliance order. If the application is successful, a judge orders the person to provide access, assistance, information or documents sought by the Minister. Failure or refusal to comply with a compliance order can result in a person being found in contempt of court under subsection 231.7(4), and thus subject to appropriate punishments by the Court. Typically, the punishment for failure or refusal to comply with a compliance order is the imposition of a fine or possibly imprisonment for repeated contempt orders.

[14] Canada indicates that it has 93 Tax treaties in effect (www.fin.gc.ca/treaties-conventions/treatystatus_-eng.asp, accessed 11 April 2018) which all allow for the Automatic Exchange of Information.

[15] There are also two non-reciprocal QCAAs in effect with Bermuda and the Cayman Islands.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Cayman Islands

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. The Cayman Islands implementation of the Action 13 minimum standard meets all applicable terms of reference. The report therefore contains no recommendation.

Part A: Domestic legal and administrative framework

2. The Cayman Islands has rules (primary and secondary laws) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the Cayman Islands. The first filing obligation for a CbC report in the Cayman Islands commences in respect of fiscal years starting on or after 1 January 2016. The Cayman Islands meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. The Cayman Islands is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016. It is also a signatory to the CbC MCAA and has provided its notifications under Section 8 of this agreement. The Cayman Islands intends to have the CbC MCAA in effect with all other Competent Authorities which provide notifications under the same agreement As of 12 January 2018, the Cayman Islands has 44 bilateral relationships activated under the CbC MCAA or exchanges under a bilateral Competent Authority Agreement (CAA). The Cayman Islands has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time the Cayman Islands meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. The Cayman Islands is a non-reciprocal jurisdiction and so will not receive CbC Reports submitted to tax authorities in other jurisdictions and will not apply local filing. As such, it is not necessary to reach any conclusions with respect to compliance with Part C.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. The Cayman Islands has primary and secondary laws (hereafter the "Regulations") in place for implementing the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[3] Guidance was not published.[4]

(a) Parent entity filing obligation

Summary of terms of reference:[5] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. The Cayman Islands has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[6]

8. No inconsistencies were identified with respect to the Cayman Island's domestic legal framework in relation with the parent entity filing obligation.[7]

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Cayman Islands would apply in respect of fiscal years beginning on or after 1 January 2016.[8] The CbC report must be filed no later than 12 months after the last day of the reporting fiscal year of the MNE Group relates.[9] It is noted that Article 6 (3) of the Regulations extend the filing deadline with respect to the Reporting Fiscal Year that began on or before 31 March 2016 until no later than 31 March 2018. This will be monitored to ensure that the filing deadline in these cases will not impact the ability of the Cayman Islands to meet its obligations relating to the exchange of information under the terms of reference.[10]

10. Article 6(2) of the Regulations refers to a schedule to the regulations which also contains instructions (in part two of this schedule). These instructions notably include a definition of "Revenues", as comprising "the sum of revenues of all Constituent Entities of the MNE Group in the relevant jurisdiction generated from transactions with associated enterprises". However, interpretative guidance issued by the OECD in April

2017[11] explains that "for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report". It is expected that the Cayman Islands issue an updated interpretation or clarification of the definitions of "Revenues – Unrelated Party" and "Revenues – Related Party" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. The Cayman Islands is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and confirms that it will not apply local filing.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. The Cayman Islands is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and confirms that it will not apply local filing. The Cayman Islands' legislation requires a surrogate parent entity to file in the Cayman Islands when such surrogate parent has been appointed by the MNE Group to do so. Surrogate filing shall occur only when certain conditions are met.[12]

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. The Cayman Islands has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to all Constituent Entities in the Cayman Islands.[13] There are also penalties in place in relation to the CbC Reporting obligation and notification: (i) penalty for failure comply with CbC filing requirements,[14] (ii) daily default penalty[15] and (iii) penalties for inaccurate information.[16] In addition, any Constituent Entity of a MNE Group that is resident in the Cayman Islands is obliged to keep records of the information related to CbC for six years and to make the information available to Authority for inspection within a specified time frame and failure to comply constitutes an offence liable to a fine or imprisonment.[17]

15. There are no specific processes in place that would allow to take appropriate measures in case the Cayman Islands is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017), the Cayman Islands has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the Cayman Islands. The Cayman Islands meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. The Cayman Islands is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"),[18] in force since 1 January 2014 and in effect for 2016, and to (ii) a bilateral double taxation arrangement with the United Kingdom as well as to bilateral Tax Information Exchange Agreements with the United States, the Isle of Man and Guernsey, which allow for Automatic Exchange of Information.

19. The Cayman Islands signed the CbC MCAA on 21 June 2017 and submitted a full set of notification under section 8 of the CbC MCAA on 27 November 2017. The Cayman Islands intends to have the CbC MCAA in effect with all other Competent Authorities which provide notifications under the same agreement. As a non-reciprocal jurisdiction, the Cayman Islands does not seek for any country to send information to the

Cayman Islands pursuant to the CbC MCAA. As of 12 January 2018, the Cayman Islands has 44 bilateral relationships activated under the CbC MCAA[19] or exchanges under a bilateral Competent Authority Agreement (CAA).[20] The Cayman Islands has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time the Cayman Islands meets the terms of reference regarding the exchange of information framework.

Conclusion

20. Against the backdrop of the still evolving exchange of information framework, at this point in time the Cayman Islands meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) Jurisdictions should have in place mechanisms (such as legal or administrative measures) to ensure that CbC reports which are received through exchange of information or by way of local filing are used appropriately (paragraphs 12 (a) of the terms of reference).

22. The Cayman Islands is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and will not apply local filing. As such, it is not necessary for this peer review evaluation to reach any conclusion with respect to the Cayman Islands' compliance with paragraph 12 (a) of the terms of reference (OECD, 2017) on appropriate use.[21]

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), the Cayman Islands is a non-reciprocal jurisdiction and, as such, will not receive CbC reports submitted to tax authorities in other jurisdictions, and will not apply local filing. As such, it is not necessary for this peer review evaluation to reach any conclusion with respect to this paragraph of the terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	Not applicable.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Primary law consists the Tax Information Authority Law which gives effect to the terms of scheduled Agreements, which include the Convention on Mutual Administrative Assistance in tax matters (as amended by the Protocol) and bilateral agreements for the provision of information for tax purposes including the Automatic Exchange of Information.

Secondary law consists of the "Tax Information Authority (International Tax Compliance) (Country-by-Country Reporting) Regulations, 2017" (hereafter the "Regulations"): "Industry Advisory: Issue of CbCR Regulations & Consultation on CbCR Guidance", www.tia.gov.ky (accessed 11 April 2018).

[4] As per the Tax Information Authority, the domestic CbCR Guidance Notes is in the process of being finalised: www.tia.gov.ky/pdf/CbCR_Legislation.pdf (accessed 11 April 2018).

[5] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[6] See Article 4 of the Regulations.

[7] It is noted that the term "resident in the islands" for a Constituent Entity means (a) being incorporated or established in the Islands; (b) having a place of effective management in the Islands; or (c) being subject to financial supervision in the Islands. The Cayman Islands indicates that these provisions would cover the cases of fiscally transparent entities (e.g. partnerships). This would also apply in the context of parent entity filing as a "Ultimate Parent Entity" is a Constituent Entity.

[8] See Article 3 of the Regulations.

[9] See Articles 6(3) of the Regulations.

[10] Paragraph 9 (d) of the terms of reference (OECD, 2017).

[11] www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

[12] See Article 4 (2) of the regulations: the conditions under this article reflect the conditions set in paragraphs 8 c) iv. a) b) and c) of the terms of reference (OECD, 2017) for local filing requirements.

[13] See Article 5 of the Regulations.

[14] See Article 16 of the Regulations. A person who fails to comply with any CbC obligation under these Regulations is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of six months, or to both. Article 17 of the Regulations may also impose an administrative penalty of four thousand dollars.

[15] See Article 19 of the Regulations. Failure to pay the administrative penalty imposed under Regulation 17 shall be liable to an additional penalty of an amount of two hundred dollars for each day during which the penalty imposed under regulation 17 remains unpaid.

[16] See Article 20 of the Regulations. A person is liable to an administrative penalty of 5,000 dollars, if the person provides inaccurate information when filing a CbC report and condition A or B is met: (A) the person knows of the inaccuracy at the time it is provided but does not inform the Authority of the inaccuracy at that time or (B) the person discovers the inaccuracy after the information is provided in the Report to the Authority and fails to take reasonable steps to inform the Authority of the inaccuracy.

[17] See Articles 10 and 16 of the Regulations.

[18] The Cayman Islands is a Party to the Convention on Mutual Administrative Assistance in Tax Matters by way of the United Kingdom's territorial extension.

[19] It is noted that some Qualifying Competent Authority agreements are not in effect for fiscal year 2016 with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notification under Section 8 of the CbC MCAA.

[20] Bilateral CAA with the United Kingdom.

[21] Article 7 of the Regulations states that (1) the Authority shall use the CbC Report and any other information obtained pursuant to these Regulations for purposes of collaboration on compliance and enforcement with other Competent Authorities pursuant to a Qualifying Competent Authority Agreement and (2) the Authority shall preserve 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.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

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Chile

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Chile's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that it raises three substantive issues in relation to its domestic legal and administrative framework. The exchange of information framework is also incomplete and measures to ensure appropriate use are not yet in place. The report, therefore, contains five recommendations to address these issues.

Part A: Domestic legal and administrative framework

2. Chile has rules (primary and secondary laws) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Chile. The first filing obligation for a CbC report in Chile commences in respect of fiscal years commencing on or after 1 January 2016. Chile meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- The absence of a definition of an "MNE Group",[2]
- The threshold calculation rule which may generate fluctuations from year to year,[3]
- The absence of enforcement measures on Surrogate Parent Entities in relation to the filing of a CbC report.[4]

Part B:Exchange of information framework

3. Chile is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is however not in effect for 2016. Chile was not able to lodge a Unilateral Declaration. Chile is a signatory of the CbC MCAA and has provided its notifications under Section 8 of this agreement. Chile intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Chile has 50 bilateral relationships activated under the CbC MCAA. However, most of these Qualifying Competent Authority agreements will only be only in effect for taxable periods starting 1 January 2017. This is because Chile was not able to submit a Unilateral Declaration. It is recommended that Chile bring the Convention into effect in relation to the fiscal year 2016 and / or continue to take steps to enable exchanges of CbC reports relating to the fiscal year 2016 under existing international agreements.[5]

Part C: Appropriate use

4. Chile does not yet have measures in place relating to appropriate use:[6] it was therefore not possible to perform a review at this stage. It is recommended that Chile take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Chile has primary law in place for implementing the BEPS Action 13 minimum standard which consists on amendments to the general legal basis for the establishment of any new filing obligations[7] and secondary law establishing the obligation to present a CbC report.[8]

(a) Parent entity filing obligation

Summary of terms of reference:[9] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Chile has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups[10] above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. There is no definition of an "MNE Group" under Chile's legislation, as per paragraph 15 of the terms of reference (OECD, 2017). It is thus recommended that Chile introduce this definition in its legal and administrative framework.

9. With respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017)), the reference to EUR 750 million has effect as if it were a reference to the equivalent at the exchange rate observed at 31 December of the indicated tax period published by the Central Bank of Chile.[11] This provision is inconsistent with paragraph 8 a) ii. of the terms of reference (OECD, 2017), as it may generate fluctuations from year to year on the threshold to require the filing of CbC reports. It is thus recommended that Chile amend or otherwise clarify this rule so that it would apply in a manner consistent with the terms of reference.[12]

10. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

11. The first filing obligation for a CbC report in Chile commences in respect of periods commencing on or after 1 January 2016.[13] The CbC report must be filed on the last business day of June each year following the end of the period to which the CbC report of the MNE Group relates.[14]

12. Specific instructions were issued as regards the items to be included in a CbC Report.[15] This explains that "Income – Related Party" should be read as referring to "transactions with related parties". However, interpretative guidance issued by the OECD in April 2017[16] explains that "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report*". It is expected that Chile issue an updated interpretation or clarification of the definitions of "Revenues – Related Party" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

13. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

14. Chile does not apply or plan to introduce local filing.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Chile's legislation requires a surrogate parent entity to file in Chile when such surrogate parent has been appointed by the MNE Group to do so. Surrogate filing shall occur only when certain conditions are met.[17]

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

16. Chile's rules provides for mechanisms to enforce compliance by all Ultimate Parent Entities with their filing obligations. There are penalties in place in relation to the filing of a CbC report:[18] (i) penalties for failure to file the transfer pricing obligations, (ii) penalties for incorrect, incomplete or extemporaneous presentation and (iii) penalties for submitting false declaration of transfer pricing documentation. However, it appears that these penalties only apply to Ultimate Parent Entities which are not in line with paragraph 8 (e) i. of the terms of reference (OECD, 2017). It is recommended that Chile introduce enforcement measures applicable to Surrogate Parent Entities.

17. There are no specific processes in place that would allow to take appropriate measures in case Chile is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reported by a Reporting Entity or that a Reporting Entity is failing to comply with respect to CbC Reporting obligations. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017), Chile has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Chile. Chile meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the definition of an MNE Group (paragraph 8 (a) i. and 15 of the terms of reference (OECD, 2017)), the annual consolidated group revenue threshold calculation rule (paragraphs 8 (a) ii. of the terms of reference (OECD, 2017)) and the absence of enforcement measures on Surrogate Parent Entities (paragraph 8 (e) i. of the terms of reference (OECD, 2017)).

Part B: The exchange of information framework

19. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

20. Chile has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 24 October 2013, in force on 1 November 2016 and in effect for 2017) (the "Convention") and (ii) bilateral Double Tax Agreements and Tax Information and Exchange Agreements which allow Automatic Exchange of Information.[19] The Convention is not in effect with respect to the fiscal year starting on 1 January 2016. This means that Chile will not be able to exchange (either send or receive) CbC reports with respect to 2016 fiscal year under the Convention and CbC MCAA on the first exchange date in mid-2018. Chile affirms it is not able to lodge a Unilateral Declaration in this respect, but it is taking steps to enable exchanges of CbC reports relating to the fiscal year 2016 with other jurisdictions through the signature of a Supplementary Competent Authority Agreement, in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA. Chile has signed Supplementary Competent Authority Agreements with Colombia, France, Mexico and the United Kingdom to enable exchanges of CbC reports relating to the fiscal year 2016 with these jurisdictions.

21. Chile signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 21 April 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under paragraph (1) (e) of Section 8 of the same agreement. As of 12 January 2018, Chile has 50 bilateral relationships activated under the CbC MCAA. However, most of these Qualifying Competent Authority agreements will only be in effect for taxable periods starting 1 January 2017. This is because Chile was not able to submit a Unilateral Declaration. It is recommended that Chile bring the Convention into effect in relation to the fiscal year 2016 and / or continue to take steps to enable exchanges of CbC reports relating to the fiscal year 2016 under existing international agreements.

Conclusion

22. It is recommended that Chile bring the Convention into effect in relation to the fiscal year 2016 and / or continue to take steps to enable exchanges of CbC reports relating to the fiscal year 2016 under existing international agreements.

Part C: Appropriate use

23. Part C assesses the compliance of the reviewed jurisdiction with appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

24. Chile does not yet have measures in place relating to appropriate use: it was therefore not possible to perform a review at this stage. It is recommended that Chile take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), it is recommended that Chile take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation	It is recommended that Chile introduce the definition of an "MNE Group" in its legal and administrative framework.
Part A	Domestic legal and administrative framework - Parent entity filing obligation annual consolidated group revenue threshold calculation rule	It is recommended that Chile amend or otherwise clarify the annual consolidated group revenue threshold calculation rule applies in a manner consistent with the terms of reference.
Part A	Domestic legal and administrative framework Enforcement measures	It is recommended that Chile introduce enforcement measures applicable to Surrogate Parent Entities.
Part B	Exchange of information framework agreements which allow Automatic Exchange of Information	It is recommended that Chile brings the Convention into effect in relation to the fiscal year 2016 and / or continue to take steps to enable exchanges of CbC reports relating to the fiscal year 2016 under existing international agreements.
Part C	Appropriate use	It is recommended that Chile take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraphs 8 (a) i. and 15 of the terms of reference (OECD, 2017).

[3] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017).

[4] Paragraph 8 (e) i. of the terms of reference (OECD, 2017).

[5] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[6] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[7] Chile's primary law consists of a general provision in the tax legislation granting power to the Chilean Tax Authority to require information from its taxpayers (article 41, item 6 of Chilean Income Tax Law).

[8] Chile's secondary law consists of a Resolution setting the obligation to present CbC report (Resolution No. 126/2016) and is available at: www.sii.cl/documentos/resoluciones/2016/reso126.pdf (accessed 11 April 2018) and Annex No. 4 to the Resolution No. 126/2016 provides instructions for filing the CbC report and is available at: www.sii.cl/documentos/resoluciones/2016/reso126_anexo4.pdf (accessed 11 April 2018).

[9] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[10] See item B of Resolution No. 126/16.

[11] See paragraph (12) of Resolution No. 126/16.

[12] Chile affirms that they will review this issue in the future.

[13] See paragraph (2) B of Resolution No. 126/16.

[14] See paragraph (3) of Resolution No. 126/16.

[15] See item B, annex 4 of Resolution No. 126/16.

[16] See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

[17] See definition of "Surrogate entity" in annex 6 of Resolution No. 126/16: "a) The ultimate parent or controlling company of the Group is not bound to file the Form N°1937 in its country of tax residence; or b) The country in which the ultimate parent entity is resident for tax purposes has an international agreement in which its country is a Party, but does not have a "Qualified Competent Authority Agreement" in force on the filing date of the Form N°1937; or c) There is a systematic failure in the country of tax residence of the ultimate parent or controlling entity that has been advised by the tax administration of that country, to the member entity or that belongs to the Group resident in Chile for tax purposes.

[18] These are the generic penalties related to the failure to comply with transfer pricing obligations. See article 4 of Resolution No. 126/16.

[19] Chile lists bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions: Ecuador, Paraguay, Peru and Thailand.

References

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China (People's Republic of)

Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of Country-by-Country (CbC) reports. China's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one definitional and one substantive issue in relation to its domestic legal and administrative framework. The report, therefore, contains two recommendations concerning these issues. China should also bring the Convention in effect as soon as possible and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions. In addition, China should take steps to ensure that the appropriate use condition is met as soon as possible, while noting that China will not exchange CbC reports in 2018.

Part A: Domestic legal and administrative framework

2. China has rules (primary and secondary law) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in China. The first filing obligation for a CbC report in China commences in respect of fiscal years commencing on or after 1 January 2016. China meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the filing exemption which relates to "national security",[2]
- one of the conditions for local filing which does not appear to be in line with the terms of reference.[3]

Part B: Exchange of information framework

3. China is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is not in force for fiscal year 2016 (entry in force as of 1 February 2016). The *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) is not in effect with respect to the fiscal year starting on 1 January 2016. China has however decided not to apply local filing requirements for the 2016 fiscal year, as a transitional relief. It is also a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with three signatories of this agreement. As of 12 January 2018, China has three bilateral relationships activated under the CbC MCAA. It is recommended that China bring the Convention in effect as soon as possible and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions.[4]

Part C: Appropriate use

4. China indicates that measures are currently being developed to ensure the appropriate use of information in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It notes that such measures will soon be in place and has also provided details on the next steps which are being planned. It is recommended that China take steps to ensure that the appropriate use condition is met as soon as possible, while noting that China will not exchange CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and ((e) the effective implementation.

6. China has primary and secondary law in place[5] which implements the BEPS Action 13 minimum standard establishing the necessary requirements, including the filing and reporting obligations.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. China has introduced a domestic legal and administrative framework which imposes a CbC filing obligation[7] on Ultimate Parent Entities of MNE Groups[8] above a certain threshold of revenue.

8. The secondary law defines an "Ultimate Parent Entity" as follows:[9] "*The resident enterprise is the ultimate holding company of a multinational enterprise's* (hereafter referred to as the "MNE") *group having total consolidated group revenue of more than 5.5 billion RMB during the fiscal year immediately preceding the reporting fiscal year as reflected in its consolidated financial statements for such preceding fiscal year. Ultimate holding company is the enterprise that can consolidate the financial statements of all constituent entities that belong to its MNE group and cannot be included in the consolidated financial statements of another enterprise*". It is unclear from this wording whether Ultimate Parent Entities which would be required to prepare Consolidated Financial Statements if their equity interests were traded on a public securities exchange in China would be captured or not by this definition.[10] However, China confirms that non-listed Chinese companies are bound by the accounting rules to produce consolidated financial statements when certain conditions of shareholding and/or control are met.[11]

9. Under the terms of reference,[12] an entity which prepares consolidated financial statements is only an Ultimate Parent Entity if it is required to do so or would be required to do so if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence. Therefore there may be cases where an entity prepares

Consolidated Financial Statements but is not an Ultimate Parent Entity. It is unclear under China's legislation whether an Ultimate Parent Entity which would prepare Consolidated Financial Statements, without being required to do so, would fall within the scope of the CbC filing obligation. However, China confirms that an Ultimate Parent Entity which would prepare Consolidated Financial Statements, without being required to do so, would not fall within the scope of the CbC filing obligation.

10. No other inconsistencies were identified with respect to China's domestic legal framework in relation with the parent entity filing obligation.[13]

(b) Scope and timing of parent entity filing

11. China indicates that the first filing obligation for a CbC report in China commences in respect of periods commencing on or after 1 January 2016. The CbC report must be filed yearly by the "ultimate holding company" or the resident enterprise (tax resident in China) that has been appointed by the MNE Group to file the CbC report at the time of submitting its annual Enterprise Income.[14]

12. With respect to paragraph 8 (a) iv. of the terms of reference (OECD, 2017b), China's rules[15] provide for a full or partial filing exemption as follows: "*For an MNE Group whose ultimate holding company is a resident enterprise in the People's Republic of China, if its information is related to national security, it can be exempted from filing the Country-by-Country Report in whole or in part in accordance with the applicable laws and regulations*". China's rules do not detail the exact scope and conditions of such filing exemption, i.e. the entities to which it may apply, the circumstances and conditions under which such exemption would apply, the definition of "national security" matters, the activities or the types of information covered by the exemption, etc. Thus, this filing exemption may be interpreted in a broad way whereas the minimum standard states that "*no exemptions from filing the Country-by-Country Report should be adopted apart from the exemptions outlined in this section* [exemption based on the EUR 750 million threshold]. *In particular, no special industry exemption should be provided, no general exemption for investment funds should be provided, and no exemption for non-corporate entities or non-public corporate entities should be provided*".[16] It is therefore recommended that China clarify the exact scope, conditions and legal basis for such an exemption.[17]

13. No other inconsistencies were identified with respect to the parent entity filing obligation.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

14. China has introduced local filing requirements[18] as from the reporting period starting on or after 1 January 2016.

15. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. a) of the terms of reference (OECD, 2017b), the tax administration can request the enterprise (that is not an ultimate holding company or resident enterprise that has been appointed by the MNE Group to file the CbC report) to provide the CbC report during a special tax investigation if the MNE to which the enterprise belongs is required to prepare the Country-by-Country Report in accordance with the relevant regulations of another country and the MNE has not filed the CbC report to any other countries. These provisions reflect a different situation than under the first condition mentioned in the terms of reference[19] (a circumstance which is not envisaged by China's rules) and aim at obtaining a CbC report through a Constituent Entity in China when no CbC report has been obtained through a Surrogate Parent Entity. However, as drafted, these provisions may be applied in situations where

1. there is an international instrument and a QCAA in effect between China and the jurisdiction of residence of the Ultimate Parent Entity but the latter has not complied with this obligation. This is normally a situation for which it is up to the jurisdiction of residence of the Ultimate Parent Entity to deal with, through its enforcement measures[20]
2. there is no international instrument China and the jurisdiction of residence of the Ultimate Parent Entity[21]
3. where the tax authority in the residence jurisdiction of the Ultimate Parent Entity of an MNE Group has failed to exchange the MNE Group's CbC report with China, but this falls short of systemic failure.

16. These situations are however not covered by the terms of reference. China indicates that the differences between China's domestic legislation and the terms of reference are solely attributed to the differences in language conventions and legislation structures. It was not the intent of China's domestic legislation to deviate from the Model Legislation when defining local filing obligations. However, taking into account that there might be unintended implications due to the specific wording in China's domestic legislation as described above, and in order to ensure consistency with the terms of reference, China will issue an internal guidance (or internal instructions in other forms, depending on the administrative process) to monitor and control the implementation of local filing. It is recommended that China amend its legislation or otherwise take steps to ensure that local filing is only required in the circumstances contained in the terms of reference.

17. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b), the tax administration can also request an enterprise to provide the CbC report during a special tax investigation if the MNE to which the enterprise belongs is required to prepare the CbC report in accordance with the relevant regulations of another country, and although the MNE has filed the CbC report to another country, there is no mechanism in place to exchange CbC report between China and that country. Although this condition does not reflect the details of paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b), China confirms that it will apply this provision in accordance with the wording of these terms of reference. As such, no recommendation is made but this aspect will be further monitored.

18. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017b), the tax administration

can also request an enterprise (that is not an ultimate holding company or resident enterprise that has been appointed by the MNE Group to file the CbC report) to provide the CbC report during a special tax investigation if the MNE to which the enterprise belongs is required to prepare the CbC report in accordance with the relevant regulations of another country and although the MNE has filed the CbC report to another country, and there is a mechanism in place to exchange the CbC report between China and that country, the CbC report has not been successfully exchanged to China.[22] Although this condition does not reflect the details of paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017b) in particular in regard of the concept of "Systemic Failure", and may be interpreted in a broader meaning than the situation of a "Systemic Failure", China confirms that it will apply this provision in accordance with the wording of these terms of reference. As such, no recommendation is made but this aspect will be further monitored.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

19. China's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[23] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

20. China has legal mechanisms in place to enforce compliance with the minimum standard: there are penalties in place in relation to the filing of a CbC report: (i) penalties for failure to file a CbC report and (ii) penalties for inaccurate information.[24] It is noted that there is no specific mechanism to validate whether all Ultimate Parent Entities and Surrogate Parent Entities that are to file in China did so. China indicates that power to compel the production of a CbC report is within the purview of the State Administration of Taxation. The enforcement powers are divided into several steps. The first step was to release the PN 42 to require the filing of CbC reports. The second step will be for the taxpayers to file the CbC reports by the way of filing income tax returns. The third step will be for the tax authorities at the local level to review the CbC reports and apply the penalty for the noncompliance to the taxpayers if deemed necessary.

21. There are no specific processes in place that would allow to take appropriate measures in case China is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with

respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

22. In respect of paragraph 8 of the terms of reference (OECD, 2017b), China has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in China. China meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the filing exemption which relates to "national security" (paragraph 8 (a) iv. of the terms of reference (OECD, 2017b)) and local filing conditions (paragraphs 8 (c) iv. a) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

23. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

24. China has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the Convention) (signed on 27 August 2013 and in force on 1 February 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements which allow Automatic Exchange of Information.[25] The Convention is not in effect with respect to the fiscal year starting on 1 January 2016. This means that China will not be able to exchange (either send or receive) CbC reports with respect to 2016 fiscal year and will not send or receive CbC reports under the Convention and CbC MCAA on the first exchange date in mid-2018. It is recommended that China take steps to enable exchanges of CbC reports relating to the fiscal year 2016, e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention,[26] or relying on Double Tax Agreements or Tax Information and Exchange Agreements. China indicates that it was not able to lodge a Unilateral Declaration as this requires a Parliamentary process. China has however decided not to apply local filing requirements for the 2016 fiscal year, as a transitional relief.

25. China signed the CbC MCAA on 12 May 2016. It has submitted notifications under section 8 of the CbC MCAA on 15 June 2017. It intends to have the CbC MCAA in effect with Competent Authorities of France, Germany and the United Kingdom. As of 12 January 2018, China has three bilateral relationships activated under the CbC MCAA. It is recommended that China take further steps to have Qualifying Competent Authority

agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions.

Conclusion

26. It is recommended that China bring the Convention in effect as soon as possible and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions.

Part C: Appropriate use

27. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

28. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), China indicates that measures are currently being developed to ensure the appropriate use of information in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It notes that such measures will soon be in place and has also provided details on the next steps which are being planned. It is recommended that China take steps to ensure that the appropriate use condition is met as soon as possible, while noting that China will not exchange CbC reports in 2018.

Conclusion

29. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), it is recommended that China take steps to ensure that the appropriate use condition is met as soon as possible, while noting that China will not exchange CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Scope and timing of parent entity filing - filing exemption	It is recommended that China clarify the exact scope, conditions and legal basis for the filing exemption which relates to "national security".
Part A	Domestic legal and administrative framework - Limitation on local filing	It is recommended that China amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference.
Part B	Exchange of information framework	It is recommended that China bring the Convention in effect as soon as possible and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions.
Part C	Appropriate use	It is recommended that China take steps to ensure that the appropriate use condition is met as soon as possible, while noting that China will not exchange CbC reports in 2018.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (a) iv. of the terms of reference (OECD, 2017b).

[3] Paragraph 8 (c) iv. a) of the terms of reference (OECD, 2017b).

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of Article 43 of the "Enterprise Income Tax Law of the People's Republic of China" (or "Enterprise Income Tax Law"), of Article 114 of the Interpretation Regulations of the Enterprise Income Tax Law, as well as Articles 62 and 64 of the "Tax Collection and Administration Law". Secondary law consists of Articles 5 to 9 of the Public Notice of the State Administration of Taxation [2016] 42 (hereafter "PN 42") relating to "Matters regarding Refining the Filing of Related Party Transactions and Administration of Contemporaneous Transfer Pricing Documentation".

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] China confirms that state-owned companies are subject to the same CbC Reporting filing requirements as any other type of companies in China.

[8] Although there is no definition of an « MNE Group » as such in China's legislation, China confirms that the situation of a group with a Chinese head office and one/several overseas permanent establishments (PEs) will be caught by CbC Reporting requirements since Chinese accounting rules require Chinese head offices to include the financial data of overseas PEs in their financial reports regardless of whether the PEs are required to prepare separate financial statements in the jurisdictions in which the PEs are situated.

[9] See Article 5 of PN 42.

[10] Under the terms of reference (paragraphs 8 (a) i. and 18 i. of the terms of reference (OECD, 2017b)), the Ultimate Parent Entity of a group includes an entity that does not prepare Consolidated Financial Statements, but would be required to do so if its equity interests were

traded on a public securities exchange in its jurisdiction of tax residence ("deemed listing provision").

[11] In addition, China indicates that it has followed the Model Legislation for the definition of "Constituent Entities" in its domestic legislation which captures the "deemed listing" situation. Under China's domestic legislation, Constituent Entities would include any entity that would be included in the consolidated financial statements of the MNE group if equity interests in such entity were traded on a public securities exchange.

[12] Paragraph 18 i. of the terms of reference (OECD, 2017b).

[13] See Article 5 of PN 42.

[14] See Articles 1 and 5 of PN 42.

[15] See Article 6 of PN 42.

[16] See paragraph 55 of the Action 13 Report (OECD, 2015).

[17] China indicates that it is in the process of drafting the guidance on the scope and conditions of the exemption (which would also explain the legal basis). This will be finalised soon and will be presented in the report for China later during the peer review process.

[18] See Article 8 of PN 42. It is noted that it is unclear from the provisions of China's legislation whether local filing requirements only apply to Constituent Entities which are "resident for tax purposes" in China, as per paragraph 8 (c) i. of the terms of reference (OECD, 2017b). Article 8 of PN 42 uses the word "enterprise".

[19] Paragraph 8 (c) iv. a) of the terms of reference (OECD, 2017b).

[20] This is an aspect which is assessed during the peer review process.

[21] regardless of whether the Ultimate Parent Entity has complied or not with the filing obligation in its jurisdiction of residence.

[22] See Articles 5 (ii) and 8 (i) of PN 42.

[23] See Article 8. (i) of PN 42.

[24] China indicates that the penalty for a failure to file any tax-related documents and information, a late filing of any tax-related documents and information, inaccurate filing of any tax-related documents provided by the Tax Collection and Administration Law of the People's Republic of China also applies to the non-compliance with respect to the filing of a CbC report. See Articles 62 and 64 of the Tax Collection and Administration Law of the People's Republic of China:

Article 62: For the taxpayer not completing the tax declaration and not submitting the data of tax payments before the set deadline or the withholding agents not reporting the report forms of the withholding and remitting, collecting and remitting the taxation and relative documents to the tax authorities before the set deadline, the tax authorities shall order them to remedy before a deadline. The tax authorities may impose fines below CNY 2 000 and in case of serious circumstances, between CNY 2 000 and RMB 10 000.

Article 64: The tax authorities shall order the taxpayer and the withholding agents fabricating the false tax accounting basis to make remedy before a set deadline and impose fines below CNY 50 000.

As for the taxpayer not declaring the tax, not paying or underpaying the tax payable, the tax authorities shall recover the tax payments and arrearages not paid and impose fines of more than 50% but less than quintuple of the tax payments not paid or less paid.

[25] China indicates that it has such agreements with Albania, Algeria, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Cambodia, Canada, Chile, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Viet Nam, Zambia, Zimbabwe, as well as double tax agreements with Hong Kong Special Administration Region, Macau Special Administration Region, and Chinese Taipei.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[26] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

References

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Colombia

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Colombia's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that Colombia should take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Part A: Domestic legal and administrative framework

2. Colombia has rules (primary and secondary laws) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Colombia. The first filing obligation for a CbC report in Colombia commences in respect of fiscal years commencing on or after 1 January 2016. Colombia meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Colombia is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), signed on 25 May 2012, in force on 1 July 2014 and in effect for 2016. It is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Colombia has 48 bilateral relationships activated under the CbC MCAA and exchanges under a bilateral CAA with the United States. Colombia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Colombia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. On the appropriate use of CbC Reports, Colombia has not yet provided information on measures relating to appropriate use. It is recommended that Colombia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.[3]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Colombia has primary[4] and secondary[5] law in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Colombia has introduced a domestic legal and administrative framework which imposes CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. For the purposes of determining who is required to submit CbC Reporting, Colombia's primary and secondary legislation[7] provide that an MNE group is required to submit CbC Reporting if it meets the following conditions: 1) the Ultimate Parent Entity of the MNE group is resident in Colombia, 2) the entity holds subsidiaries, branches or permanent establishments resident or domiciled abroad, 3) the entity is not a subsidiary of another company resident abroad, 4) the entity has the obligation to prepare, provide and disclose consolidated financial statements and 5) the consolidated group revenues in the preceding financial year is at least 81 million Tax Value Unit (UVT). The requirement that "*the entity is not a subsidiary of another company resident abroad*"[8] differs from that under the terms of reference in particular in respect of the definition of an "Ultimate Parent Entity" (UPE).[9] This requirement under Colombia's law may lead to cases where the entity likely to be the UPE is owned by another entity (hereafter "an upper tier" entity) which does not prepare consolidated financial statements and thus cannot be considered as a UPE. In this situation, neither the entity likely to be the UPE, nor the "upper tier entity" would be considered as a UPE for the purposes of CbC Reporting requirements.[10] However, Colombia indicates that a 50% shareholding is considered as necessary to qualify as a "subsidiary" in Colombia. This means that the "upper tier" entity would thus have a requirement to prepare consolidate financial statements. There may also be instances where the "upper tier" entity would not be resident in Colombia. Colombia confirms that the provisions of article 260, paragraph 2.a.iii. of the Colombian Tax Code and article 1.2.2.2.3.3., item 1.3 of the secondary law shall be read together with the definition of UPE (in article 1.2.2.2.3.2 of the secondary law) and that it will apply these provisions in accordance with the wording of the terms of reference (OECD, 2017).[11] It will clarify this in FAQ to be issued. As such, no recommendation is made but this aspect will be further monitored.

9. No other inconsistencies were identified with respect to Colombia's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Colombia commences in respect of periods commencing on or after 1 January 2016.[12] The CbC report must be filed within 12 months of the last day of the fiscal year of the MNE Group, pursuant to article 4 of the DIAN resolution No.71/2017. It is noted that the article has set the first filing deadline of a CbC report until 23 February 2018 for Reporting Fiscal Years commencing on 1 January 2016. This will be monitored to ensure that the filing deadline will not impact the ability of Colombia to meet its obligations relating to the exchange of information under the terms of reference. Colombia should also have an express deadline to file the CbC report for the upcoming years. This will be monitored.

11. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. Colombia has introduced local filing requirements[13] as from the reporting period starting on or after 1 January 2016.[14] No inconsistencies were identified with respect to the local filing obligation.[15]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Colombia's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[16] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. Colombia has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to all Constituent Entities in Colombia. There are also penalties in place in relation to the filing of a CbC report for failure:[17] (i) to file a CbC report, (ii) to correctly file a CbC report and (iii) to submit it on time.

15. There are no specific processes in place that would allow Colombia to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report, however Colombia indicates that penalties may be imposed under article 651 of the Colombian Tax Code. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017), Colombia has a domestic legal and administrative framework to impose and to enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Colombia. Colombia meets all the terms of reference relating to the domestic legal and administrative framework for the year in review.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Colombia has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 23 May 2012, in force on 1 July 2014 and in effect for 2016) and (ii) a number of bilateral Double Tax Agreements and a Tax Information and Exchange Agreement which allow Automatic Exchange of Information.[18]

19. Colombia signed the CbC MCAA on 21 June 2017 and submitted a full set of notification under section 8 of the CbC MCAA on 18 December 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. As of 12 January 2018, Colombia has 48 bilateral relationships activated under the CbC MCAA and exchanges under a bilateral CAA with the United States. Colombia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[19] Against the backdrop of the evolving exchange of information framework, at this point in time Colombia meets the terms of reference relating to the exchange of information framework for the year in review.

Conclusion

20. Against the backdrop of the evolving exchange of information framework, at this point in time Colombia meets the terms of reference relating to the exchange of information framework.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference.

22. Colombia has not yet provided information on measures relating to appropriate use: it was therefore not possible to perform a review at this stage. It is recommended that Colombia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), Colombia is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	Colombia is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] Colombia's Primary law consists of Article 108 of the Colombian Tax Code (Law No. 1,819/2016).

[5] Colombia's Secondary law consists of Section 3 of Decree No. 2,120/2017, published on 15 December 2017.

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[7] See article 260, paragraph 2.a. of the Colombian Tax Code and article 1.2.2.2.3.3. of the secondary law.

[8] See article 260, paragraph 2.a.iii. of the Colombian Tax Code and article 1.2.2.2.3.3., item 1.3 of the secondary law.

[9] See paragraphs 8. a) i. and 18 of the terms of reference (OECD, 2017).

[10] There may also be cases where an entity likely to be a UPE would not be held through ownership by another "upper tier entity" but may however be controlled by such entity (e.g. in some cases of joint-venture where there is control without ownership). In such a situation, the "upper tier entity" would normally be the UPE if it meets all the other conditions to be a UPE (e.g. prepare Consolidated Financial Statements).

[11] Colombia also affirms that OECD Guidelines must be used as an interpretation tool in case of interpretation issues (as set in Constitutional Court precedent Sentence C-690/2003).

[12] See article 260-5, paragraph 2 of the Colombian Tax Code.

[13] Local filing can be required if the following conditions are present:

"*3.1) to jointly have a participation in the consolidated income of the multinational group equal to or greater than twenty percent (20%);*

3.2) that the parent company has not presented in its country of residence the Country by Country Report referred to in article 1.2.2.2.3.5. of this Decree. It will be understood that these are cases in which one of the following conditions is met:

3.2.1) There is no legal requirement for the parent or contracting entity of the Multinational Group to submit the Country by Country Report in its jurisdiction of fiscal residence; or

3.2.2) The jurisdiction in which the parent or contractor entity resides for tax purposes has a current "International Agreement" of which Colombia is a Party, but does not have a "Qualified Competent Authorities Agreement" of which Colombia is a Party, on the filing date of the Country by Country Report for the informed Fiscal Year; or

3.2.3. There is a "Systematic Failure" in the tax residence of the Parent Entity or Controlling Entity that has been notified by the Colombian Tax Administration to the Member Entity or Pertaining to the Multinational Group that is resident for tax purposes in Colombia.

3.3) That the multinational group has obtained consolidated revenues for accounting purposes equal to or greater than eighty-one million (81 000 000) Unit of Tax Value-UVTs in the immediately preceding taxable period."

[14] See article 260-5, paragraph 2 (c) of the Colombian Tax Code and article 1.2.2.2.3.3. of the secondary law.

[15] It is noted that the condition of "*jointly have a participation in the consolidated income of the multinational group equal to or greater than twenty percent (20%)*" narrows the situations in which local filling is required.

[16] See Section 3, article 1.2.2.2.3.3., paragraph 3.3a of the secondary law.

[17] See article 651 of the Colombian Tax Code (Penalties for not filing information):

"*Persons or entities obliged to provide tax information, as well as those who have been requested for information or evidence who do not provide it, who do not provide it within the deadline established for it or information is provided wrongly or does not correspond to what is requested, will incur on the following penalties:*

a. Five percent (5%) of the amount that was not informed in case of not filing.

b. Four percent (4%) of the amount that was informed mistakenly.

c. Three percent (3%) of the amount that was informed extemporaneously.

d. When it is not possible to establish the basis of the penalty or the information is not quantifiable, the penalty will be equivalent to half percent (0.5%) of the net income of the person or entity obliged to provide tax information. When there is no income, the penalty will be equivalent to half percent (0.5%) of the taxpayer's gross worth, corresponding to the immediately preceding year or previous Income Tax Return.

The aforementioned penalties cannot exceed 15 000 UVT. Tax Value Unit (Unidad de Valor Tributario, in Spanish)".

[18] Colombia lists bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions: Canada, Chile, Czech Republic, India, Korea, Mexico, Portugal, and Spain. It also lists a Tax Information Exchange Agreement with the United States.

[19] It is noted that a few of Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered to not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

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Costa Rica

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Costa Rica's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that it raises two issues in relation to its domestic legal and administrative framework, one issue in relation to the exchange of information framework and one issue in relation to the appropriate use of CbC Reports. The report contains, therefore four recommendations to address these issues.

Part A: Domestic legal and administrative framework

2. Costa Rica has rules (primary law) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Costa Rica. The first filing obligation for a CbC report in Costa Rica commences in respect of fiscal years commencing on or after 1 January 2017. Costa Rica meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the definition of "Ultimate Parent Entity" which is yet to be introduced or completed[2] and
- the filing deadline of a CbC report.[3]

Part B: Exchange of information framework

3. Costa Rica is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016. It is also a signatory to the CbC MCAA and has recently provided its notifications under Section 8 of this agreement in order to have bilateral relationships activated in the next round of activations. As of 12 January 2018, Costa Rica does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Costa Rica continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions.[4] Costa Rica expects to have a number of QCAAs in effect before the date of the first exchanges of CbC reports and indicates that it intends to exchange information with a large number of signatories of the CbC MCAA. It is however noted that Costa Rica will not be exchanging reports in 2018.

Part C: Appropriate use

4. Costa Rica does not yet have measures in place relating to appropriate use.[5] Costa Rica is recommended to take steps to ensure that the appropriate use condition is

met ahead of the first exchanges of CbC reports. It is however noted that Costa Rica will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Costa Rica has primary law in place for implementing the BEPS Action 13 minimum standard which consists on a legal basis for the establishment of any new filing obligations and establishes the necessary requirements, including the filing and reporting obligations.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Costa Rica has introduced a domestic legal and administrative framework which imposes CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[8]

8. With respect to the definition of "Ultimate Parent Entity"[9] in Costa Rica's rules does not make it clear that an entity cannot be an Ultimate Parent Entity if another Constituent Entity holds an interest in that entity (i.e. the ultimate holding company must be the top level holding company in the MNE group). It is recommended that Costa Rica amend or otherwise clarify that the definition of Ultimate Parent Entity in the CbC Reporting Rules is consistent with the terms of reference.

9. No other inconsistencies were identified with respect to Costa Rica's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Costa Rica commences in respect of fiscal years beginning on or after 1 January 2017.[10] The CbC report must be filed no later than 31 December after the end of each reporting fiscal year of the MNE Group,[11] noting that the ordinary tax year starts on 1 October and ends on 30 September.[12] The CbC reports shall be filed by 31 December of the year following the reporting fiscal year of the MNE Group. For the 2017 tax year (starting on October 1, 2016 and ending on September 30, 2017), the CbC report shall be filed by the last business day of December 2018.[13] Costa Rica affirms that the CbC Reports will be available for the first exchange of information at the end of April 2019. This will be monitored to ensure that the filing deadline will not impact the ability of the Costa Rica to meet its obligations relating to the exchange of information under the terms of reference.

11. For the following fiscal years, this results in a CbC report being filed later than the date in paragraph 8 (b) iii. of the terms of reference (OECD, 2017a).[14] As a result, the CbC report may subsequently be exchanged with a partner jurisdiction later than the timeline envisaged in the Action 13 Report.[15] [16] It is recommended that Costa Rica amend its rules or otherwise ensures that a CbC report is not filed later than 12 months after the end of the accounting period and that is not subsequently exchanged later than 15 months after the end of the accounting period with partner jurisdictions.

12. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Costa Rica does not apply or plan to introduce local filing.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

14. Costa Rica's legislation requires a surrogate parent entity to file in Costa Rica when such surrogate parent has been appointed by the MNE Group to do so. Surrogate filing shall occur only when certain conditions are met.[17]

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

15. Costa Rica's rules provides for mechanisms to enforce compliance by all Ultimate Parent Entities with their filing obligations. There are penalties in place for failure:[18] (i) to file a CbC report, (ii) to completely file a CbC report and (iii) to submit it on time.

16. There are no specific processes in place that would allow to take appropriate measures in case Costa Rica is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reported by a Reporting Entity or that a Reporting Entity is failing to comply with respect to CbC Reporting obligations. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

17. In respect of paragraph 8 of the terms of reference (OECD, 2017a), Costa Rica meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the definition of "Ultimate Parent Entity" which is yet to be introduced or completed (Paragraphs 8 (a) iii and 18 of the terms of reference (OECD, 2017a)) and the filing deadline of a CbC report (paragraph 8 (b) iii. of the terms of reference (OECD, 2017a)).

Part B: The exchange of information framework

18. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017a).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

19. Costa Rica has domestic legislation that permits the automatic exchange of CbC reports.[19] It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 1 March 2012, in force on 1 August 2013 and in effect for 2016) and (ii) a number of bilateral Double Tax Agreements and a Tax Information and Exchange Agreement which allow Automatic Exchange of Information.[20]

20. Costa Rica signed the CbC MCAA on 27 January 2016 and has recently provided its notifications under Section 8 of this agreement in order to have bilateral relationships

activated in the next round of activations. As of 12 January 2018, Costa Rica does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Costa Rica continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. Costa Rica expects to have a number of QCAAs in effect before the date of the first exchanges of CbC reports and indicates that it intends to exchange information with a large number of signatories of the CbC MCAA. It is also noted that Costa Rica will not be exchanging reports in 2018.

Conclusion

21. It is recommended that Costa Rica continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Costa Rica will not be exchanging reports in 2018.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Costa Rica indicates that is currently preparing guidance to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017b). It is recommended that Costa Rica take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Costa Rica will not be exchanging CbC reports in 2018.

Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017a), Costa Rica is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Costa Rica will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework – parent filing obligation	It is recommended that Costa Rica complete its definition of "Ultimate Parent Entity" so that it is in line with the terms of reference.
Part A	Domestic legal and administrative framework - Scope and timing of parent entity filing – filing date	It is recommended that Costa Rica amend its rules or otherwise ensures that a CbC report is not filed later than 12 months after the end of the accounting period and not subsequently exchanged more than 15 months after the end of the accounting period with partner jurisdictions.
Part B	Exchange of information framework	It is recommended that Costa Rica continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions.
Part C	Appropriate use	Costa Rica is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraphs 8 (a) iii and 18 of the terms of reference (OECD, 2017b).

[3] Paragraph 8 (b) iii of the terms of reference (OECD, 2017b).

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] Costa Rica's primary law consists of the Resolution n° DGT-R-001-2018, published on 11 January 2018.

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] See article 2 of the primary law.

[9] Paragraph 18 of the terms of reference (OECD, 2017b).

[10] See article 5 (i) of the primary law.

[11] Costa Rica indicates that the determinative declaration must be submitted no later than 15 December 2017.

[12] Costa Rica's legislation allows the authorization of a special tax year period, which coincides with the calendar year (from 1 January to 31 December).

[13] Costa Rica affirms that if a taxpayer follows the special period with a year closing on 31 December 2017, it must file the income tax return on 15 March 2018 and the CbC Report on the last business day of December 2018.

[14] "The CbC report is required to be filed no later than 12 months after the last day of the reporting Fiscal year of the MNE Group".

[15] See the Model Multilateral Competent Authority Agreement, Model Competent Authority Agreement on the basis of a DTC, Model Competent Authority Agreement on the basis of a TIAE

in the Action 13 Report (OECD, 2015), which envisage that the CbC reports should be exchanged as soon as possible and no later than 18 months after the last day of the fiscal year of the Reporting entity of the MNE Group for the first year for which CbC requirements are applicable, and no later than 15 months after the last day of the fiscal year of the Reporting entity of the MNE Group for subsequent years.

[16] For example, for an MNE Group with a fiscal year 1 October 2017 and ending on 30 September 2018, the CbC report would have to be filed together with by December 31 2019 and exchanged later than 15 months after the last day of the fiscal year of the Reporting entity of the MNE Group.

[17] See article 2.2. of the primary law.

[18] See article 6 of the primary law: Failure to supply the information required in this resolution corresponding to the country-by-country report will be sanctioned in accordance with Article 83 of the Tax Standards and Procedures Code. Article 83 of General Tax Code provides a pecuniary penalty equivalent of two percent (2%) of the gross income of the offending subject shall be applied in the period of the income tax, prior to that in which the infringement occurred, with a minimum of ten base salaries and a maximum of one hundred base salaries. If there are errors in the information provided, the penalty will be one percent (1%) of the base salary for each incorrect record, understood as a record of tax-relevant information about a natural or legal person or other entities without legal personality (For this natural year one base salary is CRC 426 200 (Costa Rican colones) which is equal to USD 774).

[19] See article 106.IV of the Tax Code.

[20] Costa Rica lists bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions (in force): Germany and Spain. Costa Rica also lists agreements permitting exchange of information (TIEAs) with the following jurisdictions (in force): Argentina, Canada, Finland, France, Mexico, Netherlands, Norway, Sweden and United States. It is also part of the Central American Assistance, Convention that includes the following jurisdictions: El Salvador, Guatemala, Honduras and Nicaragua.

References

OECD (2017a), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2017b), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

Côte d'Ivoire

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Côte d'Ivoire has primary law in place to implement CbC Reporting but an administrative instruction is needed to complete the framework. It is recommended that Côte d'Ivoire finalize its domestic legal and administrative framework in relation to CbC requirements as soon as possible. For the moment, Côte d'Ivoire's implementation of the Action 13 minimum standard meets the terms of reference for the year in review, except that it raises two substantive issues in relation to its domestic legal and administrative framework. The report contains, therefore two recommendations to address these issues in addition to the general recommendation to finalise the domestic legal and administrative framework. In addition, Côte d'Ivoire should put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Côte d'Ivoire has rules (primary law) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Côte d'Ivoire.[1] Côte d'Ivoire indicates that an administrative instruction is needed to complete the framework. The first filing obligation for a CbC report in Côte d'Ivoire commences in respect of fiscal years commencing on or after 1 January 2018. It is recommended that Côte d'Ivoire finalize its domestic legal and administrative framework in relation to CbC requirements as soon as possible. Specifically, it is recommended that Côte d'Ivoire:

- introduce or complete the definitions of an "Ultimate Parent Entity", "MNE Group", "Group" and "Constituent Entity"[2]
- have enforcement measures in case of an incomplete or erroneous filing of a CbC report.[3]

Part B: Exchange of information framework

Côte d'Ivoire is not a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), and is also not a signatory to the CbC MCAA. As of 12 January 2018, Côte d'Ivoire does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[4] it is recommended that Côte d'Ivoire take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive

Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Côte d'Ivoire will not be exchanging CbC reports in 2018.

Part C: Appropriate use

In respect of the terms of reference under review,[5] Côte d'Ivoire does not yet have measures in place relating to appropriate use. It is recommended that Côte d'Ivoire take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Côte d'Ivoire will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

3. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

4. Côte d'Ivoire has primary legislation in place to implement the BEPS Action 13 minimum standard.[6] Côte d'Ivoire indicates that an administrative instruction is needed to complete its domestic legal and administrative framework.

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

5. Côte d'Ivoire has primary legislation to impose a CbC filing obligation on Ultimate Parent Entities of MNE Groups meeting certain conditions. The legal and administrative framework is however incomplete at this moment: Côte d'Ivoire indicates that it will be preparing an administrative instruction to complete this framework, which will introduce a number of details.

6. Under Côte d'Ivoire's primary legislation, companies that control other companies located outside Côte d'Ivoire are required to file an annual declaration with the tax administration, following the end of each fiscal year, which includes the breakdown per jurisdiction of the group's profits and various economic, accounting and tax aggregates. The companies concerned by this requirement are legal persons established in Côte d'Ivoire, fulfilling the following conditions: (i) they have a consolidated turnover (excluding tax) of XOF 491 967 750 000 or more in respect of the fiscal year subject to declaration; (ii) they are subject to the obligation to prepare consolidated financial statements, pursuant to articles 74 et following of the Uniform Act of the OHADA relating to accounting law and financial information; (iii) they control entities established outside Côte d'Ivoire; (iv) they are not under the control of a company located in Côte d'Ivoire which is itself subject to the filing of this declaration, or established in a country with which Côte d'Ivoire has an agreement providing for the exchange of information for tax purposes and which is subject to a similar filing obligation.

7. With respect to the definition of an "Ultimate Parent Entity", Côte d'Ivoire's legislation defines an Ultimate Parent Entity by reference to a legal person being required to prepare consolidated financial statements under accounting principles, but it does not include an entity that would be required to prepare consolidated financial statements if its equity interests were traded on a public securities exchange in Côte d'Ivoire ("deemed listing provision"), as required under paragraph 18 i. of the terms of reference (OECD, 2017).[8] It is also unclear whether the legislation would apply to entities which do not have legal personality.

8. In addition, under the terms of reference, the Ultimate Parent Entity shall not be held by another Constituent Entity that owns directly or indirectly sufficient interest to be considered as an Ultimate Parent Entity. This is not reflected in Côte d'Ivoire's primary law, which instead contains the following conditions in the primary filing obligation provisions: the Ultimate Parent Entity is "*not under the control of a company located in Côte d'Ivoire which is itself subject to the filing of this declaration, or established in a country with which Côte d'Ivoire has an agreement providing for the exchange of information for tax purposes and which is subject to a similar filing obligation*".[9]

9. It is recommended that Côte d'Ivoire complete the definition of an "Ultimate Parent Entity" consistent with the terms of reference.[10]

10. There is also no definition of a "MNE Group", a "Group" and a "Constituent Entity" in Côte d'Ivoire's primary legislation. It is recommended that Côte d'Ivoire introduce these definitions in its domestic legal and administrative framework.

11. No other inconsistencies were identified with respect to Côte d'Ivoire's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

12. The first filing obligation for a CbC report in Côte d'Ivoire commences in respect of periods commencing on or after 1 January 2018. The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.

13. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

14. Côte d'Ivoire has not introduced local filing requirements as from the reporting period starting on or after 1 January 2018.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Côte d'Ivoire has not introduced local filing requirements as from the reporting period starting on or after 1 January 2018.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

16. Côte d'Ivoire has introduced penalties in place in relation to the filing of a CbC report for failure to file and late filing.[11] There are however no penalties in relation to incomplete or erroneous filing of a CbC report. It is recommended that Côte d'Ivoire implement enforcement measures in case of incomplete or erroneous filing of a CbC report.

17. There are no specific processes in place that would allow Côte d'Ivoire to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017), Côte d'Ivoire has primary law that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Côte d'Ivoire. Côte d'Ivoire indicates that an administrative instruction is needed to complete the framework. It is recommended that Côte d'Ivoire finalize its domestic legal and administrative framework in relation to CbC requirements as soon as possible. Based on its primary law, Côte d'Ivoire meets the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the definitions of "Ultimate Parent Entity", "MNE Group", Group" and "Constituent Entity" (paragraphs 8 (a) i. and iii. and 18 of the terms of reference (OECD, 2017)) and (ii) the absence of enforcement measures in case of incomplete or erroneous filing of a CbC report (paragraph 8 (e) of the terms of reference (OECD, 2017)).

Part B: The exchange of information framework

19. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

> Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

20. Côte d'Ivoire is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention") and is also not a signatory to the CbC MCAA. Côte d'Ivoire does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.

21. As of 12 January 2018, Côte d'Ivoire does not have bilateral relationships activated under the CbC MCAA. It is recommended that Côte d'Ivoire take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Côte d'Ivoire will not be exchanging CbC reports in 2018.

Conclusion

22. In respect of the terms of reference under review, it is recommended that Côte d'Ivoire take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Côte d'Ivoire will not be exchanging CbC reports in 2018.

Part C: Appropriate use

23. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

> Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

24. Côte d'Ivoire does not yet have measures in place relating to appropriate use. It is recommended that Côte d'Ivoire take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Côte d'Ivoire will not be exchanging CbC reports in 2018.

Conclusion

25. It is recommended that Côte d'Ivoire take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Côte d'Ivoire will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Côte d'Ivoire finalise its domestic legal and administrative framework as soon as possible. Specifically, it is recommended that Côte d'Ivoire: - introduce or complete the definitions of an "Ultimate Parent Entity", "MNE Group", "Group" and "Constituent Entity" in a manner that is consistent with the terms of reference; - have enforcement measures in case of an incomplete or erroneous filing of a CbC report.
Part B	Exchange of information framework	It is recommended that Côte d'Ivoire take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Côte d'Ivoire take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraphs 8 (a) i. and iii. and 18 of the terms of reference (OECD, 2017).

[3] Paragraph 8 (e) of the terms of reference (OECD, 2017).

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[6] Côte d'Ivoire's primary law consists of Article 36 bis of the General Tax Code.

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[8] See www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf (OECD, 2017).

[9] It appears that these provisions may in fact trigger an instance of local filing for entities in Côte d'Ivoire when there is no requirement to file CbC report on an entity located in another jurisdiction, which would be considered as their Ultimate Parent Entity as per the terms of reference. Where such a filing obligation would occur under the "primary" filing provision of Côte d'Ivoire's legislation, there would be no provisions (i) which would allow an MNE Group to designate one Constituent Entity to file the CbC report and (ii) which would deactivate this filing obligation when a CbC report is made available through surrogate filing.

[10] Paragraph 18 of the terms of reference (OECD, 2017).

[11] See last paragraph of Article 36 bis of the General Tax Code: Failure to produce the CbC report within the legal deadlines is sanctioned by a fine of XOF 5 000 000.

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Croatia

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Croatia's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that Croatia should take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. The report therefore contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. Croatia has rules (primary and secondary laws) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Croatia. The first filing obligation for a CbC report in Croatia commences in respect of tax years beginning on or after 1 January 2016. Croatia meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Croatia is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016. Croatia signed the CbC MCAA on 6 July 2017 and has submitted a full set of notifications under Section 8 of the same agreement. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under Section 8(1)(e) of the same agreement. Croatia also indicates that it is in the process of signing a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Croatia has 51 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Croatia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Croatia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. Croatia does not yet have measures in place to ensure the appropriate use of information[3] in the six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a).[4] It is

recommended that Croatia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and ((e) the effective implementation.

6. Croatia has primary and secondary laws (hereafter the "Ordinance") in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5] No guidance has been published.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Croatia has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[7]

8. No inconsistencies were identified with respect to the parent entity filing obligation.[8]

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Croatia commences in respect of tax years beginning on or after 1 January 2016.[9] The CbC report must be filed within 12 months of the last day of the reporting fiscal year of the MNE Group.[10]

10. Croatia's secondary law includes a definition of the items to be included in a CbC Report (Articles 109 and following of the Ordinance). This notably explains that this should include notably "*the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with related enterprises*".[11] However, interpretative guidance issued by the OECD in April 2017,[12] subsequent to the issuance of the CbC Act, explains that "*for the third column of Table 1*

of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report". Croatia indicates that it will issue an updated definition or a clarification of the definition of "related enterprises" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

11. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. Croatia has introduced local filing requirements in respect of tax years beginning on 1 January 2017 or later.[13] No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Croatia's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[14] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. Croatia has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other Constituent Entities of the MNE Group resident in Croatia.[15] There are also penalties in relation to the filing of a CbC report:

(i) penalty for failure to file, (ii) penalty for late filing and (iii) penalty for inaccurate and incomplete filing.[16]

15. There are no specific process in place to take appropriate measures in case Croatia is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Croatia has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Croatia. Croatia meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Croatia has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 11 October 2013, in force on 1 June 2014 and in effect for 2016) which allows Automatic Exchange of Information in the field of taxation. Croatia has also implemented EU Council Directive 2016/881/2016 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

19. Croatia signed the CbC MCAA on 6 July 2017 and has submitted a full set of notifications under Section 8 of the same agreement on 2 August 2017. Croatia intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under Section 8(1)(e) of the same agreement. Croatia also indicates that it is in the process of signing a bilateral CAA with the United States. As of 12 January 2018, Croatia has 51 bilateral relationships activated under the CbC MCAA[17] or exchanges under the EU Council Directive (2016/881/EU). Croatia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Croatia meets the terms of reference.

Conclusion

20. Against the backdrop of the still evolving exchange of information framework, at this point in time Croatia meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

22. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Croatia indicates that measures are not yet in place to ensure the appropriate use of information in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It had however provided details on the next steps which are being planned to put appropriate measures in place. It is recommended that Croatia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

23. In respect of paragraph 12 (a), it is recommended that Croatia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that Croatia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[4] These questions were circulated to all members of the Inclusive Framework following the release of *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a) on 6 September 2017, further to the approval of the Inclusive Framework.

[5] Primary law consists of the Act on Administrative Cooperation in the Field of Taxation (the "Act") (See Section 4 Articles 34 and 35 for Automatic exchange of information on the country-by-country report). Amendments to the Act are in force as from 1 of January 2018 (Official Gazette 130/2017). Secondary law consists of the Ordinance issued by the Ministry of Finance (hereafter referred to as the "Ordinance") on the Automatic Exchange of Information in the field of taxation. The Ordinance transposes the provisions of the following European Directives into the legal order of the Republic of Croatia: (1) Annex I and Annex II of Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation (hereinafter: Directive 2014/107/EU) and (2) Annex III of Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation (SL L 146, 3. 6. 2016) (hereinafter: Council Directive (EU) 2016/881).

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] See Section 4 Articles 34 and 35 of the Act.

[8] It is noted that under amended Article 35 paragraph 1 of the Act, the threshold calculation for currency fluctuations for MNE groups whose Ultimate Parent Entity is located in a jurisdiction other than Croatia will be applied in accordance with OECD guidance.

[9] See Article 35(2) of Section 4 of the Act and Article 123(1) of the Ordinance.

[10] See Article 35(1) of Section 4 of the Act and Article 123(1) of the Ordinance.

[11] See Article 114 of the Ordinance.

[12] See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

[13] See Article 123(2) of the Ordinance.

[14] See Articles 105 and 106 of the Ordinance.

[15] See Articles 107 of the Ordinance.

[16] Under amended Article 66(1.2) of Section 5 of the Act: a monetary fine in the amount of HRK 2 000.00 to 200 000.00 (Croatian kunas) will be imposed for the misdemeanour on the legal person who files inaccurate stipulated report, incomplete stipulated report or does not file the stipulated report within the deadline to the Ministry of Finance, Tax Administration and under; and under Article 66(1.4), a monetary fine in the amount of HRK 2 000.00 to 20 000.00 will be imposed against the responsible person for the misdemeanours under paragraph 1.2.

[17] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

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Curaçao

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Curacao does not have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Curacao take steps to finalise the domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Curacao does not have legislation in place for implementing the BEPS Action 13 minimum standard. Curacao indicates that its primary legislation relating to CbC Reporting requirements is currently going through the legislative process and that the secondary legislation will follow soon. At this time, Curacao estimates that the primary legislation will come into effect in the first half of 2018. With the introduction of this CbC legislation in 2018, the element of voluntary filing of Country-by-Country reports is taken up in said legislation. Hence, the filing of Country-by-Country reports on a voluntary basis by taxpayers will be available for fiscal years 2016 and 2017.[1] It is recommended that Curacao take steps to finalise the domestic legal and administrative framework[2] to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Curacao is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has not provided its notifications under Section 8 of this agreement. As of 12 January 2018, Curacao does not yet have bilateral relationships activated under the CbC MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review[3] process, it is recommended that Curacao take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions.

Part C: Appropriate use

4. In respect of the terms of reference under review,[4] Curacao has not yet provided information on measures relating to appropriate use. It is recommended that Curacao take

steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Curacao will not be exchanging CbC reports in 2018.[5]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Curacao does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Curacao does not yet have a legal and administrative framework in place to implement CbC Reporting and it intends to implement CbC Reporting requirements for the 2017 fiscal year. Curacao indicates that its legislation will also make it possible for tax payers to file a country by country report for the tax year 2016 on a voluntary basis.

8. Curacao indicates that its primary legislation is going through the legislative process and that secondary legislation will follow soon. It is expected that the primary legislation will be in force in the first half of 2018. With the introduction of this CbC legislation in 2018, the element of voluntary filing of Country-by-Country reports is taken up in said legislation. Hence, the filing of Country-by-Country reports on a voluntary basis by taxpayers will be available for fiscal years 2016 and 2017.

9. It is recommended that Curacao finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Conclusion

10. In respect of paragraph 8 of the terms of reference (OECD, 2017), Curacao has not yet implemented a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Curacao. It is recommended that Curacao take steps to finalise the domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

11. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

12. Curacao has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance*

in Tax Matters: Amended by the 2010 Protocol (OECD/Council of Europe, 2011)[7] (in force on 1 September 2013 and in effect for 2016).

13. Curacao signed the CbC MCAA on 30 June 2016 but it has not yet submitted its notifications under Section 8 of the CbC MCAA. As of 12 January 2018, Curacao does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Curacao take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions.

Conclusion

14. In respect of the terms of reference, it is recommended that Curacao take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Curacao will not be exchanging CbC reports in 2018.[8]

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. Curacao has not yet provided information on measures relating to appropriate use. It is recommended that Curacao take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Curacao will not be exchanging CbC reports in 2018.[9]

Conclusion

17. In respect of paragraph 12 (a), it is recommended that Curacao take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Curaçao finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Curaçao take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions.
Part C	Appropriate use	It is recommended that Curaçao take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Curacao indicates that with the passing of the CbC legislation in 2018, voluntary filing will be available for taxpayers for both fiscal years 2016 and 2017.

[2] Paragraph 8 of the terms of reference (OECD, 2017).

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[5] Except for the CbC reports filed in Curacao under the voluntary parent surrogate mechanism.

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[7] Curacao is party to the Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol by way of the Netherland's territorial extension, as a former constituent of the "Netherlands Antilles", to which the original Convention applied as from 1 February 1997.

[8] Except for the CbC reports filed in Curacao under the voluntary parent surrogate mechanism.

[9] Except for the CbC reports filed in Curacao under the voluntary parent surrogate mechanism.

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Czech Republic

Summary of key findings

1. Consistent with the agreed methodology**,** this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. The Czech Republic's implementation of the Action 13 minimum standard meets all applicable terms of reference**,** except that it raises one interpretational issue and one substantive issue in relation to its domestic legal and administrative framework. It is also recommended that the Czech Republic take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. The report, therefore, contains three recommendations to address these issues.

Part A: Domestic legal and administrative framework

2. The Czech Republic has rules (primary and secondary laws) that impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the Czech Republic. The first filing obligation for a CbC report in Czech Republic commences in respect of fiscal years beginning on 1 January 2016 or later. The Czech Republic meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the annual consolidated revenue threshold calculation rule[2] which may deviate from the guidance issued by the OECD. Although such deviation may be unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 minimum standard, and
- the local filing mechanism which may be triggered in circumstances that are wider than those set out in the minimum standard.[3]

Part B: Exchange of information framework

3. The Czech Republic is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016 and is also a signatory to the CbC MCAA; it has submitted a full set of notifications under Section 8 of this agreement. The Czech Republic intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under Section 8(1)(e) of the same agreement. The Czech Republic has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, the Czech Republic has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. The Czech Republic has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of

the still evolving exchange of information framework, at this point in time, the Czech Republic meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[4]

Part C: Appropriate use

4. The Czech Republic does not yet have measures in place to ensure the appropriate use of information[5] in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It is recommended that the Czech Republic take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.[6]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. The Czech Republic has primary and secondary laws (hereafter the "regulations") in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements including the filing and reporting obligations.[7] Guidance has been published.[8]

(a) Parent entity filing obligation

Summary of terms of reference:[9] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. The Czech Republic has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups that are resident for tax purposes in the Czech Republic, above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[10]

8. According to the Czech Republic's regulations, the filing of a CbC report may be requested from a Constituent Entity in the Czech Republic in certain circumstances (local filing). The regulations provide for an annual consolidated revenue threshold of EUR 750 million or an amount equivalent to EUR 750 million converted with an average value of the exchange rates as published by the ECB for January 2015.[11] While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in the Czech Republic, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is tax resident in the Czech Republic) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[12] It is thus recommended that the Czech Republic amend or otherwise clarify this rule so

that it would apply in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than the Czech Republic, when local filing requirements are applicable.

9. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in the Czech Republic commences in respect of reporting fiscal years beginning on or after 1 January 2016.[13] The CbC report must be filed within 12 months after the end of the reporting fiscal year of the MNE Group.[14]

11. The Czech Republic indicates that practical CbCR guidance has been published on the website of the Czech Tax Administration and is in the process of being amended to take into account the updated OECD guidance published (*Guidance on the implementation of Country-by-Country Reporting*, OECD, 2018). This will be monitored.

12. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. The Czech Republic has introduced local filing requirements in respect of reporting fiscal years beginning on or after 1 January 2017.[15]

14. Under Section 13zl of the primary legislation, local filing requirements are such that a Czech Constituent Entity other than the Ultimate Parent Entity will have to file a CbC report for the Group if the "*state of jurisdiction of the Ultimate Parent Entity of the Group is not a state exchanging country-by-country reports for the reported fiscal year (…)*".[16] Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the

given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in the Czech Republic's legislation. Under the Czech Republic's legislation, local filing may be required in circumstances where there is no current international agreement between the Czech Republic and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. It is recommended that the Czech Republic amend its legislation or otherwise take steps to ensure that local filing is only required in the circumstances contained in the terms of reference.[17]

15. No other inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

16. The Czech Republic's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[18] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

17. The Czech Republic has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity (UPE), the Surrogate Parent Entity or any other Constituent Entity resident in the Czech Republic.[19] There are also penalties in place in relation to CbC Reporting obligations of the resident Constituent Entity: (i) penalties for failure to comply with the obligation in kind and (ii) penalties for failure to comply with the obligation to retain documents or request the UPE for assistance.[20]

18. There are no specific process to take appropriate measures in case the Czech Republic is notified by another jurisdiction that it has reason to believe with respect to a Reporting Entity that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is issued in this respect. No inconsistencies were identified with respect to the effective implementation.

Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), the Czech Republic has a domestic legal and administrative framework to impose and enforce CbC requirements on the UPE of an MNE Group that is resident for tax purposes in the Czech Republic. The Czech Republic meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the annual consolidated group revenue threshold (paragraphs 8 (a) ii. of the terms of reference (OECD, 2017b)) and (ii) the local filing conditions (paragraphs 8 (c) iv. b) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

20. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

21. The Czech Republic has sufficient legal basis to automatically exchange CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 26 October 2012, in force on 1 February 2014 and in effect in 2016) and (ii) multiple bilateral Double Tax Agreements which allow the Automatic Exchange of Information in the field of taxation. The Czech Republic has also implemented EU Council Directive 2016/881/EU amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

22. The Czech Republic signed the CbC MCAA on 27 January 2016 and has submitted a full set of notifications under Section 8 of the same agreement on 5 October 2017. The Czech Republic intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under Section 8(1)(e) of the same agreement. The Czech Republic has also signed a bilateral CAA with the United States. As of 12 January 2018, the Czech Republic has 55 bilateral relationships activated under the CbC MCAA[21] or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. The Czech Republic has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, the Czech Republic meets the terms of reference relating to the exchange of information framework.

Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time, the Czech Republic meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

24. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

25. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), the Czech Republic indicates that measures are not yet in place to ensure the appropriate use of information in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It had however provided details on the next steps which are being planned to put appropriate measures in place. It is recommended that the Czech Republic take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is noted that the Czech Republic repeatedly confirmed that the risk of inappropriate use of information is minimal even under existing legal framework as no adjustment to the taxable income can be made without particular evidence obtained in the course of further control activities and investigation.

Conclusion

26. In respect of paragraph 12 (a), it is recommended that the Czech Republic take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation annual consolidated group revenue threshold	It is recommended that the Czech Republic amend or otherwise clarify that the annual consolidated group revenue threshold calculation rule applies without prejudice of the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than the Czech Republic.
Part A	Domestic legal and administrative framework - Limitation on local filing	It is recommended that the Czech Republic amend its legislation or otherwise take steps to ensure that local filing is only required in the circumstances contained in the terms of reference.
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that the Czech Republic take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017b).

[3] Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b).

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] It is noted that the Czech Republic repeatedly confirmed that the risk of inappropriate use of information is minimal even under existing legal framework as no adjustment to the taxable income can be made without particular evidence obtained in the course of further control activities and investigation.

[7] The primary law with respect to Country-by-Country Reporting (CbCR) consists of Act no. 164/2013 Sb. on international tax cooperation, as amended by Act No 305/2017 as of 16 August 2017 by inserting Division 5 "Automatic Exchange of Information Reported by Multinational Enterprise Groups". Division 5 consists of Sections 13za – 13zq (the "Act on International Cooperation"). Secondary law (hereafter the "regulations") consists of a ministerial decree for a local version of Annex III To Chapter V - Transfer Pricing Documentation – Country-By-Country along with an explanatory statement. See: http://aplikace.mvcr.cz (accessed 11 April 2018).

[8] The Czech Republic indicates that practical CbCR guidance (issued on website of the Czech tax administration in the form of Q&A) has been updated based on the updated OECD guidance of the implementation of CbCR issued in November 2017 which is currently being approved by the director of General Finance directorate.

[9] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[10] See Sections 13za – 13zq of the Act on International Cooperation.

[11] See Section 13zd (2) of the Act on International Cooperation.

[12] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold of the "*Guidance on the Implementation of Country-by-Country Reporting*":

www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

[13] See Article II paragraph 1 of the amendment Act No. 305/2017 Coll.

[14] See Section 13zm (1) of the Act on International Cooperation.

[15] See Article II paragraph 2(b) of the amendment Act No. 305/2017 Coll.

[16] See Section 13zl (2) (a.2) of the Act on International Cooperation.

[17] The Czech Republic indicates that relevant amendment in accordance with the terms of reference has already been drafted into the relevant Act no. 164/2013 Coll. which is currently being approved on governmental level.

[18] See Section 13zl (3) of the Act on International Cooperation.

[19] See Section 13zn of the Act on International Cooperation.

[20] Under Sections 13zp (2) – (4) of the Act on International Cooperation: the disciplinary fine imposed is up to CZK 1 500 000 (Czech Koruna) for a UPE or a Surrogate Parent Entity and up to CZK 600 000 for any other Constituent Entity.

[21] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

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Democratic Republic of the Congo

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. The Democratic Republic of the Congo does not have a legal and administrative framework in place to implement CbC Reporting. CbC requirements may first apply for taxable years commencing on or after 1 January 2018 if they are included in the Finance Bill for 2018. It is recommended that the Democratic Republic of the Congo implement a domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. The Democratic Republic of the Congo indicates that draft legislation is for the time being subject to internal review. It is expected to be presented during the examination of the Finance Bill for 2018. To date, no headquarters of MNE Groups have been identified in the DRC. Most MNE Groups present operate through subsidiaries or representative offices. The administration's management services are currently working with the Democratic Republic of the Congo's delegate to the Inclusive Framework in regard of the identification of the subsidiaries of certain groups present in the Democratic Republic of the Congo. The Democratic Republic of the Congo indicates that CbC requirements may apply for taxable years commencing on or after 1 January 2018, if they are included in the Finance Bill for 2018. It is recommended that the Democratic Republic of the Congo implement a domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. The Democratic Republic of the Congo is not a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), and is also not a signatory to the CbC MCAA. As of 12 January 2018, the Democratic Republic of the Congo does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that the Democratic Republic of the Congo take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] the Democratic Republic of the Congo does not yet have measures in place relating to appropriate use. It is recommended that the Democratic Republic of the Congo take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that the Democratic Republic of the Congo will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. The Democratic Republic of the Congo does not have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. The Democratic Republic of the Congo indicates that draft legislation is for the time being subject to internal review. It is expected to be presented during the examination of the Finance Bill for 2018. To date, no headquarters of MNE Groups have been identified in the DRC. Most MNE Groups present operate through subsidiaries or representative offices. The administration's management services are currently working with the Democratic Republic of the Congo's delegate to the Inclusive Framework in regard of the identification of the subsidiaries of certain groups present in the Democratic Republic of the Congo. The Democratic Republic of the Congo indicates that CbC requirements may apply for taxable years commencing on or after 1 January 2018, if they are included in the Finance Bill for 2018.

8. It is recommended that the Democratic Republic of the Congo implement a domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), the Democratic Republic of the Congo does not have a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the Democratic Republic of the Congo. It is recommended that that the Democratic Republic of the Congo implement a domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

10. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

11. The Democratic Republic of the Congo is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention") and is also not a signatory to the CbC MCAA. The Democratic Republic of the Congo does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.

12. As of 12 January 2018, the Democratic Republic of the Congo does not have bilateral relationships activated under the CbC MCAA. It is recommended that the Democratic Republic of the Congo take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that the Democratic Republic of the Congo will not be exchanging CbC reports in 2018.

Conclusion

13. In respect of the terms of reference under review, it is recommended that the Democratic Republic of the Congo take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that the Democratic Republic of the Congo will not be exchanging CbC reports in 2018.

Part C: Appropriate use

14. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

15. The Democratic Republic of the Congo does not yet have measures in place relating to appropriate use. It is recommended that the Democratic Republic of the Congo

take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that the Democratic Republic of the Congo will not be exchanging CbC reports in 2018.

Conclusion

16. It is recommended that the Democratic Republic of the Congo take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that the Democratic Republic of the Congo will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that the Democratic Republic of the Congo implement a domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that the Democratic Republic of the Congo take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that the Democratic Republic of the Congo take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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Denmark

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Denmark's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, does not contain any recommendation.

Part A: Domestic legal and administrative framework

2. Denmark has rules (primary and secondary law, as well as guidance) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity (UPE) of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Denmark. The first filing obligation for a CbC report in Denmark commences in respect of income years beginning on 1 January 2016 or later. Denmark meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Denmark is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. Denmark has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Denmark has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Denmark has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Denmark meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. Denmark indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional

questions on appropriate use.[3] Denmark meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Denmark has primary law and secondary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5] Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Denmark has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on UPEs of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to Denmark's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Denmark commences in respect of income years beginning on 1 January 2016 or later.[8] The CbC report must be filed within 12 months of the last day of the income year[9] of the MNE Group.

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Denmark has introduced local filing requirements in respect of income years beginning on 1 January 2017[10] or thereafter.

12. No inconsistencies were identified with respect to the limitation on local filing obligation.[11]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Denmark's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[12] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

14. Denmark has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other group company resident in Denmark.[13] There are also penalties in relation to the filing of a CbC report which includes a penalty for intentional or grossly negligent failure to file.[14]

15. There are no specific processes in place that would allow to take appropriate measures in case Denmark is notified by another jurisdiction that such other jurisdiction

has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Denmark has a domestic legal and administrative framework to impose and enforce CbC requirements on the UPE of an MNE Group that is resident for tax purposes in Denmark. Denmark meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Denmark has domestic legislation that permits the automatic exchange of CbC reports.[15] It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 27 May 2010, in force on 1 June 2011 and in effect for 2016) (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements[16] and (iii) the Nordic Convention on Administrative Assistance,[17] which allow Automatic Exchange of Information in the field of taxation.

19. Denmark signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 10 March 2017. It intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. It is noted that Denmark has signed a bilateral QCAA with the United States. As of 12 January 2018, Denmark has 55 bilateral relationships activated under the CbC MCAA[18] or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Denmark has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Denmark meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

20. Against the backdrop of the still evolving exchange of information framework, at this point in time, Denmark meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

22. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Denmark indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

23. There are no concerns to be reported for Denmark in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Denmark. Denmark thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Parent entity filing obligation	-
Part B	Exchange of information	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of CbC Reporting introduced in Denmark by Law of 29 December 2015 no.1884 Section 1(2); See paragraphs 10 – 16 of Section 3B of the Danish Tax Control Act regarding the obligation to provide CbC information: www.retsinformation.dk/forms/r0710.aspx?id=176725 (available in Danish text, accessed 20 April 2018). Secondary law consists of Danish statutory order on country-by-country reporting no. 1133 published on 27 August 2016: www.retsinformation.dk/Forms/R0710.aspx?id=182132 (available in Danish text, accessed 20 April 2018).

[6] Guidance is provided in SKAT's Legal Guidance section C.D.11.13.2 on CbC Reporting for multinational corporations www.skat.dk/display.aspx?oid=2232525&vid=214580 (available in Danish text, accessed 20 April 2018).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] See Law of 29 December 2015 no. 1884, Section 6.

[9] See Section 3B (10) of the Danish Tax Control Act.

[10] See Law of 29 December 2015 no. 1884, Section 6.

[11] See Section 3B (11) and (12) of the Danish Tax Control Act. It is noted that where there are more than one Constituent Entities resident in Denmark that are subject to local filing, it is mandatory for the MNE group to assign the responsibility for filing to one of the Constituent Entities under Danish legislation, whereas Article 2 of the Model Legislation in the Action 13 Report (OECD, 2015) states that the MNE Group may designate one such Constituent Entities to file the CbC report. However, this does not seem to create a substantive issue.

[12] See Section 3B (13) of the Danish Tax Control Act.

[13] See Section 3B (14) of the Danish Tax Control Act.

[14] See Section 17 (3) and (4) of the Danish Tax Control Act. It is noted that the penalty amount will be based on the economic consequences of the violation. Denmark indicates that it has extended its existing transfer pricing documentation penalty regime to the requirements to file the CbC Report. The Danish existing transfer pricing documentation penalty regime stipulates as a

main rule, that a minimum fine should be paid equivalent to twice the saved costs by not having completed the transfer pricing documentation or the transfer pricing documentation in full in first place. The documentation cost is set at a basic amount of DKK 250 000 (Danish kroner) (twice a basic amount of DKK 125 000 in saved costs). However, the explanatory notes to the legislation implementing the CbC Reporting obligations do not contain any specific guidance as to the quantum of the penalties in case of filing shortcomings as regards the CbC Report.

[15] In Section 3B (10) to (16) of the Danish Tax Control Act.

[16] Denmark reports tax treaties with Andorra, Anguilla, Antigua & Barbuda, Argentina, Aruba, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Bermuda, Botswana, Brazil, British Virgin Islands, Brunei Darussalam, Bulgaria, Canada, Cayman Islands, Chile, China (People's Republic of), Cook Islands, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Dominica, Egypt, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Germany, Ghana, Gibraltar, Greece, Grenada, Guatemala, Guernsey, Hong Kong (China), Hungary, India, Indonesia, Ireland, Isle Of Man , Israel, Italy, Jamaica, Japan, Jersey, Kenya, Korea, Kuwait, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Macao (China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Monaco, Montenegro, Montserrat, Morocco, Netherlands, New Zealand, Niue, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Serbia, Seychelles, Singapore, Sint Maarten, Slovak Republic, Slovenia, South Africa, Sri Lanka, Switzerland, Chinese Taipei, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turks and Caicos Islands, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Vanuatu, Venezuela, Viet Nam and Zambia.

Note by Turkey

The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[17] The Nordic Convention includes Denmark, Faroe Islands, Iceland, Norway and Sweden.

[18] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Egypt

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Egypt does not yet have a full legal and administrative framework in place to implement CbC Reporting. CbC requirements should first apply for taxable years commencing on or after 1 January 2018. It is recommended that Egypt finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, as well as an exchange of information framework and measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Egypt indicates that it has updated its Transfer Pricing Guidelines in 2017 to take into account the BEPS project's recommendations and the Action 13 minimum standard. These Guidelines have incorporated the three-tiered approach to Transfer Pricing Documentation. These updated Guidelines should be released in March 2018, together with a Ministerial decree. The CbC Reporting requirements will apply for taxable years commencing on or after 1 January 2018. It is recommended that Egypt finalise its domestic legal and administrative framework in relation to CbC Reporting requirements as soon as possible, in particular in respect of the enforcement measures. [1]

Part B: Exchange of information framework

3. Egypt is not a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), and is also not a signatory to the CbC MCAA. As of 12 January 2018, Egypt does not yet have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that Egypt take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Egypt will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Egypt does not yet have measures in place relating to appropriate use. It is recommended that Egypt take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Egypt will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Egypt does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

> Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Egypt indicates that it has been updating its existing Transfer Pricing Guidelines in 2017 to take into account the BEPS' project's recommendations and the Action 13 minimum standard.[5] These Guidelines have incorporated the three-tiered approach to Transfer Pricing Documentation. As such, a requirement for CbC Reporting has been introduced in Chapter 5 of the Guidelines. A Ministerial Decree should also be issued to confirm and clarify the CbC Reporting requirements. The updated Guidelines should be released in March 2018, together with this Ministerial decree.

8. Chapter 5 of the Transfer Pricing Guidelines state that the CbC report requires jurisdiction-wide information regarding a "Group of Associated Enterprises'" global allocation of income, taxes paid, and the location of key economic activity where the Group of Associated Enterprises (GAE) operates. As part of this CbC report, the GAEs are also required to report their number of employees, stated capital, retained earnings and tangible assets in each tax jurisdiction. The GAEs should also identify each entity within the group is doing business in a particular tax jurisdiction, and provide an indication of the business activities each entity engages in. It also requires a listing of all Constituent Entities for which financial information is reported, as well as their main business activities. A CbC report should be filed in the jurisdiction of tax residence of the ultimate parent entity and will be shared between the relevant tax administrations through Automatic Exchange of Information, pursuant to government-to-government mechanisms

9. Egyptian parented GAEs, i.e. Egyptian parent companies, will be required to file a CbC report with the Egyptian Tax Administration. Egypt indicates that it is currently considering the definition of an "Egyptian parented entity" for CbC purposes in the Transfer Pricing Guidelines, as well as the definitions of a "Constituent Entity", "Group", or an "MNE Group". This will be monitored.

10. For Egyptian tax and transfer pricing purposes, a CbC report will be required for an Egyptian parented GAEs if the GAE for which an Egyptian taxpayer is the parent company achieved an annual consolidated group revenue of equal to or exceeding EGP 3 billion.[6]

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

11. The first filing obligation for a CbC report in Egypt commences in respect of fiscal years starting on or after 1 January 2018.[7] The CbC report must be filed within 12 months after the end of the fiscal year to which the CbC report of the MNE Group relates.[8] [9]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. There are currently no legal or administrative rules providing for local filing in Egypt.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. There are currently no legal or administrative rules providing for local filing in Egypt.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent

Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. There are currently no specific enforcement measures in relation to the filing of a CbC report. However, Egypt indicates that work is currently underway in view of introducing a "Unified Tax Procedures Law" in which enforcement measures and penalties relating to Transfer Pricing Documentation would be incorporated. It is recommended that Egypt introduce enforcement measures as soon as possible.

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017a), Egypt does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Egypt. It is recommended that Egypt finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, in particular in respect of the enforcement measures.

Part B: The exchange of information framework

16. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017a).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

17. Egypt is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention") and is also not a signatory to the CbC MCAA. Egypt does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.

18. As of 12 January 2018, Egypt does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Egypt take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Egypt will not be exchanging CbC reports in 2018.

Conclusion

19. In respect of the terms of reference under review, it is recommended that Egypt take steps to put in place an exchange of information framework that allows Automatic

Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Egypt will not be exchanging CbC reports in 2018.

Part C: Appropriate use

20. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

21. Egypt has not yet provided information on measures relating to appropriate use. Egypt however indicates that Chapter 5 of the Transfer Pricing Guidelines (section 5.8.) that the CbC report will be primarily used by the Egyptian tax Administration for performing high-level transfer pricing risk assessment, and evaluating other tax and BEPS related risks, as relevant. As such, a CbC report does not provide comprehensive evidence that transfer prices are or are not arm's length, and the information contained in there cannot be used as a substitute for the detailed transactional transfer pricing analysis as required under the master file and local file. It is recommended that Egypt take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Egypt will not be exchanging CbC reports in 2018.

Conclusion

22. It is recommended that Egypt take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Egypt will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Egypt finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, in particular in respect of the enforcement measures.
Part B	Exchange of information framework	It is recommended that Egypt take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Egypt take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017a).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017a).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017a).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017a).

[5] Egypt also indicates that Transfer Pricing was first introduced in Egypt in the Income Tax Law of 2005 through Article (30) and its executive regulations Articles (38),(39), and (40), which basically stipulate that associated parties transacting with each other should deal at arm's length, specifying the methods that should be used and the hierarchy in which they should be applied. Later in 2010, the Egyptian Transfer Pricing ("TP") Guidelines were issued, with the purpose of providing a practical guide to the application of Article (30) of the Law. The 2010 Guidelines are based on the OECD Guidelines (OECD, 2017b), and provide a description of the key TP principles, methods, and local documentation requirements (including an Egyptian specific four-step approach). In 2017, Egypt has been working on refining and updating the Egyptian TP policy, and as part of this, the 2010 Transfer Pricing Guidelines have been updated. The Transfer Pricing Guidelines will be a "living document" which will updated over time, when necessary.

[6] Egypt confirms it would only exchange the CbC reports of Egyptian parented GAEs when the parent company achieved an annual consolidated group revenue of equal to or exceeding EUR 750 million.

[7] See Section 5.9.1. of the Transfer Pricing Guidelines: "Taxpayers are required to submit their transfer pricing documentation to ETA on an annual basis". Egypt indicates that the Guidelines will state that the first CbC report should be prepared for the subject GAE's fiscal year ending 2018, and should therefore be filed twelve months after the close of the GAE's 2018 fiscal year.

[8] See Section 5.9.1. of the Transfer Pricing Guidelines: "The CBCR should in general be submitted one year following the close of the relevant financial year that it covers". Egypt indicates that the Guidelines will state that the first CbC report should be prepared for the subject GAE's fiscal year ending 2018, and should therefore be filed twelve months after the close of the GAE's 2018 fiscal year. They also clarify that the fiscal year relates to the consolidated reporting period for financial statement purposes and not to taxable years or to the financial reporting periods of the subsidiaries.

[9] Section 5.8. of the Transfer Pricing guidelines state that Taxpayers who meet the filing threshold in any year, are required to prepare a CBCR for that given year using model template in the Action 13 report (OECD, 2015). Egypt indicates that it will provide for more filing instructions in due course. This will be monitored.

References

OECD (2017a), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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Estonia

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Estonia's implementation of the Action 13 minimum standard meets all applicable terms of reference. This report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Estonia has rules (primary and secondary laws) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Estonia. The first filing obligation for a CbC report in Estonia commences in respect of financial years beginning on 1 January 2016 or later. Estonia meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Estonia is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other competent authorities which provide notifications under the same agreement. As of 12 January 2018, Estonia has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Estonia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Estonia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Estonia. Estonia indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Estonia meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Estonia has primary law (hereafter the "Act") and secondary law (hereafter the "regulations") in place which implements the BEPS Action 13 minimum standard and the Council Directive (EU) 2016/881 of 25 May 2016 (hereafter the "DAC 4"), establishing the necessary requirements, including the filing and reporting obligations.[5] Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Estonia has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015). It is noted that the Act generally cross-references the DAC 4; in particular, certain definitions ("Ultimate Parent Entity", "Surrogate Parent Entity", "Reporting Entity" and "Multinational Enterprise Group") refer to the definitions of the DAC4, while some definitions are indirectly cross-referenced through these terms, (such as "Group" and "Excluded MNE Group"). Estonia indicates that certain translated terms used in the Estonian legislation should be read in light with the definitions of the DAC4 as the CbC legislation has been cross-referenced to the EU law through Article 4.1 of the Act.[8]

8. By cross-referencing to the definition of an "MNE Group" which itself refers to the definition of an "Excluded MNE Group" in the DAC4,[9] an Excluded Group in the Estonian framework is defined as a "*Group having total consolidated group revenue of less than EUR 750 000 000 or an amount in local currency approximately equivalent to EUR 750 000 000 as of January 2015 during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year"*. While these provisions would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Estonia, they may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is an Estonian tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[10] Estonia has indicated that the threshold calculation rule would apply in a manner consistent with the OECD guidance on currency fluctuations, in respect of an MNE Group whose Ultimate Parent Entity is

located in a jurisdiction other than Estonia. As such, no recommendation is made but this issue will be further monitored.

9. No other inconsistencies were identified with respect to Estonia's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Estonia applies in respect of financial years beginning on or after 1 January 2016.[11]

11. Under Article 1 of Section 20^5 of the Tax Act, the Estonian reporting entity is required to submit the CbC report to the tax authority in Estonia by 31 December of the calendar year following the reporting year. Estonia indicates that Estonian MNE Groups have calendar year-ends which means that the CbC report being submitted by 31 December of the year following the reporting fiscal year would be filed within the 12-month filing deadline.[12]

12. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.[13]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Estonia has introduced local filing requirements in respect of fiscal years beginning on 1 January 2017 or at a later date.[14] No inconsistencies were identified with respect to the limitation on local filing obligation.[15]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

14. Estonia's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE Group.[16] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

15. Estonia has legal mechanisms in place to enforce compliance with the minimum standard. There are notification mechanisms in place that apply to each Constituent Entity.[17] There are also penalties in place in relation to the filing of a CbC report in cases of non-filing, incorrect or incomplete filing.[18] Estonia indicates that the enforcement measure has a wide application that covers the obligations of the reporting entity under the CbC rules as well as other obligations under the Tax Information Exchange Act.

16. There are no specific processes in place that would allow to take appropriate measures in case Estonia is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

17. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Estonia has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Estonia. Estonia meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

18. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

19. Estonia has domestic legislation that permits the automatic exchange of CbC reports.[19] It is a Party to the *Multilateral Convention on Mutual Administrative*

Assistance in Tax Matters: Amended by the 2010 Protocol (OECD/Council of Europe, 2011) (signed on 29 May 2013, in force on 1 November 2014 and in effect for 2016) and it has implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards to mandatory Automatic Exchange of Information in the field of taxation.

20. Estonia has signed the CbC MCAA on 27 January 2016 and it has submitted a full set of notifications under section 8 of the CbC MCAA on 31 March 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under Section 8(1)(e) of the same agreement. As of 12 January 2018, Estonia has 53 bilateral relationships activated under the CbC MCAA[20] or exchanges under the EU Council Directive (2016/881/EU). Estonia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Estonia meets the terms of reference.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time Estonia meets the terms of reference under review for this first annual peer review regarding the exchange of information framework.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Estonia indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports*

(OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

24. There are no concerns to be reported for Estonia in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for the Estonia. Estonia thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary legislation for Country-by-Country (CbC) Reporting consists of the Tax Information Exchange Act (hereafter the "Act"), more specifically under Chapter 1 General Provisions, Chapter 2^2 , Chapter 3 and section 23^4 of Chapter 4 and Article 155.3 of the Taxation Act. See www.riigiteataja.ee/en/eli/504072017001/consolide (accessed 20 April 2018). The Act implements the BEPS Action 13 minimum standard and the Council Directive (EU) 2016/881 of 25 May 2016 (the "DAC4"): see subsection 1^1 of Chapter 1 of the Act which refers to the "rights and obligations relating to international Automatic Exchange of Information", as well as subsection $4^1(1^1)$ which refers to the automatic exchange of country-by-country report information on the basis of Article 6 of the Convention. See also the definition of "the exchange of information" which is "the automatic communication of information, needed to determine the amount of tax liability concerning direct taxes, on the basis of a treaty or under the relevant legislation of the European Union, from the tax authority to a competent authority of a foreign state and vice versa" (subsection 2 point 7 of Chapter 1 of the Act).

Secondary legislation was published on 18 December 2017. See www.riigiteataja.ee/en/eli/523012018002/consolide (accessed 20 April 2018).

[6] Guidance was published as Annex 15 of the secondary legislation on 18 December 2017. Guidance includes the instructions relating to the format of a country-by country report and the procedure for submission. See www.riigiteataja.ee/tolkelisa/5230/1201/8002/Annex15.pdf (accessed 20 April 2018).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] See for example: "Accounting Entity" which refers to a "Reporting Entity"; "Financial Year" which refers to "Fiscal Year"; and "Reporting Year" which refers to "Reporting Fiscal Year") (see paragraphs § 20^4 and § 20^5 of Chapter 2^2 of the Act). Estonia further explains that some of the terms used in Estonian legislation are sometimes translated differently so in order to avoid any conflict, the terms are explained by communication vis-a-vis the companies and the guidance to the forms will include explanations.

[9] See Article 2 of Section 20^3 of the Chapter 2^2 of the Act.

[10] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the "Guidance on the Implementation of Country-by-Country Reporting": www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

[11] See Article 1 section 23^4 of Chapter 2^1 of the Act.

[12] Paragraph 8 (b) iii. of the terms of reference (OECD, 2017b).

[13] The instructions relating to the format of a country-by country report and the procedure for submission have been published by the tax authority in Estonia as part of Annex 15 of the secondary legislation on 18 December 2017.

[14] See Article 2 section 23^4 and section $20^4$of Chapter 2^1 of the Act.

[15] It is noted that the Act directly cross-references to the provisions of the DAC4 as regards the instances of local filing (see Article 3 section $20^4$of Chapter 2^1 of the Act which refers to point (1) of Section II of Annex III of the DAC4 that provides for the conditions under which local filing may occur). Estonia's rules provide that a "*Reporting Entity that is a tax resident of Estonia, who is not the parent entity of the group: 1) shall request the ultimate parent entity of the group communication of all information required for the performance of the reporting obligation provided for in subsection (1) of this section; 2) shall submit the country-by country report also in the case of a failure to obtain all the information required to perform the reporting obligation; 3) shall notify the tax authority of the refusal of the ultimate parent entity of the group to communicate any information required for the performance of the reporting obligation*".

[16] See Article 3 of Section 20^5 of Chapter 2^1 of the Act which refers to point (2) of Section 2 of Annex III of the DAC4.

[17] See Section 20^6 of Chapter 2^1 of the Act. In addition, Estonia states that the tax authority in Estonia will notify all EU Member States of the refusal of the Ultimate Parent Entity of the MNE Group to communicate the required information to the Reporting Entity in Estonia to prepare the CbC report (See Section 20^7 of Chapter 2^1 of the Act). Estonia indicates that an administrative penalty is provided for obstruction of the exchange of information: § 155.3 of Taxation Act www.riigiteataja.ee/en/eli/502012017008/consolide (accessed 20 April 2018). Estonia also has enforcement powers to compel the production of a CbC report: § 10/2/6 of Taxation Act.

[18] See Section 22 of Chapter 3 of the Act: (1) if the reporting entity fails to perform the filing obligations, the tax authority may designate additional term for the performance of obligations and issue a warning of imposing penalty payment pursuant to § 136 of the Taxation Act. (2) If the reporting entity has failed to perform the obligations by the due date specified in the warning, the penalty payment specified in the warning is required to be paid thereby. The tax authority shall submit a claim for payment of penalty to the obligated person by an order, determine the term of payment and issue a warning that in case of a failure to pay the penalty within the time limit, the claim shall be subject to compulsory execution pursuant to §§ 128-132 of the Taxation Act. (3) In order to enforce the performance of the obligations the amount of penalty payment may not exceed EUR 3 300, whereas it may not exceed EUR 1 300 for the first event and EUR 2 000 in the second event. (4) The provisions of this section shall be applied also to a member of the group that is a tax resident of Estonia upon a failure to perform the notification obligation provided.

[19] See section 23^4 of Chapter $2^1$of the Act.

[20] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

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OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Finland

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Finland's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Finland has rules (primary and secondary laws, as well as guidance) that impose and enforce CbC requirements on the Ultimate Parent Entity (UPE) of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Finland. The first filing obligation for a CbC report in Finland commences in respect of fiscal years beginning on 1 January 2016 or later. Finland meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Finland is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and is also a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. Finland has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Finland has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Finland has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Finland meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Finland. Finland indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Finland meets the terms

of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Finland has primary law and secondary laws in place for implementing the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5] Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Finland has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on UPEs of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to the parent entity filing obligation.[8]

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Finland commences in respect of fiscal years beginning on 1 January 2016 or thereafter.[9] The CbC report must be filed within 12 months of the last day of the reporting fiscal year of the MNE Group.[10]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Finland has introduced local filing requirements in respect of fiscal years beginning on 1 January 2016 or thereafter.[11] No inconsistencies were identified with respect to the limitation on local filing obligation.[12]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

12. Finland's local filing requirements will not apply if there is surrogate filing in another jurisdiction by a group entity that is a tax resident of the European Union or another group entity as appointed by the Ultimate Parent Entity.[13] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Finland has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to taxpayers in Finland.[14] There are also penalties in place in relation to the filing of a CbC report or a notification of refusal to file:[15] (i) penalties for failure to file (ii) penalty for late filing and (iii) penalties for filing information with substantial deficiencies or inaccuracies.

14. There are no specific processes in place that would allow to take appropriate measures in case Finland is notified by another jurisdiction that such other jurisdiction

has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. However, Finland has a penalty regime in place that would impose a penalty on the reporting entity in Finland that has submitted a deficient or inaccurate CbC report. The effective implementation of these provisions will be further monitored once the actual exchanges of CbC reports take place.

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Finland has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Finland. Finland meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

16. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

17. Finland has domestic legislation that permits the automatic exchange CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 27 May 2010, in force on 1 June 2011 and in effect for 2016), (ii) multiple bilateral Double Tax Agreements[16] and (iii) the Nordic Convention on Administrative Assistance,[17] which allow Automatic Exchange of Information. Finland has also implemented EU Council Directive 2016/881/2016 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

18. Finland signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 31 March 2017. It intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. Finland also signed a bilateral CAA with the United States. As of 12 January 2018, Finland has 53 bilateral relationships activated under the CbC MCAA[18] or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Finland has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Finland meets the terms of reference regarding the exchange of information framework.

Conclusion

19. Against the backdrop of the still evolving exchange of information framework, at this point in time, Finland meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

20. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

21. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Finland indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

22. There are no concerns to be reported for Finland in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for the Finland. Finland thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of the Country-by-Country report for taxation included in Sections 14(d), 14(e) and 32(5) of the Act on Tax Assessment Procedure (1558/1995), as amended in Act 1489/2016: www.finlex.fi/fi/laki/ajantasa/1995/19951558#L4P32 (accessed 20 April 2018) and the Act implementing the EU Council Directive 2016/881/EU as regards mandatory Automatic Exchange of Information in the field of taxation (DAC4). Secondary law consists of a Decision (Number A260/200/2016) by the Finnish Tax Administration regarding the obligation to provide CbC information: www.vero.fi (accessed 20 April 2018).

[6] See updated guidance on the Finnish Tax Administration website at www.vero.fi/yritykset-ja-yhteisot/tietoa-yritysverotuksesta/siirtohinnoittelu/maakohtainen_raportti_ja_ilmoitus_selvi/ (accessed 20 April 2018). The updated guidance reflects the rule on the threshold calculation for currency fluctuation and contains updated guidance concerning XML published on 13 June 2017 under the heading "Tekninen soveltamisohje": www.vero.fi (accessed 20 April 2018).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] Finland has published updated guidance in respect of the threshold calculation for currency fluctuations for MNE groups whose Ultimate Parent Entity is located in a jurisdiction other than Finland. The rule will be applied in accordance with OECD guidance.

[9] See Section 32(3) of the Act on Tax Assessment Procedure (1558/1995), as amended in Act 1489/2016 and Section 3 of the Decision (Number A260/200/2016) of the Finnish Tax Administration.

[10] See Section 14(d)(10) of the Act on Tax Assessment Procedure (1558/1995), as amended in Act 1489/2016.

[11] See Section 32(3) of the Act on Tax Assessment Procedure (1558/1995), as amended in Act 1489/2016 – the same filing deadline applies to all reporting entities.

[12] See Section 14(d)(5) of the Act on Tax Assessment Procedure (1558/1995), as amended in Act 1489/2016. It is noted that in accordance with the Council Directive 2016/881/EU, the local filing requirements require the Constituent Entity to report only the information it has received from its Ultimate Parent.

However, there is a mandatory notification procedure for the Constituent Entity with its jurisdiction of tax residence, in case the Ultimate Parent Entity has refused to provide the necessary information to the Constituent Entity.t Entity or that it has in its possession.

[13] See Section 14(d)(7) of the Act on Tax Assessment Procedure (1558/1995), as amended in Act 1489/2016.

[14] See Section 14(d)(9) of the Act on Tax Assessment Procedure (1558/1995), as amended in Act 1489/2016

[15] See Section 32 of the Act on Tax Assessment Procedure (1558/1995), as amended in Act 1489/2016: the penalty imposed is no higher than EUR 25 000.

[16] Finland reports tax treaties with Argentina, Armenia, Australia, Austria, Azerbaijan, Barbados, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Estonia, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Kosovo, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mexico, Moldova, Montenegro, Morocco, Netherlands, New Zealand, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Serbia, Singapore, Slovenia, Slovak Republic, South Africa, Spain, Sri Lanka, Switzerland, Tajikistan, Tanzania, Thailand, United Arab Republic, Turkey, Turkmenistan (the agreement will be in effect as of 2018), Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam and Zambia.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[17] Finland mentions that the Nordic Convention includes Denmark, Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden.

[18] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

France

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. France's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that it raises two definitional and substantive issues. The report, therefore, contains two recommendations concerning these issues. France should also ensure that the appropriate use condition is met ahead of the first exchanges of information.

Part A: Domestic legal and administrative framework

2. France has rules (primary and secondary laws) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in France.[1] The first filing obligation for a CbC report in France commences in respect of fiscal years commencing on or after 1 January 2016. France meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of:

- the definition of an Ultimate Parent Entity[2] which appears to be incomplete,
- the local filing mechanism which does not correspond to the cases defined in the minimum standard.[3]

Part B: Exchange of information framework

3. France is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and it is also a signatory to the CbC MCAA. It has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, France has 56 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under bilateral arrangements (including with Chile and the United States). It has also signed a bilateral arrangement with Hong Kong. France has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time France meets the terms of reference regarding the exchange of information framework.[4]

Part C: Appropriate use

4. France indicates that measures are currently being developed to ensure the appropriate use of information in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a).[5] It notes that such measures will be in place before the first exchanges of CbC reports. It is recommended that France take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. France has primary and secondary laws[6] in place which implement the BEPS Action 13 minimum standard establishing the necessary requirements, including the filing and reporting obligations. No guidance has been published.

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. France has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. Certain points have been identified which may raise questions in relation to the parent entity filing obligation:

- France's legislation defines an Ultimate Parent Entity by reference to a legal person[8] being required to prepare consolidated financial statements under accounting principles, but does not include an entity that would be required to prepare consolidated financial statements if its equity interests were traded on a public securities exchange in France ("deemed listing provision"), as required under paragraph 18 i. of the terms of reference. France notes that the French Commercial Code imposes a requirement to prepare Consolidated Financial Statements on every commercial company when certain conditions are met (control), this requirement being independent from the fact that the company is listed or not. It is however noted that this requirement does not apply to certain types of entities, in particular "civil companies" ("*sociétés civiles*"). As they are not subject to a requirement to prepare Consolidated Financial Statements, these civil companies may constitute holding companies of groups which would

therefore not be required to file a CbC report at their level. France notes that since civil companies cannot legally be listed, introducing a "deemed listing provision" would have no effect in the French legal framework. It is recommended that France introduce a provision which would have an equivalent effect as the "deemed listing provision", i.e. ensuring that all entities that are not legally required to prepare Consolidated Financial Statements (whether under commercial / company law, or under regulations governing the relevant stock exchange / market, or other) be included in the scope of the parent entity filing obligation.[9]

9. In addition, under the terms of reference, the Ultimate Parent Entity shall not be held by another Constituent Entity that owns directly or indirectly sufficient interest to be considered as an Ultimate Parent Entity. This is not reflected in France's primary law, which instead contains the following conditions in the primary filing obligation provisions:[10] the Ultimate Parent Entity is "*not held (…) by one or more entities located in France and [which] is (are) required to file this declaration, or established outside France and [which] is (are) required to file a similar declaration under foreign regulations*". It appears that these provisions in fact trigger an instance of local filing for French entities when there is no requirement to file CbC report on an entity located in another jurisdiction, which would be considered as their Ultimate Parent Entity as per the terms of reference[11] (this may technically give rise to a duplication of the CbC reports filed under both the primary and secondary filing requirements by the parent company in France). Where such a filing obligation would occur under the "primary" filing provision of France's legislation, there are no provisions (i) which would allow an MNE Group to designate one Constituent Entity to file the CbC report[12] and (ii) which would deactivate this filing obligation when a CbC report is made available through surrogate filing.[13] However, France confirms that it will clarify in its domestic legal and administrative framework that where the primary filing requirement would operate in the same circumstance as a local filing requirement, (i) it will be allowed that only one entity would be required to file one CbC report which would satisfy the obligation of all reporting entities and (ii) this filing obligation would not operate if the CbC report is made available through a Surrogate Parent Entity.[14] [15] As such, no recommendation is issued but this will be monitored.

10. Under France's legislation, the definition of the Constituent Entities that are to be included in an MNE Group's CbC report does not mention that a permanent establishment should be separately disclosed as a Constituent Entity in a CbC Report if a separate financial statement for the permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes is prepared.[16] France indicates that this is how a CbC report should be prepared and this will be clarified soon in secondary law or in guidance. No recommendation is made but this will be monitored.

11. According to France's legislation, the filing of a CbC report may be requested from a Constituent Entity in France in certain circumstances (local filing) with respect an MNE Group which would have been required to file a CbC report if it were established in France. With respect to entities established in France, the legislation provides for an annual consolidated revenue threshold of EUR 750 million or more.[17] While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in France, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is tax resident in France) of an MNE Group which does not reach the threshold as

determined in the jurisdiction of the Ultimate Parent Entity of such Group.[18] France confirms that it will apply this guidance, the details of which will be included in secondary law or in future guidance. As such, no recommendation is made but this will be monitored.

12. No other points were identified with respect to France's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

13. The first filing obligation for a CbC report in France commences in respect of periods commencing on or after 1 January 2016. The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[19]

14. No other points were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

15. France has introduced local filing requirements as from the reporting period starting on or after 1 January 2016.[20] A legal person established in France that is owned or controlled, directly or indirectly, by a legal person established in a state or territory which is not listed in an officially published list of state or territories[21] (which have adopted regulations imposing the filing of a CbC report similar to that required in France, which have concluded an agreement with France for the automatic exchange of CbC reports and which comply with the obligations arising from such agreement),[22] and would be required to file the CbC report if it were established in France, shall file the CbC report (A) if it has been designated by the group for that purpose and has informed the tax authorities accordingly; or (B) if it cannot demonstrate that another entity of the group, located in France or in a country or territory included in the above list has been designated for that purpose.

16. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), under France's legislation, local filing applies where an MNE Group has a Constituent Entity established in France which is not the Ultimate Parent Entity of the group, and the jurisdiction of residence of the Ultimate Parent Entity of the MNE Group does not have a qualifying competent authority agreement with France. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in France's legislation. Under France's legislation, local filing may be required in circumstances where there is no current international agreement between France and the residence jurisdiction of the Ultimate Parent Entity. It is recommended that France ensure that local filing only occurs in the circumstances permitted under the minimum standard and set out in the terms of reference, in particular to prevent local filing in the absence on an international agreement. It is noted that in practice this issue should only arise where local filing is imposed on a Constituent Entity in an MNE Group where the Ultimate Parent Entity is resident in a country with which France does not have an international agreement, and the other conditions where local filing is permitted, set out in the terms of reference, are not met. In this context it is further noted that, for fiscal year 2016, France was party to the Convention and also had 125 double tax conventions in force which provide for Automatic Exchange of Information.[23] In light of its treaty network, France expresses the view that it seems unlikely that local filing would occur in the absence of an International Agreement.

17. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017b)), under France's legislation, local filing applies where an MNE group has a Constituent Entity established in France which is not the Ultimate Parent Entity of the Group, and the jurisdiction of the Ultimate Parent Entity has concluded an agreement with France for the automatic exchange of CbC reports but does not comply with the obligations arising from such agreement. Whether these provisions fully reflect the terms of paragraph 8 c) iv. c) of the terms of reference (OECD, 2017b) which limit local filing to the instances of "Systemic Failure" as defined in paragraph 21 of the terms of reference (OECD, 2017b) (suspension for reasons other than those that are in accordance with the terms of that agreement or persistent failure to automatically provide the CbC report) should be clarified. France confirms that its legislation implies that the obligations under the CbC MCAA are complied with (in particular the obligation for a prior consultation between Competent Authorities under Section 6 of the CbC MCAA) and will only apply local filing if there is a "Systemic Failure". This will be monitored.

18. No other points were identified with respect to the limitation on local filing.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

19. Under paragraph 8 (d) of the terms of reference (OECD, 2017b), local filing requirements shall not apply when there is surrogate filing in another jurisdiction, including voluntary parent surrogate filing as per the OECD guidance issued in June 2016. France's local filing requirements will not apply if there is surrogate filing in another jurisdiction which is listed in a list of state or territories which have adopted regulations imposing the filing of a CbC report similar to that required in France, which have concluded an agreement with France for the automatic exchange of CbC reports and which comply with the obligations arising from such agreement. It appears that certain jurisdictions which allow voluntary parent surrogate filing for periods starting 1 January 2016 are however not included in such list, although they already have law in place to require CbC Reporting and may have a Qualifying Competent Authority Agreement in effect with France by the first filing deadline of a CbC report. France indicates that when the law introducing the CbC Reporting requirements was voted, voluntary filing was not yet envisaged. However, France states that it recognises this mechanism[24] and has released a public communication in December 2017[25] indicating that: "*In accordance with the OECD recommendations, if a parent company located in a State or territory which is not included in the list provided for in paragraph II of Article 223 quinquies C of the French Tax Code voluntarily submits a country-by-country declaration for a financial year opened as from 1 January 2016, in accordance with the international standard, and that the latter is communicated by the foreign tax administration to the French competent authority, subsidiaries or branches located in France will not be subject to the filing obligation"*.

20. No other points were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

21. France has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Constituent Entities in France.[26] There are also penalties in place in relation to the filing of a CbC report[27] (i) for failure to file a CbC report and (ii) for late filing. In addition, France indicates that compliance with the reporting obligation is monitored in the context of tax audit operations.

22. There are no specific processes in place that would allow to take appropriate measures in case France is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. France indicates that in the event of an anomaly or a filing error, the company will be requested by the tax authorities to file an amending declaration. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

23. In respect of paragraph 8 of the terms of reference (OECD, 2017b), France has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in France. France meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the definition of the Ultimate Parent Entity required to file a CbC report (paragraphs 8 (a) i. and 18 i. of the terms of reference (OECD, 2017b)) and the conditions for local filing (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

24. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

25. France has domestic legislation that permits the automatic exchange of CbC reports.[28] It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 27 May 2010, in force on 1 April 2012 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and a Tax Information and Exchange Agreement which allow Automatic Exchange of Information.[29]

26. France signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 15 May 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. As of 12 January 2018, France has 56 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under bilateral arrangements.[30] In addition, a bilateral arrangement has been signed by France with Hong Kong. France has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[31] Against the backdrop of the still evolving exchange of information framework, at this point in time France meets the terms of reference regarding the exchange of information framework aspects under review for this first annual peer review.

Conclusion

27. Against the backdrop of the still evolving exchange of information framework, at this point in time France meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

28. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

29. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), France indicates that measures are currently being developed to ensure the appropriate use of information in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It notes that such measures will be in place before the first exchanges of CbC reports and has also provided details on the next steps which are being planned. It is recommended that France take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

30. In respect of paragraph 12 (a), it is recommended that France take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework – parent entity filing obligation – definition of an Ultimate Parent Entity	It is recommended that France introduce a provision which would have an equivalent effect as the "deemed listing provision", i.e. ensuring that all entities that are not legally required to prepare Consolidated Financial Statements (whether under commercial / company law, or under regulations governing the relevant stock exchange / market, or other) be included in the scope of the parent entity filing obligation.
Part A	Domestic legal and administrative framework – limitation on local filing obligation	It is recommended that France ensure that local filing only occurs in the circumstances contained in the terms of reference.
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that France take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (a) i. and 18 i. of the terms of reference (OECD, 2017b).

[3] Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b).

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] Primary law consists of Article 223 quinquies C and 1729 F of the French Tax Code. Secondary law consists of Article 46 quater -0 YE of Annex 3 of the French Tax Code.

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] France's legislation defines an Ultimate Parent Entity by reference to a "legal person" being required to prepare consolidated financial statements under accounting principles. This definition would therefore not apply to entities which do not have legal personality. However, France indicates that no instances have been identified where an entity which does not have legal personality (eg. a "société en participation" or a "société de fait") could be a Ultimate Parent Entity of an MNE Group; this will be monitored.

[9] It is noted that a provision having an equivalent effect as the "deemed listing provision" will be deemed to satisfy the conditions set out in paragraph 8 (a) (i). and 18 i. of the terms of reference (OECD, 2017).

[10] See paragraph I.1. of Article 223 quinquies C of the French tax Code.

[11] This would correspond to the first condition for local filing described under paragraph 8.(c).iv. a) of the terms of reference (OECD, 2017b).

[12] Paragraph 8.(c).v. of the terms of reference (OECD, 2017b).

[13] Paragraph 8.(d). of the terms of reference (OECD, 2017b).

[14] France also indicates that where the CbC report filed by the parent company in France is filed under the primary filing obligation in such circumstances (as a form of local filing), the CbC report will be exchanged with other jurisdictions.

[15] France also indicates that the primary filing obligation could not operate as a form of local filing where local filing is not permitted under the terms of reference, in particular where (i) the Ultimate Parent Entity is required to file a CbC report in its jurisdiction of residence but has failed to do so; (ii) the Ultimate Parent Entity is required to file a CbC report in its jurisdiction of residence but there is no international agreement between this jurisdiction and France; (iii) the Ultimate Parent Entity is required to file a CbC report in its jurisdiction of residence but there has been failure under the QCAA other than a systemic failure between this jurisdiction and France.

[16] Paragraph 8 (a) iii. of the terms of reference (OECD, 2017b).

[17] See Article 223 quinquies C. I. paragraph 2 which refers back to paragraph 1 which contains the threshold.

[18] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the "*Guidance on the implementation of Country-by-Country reporting*" (OECD, 2018).

[19] See Article 223 quinquies C. I. 1.

[20] See Article 223 quinquies C. I. paragraph 2.

[21] France indicates that this list of states or territories which have adopted regulations imposing the filing of a CbC report similar to that required in France, which have concluded an agreement with France for the automatic exchange of CbC reports and which comply with the obligations arising from such agreement, will be updated before the end of 2017 to take into account jurisdictions which will meet the required conditions by then.

[22] Decree of 6 July 2017, Arrêté du 6 juillet 2017 pris en application du II de l'article 223 quinquies C du code général des impôts, www.legifrance.gouv.fr (accessed 20 April 2018).

[23] To date, the jurisdictions that are members of the Inclusive Framework, which with France has not concluded an International Agreement are the following: Angola, Democratic Republic of Congo, Djibouti, Haiti, Liberia, Macau, Papua New Guinea, Paraguay, Peru, and Sierra Leone. For the fiscal year 2016, jurisdictions which are signatories of the Convention which have not submitted a Unilateral Declaration to bring forward its date of entry in force for the automatic exchanges of information on CbC reports could also be concerned. The list of these latter jurisdictions has not yet been definitively determined. France indicates that it would soon submit a Unilateral Declaration.

[24] France indicates that the filing requirements of the CbC report in the jurisdiction allowing the voluntary surrogate parent mechanism must be consistent with the French filing requirements. It also indicates that, in accordance with the recommendations contained in document CTPA/CFA/NOE2(2016)36 paragraph 67, it does not consider itself required to send CbC reports to such States or territories.

[25] See www.impots.gouv.fr/portail/actualite/declaration-pays-par-pays-mesure-transitoire (accessed 20 April 2018).

[26] See paragraph VIII of Article 46 quater – 0 YE of Annex 3 of the French Tax Code.

[27] See Article 1729 F: a maximum penalty of EUR 100 000 is applicable.

[28] Article L114 of the French Tax Procedure Code.

[29] http://bofip.impots.gouv.fr/bofip/2509-PGP.html (accessed 20 April 2018).

[30] It is noted that France and the United States will be spontaneously exchanging CbC reports with respect to fiscal year beginning in 2016. In addition, a bilateral arrangement has been signed by France with Chile in order to enable exchanges for fiscal years commencing on or after 1 January 2016.

[31] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

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OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

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Gabon

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Gabon has primary law and is in the process of completing its legal and administrative framework to implement CbC Reporting. CbC requirements will apply for taxable years commencing on or after 1 January 2017. It is recommended that Gabon finalise the domestic legal and administrative framework and the exchange of information framework in relation to CbC requirements as soon as possible. For the moment, based on its primary legislation, Gabon's implementation of the Action 13 minimum standard meets the terms of reference for the year in review, except that it raises one definitional issue, one timing issue and one substantive issue in relation to its domestic legal and administrative framework. The report contains, therefore three recommendations to address these issues in addition to the general recommendation to finalise the domestic legal and administrative framework. In addition, Gabon should put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Gabon has primary legislation in place which implements the BEPS Action 13 minimum standard. Gabon indicates that further amendments are still needed in the primary legislation, which should be implemented in 2018. In addition, Gabon indicates that an administrative circular is currently being drafted and is needed to complete the domestic legal and administrative framework. CbC requirements apply for taxable years commencing on or after 1 January 2017. It is recommended that Gabon finalise the domestic legal and administrative framework in relation to CbC requirements as soon as possible. Specifically, it is recommended that Gabon:

- complete or introduce the definitions of "Ultimate Parent Entity", "Constituent Entity", "Group" and "MNE Group" which appear to be incomplete or missing,[1]
- publish the content of a CbC report,[2]
- complete or otherwise clarify the enforcement measures.[3]

Part B: Exchange of information framework

3. Gabon currently does not have a network for exchange of information in effect which would allow for Automatic Exchange of Information for CbC Reporting. Gabon is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"), signed on 3 July 2014, but which is not yet ratified. In respect of the terms of reference under review,[4] it is recommended that Gabon take steps to ratify the

Convention and have the Convention in force for taxable years starting as from 1 January 2017. Gabon is not a signatory of the CbC MCAA and it is recommended that it sign such agreement and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Gabon will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[5] Gabon does not yet have measures in place relating to appropriate use. It is recommended that Gabon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Gabon will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Gabon has primary legislation in place which will implement the BEPS Action 13 minimum standard.[6] Gabon indicates that further amendments are still needed in the primary legislation which should be implemented during the course of 2018. In addition, Gabon indicates that an administrative circular is currently being drafted and is needed to complete the domestic legal and administrative framework.

(a) Parent entity filing obligation

> Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Gabon has primary legislation which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue.[8]

8. Gabon has introduced an obligation on the ultimate parent companies, or "head companies of groups", to file a CbC report within 12 months of the end of the fiscal year if the consolidated annual turnover (excluding tax) is equal to or higher than XAF 491 967 750 000 (CFA Francs). The "head company of a group" means an entity of a group of multinational enterprises which holds, directly or indirectly, sufficient ownership interests in subsidiaries, so that it is required to prepare consolidated accounts according to the OHADA standards,[9] without any other constituent entity of such a group owning directly or indirectly such an interest as described above. It is noted that this definition does not include an entity that does not prepare Consolidated Financial Statements, but would be required to do so if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence ("deemed listing provision"). It is recommended that Gabon complete this definition in a manner consistent with the terms of reference.[10]

9. There is also no definition of a "MNE Group", a "Group" and a "Constituent Entity" in Gabon's primary legislation. It is recommended that Gabon introduce these definitions in its domestic legal and administrative framework.

10. Gabon indicates that further amendments will be made in the primary law: this will be done through the amended finance bill during the course of 2018. Gabon also indicates that a number of definitions will be introduced by way of an administrative circular which is currently being drafted.

11. It is recommended that Gabon complete its legal and administrative framework with respect to the parent entity filing obligation, including introducing or completing the definitions of "Ultimate Parent Entity", "Constituent Entity", "Group" and "MNE Group" in a manner consistent with the terms of reference.[11]

12. No other inconsistencies were identified with respect to Gabon's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

13. The first filing obligation for a CbC report in Gabon applies in respect of fiscal years beginning on or after 1 January 2017. The CbC report must be filed within 12 months from the end of the Ultimate Parent Entity's fiscal year.[12]

14. Gabon indicates that the content of a CbC report and filing instructions will be detailed in the administrative circular which is currently being drafted.

15. It is recommended that Gabon publish the administrative circular as soon as possible, prescribing all of, and only, the information as contained in the template in the Action 13 Report (OECD, 2015 - Annex III to Chapter V - Transfer Pricing Documentation – Country-by-Country Report) with regard to each jurisdiction in which the MNE Group operates.

16. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

17. Gabon has introduced local filing requirements as from the reporting period starting on or after 1 January 2017.

18. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017), it is noted that one of the conditions to apply local filing in Gabon's legislation is that "*the jurisdiction of tax residence of the ultimate parent entity has suspended the automatic exchange, or has persistently filed to automatically communicate to Gabon the CbC reports it holds*".[13] Although this condition does not reflect the details of paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017) in particular in regard of the concept of "Systemic Failure", and may be interpreted in a broader meaning than the situation of a "Systemic Failure", Gabon confirms that it will apply this provision in accordance with the wording of these terms of reference and will clarify the definition of "Systemic Failure" in its administrative circular. As such, no recommendation is made but this aspect will be monitored.

19. No other inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

20. Gabon's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[14] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

21. Gabon has legal mechanisms in place to enforce compliance with the minimum standard: there is a penalty[15] in relation to the failure to comply with the documentary requirements relating to CbC reports. It is however unclear whether this penalty would apply in cases of (i) non-filing, (ii) incorrect filing or (iii) incomplete filing of a CbC report.

22. There are no specific processes in place that would allow Gabon to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of

CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

23. It is recommended that Gabon complete or otherwise clarify the scope of enforcement measures.

Conclusion

24. In respect of paragraph 8 of the terms of reference (OECD, 2017), Gabon has a domestic legal and administrative framework which is to be further completed, in order to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Gabon. At the moment, based on its primary legislation, Gabon meets the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the definitions of "Ultimate Parent Entity", "Constituent Entities", "Group" and "MNE Group" (paragraphs 8 (a) and 18 and 15 of the terms of reference (OECD, 2017)); (ii) the information to be reported in the CbC report (paragraph 8 (b) ii. and iv. of the terms of reference (OECD, 2017)); and (iii) the enforcement measures (paragraph 8 (e) i. of the terms of reference (OECD, 2017)).

Part B: The exchange of information framework

25. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

26. Gabon does not yet have domestic legislation that permits the automatic exchange CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"), signed on 3 July 2014. The instruments of ratification have not yet been deposited, therefore the Convention will not be in effect at the start of the commencement of CbC Reporting in Gabon on 1 January 2017. This means that Gabon will not be able to exchange (either send or receive) CbC reports with respect to 2017 fiscal year and will not send or receive CbC reports under the Convention and CbC MCAA on the exchange date in 2019.

27. With respect to bilateral international agreements, Gabon is a Party to a few bilateral Double Tax Agreements (with Belgium, Canada, France and Morocco) which however do not allow Automatic Exchange of Information

28. Gabon has not signed the CbC MCAA and does not have Qualifying Competent Authority Agreements (QCAAs) in effect.

29. It is recommended that Gabon take steps to enable exchanges of CbC reports relating to the fiscal year 2017, in particular:

- bringing the Convention into force for 2017 (notably depositing its instrument of ratification, carrying on any internal process so that the Convention is brought into effect and lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention),
- signing the CbC MCAA and have QCAAs in effect.

Conclusion

30. It is recommended that Gabon take steps to ratify the Convention and having it in effect for taxable years starting as from 1 January 2017, and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Gabon will not be exchanging CbC reports in 2018.

Part C: Appropriate use

31. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

32. Gabon does not yet have measures in place relating to appropriate use. It is recommended that Gabon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Gabon's primary legislation provides that "The CbC report submitted by a parent company should only be used by the tax administration for the purpose of assessing transfer pricing risks and other risks of erosion of the tax base and of transfer of profits in the country, including the risk of non-compliance with transfer pricing rules by members of the MNE group and, where appropriate, for economic and statistical analysis purposes".[16] The tax administration does not rely on country-by-country reporting to make transfer pricing adjustments. It is also noted that Gabon will not be exchanging CbC reports in 2018.

Conclusion

33. It is recommended that Gabon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Gabon will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework – parent entity filing obligation – definitions – content of a CbC report - enforcement measures	It is recommended that Gabon finalise its domestic legal and administrative framework as soon as possible. Specifically, it is recommended that Gabon : - introduce or complete the definitions of an "Ultimate Parent Entity", "MNE Group", "Group" and "Constituent Entity" in a manner consistent with the terms of reference; - publish the administrative circular as soon as possible, prescribing all of, and only, the information as contained in the template in the Action 13 Report (OECD, 2015); - complete or otherwise clarify the scope of enforcement measures.
Part B	Exchange of information framework	It is recommended that Gabon take steps to ratify the Convention and have it in effect for taxable years starting as from 1 January 2017, and to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Gabon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraphs 8 (a) and 18 and 15 of the terms of reference (OECD, 2017).

[2] Paragraph 8 (b) ii. and iv. of the terms of reference (OECD, 2017).

[3] Paragraph 8 (e) i. of the terms of reference (OECD, 2017).

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[6] Article 831 ter nouveau of the Tax Code.

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[8] Article 831 ter nouveau of the Tax Code.

[9] Gabon refers to Article 173 of the Uniform Act relating to companies' and economic interest groupings' law.

[10] Paragraph 18 i. of the terms of reference (OECD, 2017).

[11] Paragraphs 8 (a) and 18 and 15 of the terms of reference (OECD, 2017).

[12] See paragraph 1 of Article 831 ter nouveau of the Tax Code.

[13] See paragraph 9 letter d. of Article 831 ter nouveau of the Tax Code.

[14] See paragraph 10 of Article 831 ter nouveau of the Tax Code which reads as follows: "However, the local constituent entity of a group shall not be required to file a CbC report if it can demonstrate that another entity of the group, considered as a surrogate parent entity located in a jurisdiction which has signed a qualifying competent authority agreement with Gabon relating to the exchange of CbC reports, has been designated to do so".

[15] See Article P 1010 ter of the Tax Procedures Code: Failure to comply with the documentary requirements of the CbC reports subjects the company concerned to a penalty equal to 0.5 ‰ of consolidated turnover (excluding tax), capped at XAF 100 000 000.

[16] See paragraph 6 of Article 831 ter nouveau of the Tax Code.

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Georgia

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Georgia does not yet have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Georgia finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Georgia does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Georgia. It is recommended that Georgia take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. Georgia is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 3 November 2010, in force on 1 June 2011 and in effect for 2016). Georgia has signed the CbC MCAA on 30 June 2016 but has not yet submitted notifications under section 8 of the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that Georgia take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Georgia will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Georgia does not yet have measures in place relating to appropriate use. It is recommended that Georgia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Georgia will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Georgia has no draft legislation in place in order to implement CbC Reporting.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Georgia has no draft legislation in place in order to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. Georgia indicates that relevant legislation will be designed in cooperation with the international experts. A number of group discussions and consultations will take place within the Ministry of Finance and the Georgia Revenue Service ("GRS").

8. Georgia states that there are currently no MNE groups headquartered in Georgia. All enterprises in Georgia, which are subject to audit based on the Law of Georgia on Accounting, Reporting and Auditing, have an obligation to submit their consolidated reports to the Service for Accounting, Reporting and Auditing Supervision. Therefore, the information about the enterprise's annual turnover will be readily available and the Georgia Revenue Service ("GRS") shall each year officially ask the Service for Accounting, Reporting and Auditing Supervision to provide this information. GRS will monitor this situation yearly by asking the Service for Accounting, Reporting and Auditing Supervision to provide this information and it shall then provide the updates for the purposes of the peer review.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), Georgia does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Georgia. Even though Georgia does not have MNE groups meeting the filing threshold resident in Georgia, it is recommended that Georgia take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.

Part B: The exchange of information framework

10. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

11. Georgia does not have a domestic, legal basis for the exchange of information in place. Georgia is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 3 November 2010, in force on 1 June 2011 and in effect for 2016).

12. Georgia has signed the CbC MCAA on 30 June 2016 but has not yet submitted notifications under section 8 of the CbC MCAA. As of 12 January 2018, Georgia does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Georgia take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions.

Conclusion

13. In respect of the terms of reference under review, it is recommended that Georgia take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Georgia will not be exchanging CbC reports in 2018.

Part C: Appropriate use

14. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

15. Georgia does not yet have measures in place relating to appropriate use. It is recommended that Georgia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Georgia will not be exchanging CbC reports in 2018.

Conclusion

16. It is recommended that Georgia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Georgia will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Georgia take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Georgia take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions.
Part C	Appropriate use	It is recommended that Georgia take steps to ensure that the appropriate use condition is met.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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Germany

Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Germany's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one issue in relation to its domestic legal and administrative framework. The report, therefore, contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. Germany has legislation in place that imposes and enforces CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the Germany. The filing obligation for a CbC report in Germany commences in respect of fiscal years commencing on or after 1 January 2016. Germany meets all the terms of reference relating to the domestic legal and administrative framework,[1] except the following area where there is one apparent difference with the international Action 13 minimum standard:

- the scenarios in which local filing may be required that differ from those set out in the minimum standard.[2]

Part B: Exchange of information framework

3. Germany is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in force for 2016, and is also is a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Germany has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Germany has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Germany meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[3]

Part C: Appropriate use

4. There are no concerns to be reported for Germany. Germany indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in*

Country-by-Country reports (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[4] Germany meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[5]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Germany has legislation in place (primary law)[6] which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning on or after 1 January 2016. Germany has published an administrative order which refers to the definitions contained in the Action 13 Report (OECD, 2015 - Annex III to Chapter V - Transfer Pricing Documentation – Country-by-Country Report).

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Germany has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities[8] of MNE Groups which have consolidated group revenues equal to or above EUR 750 million, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. Under the terms of reference, Constituent Entities include any business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size and materiality grounds. This requirement does not appear to be included in the German Fiscal Code.[9] However, Germany confirms that it has published an administrative order which refers to the definitions contained in the CbC report template in the Action 13 Report (OECD, 2015): the term "Constituent Entity" is thus referred to, which includes "any business unit from the MNE Group's Consolidated Financial Statements solely on size and materiality grounds".

9. No inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Germany applies in respect of reporting fiscal years commencing on or after 1 January 2016. A CbC Report is to be filed no later than one year after the end of the reporting fiscal year.[10]

11. The German Fiscal Code sets out the information to be included in a group's CbC Report: it is noted that the German translation of the terms "Income Tax Paid" and "Income Tax Accrued" is slightly different from the English version. The term "Revenue" is defined in Section 138a (2) of the German Fiscal Code as including "revenue and other income from business transactions". It is not clear that revenue from transactions other than business transactions should be included. In addition, Section 138 (a) 2 of the German Fiscal Code appears to require the use of consolidated financial statements as the source of data for an MNE group's CbC Report. However, Germany confirms that all definitions will be applied consistently with the information as contained in the CbC report template in the Action 13 Report (OECD, 2015). Germany has published an administrative order which refers to the definitions contained in the Action 13 Report's CbC report.[11] Therefore, a uniform understanding, consistent with the terms of reference, can be ensured.[12] [13]

12. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Germany has introduced local filing requirements[14] due to the EU directive.[15] Germany's requirements differ from the circumstances contemplated under paragraph 8 (c) iv. of the terms of reference (OECD, 2017b). Examples of such cases are:

- where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but there is no international agreement between Germany and this jurisdiction
- where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but has not complied with this obligation
- where the tax authority in the residence jurisdiction of the Ultimate Parent Entity of an MNE Group has failed to exchange the group's CbC report with Germany, but this falls short of systemic failure.

14. While noting that Germany's view is that it applies local filing in line with international law,[16] for the purpose of the peer review of the jurisdictions of the Inclusive Framework for BEPS, it is recommended that Germany assess its local filing

requirements and its impact in practice, and ensure that they would apply in scenarios that should not differ from paragraph 8 (c) iv. of the terms of reference (OECD, 2017b).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Germany's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[17] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

16. Germany has legal mechanisms in place to identify MNE groups whose Ultimate Parent Entity is resident in Germany and to enforce compliance with the minimum standard. Every taxpayer must confirm in its tax return if it is the Ultimate Parent Entity of an MNE group required to file a CbC report, a surrogate entity which will file a CbC report in Germany, or a Constituent Entity in an MNE group with a foreign Ultimate Parent Entity (including details of the identity and tax residence of the Ultimate Parent Entity. In cases of non-compliance with CbC Reporting, the German Fiscal Code includes provisions to impose a penalty of up to EUR 10 000, as well as measures to enforce compliance.

17. As regards specific processes in place that would allow to take appropriate measures in case Germany is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report, Germany indicates that the above mentioned penalties would be applicable. This aspect will be further monitored once the actual exchanges of CbC reports will commence.

18. No inconsistencies have been identified with the terms of reference on effective implementation.

Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Germany has a domestic framework to impose and enforce CbC requirements on MNE Groups whose UPE is resident for tax purposes in Germany. Germany meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of

apparent inconsistencies with the terms of reference with respect to the limitation on local filing (paragraph 8 (c) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

20. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference.

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

21. Germany has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 3 November 2011 and in force on 1 December 2015), and (ii) around 90 bilateral tax conventions which allow Automatic Exchange of Information.[18] As an EU Member State, Germany is also committed to the exchange of CbC Reports within the European Union under the EU Council Directive (2016/881/EU).

22. Germany signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 15 March 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. As of 12 January 2018, Germany has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU).

23. Germany has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[19] Against the backdrop of the still evolving exchange of information framework, at this point in time Germany meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

24. Against the backdrop of the still evolving exchange of information framework, at this point in time Germany meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

25. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

26. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Germany has provided information that the obligation to comply with the appropriate use of CbC reports is enshrined in writing in its law and this binds all tax administration employees. Germany has further confirmed that, within the organisational structure of the German tax administration and the German legal system, measures are in place to ensure the appropriate use of CbC Reporting information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a).

27. There are no concerns to be reported for Germany in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

28. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Germany. Germany thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Limitation on local filing	For the purpose of the peer review of the jurisdictions of the Inclusive Framework for BEPS, it is recommended that Germany assess its local filing requirements and its impact in practice, and ensure that they would apply in scenarios that should not differ from paragraph 8 (c) iv. of the terms of reference (OECD, 2017b).
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (c) iv. a) b) and c) of the terms of reference (OECD, 2017b).

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[4] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] Primary law consists of Paragraph 3 of section 90 Fiscal Code and Section 138a and Section 31 Einführungsgesetz zur Abgabenordnung sowie EU-Amtshilfegesetz (EUAHIG) und Finanzverwaltungsgesetz Gesetz zur Umsetzung der Änderungen der EU-Amtshilferichtlinie und von weiteren Maßnahmen gegen Gewinnkürzungen und –verlagerungen (BGBL 2016 I Seite 3000).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] It is noted with respect to the definition of an "Ultimate Parent Entity" under German law that the reference included in the terms of reference to "*an entity that does not prepare Consolidated Financial Statements, but would be required to do so if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence*" ("deemed listing provision") is not expressly reflected in the German legislation. However, Germany explained that, under the accounting standards applicable in Germany, the requirement to prepare Consolidated Financial Statements applies also to entities which are non-listed, if certain conditions are met (control, ownership etc.). This requirement also may apply to partnerships and other fiscally transparent entities under certain conditions. In addition, Germany confirms that the definition of an "Ultimate Parent Entity" is not to be read as meaning that an "Ultimate Parent Entity" which voluntarily prepares Consolidated Financial Statements would be subject to CbC requirements.

[9] It is also noted that under the terms of reference, a permanent establishment should only be separately disclosed as a Constituent Entity in a CbC Report if a separate financial statement for the permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes is prepared. However, this not expressly reflected in the German legislation section 138a (2) 2 of the Fiscal Code which requires all permanent establishments to be separately disclosed as Constituent Entities. However, Germany explained that, under the accounting standards applicable in Germany, a permanent establishment would generally not be required to prepare a separate financial statement for financial reporting purposes. It is only if a permanent establishment would exceptionally appear for tax reporting or internal management control purposes as a distinct legal entity that the permanent establishment would have to be shown in the CbC report and would be treated as a Constituent Entity.

[10] It is noted that in limited circumstances where a CbC Report where a German resident entity had reason to believe a CbC Report would be filed but this proved not to be the case, the deadline is extended to one month after the non-submission became known.

[11] The administrative order contains a link to the OECD website relating to CbC Reporting: www.bzst.de/DE/Steuern_International/CbCR/cbcr_node.html (accessed 20 April 2018).

[12] This also ensures that MNE Groups are allowed to MNE group to use different sources of data in completing its CbC report, including consolidation reporting packages, separate entity statutory reporting statements, regulatory financial statements or internal management accounts.

[13] As the administrative order mentioned above refers to the Action 13 Report (OECD, 2015), it is noted that interpretative guidance has been issued by the OECD in April and in July 2017 (e.g. it clarifies the definition of "Revenue – Related Party" and explains that "for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report (OECD, 2015), should be interpreted as the Constituent Entities listed in Table 2 of the CbC report"). In order to ensure consistency with OECD guidance, Germany refers to the OECD website on the website of the Federal Taxation Office www.bzst.de/DE/Steuern_International/CbCR/cbcr_node.html (accessed 20 April 2018). Therefore, Germany indicates that the reference to interpretative guidance is always very up-to-date.

[14] It is noted that under paragraph (4) of section 138a, if a "*domestic constituent entity submits the CbC report, all of the other constituent entities shall be relieved of this requirement. If a constituent entity is unable to submit the CbC report by the deadline [for filing a CbC report], in particular because it cannot procure or produce the report, then it shall notify the Federal Central Tax Office accordingly by the deadline [for filing the CbC report] while at the same time providing all of the information (…) that it has at its disposal or that it can procure*".

[15] Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

[16] Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

[17] See Section 138a (4) of the German Fiscal Code.

[18] Germany has not provided a list of these bilateral conventions.

[19] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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Greece

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Greece's implementation of the Action 13 minimum standard meets all applicable terms of reference in relation to its domestic legal and administrative framework. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Greece has rules (primary and secondary laws) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity (UPE) of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Greece. The first filing obligation for a CbC report in Greece commences in respect of fiscal years beginning on 1 January 2016 or later. Greece meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Greece is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has submitted a full set of notifications under Section 8 of the same agreement and intends to have the CbC MCAA in effect with all other jurisdictions that provide notifications under Section 8(1)(e) of the same agreement. It is noted that Greece has signed a bilateral Competent Authority Agreement (CAA) with the United States which is currently in the process of being ratified. As of 12 January 2018, Greece has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Greece has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Greece meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Greece. Greece indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it

to answer "yes" to the additional questions on appropriate use.[3] Greece meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Greece has primary law (hereafter the "Act") and secondary law (the "regulations") in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5] Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Greece has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parents Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to Greece's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Greece commences in respect of reporting fiscal years beginning on or after 1 January 2016.[8] The CbC report must be filed within 12 months of the last day of the reporting fiscal year of the MNE Group.[9]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference (OECD, 2017b)).

11. Greece has introduced local filing requirements in respect of reporting fiscal years beginning on or after 1 January 2016.[10] No inconsistencies were identified with respect to the limitation on local filing obligation.[11]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

12. Greece's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[12] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

13. Greece has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other Constituent Entities of the MNE Group resident in Greece.[13] There are also penalties in relation to the CbC Reporting obligation: (i) penalties for failure to file and (ii) penalties for late or inaccurate filing.[14] Greece also indicates that the Governor of the Independent Authority for Public Revenue (IAPR) is competent for issuing the acts of penalties and that the specific provisions relating to tax audit, penalties and recovery of the Law 4174/2013 (A'170) would be applied accordingly to CbC Reporting.

14. There are no specific processes in place that would allow to take appropriate measures in case Greece is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information

reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Greece has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Greece. Greece meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

16. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

17. Greece has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 21 February 2012, in force on 1 September 2013 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements (DTAs) and one Tax Information and Exchange Agreement (TIEA) which allow Automatic Exchange of Information.[15]

18. Greece signed the CbC MCAA on 27 January 2016 and has submitted a full set of the notifications under Section 8 of the same agreement. It intends to have the CbC MCAA in effect with all other jurisdictions that provide notifications under Section 8(1)(e) of the same agreement. It is noted that Greece has signed a bilateral CAA with the United States on 27 September 2017 which is currently in the process of being ratified. As of 12 January 2018, Greece has 53 bilateral relationships activated under the CbC MCAA[16] or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Greece has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Greece meets the terms of reference.

Conclusion

19. Against the backdrop of the still evolving exchange of information framework, at this point in time, Greece meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

20. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

21. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Greece indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

22. There are no concerns to be reported for Greece in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Greece. Greece meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law (the "Act") consists of CbC Reporting introduced in Greece by Law No 4490/2017, which was made public in the official gazette No A 150/11.10.2017 which can be accessed at: www.et.gr/index.php/anazitisi-fek (accessed 20 April 2018). See Article 1-8 and 15 in relation to CbC implementation. The secondary law (the "regulations") explain the procedure of implementation of submission and exchange of CbC Reports in accordance with the provisions of the Act.

[6] Technical guidance as well as general information is uploaded on the Independent Authority for Public Revenue (IAPR) in Greece. The text is available in Greek and can be accessed: www.aade.gr/epicheireseis/themata-diethnoys-dioiketikes-synergasias/country-country-reportingcbcdac4 (accessed 20 April 2018).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] See Article 15 of the Act.

[9] See Article 6 of the Act.

[10] See Article 15 of the Act.

[11] See Article 3 of the Act: Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in Greece and one or more of the conditions set out in point b of paragraph 2 apply, the MNE Group may designate one of such Constituent Entities to file the CbC Report, conforming to the requirements of the fifth article, with respect to any Reporting Fiscal Year within the deadline specified in the sixth article and to notify the Greek Tax Administration that the filing is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in Greece.

[12] See paragraph 3 of Article 3 of the Act.

[13] See Article 4 of the Act.

[14] See paragraph 4 of Article 3 of the Act. In case of failure to file the CbC report, a penalty of EUR 20 000 is imposed, while in case of late or inaccurate filing, a penalty of EUR 10 000 is imposed.

[15] Greece indicated it has 57 double tax treaties in effect which permit Automatic Exchange of Information with Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Georgia, Hungary, Iceland, India, Ireland, Israel, Italy, Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malta, Mexico, Moldova, Morocco, Netherlands, Norway, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia, Slovak Republic, Slovenia, Spain, South Africa, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, United States) and one (1) TIEA (Greece-Guernsey).

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[16] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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Guernsey

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Guernsey's implementation of the Action 13 minimum standard meets all applicable terms of reference in relation to its domestic legal and administrative framework. The report, therefore, contains no recommendation.

Part A: Domestic legal and administrative framework

2. Guernsey has rules (primary and secondary laws as well as guidance) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Guernsey. The first filing obligation for a CbC report in Guernsey commences in respect of reporting fiscal years beginning on or after 1 January 2016. Guernsey meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Guernsey is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with a large number of signatories of this agreement which provide notifications. Guernsey has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). It is noted that Guernsey has signed four bilateral Competent Authority Agreements (CAAs) with the United States, the Isle of Man, United Kingdom and Jersey. Guernsey also indicates that two additional jurisdictions have expressed interest to sign a bilateral CAA with Guernsey. As of 12 January 2018, Guernsey has 50 bilateral relationships activated under the CbC MCAA and exchanges under bilateral CAAs. Against the backdrop of the still evolving exchange of information framework, at this point in time Guernsey meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review[2] process.

Part C: Appropriate use

4. There are no concerns to be reported for Guernsey. Guernsey indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these

measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Guernsey meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Guernsey has primary law (the "ITL") and secondary law (the "CbCR Regulations") in place which implements the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5] Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Guernsey has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[8]

8. No inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Guernsey commences in respect of reporting fiscal years beginning on or after 1 January 2016.[9] The CbC report must be filed by no later than 12 months after the last day of the reporting fiscal year of the MNE Group.[10]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Guernsey has introduced local filing requirements in respect of accounting periods beginning on or after 1 January 2016.[11] No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

12. Guernsey's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[12] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Guernsey has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to any Constituent Entity resident for tax purposes in Guernsey.[13] There are also penalties in relation to the filing and notification for filing of a CbC report:[14] (i) penalties for failure to file, and (ii) penalties for late filing.

14. Guernsey indicates that in addition to the overriding obligation for Reporting Entities to submit CbC reports under Regulation 4 of the CbCR Regulations, it has enforcement powers in place to compel the production of a CbC report under Regulation 5.[15]

15. There are no specific processes in place that would allow the Director of Income Tax to take appropriate measures in case he is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. However, Guernsey notes that under Regulation 5, the Director could use, for example, Section 75B of the ITL (together with all other relevant provisions of the information gathering powers contained in Part VIA of the ITL) in order to compel production of information to corroborate information in the submitted report. This process is, therefore, the same process that the Director utilises when administering the Income Tax Law in respect of the domestic tax base. Having compelled a Reporting Entity to provide the required information, if it was established that incorrect/incomplete information had been provided, the CbCR Regulations then enable the Director to consider what appropriate action he may wish to take to impose sanctions for any such failures. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Guernsey has a domestic legal and administrative framework to impose and enforce CbC requirements on the UPE of an MNE Group that is resident for tax purposes in Guernsey. Guernsey meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Guernsey has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) (the "Convention"), as amended by the 2010 Protocol, (in force on 1 August 2014 and in effect for 2016)[16] and (ii) multiple bilateral Double Tax Agreements (DTAs)[17] and certain amended Tax Information Exchange Agreements (TIEAs), which allow Automatic Exchange of Information in the field of taxation.

19. Guernsey signed the CbC MCAA on 21 October 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 13 June 2017. It intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement and has taken steps to have Qualifying Competent Authority Agreements (QCAAs) in effect with jurisdictions

of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[18] Guernsey also indicates that additional bilateral CAAs are under negotiation and Guernsey has a policy of entering into such agreements with all interested parties. It is noted that Guernsey has signed four bilateral CAAs with the United States, the Isle of Man, United Kingdom and Jersey. The intention is to have an additional bilateral CAA with Bermuda which will cover the first fiscal year beginning on or after 1 January 2016. Guernsey also indicates that two additional jurisdictions have expressed interest to sign a bilateral CAA with Guernsey. As of 12 January 2018, Guernsey has 50 bilateral relationships activated under the CbC MCAA[19] and exchanges under bilateral CAAs. Against the backdrop of the still evolving exchange of information framework, at this point in time Guernsey meets the terms of reference.

Conclusion

20. Against the backdrop of the still evolving exchange of information framework, at this point in time Guernsey meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

22. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Guernsey indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

23. There are no concerns to be reported for Guernsey in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Guernsey. Guernsey thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law for CbCR consists of Sections 75CC and 203A of the Income Tax (Guernsey) Law, 1975 (The "ITL") : www.guernseylegalresources.gg/article/98265/Income-Tax-Guernsey-Law-1975-Consolidated-text (accessed 20 April 2018).

Secondary law consists of the Income Tax (Approved International Agreements) (Implementation) (Country by Country Reporting) Regulations, 2016 ("The CbCR Regulations"): www.gov.gg/CHttpHandler.ashx?id=105472&p=0 (accessed 20 April 2018).

[6] Guernsey indicates that Regulation 10 of the CbCR Regulations has provision for the Director to issue guidance notes for practical guidance in respect of these Regulations and that the content of such guidance notes would be considered to be 'binding': www.gov.gg/GuernsyGuidance (accessed 20 April 2018).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] See Regulation 1 and Schedule 1 of the CbCR Regulations.

[9] See Regulation 4(1) of the CbCR Regulations.

[10] See Regulation 4(3) of the CbCR Regulations.

[11] See paragraph 2 of Schedule 1 and Regulation 4(3) of the CbCR Regulations.

[12] See paragraph 3 of Schedule 1 of the CbCR Regulations.

[13] See Regulation 4(1) and paragraph 2 of Schedule 1 of the CbCR Regulations. Guernsey indicates that a reporting entity will be required to register with the Guernsey reporting portal (the Information Gateway Online Reporter "IGOR") and a similar suite of administrative tools that is currently being used for all FATCA and CRS Reporting, will be developed for CbC Reporting to ensure that all CbC reports are filed by their filing deadline.

[14] Under Regulation 4(4) - Reporting Entities that fail to comply with the CbC filing requirements are guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one year and to a fine not exceeding twice level 5 of the uniform scale, or both.

Regulation 6 provides for civil enforcement sanction for failing to make timely returns – the civil penalties being applied in accordance with section 193 of the ITL, which equates to an initial penalty of up to GBP 300 (pounds) and continuing daily penalties of up to GBP 50 for each subsequent day of non-compliance. The result of this, being that, penalties of GBP 18 500 would accrue per annum in the case of continuing non-compliance.

Regulation 7 provides a criminal sanction where a Reporting Entity for failing to comply with the CbC Reporting Obligations, including fraudulent filings cross referencing to section 201 of the ITL (where the provisions include, on summary conviction imprisonment for a term not exceeding two years and to a fine not exceeding twice level 5 of the uniform scale, or both; and on indictment, imprisonment for a term not exceeding five years and to a fine not exceeding four times level 5 of the uniform scale, or both).

[15] Regulation 5 provides that Section 75A of the ITL ("power to call for documents, etc., from taxpayer") and 75B of the same ("power to call for documents, etc., relating to taxpayer") applies to these Regulations, together with all other relevant elements of the Information Gathering Powers contained in Part VIA of the ITL. The Directors powers under 75B are used routinely to obtain information from financial institutions, most frequently for EOIR purposes, however, will be used as necessary to ensure any non-compliant person provided required information under the FATCA, CRS and CbCR regimes.

[16] Guernsey, as a British Crown Dependency, is party to the Convention on Mutual Administrative Assistance in Tax Matters (the "Convention") by way of the UK's territorial extension. It is considered, therefore, that Guernsey's participation in the Multilateral Convention does not extend to permitting exchange of information as between Guernsey and the United Kingdom or the British Crown Dependencies (the Isle of Man and Jersey) or the Overseas Territories (including Bermuda).

[17] See https://gov.gg/tiea (accessed 20 April 2018) for a list of Guernsey's TIEAs and https://gov.gg/dta (accessed 20 April 2018) for a list of DTAs. Guernsey indicated that under the Convention, exchange is not possible with the other British Crown Dependencies, Overseas Territories and the UK itself. See below.

[18] Guernsey indicates that it participates in the Convention and therefore the Multilateral Competent Authority Agreement, by virtue of Guernsey's government having requested the United Kingdom to extend to Guernsey its participation in the Convention. It is considered, therefore, that Guernsey's participation in the Multilateral Convention does not extend to permitting exchange of information as between Guernsey and the United Kingdom or the British Crown Dependencies (the Isle of Man and Jersey) or the Overseas Territories (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Montserrat and Turks and Caicos Islands). Exchange of information between Guernsey and these jurisdictions will be effected by way of other bilateral international agreements/competent authority agreements. It is for that reason that, although it is Guernsey's intention to exchange CbC Reports with all currently committed jurisdictions and those that will commit in the future it will be necessary for Guernsey to update the list of exchange partners in accordance with section 8(1)(e)(i) of the MCAA. For the purpose of the CRS, Guernsey has been amending/negotiating DTAs and TIEAs that allow for Automatic Exchange of Information which will be used to facilitate exchange with some of these jurisdictions as and when bilateral QCAAs are entered into. In order to meet the FATCA, UK equivalent of FATCA and CRS reporting requirements (which are not covered by the MAAC and MCAA) Guernsey indicates that it has the following bilateral CAAs which sit under an amended TIEA or DTA which permit AEOI: (i) UK-Guernsey Agreement to improve international tax compliance – under an amended TIEA, (ii) Agreement Between the Government of the United States of America and the Government of the States of Guernsey to Improve International Tax Compliance and to Implement FATCA– under an amended TIEA, (iii) Multilateral Competent Authority Agreement signed 29 October 2014 (permitting CRS)– under the MAAC and (iv) CAAs for AEOI with

British Virgin Islands (under amended TIEA); Cayman Islands (under amended TIEA); Isle of Man (under DTA); Jersey (under DTA); United Kingdom (under amended TIEA); Gibraltar (under amended TIEA); Switzerland (under the MAAC); with Hong Kong (China) (under DTA) and Turks and Caicos Islands (under amended TIEA).

[19] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA, or the reviewed jurisdiction may not have listed all signatories of the CbC MCAA. Guernsey indicates that it will further update the list of jurisdictions it intends to exchange CbC reports with, before the first exchanges of information in June 2018.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

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Haiti

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Haiti does not yet have a legal and administrative framework in place to implement CbC Reporting. CbC requirements should first apply for taxable years commencing on or after 1 January 2018. It is recommended that Haiti finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process, and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Haiti does not have legislation yet, but the project is under study. A commission for the BEPS project has been appointed and reflections have begun. Haiti indicates that CbC requirements should apply for taxable years commencing on or after 1 January 2018. It is recommended that Haiti finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

Haiti is a not signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention"), but intends to sign it. It is a signatory to the CbC MCAA but has not provided its notifications under Section 8 of this agreement. As of 12 January 2018, Haiti does not yet have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that Haiti take steps to sign the Convention and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Haiti will not be exchanging CbC reports in 2018.

Part C: Appropriate use

3. In respect of the terms of reference under review,[3] Haiti does not yet have measures in place relating to appropriate use. It is recommended that Haiti take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Haiti will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

4. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

5. Haiti does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

6. Haiti does not have legislation yet, but the project is under study. A commission for the BEPS project has been appointed and reflections have begun. Haiti indicates that CbC requirements should apply for taxable years commencing on or after 1 January 2018. It is recommended that Haiti finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

7. Haiti indicates that the implementation steps are as follows: the procedure for voting is as follows: the Ministry of Finance, once the document has been validated by its legal department, submits it to the Prime Minister for approval in the Council of Ministers. Finally, the Prime Minister's Office forwards the document to Parliament. If the Parliament wishes to introduce amendments in the text, it appeals to the Minister who is accompanied by his technicians to work with the Parliament. Once the conditions are met, Haiti will be ready to join the CbC framework.

8. Haiti reports that it does not have companies with a turnover equal to or greater than EUR 750 million.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), Haiti does not yet have a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Haiti. It is recommended that Haiti finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

10. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

11. Haiti is not a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention"). It has however indicated that it wishes to become a signatory of the Convention.

12. Haiti is a signatory to the CbC MCAA (signed on 22 June 2017) but has not provided its notifications under Section 8 of this agreement. As of 12 January 2018, Haiti does not yet have bilateral relationships activated under the CbC MCAA.

13. It is recommended that Haiti take steps to sign the Convention and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Haiti will not be exchanging CbC reports in 2018.

Conclusion

14. In respect of the terms of reference under review, it is recommended that Haiti take steps to sign the Convention and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Haiti will not be exchanging CbC reports in 2018.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. Haiti does not yet have measures in place relating to appropriate use. It is recommended that Haiti take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Haiti will not be exchanging CbC reports in 2018.

Conclusion

17. It is recommended that Haiti take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Haiti will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Haiti finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Haiti take steps to sign the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Haiti take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Hong Kong (China)

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. It is recommended that Hong Kong finalise its domestic legal and administrative framework to impose and enforce CbC requirements, as well as its exchange of information framework, as soon as possible.

Part A: Domestic legal and administrative framework

2. Hong Kong is in the process of putting in place a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Hong Kong. It intends to implement CbC requirements for fiscal years as from 1 January 2018, with a "parent surrogate filing" arrangement which allows the Ultimate Parent Entities of MNE Groups resident in Hong Kong to voluntarily file CbC reports for fiscal years from 1 January 2016 to 31 December 2017 in Hong Kong for exchange with other jurisdictions. Hong Kong indicates that the amendment bill seeking to introduce the legal framework of CbC Reporting was published in the Gazette on 29 December 2017 and is being scrutinized by the Legislative Council. It is recommended that Hong Kong finalise its domestic legal and administrative framework[1] to impose and enforce CbC requirements as soon as possible.

Part B: Exchange of information framework

3. Hong Kong has a domestic legal basis for the exchange of information in place. Hong Kong has a number of Double Taxation Agreements ("DTAs") and TIEAs that allow Automatic Exchange of Information. In order to conduct Automatic Exchange of Information with more jurisdictions on a multilateral basis, Hong Kong has obtained an in-principle approval from China to extend the application of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") to Hong Kong. The amendment bill seeking to introduce the legal framework for such extension was passed by the Legislative Council on 24 January 2018. The Convention and the CbC MCAA will come into force in Hong Kong after the enactment of relevant subsidiary legislation and the completion of relevant procedures with the Depositary of the Convention, tentatively in the second half of 2018. Since the Convention is at present not applicable in Hong Kong, bilateral Competent Authority Agreements (CAAs) need to be concluded for exchange of CbC reports received under the voluntary parent surrogate filing arrangement. As of 12 January 2018, Hong Kong has four bilateral CAAs in place for exchanges under DTAs and will continue discussions with other jurisdictions seeking to conclude as many such CAAs as practicable. With respect to the terms of reference relating to the exchange of

information framework aspects under review for this first annual peer review process,[2] Hong Kong is in the process of developing a complete exchange of information framework that allows Automatic Exchange of Information. It is recommended that Hong Kong take steps to complete such a framework and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. In 2018, Hong Kong will be exchanging CbC reports received under voluntary parent surrogate filing under the bilateral CAAs mentioned above.

Part C: Appropriate use

4. There are no concerns to be reported for Hong Kong. Hong Kong indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Hong Kong meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Hong Kong is in the process of finalising its legislation in order to implement the BEPS Action 13 minimum standard. Hong Kong indicates that the amendment bill seeking to introduce the legal framework of CbC Reporting was published in the Gazette on 29 December 2017 and is being scrutinized by the Legislative Council.

(a) Parent entity filing obligation

Summary of terms of reference:[5] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Hong Kong is in the process of finalising its legal and administrative framework to implement CbC Reporting. Hong Kong indicates that it intends to introduce CbC filing requirements for MNE Groups for accounting periods commending from 1 January 2018, with a "parent surrogate filing" arrangement which allows the Ultimate Parent Entities of MNE Groups resident in Hong Kong to voluntarily file CbC reports for fiscal years from 1 January 2016 to 31 December 2017 in Hong Kong for exchange with other jurisdictions.

Conclusion

8. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Hong Kong is in the process of putting in place a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Hong Kong. It is recommended that Hong Kong finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.

Part B: The exchange of information framework

9. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

10. Hong Kong has a legal basis to automatically exchange information. Hong Kong has multiple DTAs and TIEAs in place with a number of jurisdictions, which allow Automatic Exchange of Information.[6] In order to conduct Automatic Exchange of Information with more jurisdictions on a multilateral basis, Hong Kong has obtained an in-principle approval from China to extend the application of the Convention to Hong Kong. The amendment bill seeking to introduce the legal framework for such extension was passed by the Legislative Council on 24 January 2018. The Convention and the CbC MCAA will come into force in Hong Kong after the enactment of relevant subsidiary legislation and the completion of relevant procedures with the Depositary of the Convention, tentatively in the second half of 2018.

11. Since the Convention is at present not applicable in Hong Kong, bilateral CAAs need to be concluded for exchange of CbC reports received under the voluntary parent surrogate filing arrangement. As of 12 January 2018, Hong Kong has four bilateral CAAs in place for exchanges under DTAs and will continue discussions with other jurisdictions seeking to conclude as many such CAAs as practicable. In 2018, Hong Kong will be exchanging CbC reports received under voluntary parent surrogate filing under the bilateral CAAs mentioned above.

Conclusion

12. In respect of paragraph 9 (a) of the terms of reference (OECD, 2017b), Hong Kong is in the process of developing a complete exchange of information framework that allows Automatic Exchange of Information. It is recommended that Hong Kong take steps to complete such a framework and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. In 2018, Hong Kong will be exchanging CbC reports received under voluntary parent surrogate filing under the bilateral CAAs mentioned above.

Part C: Appropriate use

13. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

14. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Hong Kong indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

15. There are no concerns to be reported for Hong Kong in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

16. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Hong Kong. Hong Kong thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Hong Kong finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.
Part B	Exchange of information framework	It is recommended that Hong Kong complete its exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[6] Hong Kong indicates that currently, Automatic Exchange of Information can be undertaken under the DTAs between Hong Kong and Austria, Belgium, Canada, China (People's Republic of), France, Guernsey, Hungary, Indonesia, Ireland, Italy, Japan, Jersey, Korea, Mexico, Netherlands, New Zealand, Portugal, Qatar, Romania, Russia, South Africa and United Kingdom. Hong Kong has committed to AEOI, and is negotiating with other jurisdictions to refine the relevant DTAs and TIEAs to pave the way for the purposes of AEOI. It is expected that Hong Kong will be able to conduct AEOI and automatic exchange of CbC reports with more jurisdictions in the near future.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Hungary

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Hungary's implementation of the Action 13 minimum standard meets all applicable terms of reference except that it raises one interpretational issue in relation to its domestic and administrative frameworks. It is also recommended that Hungary take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. The report therefore contains two recommendations to address these issues.

Part A: Domestic legal and administrative framework

2. Hungary has rules (primary law) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Hungary. The first filing obligation for a CbC report in Hungary commences in respect of reporting fiscal years beginning on or after 1 January 2016. Hungary meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the annual consolidated revenue threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than Hungary[2] which may deviate from the guidance issued by the OECD. Although such deviation may be unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 standard.

Part B: Exchange of information framework

3. Hungary is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA. Hungary has provided its notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. It is noted that Hungary is awaiting authorisation from its prime minister to enter into negotiation for a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Hungary has 51 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Hungary has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Hungary meets the

terms of reference relating to the exchange of information framework aspects under review for this first annual peer review[3] process.

Part C: Appropriate use

4. Hungary does not yet have measures in place to ensure the appropriate use of information in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a).[4] It is noted however that Hungary has legal measures to ensure the appropriate use of CbC information. It is recommended that Hungary take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Hungary has primary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5] No guidance has been published.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Hungary has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[7]

8. With respect to the CbC filing requirements, Hungarian legislation states in its definition of "Excluded MNE Group" that the CbC filing requirement is not applicable if the consolidated group revenue is less than EUR 750 000 000 or the HUF (Hungarian forint) equivalent thereof calculated based on the average currency exchange rate published by the Hungarian National Bank for January 2015.[8] While these provisions would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Hungary, they may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Hungary tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[9] It is thus recommended that Hungary clarify that this rule would apply in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Hungary.

9. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Hungary commences in respect of reporting fiscal years beginning on or after 1 January 2016.[10] The CbC report must be filed within 12 months of the last day of the reporting fiscal year of the MNE Group.[11]

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. Hungary has introduced local filing requirements in respect of income years beginning on or after 1 January 2017.[12] No inconsistencies were identified with respect to the limitation on local filing obligation.[13]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Hungary's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[14] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. Hungary has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other Constituent Entities of the MNE Group resident in Hungary.[15] There are also penalties in relation to the CbC Reporting obligation and notification: (i) penalties for failure to file, (ii) penalties for defective filing and (iii) penalties for deficient or inaccurate filing.[16] Hungary also indicates that the Hungarian Tax Authority will apply risk assessment, audit process and, if need be, default payment penalties in order to enforce compliance with filing obligations.

15. There are no specific process in place to take appropriate measures in case Hungary is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. However, Hungary indicates that the Tax Authority has the right and necessary powers to examine, through an audit, whether the Reporting Entity's obligation under CBC reporting has been fulfilled and that the suspicion that the obligations might be breached could also be based on the information received from another jurisdiction. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Hungary has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Hungary. Hungary meets all the terms of reference relating to the domestic legal and administrative framework with the exception of the annual consolidated group revenue threshold (paragraph 8 (a) ii. of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Hungary has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 12 November 2013, in force on 1 March 2015 and in effect for 2016) which allows Automatic Exchange of Information in the field of taxation. Hungary has also implemented EU Council Directive 2016/881/2016 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

19. Hungary signed the CbC MCAA on 1 December 2016 and has submitted its notifications under section 8 of the CbC MCAA on 20 July 2017. It intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. It is noted that Hungary is currently awaiting authorisation from its prime minister to enter into negotiation for a bilateral CAA with the United States. As of 12 January 2018, Hungary has 51 bilateral relationships activated under the CbC MCAA[17] or exchanges under the EU Council Directive (2016/881/EU). Hungary has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Hungary meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

20. Against the backdrop of the still evolving exchange of information framework, at this point in time, Hungary meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

22. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in

order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Hungary indicates that measures are not yet in place to ensure the appropriate use of information in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It had however provided details on the next steps which are being planned to put appropriate measures in place. It is also noted that Hungary has legal measures to ensure the appropriate use of CbC information. It is recommended that Hungary take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

23. In respect of paragraph 12 (a), it is recommended that Hungary take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation – annual consolidated group revenue threshold	It is recommended that Hungary clarify that the annual consolidated group revenue threshold calculation rule applies without prejudice of the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Hungary.
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that Hungary take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017b).

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of Chapter V/D for the Reporting and Automatic Exchange of Information Relating to Country-by-Country Reports established by Act XL of 2017 amending Act XXXVII of 2013 on the rules of International Administrative Cooperation Related to Taxes and other Public Duties, implemented in May 2017 (hereafter referred to as the "Act").

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] See Section 43/N of the Act.

[8] See Article 7 of Section 4(1) of the Act.

[9] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of "*Guidance on the Implementation of Country-by-Country Reporting"* (OECD, 2018).

[10] See Section 45/F (1) of the Act.

[11] See Section 45/F (1) of the Act.

[12] See Section 45/F (2) of the Act.

[13] See Section 43/N (4) of the Act: If multiple constituent entities of an MNE Group have tax residence in the European Union and one or more of the conditions specified in Subsection (2)(b) are fulfilled, and the MNE Group appointed one of its constituent entities with tax residence in Hungary to fulfill the country-by-country reporting obligation for the reporting fiscal year for all constituent entities of the MNE Group with tax residence in the European Union, then the appointed constituent entity shall submit a country-by-country report to the state tax authority with the content specified in Subsection (9) and Annex 3 of the Act.

[14] See Section 43/N (6) of the Act.

[15] See Section 43/O of the Act.

[16] See Section 43/S (1) of the Act. Hungary indicates the state tax authority in Hungary may impose a default penalty of up to HUF 20 million (approximately EUR 64 500) on the person subject to the notification or reporting obligation. However, no penalty should be applied if the taxpayer can prove that the taxpayer exercised its rights according to general legal expectations.

[17] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

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Iceland

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Iceland's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one definitional issue, one interpretational issue and two substantive issues in relation to its domestic legal and administrative framework. It is also recommended that Iceland take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Part A: Domestic legal and administrative framework

2. Iceland has rules (primary and secondary laws as well as guidance) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Iceland. The first filing obligation for a CbC report in Iceland commences in respect of reporting fiscal years beginning on or after 1 January 2017. Iceland meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the definitions of an "Ultimate Parent Entity", a "Constituent Entity" and an "MNE Group" which appear to be inconsistent or incomplete,[2]
- the annual consolidated revenue threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than Iceland[3] which may deviate from the guidance issued by the OECD. Although such deviation may be unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 standard,
- the local filing mechanism which may be triggered in circumstances that are wider than those set out in the minimum standard,[4] and
- the absence of deactivation of local filing where there has been surrogate filing in another jurisdiction.[5]

Part B: Exchange of information framework

3. Iceland is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2017, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under the same agreement. Iceland has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Iceland has 50 bilateral relationships activated under the CbC MCAA or exchanges under the bilateral CAA. Iceland has taken steps to have Qualifying Competent Authority agreements in effect

with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Iceland meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.[6]

Part C: Appropriate use

4. Iceland does not yet have measures in place to ensure the appropriate use of information[7] in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It is recommended that Iceland take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Iceland will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Iceland has primary law and secondary law (hereafter referred to as the "Regulations") in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligation.[8] Guidance has also been published.[9]

(a) Parent entity filing obligation

Summary of terms of reference:[10] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Iceland has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[11]

8. There are however a number of areas where the parent entity filing obligation appears to be inconsistent with the terms of reference:

(i) Under Article 2 of the Regulations, an "Ultimate Parent Entity" means a Constituent Entity that owns either directly or indirectly a sufficient interest in one or more other Constituent Entities of such a MNE Group. Under the terms of reference, the Ultimate Parent Entity of an MNE Group refers to an entity that "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". Iceland's requirements appear to be inconsistent or incomplete with the definition of an Ultimate Parent Entity in paragraph 18 i. and ii. of the terms of reference (OECD, 2017b) in two respects:

- The definition in Iceland's rules does not include a condition that the Ultimate Parent Entity is required to prepare Consolidated Financial Statements or would be so required if its equity interests were traded on a public securities exchange in Iceland ("deemed listing provision").
- The definition in Iceland's rules does not make it clear that an entity cannot be an Ultimate Parent Entity if another Constituent Entity holds an interest in that entity (i.e. the ultimate holding company must be the top level holding company in the MNE group).

It appears that the definition of an "Ultimate Parent Entity" in Iceland is wider than the definition of an "Ultimate Parent Entity" as defined in the terms of reference, and could notably apply to one or several entities in Iceland which would themselves be included in the Financial Consolidated Statement of another entity located outside Iceland which would be considered as an "Ultimate Parent Entity" as per the terms of reference. It is also unclear whether an MNE Group would include a collection of enterprises the tax residence for which is in different jurisdictions.[12] It is recommended that Iceland amend or otherwise clarify that the definition of an Ultimate Parent Entity in the CbC Reporting Rules is consistent with the terms of reference.

(ii) There also appears to be three inconsistencies between the Constituent Entities that are to be included in an MNE Group's CbC report under paragraph 8 (a) iii. of the terms of reference (OECD, 2017b), and those covered by the Icelandic legislation:

- Under the terms of reference, Constituent Entities means any separate business unit of the 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 the MNE Group were traded on a public securities exchange. This requirement does not appear to be included in Iceland's Regulations.
- Under the terms of reference, Constituent Entities include any business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size and materiality grounds. This requirement does not appear to be included in Iceland's Regulations.
- Under the terms of reference, a permanent establishment should only be separately disclosed as a Constituent Entity in a CbC Report if a separate financial statement for the permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes is prepared. However, Article 2 of the Regulations appears to require all permanent establishments to be separately disclosed as Constituent Entities.

9. It is thus recommended that Iceland amend or otherwise clarify the definitions of an "Ultimate Parent Entity", a "Constituent Entity" and of an "MNE Group" in a manner consistent with the terms of reference.[13]

10. With respect to the CbC filing requirements, Article 1 of the Regulations states that the CbC filing requirement is not applicable if the consolidated group revenue is less than ISK 100 billion (EUR 750 000 000) in the immediately preceding fiscal year.[14] This is also reflected in Article 92a of the Income Tax Act which states that "*the obligation to*

file a Country-by-Country report is not valid is the all-over income of the MNE Group is less than ISK 100 billion." While these provisions would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Iceland, they may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is an Iceland tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[15] It is thus recommended that Iceland clarify that this rule would apply in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Iceland.[16]

11. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

12. The first filing obligation for a CbC report in Iceland commences in respect of fiscal years beginning on or after 1 January 2017.[17] The CbC report must be filed no later than 12 months after the end of each reporting fiscal year of the MNE Group.[18]

13. Article 6 of the Regulations specifies that the CbC report will be based on the standard template set out at Annex III of the OECD's *Transfer Pricing Documentation and Country-by-Country Reporting* (Action 13 Report, OECD, 2015). This explains that "'Revenues – Related Party' should be read as referring to revenues arising from associated enterprises. However, interpretative guidance issued by the OECD in April 2017,[19] explains that "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report*". It is expected that Iceland issue an updated interpretation or clarification of the definitions of "Revenues – Related Party" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.[20]

14. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE

Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

15. Iceland has introduced local filing requirements in respect of income years beginning on or after 1 January 2017.[21] There appears to be two inconsistencies in the circumstances when local filing may be required under paragraph 8 (c) iv. b) and c) of the terms of reference (OECD, 2017b):

- Under Article 91a of the Income Tax Act no. 90/2003. local filing is required where "*the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes does not have a current Agreement on Automatic Exchange of Information of Country by Country Report in force (…)*". However, paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in Iceland's legislation. Under Iceland's legislation, local filing may be required in circumstances where there is no current international agreement between Iceland and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference.
- Local filing requirements can also be required if "*the Directorate of Internal Revenue has notified the taxable Icelandic Entity that the jurisdiction of the Parent Entity of the MNE Group has not a qualifying agreement with Iceland on Automatic Exchange of Information in effect in accordance with section b) or for other reasons does not send Country by Country Report to the Icelandic tax authorities (…)*". This condition does not reflect the details of paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017b) in regard of the concept of "Systemic Failure", and may be interpreted in a broader meaning than the situation of a "Systemic Failure". Under Iceland's legislation, local filing may be required in circumstances where there is a failure to file one CbC report, which is unlikely to constitute a systemic failure.

16. It is recommended that Iceland amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference.[22]

17. No other inconsistencies were identified with respect to the limitation on local filing obligation.[23]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

18. Iceland's legislation appears not to provide for the deactivation of local filing when the CbC report of an MNE Group is filed in another jurisdiction by a Surrogate

Parent Entity. Iceland's local filing requirements apply in all cases where a group meets the requirements for CbC Reporting and a CbC report is not received by Iceland's tax authority. This appears not to be in line with paragraph 8 (d) of the terms of reference (OECD, 2017b). It is recommended that Iceland introduce rules providing that local filing will not apply for a Constituent Entity resident in Iceland when the CbC report of the CbC Group to which it belongs has been filed by a Surrogate Parent Entity in its jurisdiction of tax residence.[24]

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

19. Iceland has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Constituent Entities of the MNE Group resident in Iceland.[25] There are also penalties in relation to the filing of a CbC report under the general provisions in the Income Tax Act.[26]

20. There are no specific processes in place that would allow to take appropriate measures in case Iceland is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

21. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Iceland has a domestic legal and administrative framework to impose and enforce CbC requirements on the UPE of an MNE Group that is resident for tax purposes in Iceland. Iceland meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the definitions of an "Ultimate Parent Entity", a "Constituent Entity" and an "MNE Group" (paragraphs 8 (a) i. and iii. and 15 of the terms of reference (OECD, 2017b)); (ii) the annual consolidated group revenue threshold (paragraph 8 (a) ii. of the terms of reference (OECD, 2017b)); (iii) the local filing conditions (paragraphs 8 (c) iv. b) and c) of the terms of reference (OECD, 2017b)); and (iv) the limitation on local filing where there is surrogate entity filing (paragraph 8 (d) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

22. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain

aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

23. Iceland has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 27 May 2010, in force on 1 February 2012 and in effect for 2016), (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements[27] and (iii) the Nordic Convention,[28] which allow Automatic Exchange of Information in the field of taxation.

24. Iceland signed the CbC MCAA on 12 May 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 8 March 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under Section 8(1)(e) of the same agreement. Iceland has also signed a bilateral CAA with the United States. As of 12 January 2018, Iceland has 50 bilateral relationships activated under the CbC MCAA[29] or exchanges under the bilateral CAA. Iceland has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Iceland meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

25. Against the backdrop of the still evolving exchange of information framework, at this point in time, Iceland meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

26. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer

prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

27. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Iceland indicates that measures are not yet in place to ensure the appropriate use of information in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has however provided details on the next steps which are being planned to put appropriate measures in place. It is recommended that Iceland take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Iceland will not be exchanging CbC reports in 2018.

Conclusion

28. In respect of paragraph 12 (a), it is recommended that Iceland take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Iceland will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation definitions	It is recommended that Iceland amend or otherwise clarify the definitions of an "Ultimate Parent Entity", a "Constituent Entity" and an "MNE Group" in a manner consistent with the definition contained in the terms of reference. Iceland indicates that it will make appropriate law /or regulations changes in order to fully comply.
Part A	Domestic legal and administrative framework - Parent entity filing obligation annual consolidated group revenue threshold	It is recommended that Iceland clarify that the annual consolidated group revenue threshold calculation rule applies without prejudice of the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Iceland. Iceland indicates that it will make appropriate law/or regulation changes in order to fully comply.
Part A	Domestic legal and administrative framework - Limitation on local filing	It is recommended that Iceland clarify the scope of two conditions for local filing to ensure that local filing can only be required in the circumstances contained in the terms of reference. Iceland indicates that it will make appropriate law/or regulation changes in order to fully comply.
Part A	Domestic legal and administrative framework - Limitation on local filing in case of surrogate filing	It is recommended that Iceland introduce rules providing that local filing will not apply in case of Surrogate Parent Entity. Iceland indicates that it will make appropriate law/or regulation changes in order to fully comply.
Part B	Exchange of information	-
Part C	Appropriate use	It is recommended that Iceland take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraphs 8 (a) i. and iii. and 15 of the terms of reference (OECD, 2017b).

[3] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017b).

[4] Paragraph 8 (c) iv. b) and c) of the terms of reference (OECD, 2017b).

[5] Paragraph 8 (d) of the terms of reference (OECD, 2017b).

[6] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[7] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[8] Primary law consists Article 91 a, of the Income Tax Act no. 90/2003, as amended with Act no. 112/2016. Secondary law consists of Regulation no. 1166/2016 Country by Country reporting.

[9] Guidance was published on the Directorate of Internal Revenue website available at www.rsk.is/media/rsk04/rsk_0430_2017.is.pdf (accessed 20 April 2018).

[10] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[11] See Article 91 a, of the Income Tax Act no. 90/2003, as amended with Act no. 112/2016.

[12] E.g. the English translation of the first sentence of Article 91 (a) is unclear in this respect.

[13] Iceland has indicated that it will make the appropriate law/or regulation changes in order to fully comply.

[14] See under Article 1(1) of the Regulations.

[15] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018)

[16] Iceland has indicated that it will make the appropriate law/or regulation changes in order to fully comply.

[17] Iceland indicated that CbC filing would apply in 2017 in its response to question 6(j) of the CbC peer review questionnaire. The Regulations for CbC filing take effect on 1 January 2017 under Article 8 of the Regulations.

[18] Iceland has amended Article 91 a, of the Income Tax Act no. 90/2003 (as amended with Act no. 96-2017 in Article 7) to amend the time frame for filing a CbC report from "before the end of each calendar year after the end of the fiscal year" to "no later than 12 months after the end of the fiscal year."

[19]See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018)

[20] The forms and instructions relating to the information required in a CbC report have been published by the Directorate of Internal Revenue, available at www.rsk.is/media/rsk04/rsk_0430_2017.is.pdf (accessed 20 April 2018).

[21] Iceland indicated that CbC filing would apply in 2017 in its response to question 6(j) of the CbC peer review questionnaire. The Regulations for CbC filing take effect on 1 January 2017 under Article 8 of the Regulations.

[22] Iceland has indicated that it will make the appropriate law/or regulation changes in order to fully comply.

[23] It is noted that under Iceland's rules, the Constituent Entity shall request its Ultimate Parent Entity to provide it with the necessary information to enable it to meet its obligations to file a country-by-country report. If despite that, that Constituent Entity has not obtained the required information, this Constituent Entity shall file a country-by-country report containing all information in its possession and inform the Directorate of Internal revenue that the Ultimate Parent Entity has not provided the information or that the information provided has been unsatisfactory.

[24] See Paragraph 8 (d) of the terms of reference (OECD, 2017b). Iceland has indicated that it will make the appropriate law/or regulation changes in order to fully comply.

[25] See paragraph 4 of Article 3 of the Regulations.

[26] See Article 109 of the Income Tax Act no. 90/2003. The penalties are mainly in the form of fines or a jail sentence of up to two years.

[27] Iceland reported Double Tax Agreements with: Albania, Barbados, Belgium, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Georgia, Greece, Hungary, India, Ireland, Italy, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Switzerland, Ukraine, United Kingdom, United States and Viet Nam.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[28] The Nordic Convention comprises Denmark, Faroe Islands, Finland, Greenland, Norway and Sweden.

[29] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

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India

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. India's implementation of the Action 13 minimum standards meets all applicable terms of reference, except that it raises one interpretative and one substantive issue in relation to its domestic legal and administrative framework. The report, therefore, contains two recommendations to address these issues. In addition, it is recommended that India have in place measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. India has rules (primary and secondary laws) that impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in India.[1] The first filing obligation for a CbC report in India commences in respect of accounting years beginning on or after 1 April 2016 (financial year 2016/2017). India meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of:

- the annual consolidated threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than India[2] which may deviate from the guidance issued by the OECD. Although such deviation may be unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 minimum standard,
- the local filing requirements.[3]

Part B: Exchange of information framework

3. India has a domestic, legal basis for the exchange of information. India is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") (signed on 26 January 2012, in force on 1 June 2012 and in effect for 2016). India has signed the CbC MCAA, and has submitted notifications under section 8 of the CbC MCAA. As of 12 January 2018, India has 50 bilateral relationships activated under the CbC MCAA. India has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time India meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[4]

Part C: Appropriate use

4. In respect of the terms of reference under review,[5] India notes that measures on appropriate use will be in place before the first exchanges of CbC reports. It is recommended that India take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing (a) the parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. India has primary law[6] and secondary law[7] in place for implementing the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations. No guidance has been issued so far, but India notes that this is under process.

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. India has primary legislation which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue,[9] whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the CbC filing requirements, Article 10DB (6) and (7) of the Income-tax Rules, 1962 provide that: "(…) *the total consolidated group revenue of the international group shall be five thousand five hundred crore rupees*" and that "*where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the rate of the exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year preceding the accounting year*". While these provisions would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in India, they may be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is an Indian tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[10] It is thus recommended that India amend or otherwise clarify this rule so that it would apply in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent

Entity is located in a jurisdiction other than India, when local filing requirements are applicable.

9. No other inconsistencies were identified with respect to India's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in India commences in respect of periods commencing on or after 1 April 2016 (financial year 2016/2017). The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[11]

11. Form no. 3CEAD of the secondary legislation includes a description of the items to be included in a CbC Report. This explains that "Revenues" (related parties) are "the sum of revenues of all the Constituent Entities of the MNE Group in the relevant tax jurisdiction generated from transactions with associated enterprises". However, interpretative guidance issued by the OECD[12] explains that "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report*". It is expected that India issue an updated interpretation or clarification of the definitions of "Revenues" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

12. No other inconsistencies were identified in respect of the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. India has introduced the following conditions for local filing requirements:[13]

> *"A constituent entity of an international group, resident in India, other than the entity referred to in sub-section (2), shall furnish the report referred to in the said*

sub-section, in respect of the international group for a reporting accounting year, if the parent entity is resident of a country or territory,—

with which India does not have an agreement providing for exchange of the report of the nature referred to in sub-section (2); or

there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity."

14. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition (a) in India's legislation. Under India's legislation, local filing may be required in circumstances where there is no current international agreement between India and the residence jurisdiction of the Ultimate Parent Entity. It is recommended that India takes steps to ensure that local filing can only be required in circumstances permitted under the minimum standard and set out in the terms of reference, in particular to prevent local filing in the absence of an international agreement. It is noted that in practice this issue should only arise where local filing is imposed on a Constituent Entity in an MNE Group where the Ultimate Parent Entity is resident in a country with which India does not have an international agreement and the other conditions where local filing is permitted, set out in the terms of reference, are not met. In this context it is further noted that, for fiscal year 2016, India was party to the Convention and also had 114 double tax conventions and tax information exchange agreements, which provide for Automatic Exchange of Information, in force.[14] In addition, India indicates that it is submitting a Unilateral Declaration under Article 28(6) of the Convention so as to minimise the triggering of local filing.[15]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. India's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[16] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

16. India has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place for every Constituent Entity in India.[17] The domestic framework also includes penalties in relation to the filing of a CbC report for failure:[18] (i) to file a CbC report, (ii) to incompletely file a CbC report and (iii) to submit it on time.

17. India indicates that they will make use of mechanisms in place for request of information and risk assessment process to take appropriate measures in case India is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reported by a Reporting Entity or that a Reporting Entity is failing to comply with respect to CbC Reporting obligations. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017a), India has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in India. India meets all the terms of reference relating to the domestic legal and administrative framework[19] with the exception of (i) the annual consolidated group revenue threshold (paragraph 8 (a) ii. of the terms of reference (OECD, 2017a)) and (ii) the conditions for local filing (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a)).

Part B: The exchange of information framework

19. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017a).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

20. India has a domestic legal basis for the exchange of information.[20] India is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 26 January 2012, in force on 1 June 2012 and in effect for 2016).

21. India has signed the CbC MCAA and has submitted a full set of notifications under section 8 of the CbC MCAA. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. India is expecting to enter into a bilateral CAA with one jurisdiction.[21] As of 12 January 2018, India has 50 bilateral relationships activated under the CbC MCAA.[22] India has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time India meets the terms of reference.

Conclusion

22. Against the backdrop of the still evolving exchange of information framework, at this point in time India meets the terms of reference.

Part C: Appropriate use

23. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

24. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), India indicates that measures are currently being developed to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017b). It notes that such measures will be in place before the first exchanges of CbC reports. It is recommended that India take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that India's fiscal year starts on 1 April and first CbC reports will be exchanged in September 2018.

Conclusion

25. In respect of paragraph 12 (a), it is recommended that India take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation – annual consolidated group revenue threshold	It is recommended that India amend or otherwise clarify that the annual consolidated group revenue threshold calculation rule applies without prejudice of the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than India.
Part A	Domestic legal and administrative framework – Local filing conditions	It is recommended that India take steps to ensure that local filing can only be required in circumstances contained in the terms of reference.
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that India take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017a).

[2] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017a).

[3] Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a).

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017a).

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017a).

[6] Primary law consists of Section 286 of the Indian Income-tax Act, 1961: www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx (accessed 23 April 2018).

[7] The Gazette of India: Extraordinary (31 October 2017) - Part II – Sec. 3(ii).

[8] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[9] Rule 10DA (1)(ii)(A) of the Income-tax Rules, 1962.

[10] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018).

[11] Section 286(2) in conjunction with Section 139(1) of the Income-tax Act, 1961. Every "parent entity" or the "alternate reporting entity", resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority on or before the due date specified under sub-section (1) of section 139 of the Income-tax Act, 1961, for furnishing the return of income for the relevant accounting year, in the form and manner as may be prescribed. This due date is 30 November of the assessment year (the assessment year is the financial year immediately succeeding the relevant reporting financial year). India indicates that the filing date for CbC Reports for financial year 2016/2017 is deferred to 31 March 2018, which is still within 12 months after the end of the period to which the CbC report of the MNE Group relates.

[12] See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

[13] India indicates that for local filing, the filing date for CbC Reports for financial year 2016/2017 is deferred to 31 March 2018.

[14] Inclusive Framework members with which India did not have an international agreement providing for Automatic Exchange of Information in force for fiscal year 2016 include: Andorra*#, Angola#, Barbados*#, Benin#, Brunei Darussalam*#, Burkina Faso*#, Chile*, Congo#, Côte D'Ivoire#, Democratic Republic of Congo#, Djibouti#, Gabon*, Haiti#, Jamaica*#, Liechtenstein*, Monaco*#, Panama*#, Papua New Guinea#, Paraguay#, Peru, Senegal*#, and Sierra Leone#. Jurisdictions marked with an asterisk (*) are signatories to the Convention but it was not in force for fiscal year 2016. Jurisdictions marked with a hash (#) do not yet have final legislation implementing an obligation on resident Ultimate Parent Entities of MNE Groups for the filing of CbC Reports for fiscal years commencing in 2016. As per the terms of reference paragraph 8.(c) iv. a), local filing may be permitted where the jurisdiction of the Ultimate Parent Entity has not implemented CbC requirements.

[15] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

[16] Section 286(4) of the Income-Tax Act, 1961.

[17] See Rule 10DB (1) of the Income-tax Rules, 1962: *Penalty for failure to furnish report or for furnishing inaccurate report under section 286.*

271GB. (1) If any reporting entity referred to in section 286, which is required to furnish the report referred to in sub-section (2) of the said section, in respect of a reporting accounting year, fails to do so, the authority prescribed under that section (herein referred to as prescribed authority) may direct that such entity shall pay, by way of penalty, a sum of,—

(a) five thousand rupees for every day for which the failure continues, if the period of failure does not exceed one month; or

(b) fifteen thousand rupees for every day for which the failure continues beyond the period of one month.

(2) Where any reporting entity referred to in section 286 fails to produce the information and documents within the period allowed under sub-section (6) of the said section, the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of five thousand rupees for every day during which the failure continues, beginning from the day immediately following the day on which the period for furnishing the information and document expires.

(3) If the failure referred to in sub-section (1) or sub-section (2) continues after an order has been served on the entity, directing it to pay the penalty under sub-section (1) or, as the case may be, under sub-section (2), then, notwithstanding anything contained in sub-section (1) or sub-section (2), the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of fifty thousand rupees for every day for which such failure continues beginning from the date of service of such order.

(4) Where a reporting entity referred to in section 286 provides inaccurate information in the report furnished in accordance with sub-section (2) of the said section and where—

(a) the entity has knowledge of the inaccuracy at the time of furnishing the report but fails to inform the prescribed authority; or

(b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery; or

(c) the entity furnishes inaccurate information or document in response to the notice issued under sub-section (6) of section 286, then, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of five lakh rupees.

[18] Section 271GB of the Income-tax Act, 1961.

[19] Paragraph 8 of the terms of reference (OECD, 2017a).

[20] Section 90(1)(c) of the Income-tax Act, 1961.

[21] Furthermore, India is in the process of inviting jurisdictions with whom India has entered into a DTAA or TIEA who have not signed the CbC MCAA and the jurisdictions who are signatories of the MAAC but have not signed the CBC MCAA to enter into bilateral CAAs with India.

[22] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

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Indonesia

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Indonesia's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Indonesia has rules (primary and secondary laws) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Indonesia.[1] The first filing obligation for a CbC report in Indonesia commences in respect of fiscal years commencing on or after 1 January 2016. Indonesia meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: Exchange of information framework

3. Indonesia is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with a very large number of other signatories of this agreement which provide notifications. As of 12 January 2018, Indonesia has 46 bilateral relationships activated under the CbC MCAA. Indonesia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Indonesia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. Indonesia indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Indonesia meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Indonesia has primary and secondary laws in place[5] which implement the BEPS Action 13 minimum standard which consists on amendments to the general legal basis for the establishment of any new filing obligations and secondary law establishing the necessary requirements, including the filing and reporting obligations. Guidance has been published on 29 December 2017.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Indonesia has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. Under Article 1.8 of the Ministry of Finance Regulation number 213/PMK. (hereafter "the regulations"), a "parent entity" shall mean "*a member of a business group that satisfies the following criteria: a) directly or indirectly controls other members of the business group; and b) has the obligation to prepare consolidated financial statements according to Indonesian financial accounting standard and/or regulations that are binding to public companies in Indonesian stock exchange*".[8] This is narrower than the definition in the terms of reference (paragraph 18 of the terms of reference (OECD, 2017b)). However, Indonesia has clarified the definition in a Regulation of the Directorate General of Taxes published on 29 December 2017: the Regulation provides, in the context of parent entity filing, that a "Parent Entity" shall mean that "*a) there is no other Constituent Entity of such Business Group that owns directly or indirectly a sufficient interest of the parent entity; or in the case of the parent Entity is owned directly or indirectly by other entity, such entity is not obliged to consolidate the Parent Entity's financial Statement*".[9]

9. Under the terms of reference (paragraph 18 of the terms of reference (OECD, 2017b)), the Ultimate Parent Entity of an MNE Group includes an entity that does not prepare Consolidated Financial Statements, but would be required to do so if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence ("deemed listing provision"). This requirement does not appear to be reflected in the Indonesian legislation. Indonesia however confirms that listed companies and non-listed companies, as well as any other type of entity (notably partnerships) are subject to a requirement to prepare Consolidation Financial Statements when they meet certain conditions of shareholding and / or control. Such requirement to prepare Consolidated

Financial Statements may arise under the Indonesian Financial Accounting Standard (PSAK) or the Indonesian stock exchange (IDX) regulation which follows the regulation in the PSAK.

10. The Indonesian legislation refers to the concept of a "business group" defined as a "*group of taxpayers conducting business activities, which consists of parties which are affiliated with each other*".[10] [11] In addition, the Regulation of the Directorate General of Taxes published on 29 December 2017 has clarified that an "MNE Group" is a "*Business Group that includes two or more enterprises the tax residence of which is in different jurisdictions*".[12] It is unclear whether these definitions fully reflect the definition of an MNE Group in paragraph 15 of the terms of reference (OECD, 2017b),[13] in particular for situations where there is 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. Indonesia however confirms that the definition of a "Business Group" also includes the situation where there is an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respects to the business carried out through a permanent establishment in another jurisdiction, because Indonesia treats a permanent establishment which is a foreign entity as if it is a resident taxpayer of Indonesia. The term "tax subject" in the "Business Group" definition in Indonesia includes permanent establishments.[14]

11. It is noted that the term "Constituent Entity" is defined in the provisions relating to local filing.[15] Indonesia however confirms that by way of cross-reference,[16] the definition of Constituent Entity also applies in the context of the parent entity filing. The operation of these rules will be monitored to make sure they apply consistently with the terms of reference.

12. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

13. The first filing obligation for a CbC report in Indonesia commences in respect of periods commencing on or after 1 January 2016.[17] [18]

14. The CbC report must be made available no later than 12 months after the end of a taxable year and must be filed as an attachment of the Annual Corporate Income Tax return for the subsequent taxable year.[19] This may result in a CbC report being filed later than the date in paragraph 8 (b) iii. of the terms of reference (OECD, 2017b).[20] As a result, the CbC report may subsequently be exchanged with a partner jurisdiction later than the timeline envisaged in the Action 13 Report.[21] [22] Indonesia has however introduced amended rules in a Regulation of the Directorate General of Taxes published on 29 December 2017:[23] a CbC report should be filed not later than 16 months after the end of the Fiscal Year 2016, or 12 months after the end of the Fiscal Year for the Fiscal Year 2017 and so forth. For the Fiscal Year 2016, Indonesia indicates that it intends to

exchange of information with its treaty partners according to the agreed deadlines in 2018. No recommendation is made but this aspect will be further monitored to ensure that the filing deadline for the fiscal year 2016 will not impact Indonesia's ability to meet its obligations relating to the exchange of information under the terms of reference.[24]

15. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.[25] [26]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

16. Indonesia has introduced local filing requirements as from the reporting period starting on or after 1 January 2016.[27]

17. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), under Indonesia's legislation, local filing applies where an MNE group has a "*resident taxpayer member of a business group and the parent entity of the business group is a non-resident taxpayer, where the country or jurisdiction of residence where the parent entity is resident does not have an agreement exchange of information on tax matters with Indonesia"*.[28] Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in Indonesia's legislation. Under Indonesia's legislation, local filing may be required in circumstances where there is no current international agreement between Indonesia and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. Indonesia has however introduced rules in a Regulation of the Directorate General of Taxes published on 29 December 2017[29] to clarify the conditions for local filing: the terms "*country or jurisdiction of residence where the parent entity is resident does not have an agreement with the Government of Indonesia regarding the exchange of information on tax matters"* shall mean that a *"Partner Country or Partner Jurisdiction in which the Parent Entity domiciles does not have a QCAA in effect"*.[30] It is noted that the same Regulation also defines "Partner Country or Partner Jurisdiction" as a country or jurisdiction that has an International Agreement with Indonesia in effect; and a "Qualifying Competent Authority Agreement (QCAA) as meaning an agreement that is between authorised representatives of those jurisdictions that are parties to an International Agreement and that requires the automatic exchange of CbC reports between the party jurisdictions.[31] As such, no recommendation is made.

18. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017b), under Indonesia's legislation, local filing applies where "there is an agreement with Indonesia regarding the exchange of information on tax matters but the CbC report cannot be obtained from the country or jurisdiction of the parent entity".[32] It is unclear whether this provision relates to situations where there is an agreement to exchange information as well as a Qualifying Competent Authority Agreement in place. If this provision intends to cover situations where there is an agreement to exchange information as well as a Qualifying Competent Authority Agreement in place, it is noted that paragraph 8 (c) iv.) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified to the Constituent Entity by its tax administration. This is narrower than the above condition in Indonesia's legislation. Under Indonesia's legislation, local filing may for example be required in circumstances where one CbC report may not have been obtained. This is unlikely to be considered as "Systemic failure" as per the terms of reference. This may also cover situations where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but has not complied with this obligation; in this respect, local filing is not permitted under the terms of reference. Indonesia has however introduced rules in a Regulation of the Directorate General of Taxes published on 29 December 2017 to clarify the conditions for local filing: it is stated that the situations contemplated are those where a CbC report cannot be obtained because of systemic failure due to the following conditions:[33] "a) Partner Country or Partner jurisdiction has suspended the Automatic Exchange of Information of CbC reports for reasons other than those that are in accordance with the terms of that agreement; or b) Partner Country or Partner jurisdiction persistently failed to automatically provide to Indonesia the CbC report in its possession of MNE Groups that have Constituent Entities in Indonesia". Indonesia confirms that systemic failure should be understood as occurring only in situations where there is a QCAA in effect. As such, no recommendation is made and this will be monitored.

19. No other inconsistencies were identified with respect to the limitation on local filing obligations.[34]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

20. With respect to paragraph 8 (d) of the terms of reference (OECD, 2017b), there are no provisions in the regulations to deactivate local filing in any circumstance. Indonesia has however introduced rules in a Regulation of the Directorate General of Taxes published on 29 December 2017 that provide for the deactivation of local filing in case of surrogate filing.[35]

21. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

22. Indonesia has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to all Corporate Taxpayers which are Constituent Entities or that conduct affiliated transactions.[36] There are also penalties in place (according to General Provisions and Tax Procedures Law): (i) for a late filing of a CbC report (administrative fine as stated in Article 7), (ii) for a failure to file a CbC report (administrative fine as stated in Article 7) and/or a surcharge penalty of 50% from tax underpayment as stated in Article 13, (iii) for inaccurate filing of a CbC report (administrative penalty of interest 2% per months from tax underpayment as stated in Article 13), (iv) for negligence to file or file incorrect or incomplete filling of a CbC report (criminal sanctions as stated in Article 38), and (v) for deliberately failure to file, file a false or incomplete, and failure to maintain a CbC report (criminal sanctions as stated in Article 39). The compulsion powers lie in the imposition of administrative and/or criminal sanctions based on the General Provisions and Tax Procedures Law.

23. As regards specific processes in place that would allow to take appropriate measures in case Indonesia is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report, Indonesia indicates that the above mentioned penalties would be applicable. This aspect will be further monitored once the actual exchanges of CbC reports will commence.

Conclusion

24. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Indonesia has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Indonesia. Indonesia meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

25. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

26. Indonesia indicates that it has sufficient legal basis in its domestic legislation to automatically exchange information on CbC reports.[37] It is part of (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 3 November 2011, in force on 1 May 2015 and in effect for 2016) and of (ii) 67 bilateral Double Tax Agreements which are in force, of which 65 allow for Automatic Exchange of Information.[38]

27. Indonesia signed the CbC MCAA on 26 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 19 June 2017. It intends to have the CbC MCAA in effect with a very large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement.[39] As of 12 January 2018, Indonesia has 46 bilateral relationships activated under the CbC MCAA. Indonesia also indicates that it is in the process of negotiating other QCAAs. Indonesia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[40] Against the backdrop of the still evolving exchange of information framework, at this point in time Indonesia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

28. Against the backdrop of the still evolving exchange of information framework, at this point in time Indonesia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Part C: Appropriate use

29. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

30. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Indonesia indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD

Guidance on the appropriate use of information contained in Country-by-Country reports (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

31. There are no concerns to be reported for Indonesia in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

32. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Indonesia. Indonesia thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of Article 28 paragraphs 11 and Article 48 Law Number 6 Year 1983 concerning General Provisions and Tax Procedures as lastly amended by Law Number 16 Year 2009: these provisions stipulate the obligation to retain documents for 10 years, including transfer pricing documentation and CbC report. Secondary law consists of Article 10 paragraph 3 Government Regulation Number 74 Year 2010 which gives mandate to Minister of Finance to regulate the procedures to retain documents, including transfer pricing documentation and CbC report. See also Ministry of Finance Regulation Number 213/PMK.03/2016, signed and enacted on 30 December 2016 which obliges taxpayer to prepare and retain the three-tiered transfer pricing documentation.

[6] It is noted that Article 12 of the Ministry of Finance Regulation number 213/PMK.03/2016 gives mandate to Director General of Taxes to circulate guidance on CbC report. A Directorate General of Taxes Regulation nb. 29/PJ/2017 was published on 29 December 2017.

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] This definition is also reflected in Article 1.5. of the Directorate General of Taxes Regulation nb. 29/PJ/2017 published on 29 December 2017.

[9] See Article 2 (3) of the Regulation of the Directorate General of Taxes published on 29 December 2017. It is noted that the sub provision under letter b) does not contain a reference to the deemed listing provision. The operation of the rule will be monitored to make sure it applies consistently with the terms of reference.

[10] See Article 1.7 of the regulations. This definition has also been included in a Directorate General of Taxes Regulation nb. 29/PJ/2017 published on 29 December 2017: Business group shall mean a group of taxpayers conducting business activities, which consists of parties who have “Special Relationships”. Indonesia confirms that this refers to “Affiliated parties” which are to be understood as related either through ownership or control.

[11] It appears that Indonesia's regulations also serve as a tool for Indonesia to capture information from purely domestic groups headquartered in Indonesia. Indonesia indicates that this would have no impact for foreign entities; it will not exchange such information but will only exchange CbC reports submitted by an Indonesian parent entity that would fall into the definition of an "Ultimate Parent Entity" as per paragraph 18 of the terms of reference (OECD, 2017b).

[12] See Article 1.4. of the Directorate General of Taxes published on 29 December 2017.

[13] "MNE Group" means any Group that (i) 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 (ii) is not an Excluded MNE Group.

[14] Indonesia further confirms that the situation of a head-office in Indonesia and a permanent establishment abroad would be captured under Indonesia's CbC requirements.

[15] See Article 3 (2) of the Directorate General of Taxes Regulation nb. 29/PJ/2017 published on 29 December 2017: Constituent Entity is defined as *"(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 the 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/or (iii) any permanent establishment of any separate business unit of the MNE group included in (a) or (b) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes*".

[16] Article 1.6. provides that "Constituent Entity" shall mean Parent Entity and members of business group which are included in the CbC report. Indonesia confirms that this definition therefore applies for the parent entity filing provisions.

[17] See Article 7 (3) of the regulations.

[18] Under Indonesia's rules, Ultimate Parent Entities resident in Indonesia are required to prepare and attach to the CbC report a worksheet containing data at entity level. Indonesia indicates that it will only exchange the CbC report without the worksheet. Furthermore, the requirement to prepare the worksheet will only affect Indonesian parent entities: Indonesia has clarified that a taxpayer subject to local filing in Indonesia will not need to submit the worksheet with the CbC report.

[19] See Article 4(2) and Article 7 (3) of the regulations.

[20] "The CbC report is required to be filed no later than 12 months after the last day of the reporting Fiscal ear of the MNE Group".

[21] See the Model Multilateral Competent Authority Agreement, Model Competent Authority Agreement on the basis of a DTC, Model Competent Authority Agreement on the basis of a TIAE in the Action 13 Report (OECD, 2015), which envisage that the CbC reports should be exchanged as soon as possible and no later than 18 months after the last day of the fiscal year of the Reporting entity of the MNE Group for the first year for which CbC requirements are applicable, and no later than 15 months after the last day of the fiscal year of the Reporting entity of the MNE Group for subsequent years.

[22] For example, for an MNE Group with a fiscal year 1 January 2016 – 31 December 2016, the CbC report would have to be filed together with the Annual Corporate Income Tax return of the 2017 fiscal year, due in April 2018.

[23] Directorate General of Taxes Regulation nb. 29/PJ/2017 published on 29 December 2017.

[24] Paragraph 9 (d) of the terms of reference (OECD, 2017b).

[25] Indonesia indicates that there is no definition of "Fiscal year" and "Reporting Fiscal Year" but the definition of "Fiscal Year" in the Minister of Finance Regulation refers to the definition in the General Provisions and Tax Procedures Law. It has the similar meaning and consistent with the meaning under BEPS Action 13.

[26] With respect to the content of a CbC report, it is noted that the template for Table 2 of a CbC report in Indonesia's legislation does not mention the requirement to report the tax jurisdiction of organisation if different from the tax jurisdiction of residence for the Constituent Entities of the MNE Group. Indonesia however confirms that this is included in the instructions. In addition, Indonesia indicates that it will soon publish instructions to file a CbC report in XML format with reference to the OECD XML template. This will be monitored.

[27] See Article 7 (3) of the regulations.

[28] See Article 2 (4) b. of the regulations.

[29] Directorate General of Taxes Regulation nb. 29/PJ/2017 published on 29 December 2017.

[30] See Article 3 (3) of the Directorate General of Taxes Regulation nb. 29/PJ/2017 published on 29 December 2017.

[31] See Articles 1.8 and 1.9 of the above mentioned Regulation.

[32] See Article 2 (4) c. of the regulations.

[33] See Article 3 (4) of the Directorate General of Taxes Regulation nb. 29/PJ/2017 published on 29 December 2017.

[34] Indonesia confirms that it will not apply local filing requirements in situations other than permitted under the terms of reference.

[35] See Article 2 (5) of the Directorate General of Taxes Regulation nb. 29/PJ/2017 published on 29 December 2017. It is noted that one of the conditions for surrogate filing is that the jurisdiction where the Surrogate Parent Entity is resident "*has a QCAA in effect and the CbC report could be obtained by Indonesian Government from that Partner Country or Partner Jurisdiction*". This provision does not detail when the QCAA should be in place but Indonesia confirms that it is understood that there is no requirement that a QCAA should be in effect before the time for filing the CbC report. This will be monitored.

[36] See Articles 4 (1) and 5 of the Directorate General of Taxes Regulation nb. 29/PJ/2017 published on 29 December 2017. The notification shall contain a statement regarding the identification of the taxpayer as a parent entity, or as a non parent entity, or regarding the fact that the taxpayer is obliged or not to file a CbC report.

[37] For domestic legal basis related to CBC reports, Indonesia has the following regulation in place:

(1) Minister of Finance Regulation Number 213/PMK.03/2016 concerning The Type of Additional Documents and/or Information Mandatory to be Kept by Taxpayers who Conduct Transactions with Related Parties and Its Management Procedures, as a legal basis to ensure the availability of CBC reports and the obligation of taxpayer to provide CBC reports to DGT.

(2) Minister of Finance Regulation Number 39/PMK.03/2017 of Procedures for Exchange of Information based on International Agreements, as a legal basis to ensure the authority of Indonesian Tax Authority to automatically exchange CBC reports.

[38] Indonesia reports bilateral tax treaties with Algeria, Armenia, Australia, Austria, Bangladesh, Belgium, Brunei Darussalam, Bulgaria, Canada, China (People's Republic of), Croatia,

Czech Republic, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Germany, Hong Kong (China), Hungary, India, Iran, Italy, Japan, Jordan, Korea, Kuwait, Lao People's Democratic Republic, Luxembourg, Malaysia, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Russia, Seychelles, Singapore, Slovak Republic, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Syrian Arab Republic, Chinese Taipei, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela and Viet Nam.

[39] Indonesia clarifies that Article 7 of Directorate General of Taxes Regulation nb. 29/PJ/2017 published on 29 December 2017 has stipulated that CbCR will be exchanged with other countries or jurisdictions which have Qualifying Competent Authority Agreement in effect to Indonesia.

[40] It is noted that some Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

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OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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Ireland

Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of Country-by-Country (CbC) reports. Ireland's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Ireland has rules (primary and secondary laws, as well as guidance) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in Ireland. The first filing obligation for a CbC report in Ireland commences in respect of fiscal years commencing on or after 1 January 2016. Ireland meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Ireland is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also a signatory of the Multilateral Competent Authority Agreement for exchanges of CbC reports (CbC MCAA); it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Ireland has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under bilateral competent authority agreements (CAA). Ireland has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Ireland meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Ireland. Ireland indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Ireland meets the terms of

reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Ireland has primary law in place[5] to implement the BEPS Action 13 minimum standard which enables the Irish Revenue to make regulations on country-by-country reporting (CbC Reporting). Ireland has issued such regulations[6] (secondary law) including the filing and reporting obligations. Guidance has also been published in the form of answers to frequently asked questions (FAQs).[7]

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Ireland has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[9]

8. With respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017b)), it is noted that the definition of an "MNE Group" has the same meaning as given by Article 1 of the OECD Model Legislation.[10] This incorporates by way of cross-reference the definition of an "Excluded MNE Group". It is noted that the provision relating to the total consolidated group revenue threshold is bracketed in the Model Legislation. Ireland clarifies that the total consolidated group revenue threshold that applies in Ireland for the definition of an "Excluded MNE Group" is EUR 750 million, or an equivalent amount in another currency, depending on the situation: it should be noted that not all Irish parented MNE Groups have euro as their functional currency. Furthermore, the applicable threshold amount is made clear in Q2 of the FAQs published in Ireland.

9. No inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Ireland commences in respect of periods commencing on or after 1 January 2016.[11] [12] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[13]

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. Ireland has introduced local filing requirements as from the reporting period starting on or after 1 January 2016.[14]

13. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), local filing requirements can be required from a "domestic Constituent Entity" pursuant to the regulations,[15] if the jurisdiction in which the Ultimate Parent Entity of the MNE Group is resident for tax purposes does not have in effect, by the latest date to provide a CbC report, a QCAA with the State that provides for the exchange of CbC reports.

14. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement (QCAA) in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in Ireland's legislation. Under Ireland's legislation, local filing may be required in circumstances where there is no current international agreement between Ireland and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. Ireland however confirms that it will apply local filing requirements only as per the circumstances contained in the terms of reference, i.e. when there is no QCAA but

there is an international agreement. This is reflected in the published guidance.[16] As such, no recommendation is made but this aspect will be further monitored.

15. No other inconsistencies were identified with respect to the limitation on local filing obligations.[17]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

16. Ireland's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[18] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.[19]

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

17. Ireland has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Surrogate Parent Entities in Ireland.[20] In addition, Ireland indicates that the Irish Revenue is in the process of building its "CbC Reporting compliance framework", which would include a process designed to address any of the scenarios of ineffective implementation contained in the terms of reference. There are also penalties in place in relation to the filing of a CbC report:[21] (i) penalties for failure to file a CbC report, (ii) daily default penalty and (iii) penalties for incomplete or inaccurate information. Ireland's primary legislation also includes a power to audit a CbC report.[22]

18. There are no specific processes in place that would allow Irish Revenue to take appropriate measures in case Ireland is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. Ireland indicates that the Irish Revenue is in the process of building its CbC Reporting compliance framework. It is anticipated that this framework will include appropriate measures to be taken in this scenario; however, as the framework is not yet complete, it is not possible to provide a more detailed response at this time. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Ireland has a domestic legal and administrative framework to impose and enforce CbC requirements on

MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Ireland. Ireland meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

20. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

21. Ireland has sufficient legal basis in its domestic legislation to automatically exchange information on CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 30 June 2011, in force on 1 September 2013 and in effect for 2016)[23] and (ii) multiple bilateral Double Tax Agreements which allow Automatic Exchange of Information.[24] [25] It also implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

22. Ireland signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 1 December 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. It is noted that Ireland has signed a bilateral QCAA with the United States and Hong Kong (China). As of 12 January 2018, Ireland has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under bilateral CAAs.[26] [27] Ireland has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Ireland meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time Ireland meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

24. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

25. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Ireland indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country report* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

26. There are no concerns to be reported for Ireland in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

27. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Ireland. Ireland thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of Section 891H of the Taxes Consolidation Act 1997 (No. 39 of 1997).

[6] Secondary law consists of regulations introduced by a Statutory Instrument No. 653 of 2016: the *Taxes (Country-By-Country Reporting) Regulations 2016*.

[7] The Irish Revenue Commissioners have produced some technical guidelines on CbC Reporting, which are in the form of frequently asked questions (FAQs). Ireland indicates that these are designed to provide guidance on the legislation and to provide practical assistance to taxpayers in relation to their CbC Reporting obligations. The FAQs is a 'living document' and it is being updated on a continuing basis to reflect ongoing developments and guidance from the OECD and the EU, as well as practical issues experienced by taxpayers, in relation to CbC Reporting. The purpose of this document is to provide the taxpayer with guidance on CbC Reporting but the document cannot create obligations on a taxpayer that go beyond the legislation. The FAQs are available on the Irish Revenue website: www.revenue.ie/en/companies-and-charities/documents/country-by-country-reporting.pdf (accessed 20 April 2018). It contains FAQs as well as three appendices.

[8] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[9] It is noted that Ireland included into its primary legislation some specific definitions such as "domestic constituent entity", which means a Constituent Entity that is resident in Ireland for the purposes of tax without being a UPE, nor a surrogate parent entity, nor an EU designated entity; "equivalent country-by-country report", which means a CbC report only to the extent the information required to be included therein is within the possession of, or is obtained or acquired by a domestic Constituent Entity; "EU designated entity", which means a Constituent Entity that is resident in an EU member state for tax purposes and has been designated by the MNE group to which it belongs to provide a CbC report on behalf of all Constituent Entities residing in the EU.

[10] See paragraph (1) of Sect. 891H.

[11] See paragraph (2) of Sect. 891H.

[12] The guidance provides explanations on the content of a CbC report and makes reference to the OECD XML schema (see FAQs number 11 and 22). Q22 mentions that further guidance will be provided on filing CbC Reports. Ireland indicates that prior to the go-live date for the filing system, it is anticipated that the FAQs will be updated to include a Step-by-Step Guide to filing CbC Reports similar to the guide for making CbC Reporting notifications in appendix III of the FAQs.

[13] See paragraph (2) of Sect. 891H.

[14] See Regulation 8 of the Statutory Instrument No. 653.

[15] See Regulation 3 of the Statutory Instrument No. 653.

[16] See Q13 of the guidance.

[17] In accordance with the provisions of European Union (EU) Council Directive 2016/881/EU (Annex III, Section II), a "domestic Constituent Entity" shall request its Ultimate Parent Entity to provide it with all information required to enable it to prepare a country-by-country report with respect to a fiscal year. If despite that, that Constituent Entity has not been provided the required information, this Constituent Entity shall file an "equivalent country-by-country report" containing all information in its possession, obtained or acquired, and shall notify the Commissioner of the Ultimate Parent Entity's refusal.

[18] Ireland indicates that the Irish Revenue also accepts voluntary parent surrogate filing, i.e. Constituent Entities resident in Ireland will not be required to file an Equivalent CbC Report under the secondary reporting mechanism for that year where an ultimate parent entity of an MNE Group files a CbC Report for its 2016 fiscal year on a voluntary basis in its country of residence, under the conditions that are in line with the OECD terms of reference. See Q16 of the guidance.

[19] It is noted that the Irish rules provide for the definition of an "EU designated entity" which means a Constituent Entity of an MNE Group, not being an Ultimate Parent Entity of Surrogate Parent Entity that (a) is resident in a Member State for tax purposes, and (b) has been designated as an entity by that MNE Group to provide a CbC report on behalf of all Constituent Entities of the MNE Group resident for tax purposes in a Member State.

[20] See Regulation 6 of the Statutory Instrument No. 653 of 2016. This also applies to an "EU designated entity".

[21] See Section 891H (7) of the Taxes Consolidation Act 1997, referring to Sect. 898O of the same Act. Ireland indicates that the penalty for failure to file a CbC Report / equivalent CbC Report is EUR 19 045 plus EUR 2 535 for each day the failure continues. The penalty for filing an incomplete or incorrect CbC Report / Equivalent CbC Report is EUR 19 045.

[22] See Section 891H (8) of the Taxes Consolidation Act 1997.

[23] Ireland indicates that currently it will mainly exchange CbC reports under the Multilateral Convention on Mutual Assistance in Tax Matters and there are no restrictions on the exchange of information for fiscal periods later than 2016 due to the effective date of the Convention. On 22 December 2017, Ireland also deposited a Unilateral Declaration on "the effective date for exchanges of information under the Multilateral Competent Authority Agreement on the exchange of Country-by-Country Reports" with the Depository of the Convention on Mutual Administrative Assistance in Tax Matters to allow for an earlier date of entry into effect of the Convention for jurisdictions that will sign the Convention at a later date.

[24] The list of these instruments can be accessed here: www.revenue.ie/en/practitioner/law/tax-treaties.html (accessed 20 April 2018).

[25] Ireland also has Tax Information and Exchange Agreements (TIEAs) which do not allow for the Automatic Exchange of Information. However, Ireland indicates that, should an interested partner wish to exchange CbC reports on the basis of a TIEA, it would be willing to conclude a Protocol to the TIEA to allow for automatic exchange.

[26] This includes exchanges with Cyprus and Gibraltar.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[27] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Isle of Man

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. The Isle of Man's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. The Isle of Man has rules (primary and secondary laws) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in the Isle of Man. The first filing obligation for a CbC report in the Isle of Man commences in respect of reporting fiscal years beginning on or after 1 January 2017, with a voluntary parent surrogate filing mechanism available for reporting fiscal years beginning on 1 January 2016. The Isle of Man meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. The Isle of Man is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with a large number of signatories of this agreement which provide notifications. The Isle of Man also indicates that it has signed three bilateral Competent Authority Agreements (CAAs). As of 12 January 2018, the Isle of Man has 47 bilateral relationships activated under the CbC MCAA or exchanges under bilateral CAAs. The Isle of Man has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time the Isle of Man meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.[2]

Part C: Appropriate use

4. There are no concerns to be reported for the Isle of Man. The Isle of Man indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained*

in Country-by-Country reports (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] The Isle of Man meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. The Isle of Man has primary and secondary law (hereafter referred to as the "Regulations") in place which implements the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5] Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. The Isle of Man has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[8]

8. No inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in the Isle of Man commences in respect of reporting fiscal years beginning on or after 1 January 2017.[9] In addition, the Isle of Man has allowed reporting entities to file a CbC report under a voluntary parent surrogate filing mechanism for reporting fiscal years beginning on or after 1 January 2016.[10] The CbC report must be filed by no later than 12 months and a day after the last day of the reporting fiscal year of the MNE Group.[11]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[12]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. The Isle of Man has introduced local filing requirements in respect of accounting periods beginning on or after 1 January 2017.[13] No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

12. The Isle of Man's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[14] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. The Isle of Man has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to any Constituent Entity resident for tax purposes in the Isle of Man.[15] There are also penalties in relation to the filing and notification for filing of a CbC report:[16] (i) penalties for failure to file,[17] (ii) daily default penalty[18] and (iii) penalties for inaccurate information.[19]

14. There are no specific processes in place that would allow the Isle of Man to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. However, the Isle of Man indicates that it intends to follow the same compliance measures for CbCR as it does for other AEOI reporting (FATCA & the CRS) to resolve any errors/inaccuracies notified to it by a receiving jurisdiction, which involves engaging with Reporting Entities to amend any such errors, and where necessary apply penalties under see Regulations 11, 12, 13 and 18. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017b), the Isle of Man has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the Isle of Man. The Isle of Man meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

16. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

17. The Isle of Man has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to (i) the Multilateral Convention on Mutual Administrative Assistance in Tax Matter (the "Convention"), as amended by the 2010 Protocol, (in force on 1 March 2014 and in effect for 2016)[20] and (ii) multiple bilateral Double Tax Agreements and certain amended Tax Information Exchange Agreements (TIEAs) which allow Automatic Exchange of Information in the field of taxation.[21]

18. The Isle of Man signed the CbC MCAA on 21 October 2016 submitted a full set of notifications under section 8 of the CbC MCAA on 30 March 2017. It intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement and has taken steps to have bilateral Qualifying Competent Authority Agreements (QCAAs) in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). The Isle of Man also indicates that it has signed three bilateral CAAs and that it expects to bring into effect more bilateral CAAs in the current and coming year. As of 12 January 2018, the Isle of Man has 47 bilateral relationships activated under the CbC MCAA[22] or

exchanges under bilateral CAAs. Against the backdrop of the still evolving exchange of information framework, at this point in time the Isle of Man meets the terms of reference.

Conclusion

19. Against the backdrop of the still evolving exchange of information framework, at this point in time the Isle of Man meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

20. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

21. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), the Isle of Man indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

22. There are no concerns to be reported for the Isle of Man in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for the Isle of Man. The Isle of Man thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of Section 104B of the Income Tax Act 1970: https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1970/1970-0003/IncomeTaxAct1970_25.pdf (accessed 20 April 2018).

Secondary law consists of the Income Tax (Country-by-Country Reporting) Regulations 2017 (the "Regulations"): www.gov.im/media/1355956/2017-sd-0091.pdf (accessed 20 April 2018).

[6] See: www.gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance/international-agreements/base-erosion-and-profit-shifting/action-13-country-by-country-reporting/ (accessed 20 April 2018).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] See Regulation 5.

[9] See Regulation 2.

[10] See Regulation 9.

[11] See Regulation 8. The Isle of Man indicates that the time frame for filing the CbC report of 12 months and a day aligns with the filing date of the company's Isle of Man income tax return and the additional day will not impact on the Isle of Man's ability to exchange information with other Jurisdictions by the relevant date. This does not seem to raise a significant concern and it should not impact the timeframe for exchanges of CbC reports. This will however be monitored.

[12] It is noted that Regulation 7(2) specifies that the CbC report will be based on the standard template set out at Annex III of the OECD's Transfer Pricing Documentation and Country-by-Country Report. This explains that "'Revenues – Unrelated Party' should be read as referring to revenues arising from transactions between independent parties and "Revenues – Related Party" should be read as referring to revenues arising from associated enterprises. In addition, interpretative guidance issued by the OECD in April 2017, explains that "for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report (OECD, 2015), should be interpreted as the Constituent Entities listed in Table 2 of the CbC report". The Isle of Man has issued a clarification of the definitions of "Revenues – Unrelated Party" and "Revenues – Related Party" in its published guidance to ensure consistency with the OECD guidance issued in April 2017: www.gov.im/categories/tax-vat-and-your-

money/income-tax-and-national-insurance/international-agreements/base-erosion-and-profit-shifting/action-13-country-by-country-reporting/ (accessed 20 April 2018).

[13] See Regulation 5(2) and 8.

[14] See Regulation 5(4).

[15] See Regulation 6.

[16] Isle of Man also indicates that the penalties described above are consistent with the penalties for failures by Isle of Man Financial Institutions in respect of reporting under the Common Reporting Standard. The Isle of Man also has extensive experience issuing penalties for late filing in respect of individual, company and employer's annual returns, and penalties for omitting/under-declared income.

[17] See Regulation 11. There is a penalty of GBP 300 (pounds) for failure to file a CbC report or notification.

[18] See Regulation 12 and 15. For each subsequent day on which the failure to file continues, penalties in the amount (not exceeding) of GBP 60 per day. Subject to Regulation 15, the daily default penalty may be increased to GBP 1 000 if the failure continues for more than 30 days following notification of the penalty and with the permission of the Commissioners.

[19] See Regulation 9. A person is liable to a penalty not exceeding GBP 3 000 if the person provides inaccurate information knowingly, without informing the Comptroller or if the person does not take reasonable steps to inform the Comptroller upon discovery of the inaccuracy.

[20] The Isle of Man, as a British Crown Dependency, is party to the Convention on Mutual Administrative Assistance in Tax Matters (the "Convention") by way of the UK's territorial extension. It is expected that the Convention will be the legal instrument under which most CbCR exchanges take place and where a QCAA is also put in place. The Isle of Man understands that exchange, under the Convention, is not possible with the other British Crown Dependencies, Overseas Territories and the UK itself. For the purpose of the CRS, the Isle of Man has been amending/negotiating agreements (Double Taxation Agreements/Tax Information Exchange Agreements) that allow for Automatic Exchange of Information which will be used to facilitate exchange with some of these jurisdictions as and when bilateral QCAAs are entered into.

[21] The Isle of Man indicates the following: The Convention – 84 exchange partners, subject to entry into force into in the coming months with five of those jurisdictions; TIEAs – five additional exchange partners not party to, or able to exchange with, using the Convention; and DTAs – five additional exchange partners not party to, or able to exchange with, using the Convention.

[22] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA, or the reviewed jurisdiction may not have listed all signatories of the CbC MCAA. The Isle of Man indicates that it will further update the list of jurisdictions it intends to exchange CbC reports with, before the first exchanges of information in June 2018.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Israel

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Israel does not yet have a legal and administrative framework in place to implement CbC Reporting and indicates that it is likely that CbC Reporting requirements will apply for fiscal years commencing on or after 1 January 2017. It is recommended that Israel take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Israel does not yet have legislation in place for implementing the BEPS Action 13 minimum standard. Israel indicates that primary law for CbC Reporting has been submitted to the Israeli Knesset for approval and that the secondary law is currently at draft stage. At this time, Israel estimates that the legislation will come into effect by the end of year 2018. Israel indicates that it is likely that CbC Reporting requirements will apply for fiscal years commencing on or after 1 January 2017. It is noted that Israel allows voluntary parent surrogate filing for fiscal years commencing on or after 1 January 2016, that will be exchanged after legislation will be in place. It is recommended that Israel take steps to implement a domestic legal and administrative framework[1] to impose and enforce CbC requirements as soon as possible.

Part B: Exchange of information framework

3. Israel is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in not in force for fiscal year 2016 (entry into force 1 December 2016). This means that Israel will not be able to exchange CbC reports filed under the voluntary parent surrogate filing mechanism with respect to the 2016 fiscal year under the Convention and CbC MCAA on the first exchange date in mid-2018. Israel has however submitted a Unilateral Declaration in order to align the effective date of the Convention with the first intended exchanges of CbC reports under the CbC MCAA for the fiscal year 2016. Israel is also a signatory to the CbC MCAA. It has submitted part of the notifications under Section 8 of the same agreement and intends to have the CbC MCAA in effect with a large number of jurisdictions that provide notifications under Section 8(1)(e) of the same agreement. As of 12 January 2018, Israel does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review[2] process, it is recommended that Israel take steps to have Qualifying

Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions.

Part C: Appropriate use

4. Due to the fact that the legislation is not in place, Israel does not yet have measures in place relating to appropriate use.[3] It is recommended that Israel take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Israel does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Israel does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. Israel indicates that it is likely that CbC Reporting requirements will apply for fiscal years commencing on or after 1 January 2017. Israel allows voluntary parent surrogate filing for fiscal years commencing on or after 1 January 2016, and the CbC reports filed under this mechanism will be exchanged after legislation will be in place.

8. Israel indicates that primary law (bill) for CbC Reporting has been submitted to the Israeli Knesset for approval and that the secondary law (regulations) is currently at draft stage. The primary law will contain general provisions relating to CbC Reporting requirement pursuant to International Agreement in the Income Tax Ordinance. The drafted regulation would elaborate the requirement under the CbC report Israel also indicates that it intends to publish guidance for CbC Reporting once the legislation is finalised. At this time, Israel estimates that the primary and secondary legislation will come into effect by the end of year 2018.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), Israel does not have a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Israel. It is recommended that Israel take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.

Part B: The exchange of information framework

10. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

11. Israel has sufficient legal basis that permits the Automatic Exchange of Information.[5] That legal basis will cover the CbC Reporting exchange after the primary and secondary law will come into effect. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (the "Convention", OECD/Council of Europe, 2011) (in force on 1 December 2016 and in effect for 2017). Since the Convention (OECD/Council of Europe, 2011) will be in effect for the year 2017, Israel will be able to exchange (either send or receive) CbC reports as of 1 January 2017. However, the Convention (OECD/Council of Europe, 2011) is not in effect with respect to the fiscal year starting on 1 January 2016. This means that Israel will not be able to exchange CbC reports filed under the voluntary parent surrogate filing mechanism with respect to the 2016 fiscal year under the Convention and CbC MCAA, on the first exchange date in mid-2018. Israel has however lodged a Unilateral Declaration which enables exchanges of CbC reports relating to the fiscal year 2016 (by aligning the effective date of the Convention (OECD/Council of Europe, 2011) with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention[6]) with other jurisdictions that have provided the same Unilateral Declarations.

12. Israel signed the CbC MCAA on 12 May 2016 and submitted part of the notifications under Section 8 of the same agreement. Israel intends to have the CbC MCAA in effect with a large number of jurisdictions that provide notifications under Section 8(1)(e) of the same agreement. As of 12 January 2018, Israel does not have bilateral relationships activated under the CbC MCAA. It is recommended that Israel take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions.

Conclusion

13. In respect of the terms of reference under review, it is recommended that Israel take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

14. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical

analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

15. Israel does not yet have measures in place relating to appropriate use. Due to the fact that the legislation is not in place, it is recommended that Israel take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

16. In respect of paragraph 12 (a), it is recommended that Israel take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Israel take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.
Part B	Exchange of information framework	It is recommended that Israel take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Israel take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[5] It is noted that under the Article 214B.(b) of the Income Tax Ordinance, "*Despite the provisions of sub-section (a), no information will be transferred to the tax authorities of the foreign country pursuant to an International Agreement if the transfer of the information is likely to do harm to the security of the State of Israel, the public peace or public security, or to open investigations, to public policy or to any other essential concern of the State of Israel, and the Director or any party whom he has authorized for the purpose of this chapter may refuse another country's request for the transfer of information to the tax authority of the foreign country pursuant to the International Agreement if the tax authority of foreign state does not, without justification, transfer information pursuant to the agreement of the Director or any party whom he has authorized for the purpose of this chapter, or if any other condition set out in the agreement is not met*".

[6] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Italy

Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Italy's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Italy has legislation in place that imposes and enforces CbC requirements on MNE Groups whose UPE is resident for tax purposes in Italy. The filing obligation for a CbC report in Italy commences in respect of fiscal years commencing on or after 1 January 2016. Italy meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Italy is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the CbC MCAA. It has provided its notifications under Section 8 (e) (ii) of this agreement and intends to exchange information with all signatories. It is noted that Italy has signed a bilateral QCAA with the United States. As of 12 January 2018, Italy has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Italy has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Italy meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Italy. Italy indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Italy meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Italy has primary and secondary legislation in place[5] which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning on or after 1 January 2016. Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Italy has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have consolidated group revenue of EUR 750 million or more in the immediately preceding fiscal year, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to the parent entity filing obligation.[8]

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Italy applies in respect of reporting fiscal years commencing on or after 1 January 2016. The CbC report must be filed no later than 12 months after the last day of the reporting fiscal year.[9]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[10]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than

that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Italy has introduced local filing requirements which apply to reporting fiscal years commencing on or after 1 January 2016.[11]

12. No inconsistencies were identified with respect to the limitation on local filing obligations.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Italy's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[12]

14. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

15. Italy has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place as the Italian legislation requires that any Constituent Entity of an MNE Group that is resident for tax purposes in Italy to notify the Italian tax administration whether it is the Ultimate Parent Entity or the Surrogate Parent Entity or the designated Constituent Entity.[13] There are also penalties in place in relation to the filing of a CbC report: where the resident Ultimate Parent Entity or, in case of local filing, the resident Constituent Entity, do not meet their obligation to file a CbC report, an administrative fine will be imposed of between EUR 10 000 and EUR 50 000, depending upon the severity of the non-compliance (CbC report not submitted, partially submitted or submitted with mistakes).

16. With respect to specific processes in place that would allow to take appropriate measures in case Italy is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with

respect to its obligation to file a CbC report, Italy indicates that the Provvedimento (Act/Order) of the Director of the Tax Agency ("PROVVEDIMENTO PROT. 275956 dated 28 November 2017) provides for a follow-up procedure in case a Competent Authority of a receiving jurisdiction communicates any errors detected in a CbC report: upon receipt of such a communication, the *Agenzia delle entrate* shall communicate the error notification to the Reporting Entity. The Reporting Entity shall provide the corrected report within 60 days from receipt of the communication.[14]

Conclusion

17. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Italy has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Italy. Italy meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

18. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

19. Italy has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 17 May 2010, in force on 1 May 2012 and in effect for 2016). Italy is also committed to the exchange of CbC reports within the European Union under EU Council Directive (2016/881/EU)

20. Italy signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 31 March 2017. It intends to have the CbC MCAA in effect with the Competent Authorities of all signatories to the CbC MCAA that provide a notification under Section 8(1)(e) of the same agreement.[15] It is noted that Italy has signed a bilateral QCAA with the United States on 27 September 2017. As of 12 January 2018, Italy has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Italy has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[16] Against the backdrop of the still evolving exchange of information framework, at this point in time Italy meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time Italy meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Italy indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use. It has also provided extracts of its guidance.

24. There are no concerns to be reported for Italy in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Italy. Italy thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of Article 1, paragraph 145, in Law no. 208, 28 December 2015: www.gazzettaufficiale.it (accessed 20 April 2018). Secondary law consists of *Ministerial Decree 23 February 2017, published in the Gazzetta Ufficiale of 8.3.2017:* www.gazzettaufficiale.it (accessed 20 April 2018).

[6] A Provvedimento (Act/Order) of the Director of the Tax Agency ("PROVVEDIMENTO PROT. 275956"), containing the detailed arrangements for the submission of CbC reports and provisions on appropriate use, has been published on 28 November 2017: www.agenziaentrate.gov.it (accessed 20 April 2018).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] With respect to the definition of an "Excluded MNE Group" (see Article 1 (4) of the ministerial decree), the provisions of the CbC Decree state that this refers to a Group having total consolidated group revenue of less than EUR 750 000 000 "*or an amount in local currency approximately equivalent to EUR 750,000,000 as of January 2015*" during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements. Italy's published guidance ("PROVVEDIMENTO PROT. 275956" published on 28 November 2017) states that "*in the cases where the jurisdiction of the non-resident Ultimate Parent Entity of a MNE Group, for the purposes of exemption from reporting obligation, has established a revenue threshold, in local currency, approximately equivalent to EUR 750 million, at the exchange rate in January 2015, the aforesaid threshold is also valid for the purposes of the reporting obligations provided for in Article 2, paragraph 2, of the Decree [i.e. local filing requirement] for resident Constituent Entities of the same MNE Group*".

[9] The Provvedimento (Act/Order) of the Director of the Tax Agency ("PROVVEDIMENTO PROT. 275956 dated 28 November 2017"), above mentioned in footnote no.5 and containing the detailed arrangements for the submission of CbC reports, includes specific instructions on the meaning of the items contained in the three CBCR Tables provided for in the 23 February 2017 Ministerial Decree.

[10] It is noted that paragraph 3.2.g) of the Provvedimento (Act/Order) of the Director of the Tax Agency ("PROVVEDIMENTO PROT. 275956" dated 28 November 2017, relating to the definition of accumulated earnings provides that "Accumulated earnings relating to the permanent establishment shall be included in those of the entity of which it is a permanent establishment and shall be reported in the additional information in Table 3 annexed to the Decree".

[11] It is noted that the Italian rules provide that the Constituent Entity resident in Italy shall request its Ultimate Parent Entity to provide it with all information required to enable it to meet its obligations to file a country-by-country report. If despite that, that Constituent Entity has not obtained or acquired all the required information to report for the MNE Group, this Constituent Entity shall file a country-by-country report containing all information in its possession, obtained or acquired, and notify the tax administration that the Ultimate Parent Entity has refused to make the necessary information available. In addition, in accordance with the provisions of European Union (EU) Council Directive 2016/881/EU (Annex III, Section II), where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the EU, the MNE Group may designate one of such Constituent Entities to file the CbC report conforming to the requirements that would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the EU. Where a Constituent Entity cannot obtain or acquire all the information required to file a country-by-country report, then such Constituent Entity shall not be eligible to be designated to be the Reporting Entity for the MNE Group.

[12] These provisions also extend to cases where an MNE Group has filed a CbC report under a voluntary parent surrogate filing mechanism. See Article 2 (6) and (7) of the ministerial decree.

[13] This should be no later than the last day due for the submission of the tax return concerning the Reporting Fiscal Year. Legislation also requires that where a Constituent Entity of an MNE Group, that is resident for tax purposes in Italy, is not the Ultimate Parent Entity nor the Surrogate Parent Entity nor the designated Constituent Entity, it shall notify the tax administration within the same tax return deadline of the identity and tax residence of the Reporting Entity.

[14] See paragraphs 10.1, 10.2 and 10.3 of the Provvedimento (Act/Order) of the Director of the Tax Agency ("PROVVEDIMENTO PROT. 275956 dated 28 November 2017").

[15] Italy's legislation assimilates the EU Council Directive (2016/881/EU) to the presence of a Qualifying Competent Authority Agreement with respect to EU Member States: see Article 1 (13) of the ministerial decree.

[16] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this is because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or have not listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA. It is also noted that Italy has submitted a unilateral declaration on the effective date for exchanges of information, to enable exchanges of CbC reports relating to the fiscal year 2016 with jurisdictions which do not have the Convention in force for such fiscal year and have provided the same unilateral declaration (this unilateral declaration aligns the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention).

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Jamaica

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Jamaica does not yet have a complete legal and administrative framework in place to implement CbC Reporting and indicates that it will not apply CbC requirements for the 2016 fiscal year. It is recommended that Jamaica finalise the domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part A: Domestic legal and administrative framework

2. Jamaica does not yet have legislation in place to implement the BEPS Action 13 minimum standard.[1] Jamaica indicates that amendments are needed in primary law. Jamaica has embarked on the legislative process by first seeking Cabinet's approval to amend primary and secondary legislation. The amendments will be based on the model contained in Action 13. At this time, Jamaica estimates that amendments to primary legislation[2] will come into effect by the second half of 2018. Jamaica indicates that it will apply CbC requirements as of 1 January 2019 with respect to the 2018 fiscal year (Jamaica does have draft secondary legislation, following the model legislation provided by BEPS Action 13 which is to be passed sometime soon). It is recommended that Jamaica finalise the domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Jamaica currently has a network for exchange of information in effect which would allow for Automatic Exchange of Information for CbC Reporting.[3] Jamaica is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"), signed on 1 June 2016 and ratified on 8 December 2017, but which is not yet in force. Jamaica has in place a network for exchange of information which would allow for Automatic Exchange of Information for CbC Reporting: it has multiple bilateral Double Tax Agreements. Jamaica currently has one bilateral CAA not yet in effect with the United States and intends to sign the CbC MCAA with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is recommended that Jamaica take steps to have the Convention in force for taxable years starting as from 1 January 2018 and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

4. Jamaica does not yet have measures in place relating to appropriate use.[4] It is recommended that Jamaica take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Jamaica does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[5] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Jamaica does not yet have a legal and administrative framework in place to implement CbC Reporting and it indicates that it will implement CbC Reporting requirements for year of assessment 2018 to be filed by Ultimate Parent Entities starting 1 January 2019.

8. Jamaica indicates that that the legislation for CbC Reporting is currently in draft stage. Jamaica has embarked on the legislative process by first seeking Cabinet's approval to amend primary and secondary legislation. The amendments will be based on the model contained in Action 13. At this time, Jamaica estimates that the legislation will come into effect by the second half of 2018.

9. Jamaica is willing to introduce an obligation on the Ultimate Parent Entities to file a CbC report within 12 months of the end of the fiscal year if the consolidated annual turnover is equal to or higher than JMD 100 billion (Jamaican dollars). Jamaica affirms that intends to introduce definitions in accordance with those in Action 13 minimum standard.

Conclusion

10. In respect of paragraph 8 of the terms of reference (OECD, 2017), Jamaica does not yet have a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Jamaica. It is recommended that Jamaica take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

11. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

12. Jamaica does not yet have domestic legislation that permits the automatic exchange of CbC reports in place and thus will not implement CbC Reporting requirements for the 2016 fiscal year. Jamaica is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"), signed on 1 June 2016 and ratified on 8 December 2017, but the instruments of ratification have not yet been deposited. Therefore the Convention will not be in effect at the start of the commencement of CbC Reporting in Jamaica on 1 January 2018. Jamaica has a treaty network for exchange of information that include Double Tax Agreements with Canada, China, Denmark, France, Germany, Israel, Norway, Spain, Sweden, United Kingdom and United States which allow Automatic Exchange of Information.

13. Jamaica currently has one bilateral CAA not yet in effect with the United States and intends to sign the CbC MCAA with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Conclusion

14. It is recommended that Jamaica take steps to complete its exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. Jamaica does not yet have measures in place relating to appropriate use. It is recommended that Jamaica take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Jamaica will not be exchanging CbC reports in 2018.

Conclusion

17. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), Jamaica is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Jamaica will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework – parent entity filing obligation	It is recommended that Jamaica finalize its steps to implement a legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Jamaica take steps to complete its exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Jamaica take steps to ensure that the appropriate use condition is met.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Jamaica affirms that intends to follow the model legislation provided by BEPS Action 13.

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[5] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Japan

Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of Country-by-Country (CbC) reports. Japan's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Japan has rules (primary and secondary law, as well as guidance) that impose and enforce CbC requirements on MNE Groups whose UPE is resident for tax purposes in Japan. The first filing obligation for a CbC report in Japan commences in respect of fiscal years commencing on or after 1 April 2016. Japan meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Japan is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the CbC MCAA; it intends to have the CbC MCAA in effect with all signatories of the CbC MCAA as of 8 December 2017. As of 12 January 2018, Japan has 53 bilateral relationships activated under the CbC MCAA.[2] Japan has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Japan meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[3]

Part C: Appropriate use

4. There are no concerns to be reported for Japan. Japan indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[4] Japan meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[5]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Japan has primary law[6] in place which implements the BEPS Action 13 minimum standard, as well as secondary law[7] establishing the necessary requirements, including the filing and reporting obligations. Guidance has also been published.[8]

(a) Parent entity filing obligation

Summary of terms of reference:[9] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Japan has introduced a domestic legal and administrative framework which imposes a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue,[10] whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[11]

8. No inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC Report in Japan commences in respect of fiscal years commencing on or after 1 April 2016. In addition, Japan has allowed Japanese MNE Groups to file a CbC report for fiscal periods commencing on or from 1 January 2016 to 31 March 2016 under a "voluntary parent surrogate filing" mechanism. The CbC report must be filed within 12 months after the last day of the reporting Fiscal Year of the MNE Group.[12]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Japan has introduced local filing requirements as from the reporting periods starting on or after 1 April 2016. However, a transitional relief from local filing requirements is applicable with respect to the fiscal year from 1 April 2016 to 31 March 2017, except for the case where local filing applies in respect of a Systemic Failure.[13]

12. With respect to the conditions under which local filing may be required (paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017b)), local filing requirements can be required in situations where there is a QCAA between Japan and the jurisdiction of the UPE, and *on the last day of each fiscal year of the UPE, the tax jurisdiction falls under the country or territory as designated by the Commissioner of the National Tax Agency in the case where it is found that such country or territory is unable to provide Japan with any information in an equivalent manner to that in which Japan is to provide the country or territory with the CbC report.*[14] This condition does not reflect precisely the concept of "Systemic Failure" as defined in paragraph 21 of the terms of reference (OECD, 2017b) and could be interpreted in a broader meaning. However, Japan indicates that the interpretation of this condition is consistent with the terms of reference. This is clarified in the FAQs published by the National Tax Agency of Japan (NTA).[15]

13. No inconsistencies were identified with respect to the limitation on local filing obligation.[16]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

14. Japan's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[17] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying

these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference)..

15. Japan has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place to enforce compliance by all Ultimate Parent Entities and Surrogate Parent Entities with their filing obligations.[18] Japan indicates that the National Tax Agency (NTA) checks whether or not the notifications and CbC reports are submitted: where entities are identified, which are obliged to file a CbC report have not done so, a written inquiry is sent to them.[19] There are also penalties in place in relation to the filing of a CbC report for cases where a taxpayer does not comply with the obligations established in the regulations, working as enforcement powers to compel the production of a CbC Report: taxpayers are subject to a penalty for failure to file a CbC report.[20] In addition, Japan indicates that where entities which have received a written enquiry because they have not submitted a CbC report, the NTA takes direct contact with them to require the submission of the CbC report promptly. Where there are errors or defects in the CbC report, the entity providing it is required to correct the error or compensate the defect.[21]

16. There are no specific processes in place that would allow to take appropriate measures in case Japan is notified by another jurisdiction that such other jurisdiction it has reason to believe with respect to a Reporting Entity that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

17. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Japan has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose UPE is resident for tax purposes in Japan. Japan meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

18. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

19. Japan has sufficient legal basis in its domestic legislation to automatically exchange information on CbC reports.[22] [23] It is part of (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*

(OECD/Council of Europe, 2011) (signed on 3 November 2011, in force on 1 October 2013 and in effect for 2016) and (ii) bilateral Double Tax Agreements which allow Automatic Exchange of Information.[24]

20. Japan signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA.[25] It intends to have the CbC MCAA in effect with all signatories of the CbC MCAA as of 8 December 2017. As of 12 January 2018, Japan has 53 bilateral relationships activated under the CbC MCAA.[26] Japan has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Japan meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review).[27] Against the backdrop of the still evolving exchange of information framework, at this point in time Japan meets the terms of reference.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time Japan meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Japan indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports*

(OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

24. There are no concerns to be reported for Japan in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Japan. Japan thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] This number includes three non-reciprocal relationships (Bermuda, Cyprus and Cayman Islands).

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[4] These questions were circulated to all members of the Inclusive Framework following the release of the *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017) on 6 September 2017, further to the approval of the Inclusive Framework.

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] See Act on Special Measures concerning Taxation, Supplementary Provisions [Act No. 15 of March 31, 2016] and Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaty.

[7] See Order for Enforcement of the Act on Special Measures concerning Taxation, Supplementary Provisions [Cabinet Order No. 159 of March 31, 2016] and Ordinance for Enforcement of the Act on Special Measures concerning Taxation

[8] See Commissioner's Directive on Interpretation of the Act on Special Measures concerning Taxation, Commissioner's Directive on the Operation of Transfer Pricing (Administrative Guidelines), Commissioner's Directive on Form of Application and Reporting on Corporation Taxation (Form No.128), Commissioner's Directive on Form of Application and Reporting on Corporation Taxation (Form No.129), Commissioner's Directive on Form of Application and Reporting on Corporation Taxation (Form No.130).

[9] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[10] It is noted that with respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017)), where the MNE Group draws up its Consolidated Financial Statements in a currency other than the yen (JPY), Japanese rules provide that the total consolidated revenue shall be converted into JPY using certain prescribed methods (See Commissioner's Directive on Interpretation of the Act on Special Measures concerning Taxation - 66-4-4-2 (Conversion of Gross Revenue into JPY): the amount "shall be converted into JPY using the medium price middle rate of the telegraphic transfer rate (meaning the medium price middle rate of the telegraphic transfer rate specified in the basic circular Notice Commissioner's Directive on Interpretation of the Corporation Tax Act No. 13-2-1-2.). Japan confirmed that this rule was not incompatible with the OECD guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Japan tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group (See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the *Guidance on the Implementation of Country-by-Country Reporting* (OECD, 2018). Japan confirmed that the local filing requirements would not apply in Japan to a Constituent Entity of an MNE Group, the Ultimate Parent Entity of which is not subject to filing a CbC report in its jurisdiction of residence (see last sentence of the Commissioner's Directive on Interpretation of the Act on Special Measures concerning Taxation (Case Where Necessary Measures Have Not Been Taken) 66-4-4-3).

[11] See Article 66-4-4(4) (v) of Act on Special Measures concerning Taxation and Article 39-12-4(5) of the Order for Enforcement of the Act on Special Measures concerning Taxation; Article 66-4-4(4) (iii) of Act on Special Measures concerning Taxation; Article 66-4-4(4) (i) (ii) (iii) (iv) of the Act on Special Measures concerning Taxation; Article 39-12-4(2) (i) and (ii) and Article 39-12-4(3) and (4) of Order for Enforcement of the Act on Special Measures concerning Taxation; as well as Article 22-10-4(6) (7) (8) of the Ordinance for Enforcement of the Act on Special Measures concerning Taxation.

[12] See Article 66-4-4(1) of Act on Special Measures concerning Taxation.

[13] See Article 66-4-4(2) of Act on Special Measures concerning Taxation; Article 39-12-4(1) of Order for Enforcement of the Act on Special Measures concerning Taxation; Article 23 of Supplementary Provisions [Cabinet Order No.159 of March 31, 2016]; and the leaflet on "Voluntary Provision of Country-by-Country Report" of October 2016 of the National Tax Agency.

[14] See Article 39-12-4(1) (iii) of the Order for Enforcement of the Act on Special Measures concerning Taxation.

[15] See Question 52 - *Which case is deemed as "where the tax jurisdiction of the ultimate parent entity of a specified MNE group falls under the country or territory where it is found that such country or territory is unable to provide Japan with any information in an equivalent manner to that in which Japan is to provide the country or territory with the country-by-country report" ? How can we confirm it?*

Answer: The case "where the tax jurisdiction of the ultimate parent entity of a specified MNE group falls under the country or territory where it is found that such country or territory is unable to provide Japan with any information in an equivalent manner to that in which Japan is to provide the country or territory with the country-by-country report " is applicable in the following case;

i. domestic legislation is implemented to obligate MNE Groups to provide the CbCR in the jurisdiction in which the ultimate parent entity is resident for the tax propose; and

ii. although there is a Competent Authority Agreement with Japan, a tax authority in the jurisdiction in which the ultimate parent entity is resident for the tax purpose has suspended providing CbCRs for reasons other than those that are in accordance with the terms of that agreement or otherwise persistently failed to automatically provide CbCRs to Japan.

In above case, the Commissioner of the NTA will announce the target jurisdictions.

[16] Local filing in Japan may apply to permanent establishments.

[17] See Article 66-4-4 (1) and (2) of Act on Special Measures concerning Taxation.

[18] See Article 66-4-4(5) of Act on Special Measures concerning Taxation: Japan has a notification mechanism in place whereby all UPEs and SPEs are required to provide a notification to the National Tax Agency no later than the last day of each fiscal year of the UPE.

[19] See Commissioner's Directive on Form of Application and Reporting on Corporation Taxation (Form No.128) and Commissioner's Directive on Form of Application and Reporting on Corporation Taxation (Form No.129), as well as Administrative affairs concerning the provision of matters of notification of the ultimate parent entity pertaining to a specified MNE group and matters pertaining to the representative provider where there are several entities obligated to provide matters of notification of the ultimate parent entity, country-by-country report and master file("the MNE Notification") (Administrative Circular).

[20] See Article 66-4-4(7) and (8) of Act on Special Measures concerning Taxation: (7) In the event of a failure to provide the country-by-country report to the district director of the tax office as provided for in Paragraph (1) or (2) no later than the due date for providing such report without justifiable grounds, the representative person (including the administrator of an association or foundation without juridical personality; the same shall apply in the following paragraph), agent, employee or any other worker of a corporation who has committed such violation shall be punished by a fine of not more than 300 000 JPY; provided, however, that such person may be exculpated in light of circumstances. (8) When the representative person, agent, employee or any other worker of a corporation has committed a violation set forth in the preceding paragraph with regard to the operations of the corporation, not only the offender shall be punished but also the corporation shall be punished by the fine prescribed in the same paragraph.

[21] See Administrative affairs concerning the provision of matters of notification of the ultimate parent entity pertaining to a specified MNE group and matters pertaining to the representative provider where there are several entities obligated to provide matters of notification of the ultimate parent entity, country-by-country report and master file("the MNE Notification") (Administrative Circular).

[22] See Article 8-2 of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement Tax Treaty.

[23] It is noted that the Minister of Finance of Japan may provide the authority to enforce acts in relation to international agreements to provide information to a contracting party pursuant the stipulations of tax treaties concluded between Japan and contracting parties. This provision shall not apply, however, in cases where it is deemed that there is a risk that providing such information might harm Japan's national interests (See Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaty - Article 8-2 (Providing Information to Contracting Party). A Commissioner's Directive for Exchange of Information with Contracting Party of Tax Treaty (Administrative Guidelines) clarifies the meaning of this concept: this provision may for example cover situations where it is found that the exchange of information adversely affects the diplomatic or security interests of Japan, or where it is found that such provision interferes with ensuring security or with a criminal investigation. Japan indicates that this situation is considered to apply in very limited cases. This provision

(i.e. Article 8-2 of Law on Special Provisions of the Income Tax Law) is, therefore, not intended to be applied widely for the exchange of information cases including CbCR exchange.

[24] Japan provided the following list of countries with which it can exchange information based on the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and bilateral tax conventions (117 jurisdictions as of 1 August 2017 – the exchange relationships are already effective): Albania, Andorra, Anguilla, Argentina, Armenia, Aruba, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Brunei Darussalam, Bulgaria, Cameroon, Canada, Cayman Islands, Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Faroe Islands, Fiji, Finland, France, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Guernsey, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Jersey, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxemburg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Martin, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Turks and Caicos Islands, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam and Zambia.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[25] Japan submitted notifications under Section 8 (1) (a) to (d) on 22 December 2016 and notification under Section 8(1)(e)(i) on 29 June 2017.

[26] This number includes three non-reciprocal relationships (Bermuda, Cyprus and Cayman Islands).

[27] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

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Jersey

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Jersey's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Jersey has rules (primary and secondary laws) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Jersey. The first filing obligation for a CbC report in Jersey commences in respect of reporting fiscal years beginning on or after 1 January 2016. Jersey meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Jersey is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. Jersey has also signed a bilateral Competent Authority Agreement (CAA) with the United States, the United Kingdom and with Guernsey. As of 12 January 2018, Jersey has 49 bilateral relationships activated under the CbC MCAA or exchanges under the bilateral CAAs. Jersey has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Jersey meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Jersey. Jersey indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Jersey meets the terms of

reference relating to the appropriate use aspects[4] under review for this first annual peer review.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Jersey has primary and secondary law in place which implements the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5] No guidance has been published.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Jersey has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to the parent entity filing obligation.[7]

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Jersey commences in respect of accounting periods beginning on or after 1 January 2016.[8] The CbC report must be filed by no later than 12 months after the end of the accounting period of the MNE Group.[9]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[10]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Jersey has introduced local filing requirements in respect of accounting periods beginning on or after 1 January 2016.[11]

12. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), local filing is required where "the appropriate authority of the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has not entered into exchange agreement with the Comptroller in respect of the accounting period to which the report relates (…)" which is defined under Regulation 6(b). Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in Jersey's legislation. Under Jersey's legislation, local filing may be required in circumstances where there is no current international agreement between Jersey and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. Although this condition does not reflect the details of paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) to refer to a "Qualifying Competent Authority in effect" to which Jersey is a Party "by the time for filing the Country-by-Country Report" (as the date when the condition relating to a QCAA may be tested), Jersey confirms that it will apply this provision in accordance with the wording of these terms of reference. It confirms that it has already taken steps to amend its regulations: the new regulations are currently at the drafting stage and are expected to be presented for parliamentary approval in the spring of 2018. As such, no recommendation is made but this aspect will be monitored.

13. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017b)), local filing requirements can be required if "the Comptroller has notified the Jersey entity that the arrangements are not operating effectively (…) or if the Constituent Entity has requested the Comptroller to confirm whether or not the arrangements are operating effectively and the Comptroller has indicated that they are not". However, this condition does not reflect the details of paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017b) in particular in regard of the concept of "Systemic Failure", and be interpreted in a broader meaning than the situation of a "Systemic Failure". It is however noted that Jersey has published updated interpretation on Jersey government website to clarify that for the purposes of Regulations 5 and 6, the Comptroller will assess whether exchange

relationships are operating effectively in line with the references to "systemic failure" in the MCAA and OECD's guidance.[12] As such, no recommendation is issued but this aspect will be monitored.

14. No other inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Jersey's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[13] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

16. Jersey has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Jersey entity.[14] There are also penalties in relation to the filing and notification for filing of a CbC report: (i) penalties for failure to file,[15] (ii) daily default penalties[16] and (iii) penalties for inaccurate information.[17] Jersey also indicates that work is underway to amend the annual company tax return to require Jersey companies to declare the consolidated revenues of the group of which they are a member. This will be used as a compliance mechanism and will be reviewed in the course of the normal audit / investigation process.

17. Jersey indicates that it also has enforcement powers in place to compel the production of a CbC report. In addition to the financial penalties for late filing of reports, officers are also permitted to enter business premises, examine and copy business documents in order to investigate any issue relating to compliance with the CbC Regulations.[18]

18. There are no specific processes in place that would allow Jersey to take appropriate measures in case Jersey is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. It is noted that Jersey has indicated tentative measures as follows, based on the approach applied in respect of

its FATCA agreement with the United States since 2015: (i) contact the entity in writing to determine the position. (ii) review the response provided by the entity for reasonableness, (iii) if unsatisfied, seek further information, which could include exercising powers to search premises, (iv) consult with the other jurisdiction as necessary, (v) if the other jurisdiction's complaint proves well-founded, agree appropriate rectification action by the reporting entity and the timescale by which this will be completed and (vi) consider the appropriate penalty or enforcement action to take, depending on the severity of the breach. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Jersey has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Jersey. Jersey meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

20. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

21. Jersey has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) (the "Convention"), as amended by the 2010 Protocol, (in force on 1 June 2014 and in effect for 2016)[19] and (ii) multiple bilateral Double Tax Agreements,[20] which allow Automatic Exchange of Information in the field of taxation.

22. Jersey signed the CbC MCAA on 21 October 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 30 March 2017. It intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. Jersey has also signed a bilateral CAA with the United States, United Kingdom and Guernsey. As of 12 January 2018, Jersey has 49 bilateral relationships activated under the CbC MCAA[21] or exchanges under the bilateral CAAs. Jersey has taken steps to have bilateral Qualifying Competent Authority Agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Jersey meets the terms of reference regarding the exchange of information framework.

Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time, Jersey meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

24. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

25. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Jersey indicates that measures are in place to ensure the appropriate use of information in the six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

26. There are no concerns to be reported for Jersey in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

27. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Jersey. Jersey thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of the Taxation (Implementation) (Jersey) Law 2004, Article 2: www.jerseylaw.je/laws/revised/PDFs/17.850.pdf (accessed 23 April 2018). Secondary law consists of Taxation (Implementation) (International Tax Compliance) (Country-by-Country Reporting: BEPS) (Jersey) Regulations 2016 (hereafter referred to as the "Regulations"): www.jerseylaw.je/laws/revised/PDFs/17.850.37.pdf (accessed 23 April 2018).

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] It is noted that Jersey has clarified through interpretation published on the Jersey government website that the annual consolidated group revenue threshold calculation would apply in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Jersey. See www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/CountrybyCountryReporting.aspx (accessed 20 April 2018).

[8] See Regulation 5(2). Jersey refers to the period for which the CbC report has to be filed as "AP+1" where AP (Accounting Period) refers to the year in which the threshold requirement is met, i.e. the consolidated revenue of the MNE Group is at least EUR 750 million.

[9] See Regulation 5(3) which requires the CbC report to be filed by the filing deadline which is defined in Regulation 1 to be 12 months after the end of the relevant accounting period.

[10] Jersey has published updated interpretation on the Jersey government website to clarify that the definitions of "Revenues – Unrelated Party" and "Revenues – Related Party" are to be interpreted in accordance with guidance published in April 2017. See: www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/CountrybyCountryReporting.aspx (accessed 20 April 2018).

[11] See Regulation 5(4) and 6.

[12] See www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/CountrybyCountryReporting.aspx (accessed 20 April 2018).

[13] See Regulation 5(8).

[14] See Regulation 5(9).

[15] See Regulation 7. There is a penalty of GBP 300 (pounds) for failure to file a CbC report or notification.

[16] See Regulation 8 and 14. For each subsequent day on which the failure to file continues, penalties in the amount (not exceeding) of GBP 60 per day. Subject to Regulation 14, the daily default penalty may be increased to GBP 1 000 if the failure continues for more than 30 days following notification of the penalty and with the permission of the Commissioners of Appeal.

[17] See Regulation 9. A person is liable to a penalty not exceeding GBP 3 000 if the person provides inaccurate information knowingly, without informing the Comptroller or if the person does not take reasonable steps to inform the Comptroller upon discovery of the inaccuracy.

[18] See Regulation 17 and 18.

[19] Jersey, as a British Crown Dependency, is a Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the "Convention") by way of the United Kingdom's territorial extension.

[20] Jersey indicates that it will exchange CbC reports under existing bilateral Double Tax Agreements with Guernsey, Hong Kong (China), Isle of Man, Qatar, and Rwanda under Tax Information Exchange Agreements with United Kingdom and United States.

[21] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA. Jersey indicates that it will further update the list of jurisdictions it intends to exchange CbC reports with, before the first exchanges of information in June 2018.

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OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Kazakhstan

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Kazakhstan indicates that it has legislation in place to implement the BEPS Action 13 minimum standard. However, because the law was enacted on 25 December 2017, Kazakhstan was unable to provide a translation of the legislation in due course. Therefore, it was only possible to carry out a very preliminary review for this first annual peer review process based on some initial information. Based on this initial information, Kazakhstan's domestic and legal administrative framework may potentially raise one substantive issue. The domestic legal and administrative framework will however be assessed in the next annual peer review process (and the preliminary recommendation contained in this report may therefore be later amended based on further information). In addition, it is recommended that Kazakhstan put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Kazakhstan indicates that it has legislation in place to implement the BEPS Action 13 minimum standard.[1] However, because the law was enacted on 25 December 2017, Kazakhstan was unable to provide a translation of the legislation in due course. Therefore, it was only possible to carry out a very preliminary review for this first annual peer review process based on some initial information. Based on this initial information, it is recommended that Kazakhstan amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference. The domestic legal and administrative framework will however be assessed in the next annual peer review process. The preliminary recommendation contained in this report may therefore be later amended based on further information.

Part B: Exchange of information framework

3. Kazakhstan is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 3 November 2010, in force on 1 June 2011 and in effect for 2016). It is not a signatory to the CbC MCAA. As of 12 January 2018, Kazakhstan does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that Kazakhstan take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Kazakhstan does not yet have measures in place relating to appropriate use. It is recommended that Kazakhstan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Kazakhstan has primary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[4] [5] However, because the law was enacted on 25 December 2017, Kazakhstan was unable to provide a translation of the legislation in due course. Therefore, it was only possible to carry out a preliminary review for this first annual peer review process.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Based on initial information, Kazakhstan has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on UPEs of MNE Groups above a certain threshold of revenue. The domestic legal and administrative framework will be assessed in the next annual peer review process.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

8. Based on initial information, the first filing obligation for a CbC report in Kazakhstan commences in respect of financial years beginning on 1 January 2016 or thereafter. The CbC report must be filed within 12 months of the last day of the reporting fiscal year of the MNE Group. The domestic legal and administrative framework will be assessed in the next annual peer review process.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

9. Based on initial information, Kazakhstan has introduced local filing requirements in respect of financial years beginning on 1 January 2016 or thereafter.

10. Based on a preliminary assessment of the legislation, it seems that the circumstances under which local filing may occur under Kazakhstan's legislation appear to be wider than permitted under the terms of reference. Examples of cases where local filing may be required under Kazakhstan's legislation, but would not be permitted under the minimum standard, include:

- where the Ultimate Parent Entity of an MNE group has is required to file a CbC report in the jurisdiction of residence, but has not complied with this obligation.[7] This is normally a situation for which it is up to the jurisdiction of residence of the Ultimate Parent Entity to deal with, through its enforcement measures.
- where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but there is no international agreement between Kazakhstan and this jurisdiction.[8]

11. Based on a preliminary assessment of the legislation, it is recommended that Kazakhstan amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference. The domestic legal and administrative framework will however be assessed in the next annual peer review process and this preliminary recommendation may therefore be later amended based on further information.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

12. The domestic legal and administrative framework will be assessed in the next annual peer review process.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

13. The domestic legal and administrative framework will be assessed in the next annual peer review process.

Conclusion

14. In respect of paragraph 8 of the terms of reference (OECD, 2017), Kazakhstan indicates that it has legislation in place to implement the BEPS Action 13 minimum standard. However, because the law was enacted on 25 December 2017, Kazakhstan was unable to provide a translation of the legislation in due course. Therefore, it was only possible to carry out a preliminary review for this first annual peer review process. Based on this assessment, it is recommended that Kazakhstan amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference. The domestic legal and administrative framework will however be assessed in the next annual peer review process (and the preliminary recommendation in this report may therefore be later amended based on further information).

Part B: The exchange of information framework

15. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

16. Kazakhstan does not have a domestic, legal basis for the exchange of information in place. Kazakhstan is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 23 December 2013, in force on 1 August 2015 and in effect for 2016). It is not a signatory to the CbC MCAA. Kazakhstan does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.

17. As of 12 January 2018, Kazakhstan does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Kazakhstan take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of then Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Conclusion

18. In respect of the terms of reference under review, it is recommended that Kazakhstan take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

19. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

20. Kazakhstan does not yet have measures in place relating to appropriate use. It is recommended that Kazakhstan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

21. It is recommended that Kazakhstan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	Kazakhstan indicates that it has legislation in place to implement the BEPS Action 13 minimum standard. However, because the law was enacted on 25 December 2017, Kazakhstan was unable to provide a translation of the legislation in due course. Therefore, it was only possible to carry out a preliminary review for this first annual peer review process. The domestic legal and administrative framework will be assessed in the next annual peer review process.
Part A	Domestic legal and administrative framework – Limitation on local filing obligation	Based on a preliminary assessment of the legislation, it is recommended that Kazakhstan amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference. The domestic legal and administrative framework will however be assessed in the next annual peer review process.
Part B	Exchange of information	It is recommended that Kazakhstan take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Kazakhstan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] Under "Статья 5-1. Заявление об участии в международной группе" Article 5-1 relates to declaration of participation in an MNE.

See https://online.zakon.kz/Document/?doc_id=30194061#pos=203;-107 (accessed 20 April 2018).

Under "Статья 7-3. Межстрановая отчетность" Article 7-3 relates to CbC Reporting.

See: https://online.zakon.kz/Document/?doc_id=30194061#pos=261;-86 (accessed 20 April 2018).

[5] The domestic legislation was introduced in The Transfer Pricing Law of 25 December 2017. This law provides for the regulation of CbC Reporting, this provision was put into effect retrospectively from 1 January 2016.

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[7] Статья 7-3. Межстрановая отчетность, article 7-3(3)(1).

[8] Статья 7-3. Межстрановая отчетность, article 7-3(3)(1).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Kenya

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Kenya does not have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Kenya finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Kenya does not have a legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. It is recommended that Kenya take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. Kenya is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 8 February 2016, not yet in effect). With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process,[2] it is recommended that Kenya take steps to bring the Convention into force as soon as possible, sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Kenya will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. With respect to terms of reference under review for this first annual peer review,[3] Kenya does not yet have measures in place relating to appropriate use. It is recommended that Kenya take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Kenya will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Kenya does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Kenya does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year.

8. Kenya notes that draft legislation is currently under discussion and close to finalising. As Kenya got a new Parliament in August 2017, it is envisaged that Parliament will consider this new Income Tax Bill in the first quarter of 2018 and hence new legislation will come into effect in 2019.

9. The steps for implementing new legislation in Kenya are (1) drafting of the legislation, (2) release draft for public comments, (3) review and incorporation of comments, (4) publication of bill, (5) forwarding to Parliament for parliamentary process (including further public participation and deliberation by relevant committee) and approval, (6) presidential assent and (7) coming into effect.

Conclusion

10. In respect of paragraph 8 of the terms of reference (OECD, 2017), Kenya does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Kenya. It is recommended that Kenya take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

11. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

12. Kenya does not yet have domestic legislation that permits the automatic exchange CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"), signed on 8 February 2016. The instruments of ratification have not yet been deposited, therefore the Convention may not be in effect at the start of the commencement of CbC Reporting requirements. This means that Kenya may not be able to exchange (either send or receive) CbC reports under the Convention.

13. Kenya has not signed the CbC MCAA and does not have Qualifying Competent Authority Agreements (QCAAs) in effect.

14. As of 12 January 2018, Kenya does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Kenya take steps to enable exchanges of CbC reports relating to the fiscal year 2017, in particular:

- bringing the Convention into force as soon as possible (notably depositing its instrument of ratification, carrying on any internal process so that the Convention is brought into effect and lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention),
- signing the CbC MCAA,
- have QCAAs in effect.

Conclusion

15. It is recommended that Kenya take steps to have the Convention in force as soon as possible, sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Kenya will not be exchanging CbC reports in 2018.

Part C: Appropriate use

16. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer

prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

17. Kenya does not yet have measures in place relating to appropriate use. It is recommended that Kenya take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Kenya will not be exchanging CbC reports in 2018.

Conclusion

18. It is recommended that Kenya take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Kenya will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Kenya take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Kenya take steps to have the Convention in force as soon as possible, sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Kenya take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Korea

Summary of key findings

1. Consistent with the agreed methodology**,** this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Korea's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Korea has legislation in place that imposes and enforces CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Korea. The filing obligation for a CbC report in Korea commences in respect of fiscal years commencing on or after 1 January 2016. Korea meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Korea is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in force for 2016, and is also is a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Korea has 50 bilateral relationships activated under the CbC MCAA. Korea has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). It is also noted that Korea has signed a bilateral CAA with the United States. Against the backdrop of the still evolving exchange of information framework, at this point in time Korea meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Korea. Korea indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Korea meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Korea has primary and secondary legislation in place[5] which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning on or after 1 January 2016. No additional guidance has been issued.

(a) Parent entity filing obligation

> Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Korea has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have consolidated group revenues equal to or above a certain threshold,[7] whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

> Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Korea applies in respect of reporting fiscal years commencing on or after 1 January 2016.

10. A CbC Report is to be filed no later than one year after the end of the reporting fiscal year, except where a taxpayer is unable to submit a CbC Report due to exceptional circumstances and it files an application for an extension, which may be granted by the tax office. No recommendation is made with respect to the filing deadline, but the operation of this exception should be monitored to determine the number of times and the circumstances in which it is used.

11. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. Korea has introduced local filing requirements which apply to reporting fiscal years commencing on or after 1 January 2016.

13. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), under Korea's legislation,[8] local filing applies where an MNE group has a Constituent Entity which is a taxpayer in Korea, and the jurisdiction in which the Ultimate Parent Entity of the MNE group is resident does not have a qualifying competent authority agreement in effect with Korea by the due filing date for the CbC report. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in Korea's legislation. Under Korea's legislation, local filing may be required in circumstances where there is no current international agreement between Korea and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. Korea however indicates that this condition will be interpreted to apply when: "*1) International Agreement such as a Double Tax Convention or a Tax Information Exchange Agreement or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) *for Exchange of Country-by-Country Reports is in effect with the jurisdiction in which foreign controlling shareholders are located for tax purposes, however, does not have a Qualifying Competent Authority Agreement in effect with such jurisdiction by the time for filing the CbC report, or 2) There has been a Systemic Failure on the Exchange of Country-by-Country Reports of a country in which foreign controlling shareholders are located that has been notified to the Constituent Entity by its tax administration*". A Frequently Asked Question containing providing for this language has been published on the National Tax Service website on 10 November 2017.[9] As such, no recommendation is made.

14. No other inconsistencies were identified with respect to the limitation on local filing obligations.[10]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Korea's local filing requirements will not apply if there is surrogate filing in another jurisdiction. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing in a third country.[11]

16. No inconsistencies were identified with respect to the limitation on local filing obligations in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

17. Korea has legal mechanisms in place to identify MNE Groups whose Ultimate Parent Entity is resident in Korea and to enforce compliance with the minimum standard. There are notification mechanisms in place that apply to taxpayers in Korea:[12] every Korean taxpayer which is part of an MNE Group within the scope of CbC Reporting must provide a notification within six month of the end of its business year if it is the Ultimate Parent Entity of the MNE group, or to provide details of the foreign reporting entity. There are also penalties in cases of (i) non-filing, (ii) late filing or (iii) inaccurate filing of a CbC Report.[13]

18. There are no specific processes to take appropriate measures in case Korea is notified by another jurisdiction that it has reason to believe with respect to a Reporting Entity that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

19. No inconsistencies were identified with respect to the effective implementation.

Conclusion

20. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Korea has a domestic framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Korea. Korea meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

21. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference.

> Summary of terms of reference: having QCAAs in effect with jurisdictions of the Inclusive Framework, within the context of the current exchange of information network of the reviewed jurisdiction (paragraph 9 (a) of the terms of reference).

22. Korea has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 27 May 2010, in force on 1 July 2012 and in effect for 2016).[14]

23. Korea signed the CbC MCAA on 30 June 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 16 June 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. It is noted that Korea has signed a bilateral CAA with the United States. As of 12 January 2018, Korea has 50 bilateral relationships activated under the CbC MCAA and exchanges under the bilateral CAA.[15] Korea has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Korea meets the terms of reference.

Conclusion

24. Against the backdrop of the still evolving exchange of information framework, at this point in time Korea meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

25. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

> Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

26. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Korea indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use. It has also provided a copy of its internal guidance on appropriate use.

27. There are no concerns to be reported for Korea in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

28. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Korea. Korea thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of the Act on the Adjustment of International Taxes, the Enforcement Decrees (i.e. Presidential Decrees) and the Enforcement Rules (i.e. Ministry Ordinances): http://law.go.kr (accessed 20 April 2018) and http://law.go.kr (accessed 20 April 2018). Secondary law consists of a Notice on Parties Required to File Country-by-Country Reports and the Scope of Preparation (Notice of the Minister of Strategy and Finance), a copy of which has been provided for in the questionnaire for reviewed jurisdiction.

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] KRW 1 trillion in respect of a "domestic" Ultimate Parent Entity.

[8] See Article 21-2 2. (b) 2) of the Enforcement Decree of the Act on the Adjustment of International Taxes.

[9] See as follows: "Question 19> *What is the specific meaning of Article 21-2 2. 2) of the Enforcement Decree of the Act on the Adjustment of International Taxes?*

"2) The jurisdiction in which the ultimate parent entity of that MNE Group is resident for tax purposes does not have a tax treaty in effect with Korea (by the due date for filing the CbC Report) that provides for the exchange of CbC Reports".

Answer> 1)International Agreement such as a Double Tax Convention or a Tax Information Exchange Agreement or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters for Exchange of Country-by-Country Reports is in effect with the jurisdiction in which foreign controlling shareholders are located for tax purposes, however, does not have a Qualifying Competent Authority Agreement in effect with such jurisdiction by the time for filing the CbC report, or

2) There has been a Systemic Failure on the Exchange of Country-by-Country Reports of a country in which foreign controlling shareholders are located that has been notified to the Constituent Entity by its tax administration".

[10] According to Korea's legislation, local filing may apply to a foreign resident who operates an Korean permanent establishment (see Article 3 of the Notice on Parties Required to File Country-by-Country Reports and the Scope of Preparation (Notice of the Minister of Strategy and Finance)): it is however unclear whether permanent establishments in Korea are considered "resident for tax purposes", with respect to paragraph 8 (c) i. of the terms of reference (OECD, 2017b).

[11] Korea applies an exemption from local filing where a CbC report is filed by a surrogate entity which operates where the filed CbC report is exchanged without any problems.

[12] See Form 8-4 with respect to the "Information on Parties Required to Submit a CbC Report".

[13] Under Article 51(1)1-2 of the Enforcement Decree of the Act on the Adjustment of International Taxes, where a person fails to submit or falsely submits all or some of specifications of CbC reports, an administrative fine of KRW 10 million (Korean won) is imposed.

[14] Korea also reported double tax treaties and tax information exchange agreements but did not provide a list of these agreements.

[15] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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Latvia

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Latvia's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one interpretative issue and one substantive issue in relation to its domestic legal and administrative framework. The report, therefore, contains two recommendations to address this issue. In addition, it is recommended that Latvia have in place measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Latvia has rules (primary law) in place that impose and enforce CbC requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Latvia. The first filing obligation for a CbC report in Latvia commences in respect of reporting fiscal years beginning on 1 January 2016 or later. Latvia meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the annual consolidated threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than Latvia[2] which may deviate from the guidance issued by the OECD. Although such deviation may be unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 minimum standard.
- the absence of a provision whereby a single Constituent Entity of the same MNE Group may be designated to file the CbC report which would satisfy the local filing requirement of all the Constituent Entities.

Part B: Exchange of information framework

3. Latvia is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 29 May 2013, in force on 1 November 2014 and in effect for 2016). Latvia has also signed the CbC MCAA. It has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. Latvia has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Latvia has 54 bilateral relationships activated under the CbC MCAA or under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Against the backdrop of the still evolving exchange of information framework, at this point in time Latvia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[3]

Part C: Appropriate use

4. Because Latvia does not have measures in place in all six areas for appropriate use, it is recommended that Latvia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Latvia has primary legislation in place[5] which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning on or after 1 January 2016. No secondary legislation and/or guidance have been published.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Latvia has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have consolidated group revenue of EUR 750 million or more in the immediately preceding fiscal year, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the CbC filing requirements, Latvia's legislation states in its definition of "Excluded MNE Group" that the CbC filing requirement is not applicable if the consolidated group revenue is *"less than EUR 750 000 000 during the relevant fiscal year immediately preceding the reporting fiscal year (in accordance with the consolidated financial statement for such preceding fiscal year)*".[7] While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Latvia, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Latvian tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[8] It is thus recommended that Latvia amend or otherwise clarify this rule so that it would apply in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Latvia, when local filing requirements are applicable.

9. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Latvia commences in respect of reporting fiscal years starting on or after 1 January 2016.[9] The CbC report must be filed within 12 months after the end of the reporting fiscal year of the MNE Group.[10]

11. The primary legislation includes a description of the items to be included in a CbC Report. For "Revenues" (related parties),[11] this explains that "the revenues arisen in transactions with related entities shall be indicated".[12] However, interpretative guidance issued by the OECD[13] explains that "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report*". It is expected that Latvia issue an updated interpretation or clarification of the definitions of "Revenues" (related parties) within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

12. No other inconsistencies were identified in respect of the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Latvia has introduced local filing requirements[14] as from the reporting period starting on or after 1 January 2016.

14. With respect to paragraph 8 (c) v. of the terms of reference (OECD, 2017b), there is no provision in Latvia's legislation to provide that, where local filing is required and there is more than one Constituent Entity of the same MNE Group that is resident for tax purposes in Latvia, one Constituent Entity be designated to file the CbC report which would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in Latvia. It is recommended that Latvia implement this provision consistent with the terms of reference.[15]

15. No other inconsistencies were identified with respect to the limitation on local filing obligation.[16]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

16. Latvia's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[17] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

17. Latvia has legal mechanisms in place to enforce compliance with the minimum standard. There are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any Constituent Entity.[18] There are no specific penalties for cases of non-compliance with the CbC rules, but Latvia indicates that it is planning to introduce such a rules. This will be monitored. At the moment, the pre-existing legislation regarding non-cooperation with the tax administration could be applied (Latvian Administrative Violations Code).[19]

18. It is noted that there is no specific process to take appropriate measures in case Latvia is notified by another jurisdiction that it has reason to believe with respect to a Reporting Entity that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored in the next annual peer review process.

Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Latvia has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Latvia. Latvia meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of: (i) the annual consolidated group revenue threshold (paragraph 8 (a) ii. of the terms of reference (OECD, 2017b)) and (ii) the provision whereby a single Constituent Entity may be designated to file the CbC report which would satisfy the local filing requirement of all Constituent Entities (paragraph 8 (c) v. of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

20. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

21. Latvia indicates that it has a domestic legal basis for the exchange of information in place. Latvia is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 29 May 2013, in force on 1 November 2014 and in effect for 2016).

22. Latvia has signed the CbC MCAA on 21 October 2016. It has provided its notifications under Section 8 of this agreement on 16 June 2017 and intends to exchange information with all other signatories of this agreement which provide notifications. Latvia has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Latvia has 54 bilateral relationships[20] activated under the CbC MCAA or under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Against the backdrop of the still evolving exchange of information framework, at this point in time Latvia meets the terms of reference.

Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time Latvia meets the terms of reference.

Part C: Appropriate use

24. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

25. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Latvia indicates that measures are in place to ensure the appropriate use of information, but not in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). Because Latvia does not have measures in place in all six areas, it is recommended that Latvia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

26. In respect of paragraph 12 (a), it is recommended that Latvia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation – annual consolidated group revenue threshold	It is recommended that Latvia amend or otherwise clarify that the annual consolidated group revenue threshold calculation rule applies without prejudice of the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Latvia.
Part A	Domestic legal and administrative framework – local filing	It is recommended that Latvia implement a provision whereby a single Constituent Entity of the same MNE Group may be designated to file the CbC report which would satisfy the local filing requirement of all the Constituent Entities in Latvia.
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that Latvia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017b).

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of the "Regulations regarding Country-by-Country report of multinational enterprise group" (Regulation No. 397 adopted on 4 July 2017, issued pursuant to Section 7, paragraph four, Section 15, paragraph nine, and Section 18, paragraph three of the Law on taxes and duties).

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] Paragraph 2.3 of the regulation.

[8] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018).

[9] Paragraph 8 of the regulation.

[10] Paragraph 9 of the regulation.

[11] Paragraph 21.2.1. of the regulation.

[12] Paragraph 21.2.1 of the regulation.

[13] See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

[14] Paragraph 10 of the regulation. Paragraph 11 provides that a Constituent Entity of the MNE Group in accordance with paragraph 10 has an obligation to prepare and submit the report shall request the parent entity to provide it with all the information provided for in the regulation which is necessary for preparing the report. In addition, Paragraph 12 provides that if a Constituent Entity of an MNE Group has not obtained or acquired all the required information necessary for

completing the report for the MNE Group, this Constituent Entity shall submit the report containing all information in its possession, and concurrently notify the State Revenue Service that the parent entity has refused to make the necessary information available.

[15] It is noted that Latvia's regulation provides in paragraph 14 that in case there is more than one Constituent Entity of the same MNE Group that are resident for tax purposes in European Union, and one or more of the conditions foreseen in paragraph 10 are applicable, the MNE Group may designate one of those Constituent Entities to file the country by country report regarding any Reporting Fiscal Year, and it should notify the State Revenue Service that such report is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the European Union.

[16] It is noted that paragraph 10 of the regulation reads as follows:

10. *A constituent entity of the MNE group which is a resident for tax purposes in the Republic of Latvia and which is not a parent entity of the MNE group by complying with the time period referred to in Paragraph 9 of this Regulation shall prepare the report with respect to the reporting fiscal year of an MNE Group of which it is a constituent entity and submit it to the State Revenue Service, if any of the following criteria are satisfied:*

10.1. the parent entity is not obligated to prepare and submit the report in the country or territory of residence selected for tax purposes;

10.2. *the country in which the parent entity is resident for tax purposes has a current international agreement but does not have a relevant Qualifying Competent Authority Agreement in effect for preparing and submitting the report for the reporting fiscal year referred to in Paragraph 8 of this Regulation;*

10.3. there has been a systemic failure of the country of residence selected for tax purposes of the parent entity that has been notified by the State Revenue Service to the constituent entity of the MNE group resident for tax purposes in the Republic of Latvia.

The wording in paragraph 10.2 does not comprise the wording that should say that the QCAA is in effect "by the time for filing the CbC report". However, Latvia indicates that it is implied that the conditions described in this paragraph have to be met by the time of filing a CbC report. This will be monitored.

[17] Paragraph 15 of the regulation.

[18] Paragraphs 16 and 17 of the regulation.

[19] Section 159(9) Failure to Co-operate with Officials of the Tax Authority:

In the case of failure to provide the necessary requested information regarding tax administration and control to the tax authority a fine shall be imposed on natural persons or a member of the board in an amount up to EUR 700, with or without the suspension of the right for the member of the board to hold certain offices in commercial companies.

[20] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

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Liberia

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Liberia does not have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Liberia finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Liberia does not have a legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. It is recommended that Liberia take steps to implement a domestic legal and administrative framework[1] to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Liberia does not have an exchange of information framework that allows Automatic Exchange of Information. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process,[2] it is recommended that Liberia take steps to put in place such a framework and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Liberia will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Liberia does not yet have measures in place relating to appropriate use. It is recommended that Liberia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Liberia will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on

local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Liberia does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Liberia does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year.

8. Liberia reports that draft legislation has been developed and will be sent to the National Legislature in the near future. Due to presidential and legislative elections, it is unclear when the legislation is expected to come into effect.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), Liberia does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Liberia. It is recommended that Liberia take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

10. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

11. Liberia does not have a legal and domestic framework for the exchange of information in place and thus not implement CbC Reporting requirements for the 2016 fiscal year.

12. Liberia is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011). However, on 2 August 2017 the Minister of Finance and Development Planning of Liberia expressed Liberia's strong interest in becoming a Party to the Convention and stated Liberia is finalising amendments to its legal framework to comply with, and give effect to the terms of the Convention. Those amendments will then be sent to the Legislature. Liberia has not signed the CbC MCAA but has stated it will sign up to the MCAA although no date has

been specified. Liberia does not have in place a network for exchange of information which would allow for Automatic Exchange of Information for CbC Reporting. As a consequence, Liberia is not yet able to have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

13. As of 12 January 2018, Liberia does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Liberia take steps to put in place an EOI framework and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Liberia will not be exchanging CbC reports in 2018.

Conclusion

14. In respect of paragraph 9 (a) of the terms of reference (OECD, 2017), Liberia does not have an exchange of information framework that allows Automatic Exchange of Information. It is recommended that Liberia take steps to put in place such a framework and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Liberia will not be exchanging CbC reports in 2018.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. Liberia does not yet have measures in place relating to appropriate use. It is recommended that Liberia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Liberia will not be exchanging CbC reports in 2018.

Conclusion

17. It is recommended that Liberia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Liberia will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Liberia take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information	It is recommended that Liberia take steps to put in place an EOI framework and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Liberia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Liechtenstein

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Liechtenstein's implementation of the Action 13 minimum standard meets all applicable terms of reference in relation to its domestic legal and administrative framework. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Liechtenstein has rules (primary and secondary laws) that impose and enforce CbC requirements on the Ultimate Parent Entity of multinational enterprise group ("MNE" Group) that is resident for tax purposes in Liechtenstein. The first filing obligation for a CbC report in Liechtenstein applies in respect of reporting fiscal years beginning on or after 1 January 2017. Liechtenstein meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Liechtenstein is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which came into force on 1 December 2016 (applicable as of 1 January 2017). It is noted that Liechtenstein allows an Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Liechtenstein to file a CbC report for 2016 under a voluntary parent surrogate mechanism (Art. 29 CbC Act). However, the Convention is not in effect with respect to the fiscal year starting on 1 January 2016. This means that Liechtenstein will not be able to exchange (either send or receive) voluntarily filed CbC reports with respect to 2016 fiscal year under the Convention and CbC MCAA on the first exchange date in mid-2018. However, Liechtenstein has lodged a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention[2] Liechtenstein is also a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. As of 12 January 2018, Liechtenstein has 48 bilateral relationships activated under the CbC MCAA.[3] Against the backdrop of the still evolving exchange of information framework, at this point in time Liechtenstein meets the terms of reference regarding the exchange of information framework.[4]

Part C: Appropriate use

4. There are no concerns to be reported for Liechtenstein. Liechtenstein indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use. Liechtenstein meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[5]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and ((e) the effective implementation.

6. Liechtenstein has primary law and secondary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements including the filing and reporting obligations.[6] No guidance has been published.

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Liechtenstein has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Liechtenstein applies in respect of reporting fiscal years beginning on or after 1 January 2017.[8] In addition, Liechtenstein has allowed Ultimate Parent Entities of MNE Groups resident in Liechtenstein to file a CbC report for earlier reporting fiscal years under a "voluntary parent surrogate filing"

mechanism.[9] The CbC report must be filed within 12 months after the end of the reporting fiscal year of the MNE Group.[10]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[11]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Liechtenstein has introduced local filing requirements in respect of reporting fiscal years beginning on or after 1 January 2017.[12] [13] [14]

12. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), local filing requirements can be required if the "*jurisdiction of residence of the Ultimate Parent Entity is not a partner jurisdiction*". Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". The condition in Liechtenstein law may be interpreted as being wider that this, as applying to situations where there is no current international agreement between Liechtenstein and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. In its response to the CbC peer review questionnaire for the reviewed jurisdiction, Liechtenstein explained that the provision for local filing does not contain an explicit reference to "Qualifying Competent Authority Agreement". However, for the purpose of local filing Article 5 of the CbC Act refers to the term "partner jurisdiction".[15] *A "Partner jurisdiction" is defined as "a country or territory with which Liechtenstein has agreed to automatically exchange CbC reports*".[16] Liechtenstein indicates that "Partner jurisdictions" of Liechtenstein are listed in the Annex of the CbC Ordinance and a precondition for becoming a partner jurisdiction is to have an applicable international agreement providing for the exchange of CbC reports. Therefore, if there is a current International Agreement to which Liechtenstein is a Party but if there is no Qualifying Competent Authority Agreement in effect with Liechtenstein the Fiscal Authority may request the local filing of CbC reports. In addition, it is noted that the "List of partner jurisdictions" was published by Liechtenstein on 23 December 2016 (Ordinance of 20 December 2016 mentioned above). There are 62 countries on this list which are all signatories of the CbC MCAA and signatories of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011), for which Liechtenstein indicated in its notification under Section 8(1)(e) of the CbC MCAA that it

intended to exchange CbC reports with them. This list thus does not contradict paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b). Although the above condition in Liechtenstein's law does not reflect precisely paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b), no recommendation is made but this aspect will be monitored.

13. No other inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

14. Liechtenstein's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[17]

15. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

16. Liechtenstein has legal mechanisms in place to enforce compliance with the minimum standard. There are notification mechanisms that apply to taxpayers in Liechtenstein.[18] There are also penalties in place in relation to the filing and registration obligations of CbC Reporting: (i) penalties for breaching of filing and registration obligations,[19] (ii) penalties for breaching of the obligation of disclosure and circumvention of inspections[20] and (iii) general penalties for contraventions against implementing provisions and official orders.[21] Liechtenstein may also conduct inspections to verify that the obligations of the Constituent Entities are fulfilled.[22]

17. With respect to specific processes in place that would allow to take appropriate measures in case Liechtenstein is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report, Liechtenstein indicates that according to Article 16 (1) CbC Act the Fiscal Authority will informally request the concerned Constituent Entity resident in Liechtenstein to restore the lawful conditions within an appropriate time limit, if there is reason to believe that administrative or other minor errors might have led to an incorrect or incomplete transmission of data or other

instances of non-compliance with the applicable agreement or the CbC Act or the Fiscal Authority notices that a constituent entity resident in Liechtenstein is failing to meet the obligations under the applicable agreement and the CbC Act to a significant degree.[23] If the failings are not rectified within the specified time the Fiscal Authority will issue an appropriate decree (see Article of the 16 (2) CbC Act). According to Article 14 (1) of the CbC Act Constituent Entities resident in Liechtenstein shall disclose to the Fiscal Authority all facts that are necessary for the implementation of the applicable agreement and the CbC Act. Furthermore, according to Article 15 (1) of the CbC Act the Fiscal Authority may conduct inspections in order to verify that the obligations of the constituent entities resident in Liechtenstein are fulfilled. The Fiscal Authority will impose fines of up to CHF 20 000 on any person, who jeopardises the implementation of the applicable agreement and the CbC Act, by deliberately or negligently violating the obligation of disclosure as set out in Article 14 of the CbC Act or impeding or preventing the proper conduct of an inspection pursuant to Article 15 or makes it impossible (see Article 21 of the CbC Act).

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Liechtenstein has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Liechtenstein. Liechtenstein meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

19. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

20. Liechtenstein has domestic legislation that permits the automatic exchange of CbC reports for reporting fiscal years starting 1 January 2017.[24] [25] It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") (signed on 21 November 2013, in force on 1 December 2016) which allows the Automatic Exchange of Information. Since the Convention will be in effect for the year 2017, Liechtenstein will be able to exchange (either send or receive) CbC reports as of 1 January 2017. However, the Convention is not in effect with respect to the fiscal year starting on 1 January 2016. This means that Liechtenstein will not be able to exchange (either send CbC reports which were filed under the voluntary parent surrogate filing mechanism - or receive) CbC reports with respect to 2016 fiscal year under the Convention and CbC MCAA on the first exchange date in mid-2018. However, as it allows an Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Liechtenstein to file a CbC report for 2016 under a voluntary parent surrogate filing mechanism, Liechtenstein

has lodged a Unilateral Declaration in order to align the effective date of the Convention with the first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention, or relying on Double Tax Agreements or Tax Information and Exchange Agreements.

21. Liechtenstein signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 29 March 2017. It intends to have the CbC MCAA in effect with a large number other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. As of 12 January 2018, Liechtenstein has 48 bilateral relationships activated under the CbC MCAA.[26] Liechtenstein indicates that it is also in the process of negotiating an additional bilateral QCAA with the United States based on the Tax Information Exchange Agreement between Liechtenstein and the United States. Liechtenstein has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions.[27] Against the backdrop of the still evolving exchange of information framework, at this point in time Liechtenstein meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

22. Against the backdrop of the still evolving exchange of information framework, at this point in time Liechtenstein meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

23. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

24. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a

global formulary apportionment of income), Liechtenstein indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use. It has also provided a copy of its guidance on appropriate use.

25. There are no concerns to be reported for Liechtenstein in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

26. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Liechtenstein. Liechtenstein thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

[3] Liechtenstein indicates that its Parliament has listed 62 jurisdictions with which Liechtenstein agrees to automatically exchange CbC reports. These jurisdictions correspond to the list provided by Liechtenstein in its notification under Section 8 of the CbC MCAA submitted to the OECD's Coordinating Body Secretariat in December 2017.

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] Primary law consists of the Law of 4 November 2016 on the International Automatic Exchange of Country-by-Country Reports of Multinational Enterprise Groups (CbC Act), National Gazette 2016 No. 502 with entry into force on 1 January 2017; Materials to the CbC Act: Report and Motion of the Government (R&M), No. 99/2016 and No. 99a/2016. The CbC Act is accessible under: www.gesetze.li (accessed 23 April 2018) and R&M is accessible under: www.bua.llv.li (accessed 23 April 2018, available in German text). Secondary law consists of the Ordinance of 20 December 2016 on the International Automatic Exchange of Country-by-Country Reports of Multinational Enterprise Groups (CbC Ordinance), National Gazette 2016 No. 510 with entry into force on 1 January 2017. The CbC Ordinance is accessible under: www.gesetze.li (accessed 23 April 2018, available in German text).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] See Article 2 together with the Annex of the CbC Ordinance.

[9] According to Article 29 of the CbC Act, the "Competent Authority" (referred to as the "Fiscal Authority") may transmit CbC reports voluntarily filed with it by Constituent Entities for reporting fiscal years prior to 1 January 2017, which is the date of the entry into force of the CbC Act.

[10] See Article 6 (4) of the CbC Act.

[11] It is noted that Article 14 of the CbC Act provides that "statutory provisions concerning data, professional or commercial secrets do not preclude the disclosure of information (…) unless it is information covered by protection of confidentiality pursuant to § 108 paragraph 1 subparagraph 2 StPO (Code of Criminal Procedure) and its disclosure would represent an inadmissible circumvention of confidentiality as defined in § 108 paragraph 3 StPO. Constituent Entities

resident in Liechtenstein are released from their obligation of confidentiality to the equivalent extent". Liechtenstein explains that this is an exception to the principle of disclosure: a lawyer subject to legal privilege is not required to divulge to the Fiscal Authority information that has been entrusted to him in his capacity as a lawyer for the purpose of legal advice or for the purpose of use in existing or contemplated legal proceedings. The lawyer must disclose any other information to the Fiscal Authority. Therefore, CbC information itself is never subject of the legal privilege and has to be exchanged. Liechtenstein adds that this exception has already been part of the Phase 1 and 2 Peer Review on Exchange of Information on Request and Liechtenstein has not received Recommendations on this issue.

[12] Since the CbC Act is applicable as of 1 January 2017, the Fiscal Authority may request the local filing of CbC reports for reporting fiscal years starting 1 January 2017. However, since 31 December 2018 will be the first deadline for filing of CbC reports by MNE groups, Liechtenstein indicates that the Fiscal Authority intends not to request local filing before 31 December 2018.

[13] See Article 5 (1) of the CbC Act. It is noted that local filing by Constituent Entities is required upon request of the Fiscal Authority subject to meeting the conditions for local filing.

[14] Liechtenstein's provisions apply to entities which are resident for tax purposes in Liechtenstein, as per Article 2 (1) of the CbC Act.

[15] See Article 5 (1) (b) of the CbC Act.

[16] See Article 2 (1) (n) of the CbC Act.

[17] See Article 5 (2) of the CbC Act.

[18] See Article 7 of the CbC Act. A reporting entity refers to a constituent entity which under the domestic legal framework of its jurisdiction of tax residence is required to file the CbC report on behalf of the MNE Group, according to Article 2 (1) (e) of the CbC Act. Liechtenstein also indicates that following the registration of the Reporting Entities, the Fiscal Authority is able to check whether Ultimate Parent Entities have to file a CbC report but the Fiscal Authority is currently developing a notification process for Liechtenstein resident Constituent Entities of foreign MNE groups.

[19] See Article 20 of the CbC Act: fines of up to CHF 250 000 will be imposed on any person who deliberately violates filing and registration obligation.

[20] See Article 21 of the CbC Act: fines of up to CHF 20 000 will be imposed on persons that violate their disclosure obligations or prevent the proper conduct of inspections by the Fiscal Authority.

[21] See Article 22 of the CbC Act: fines of up to CHF 5 000 will be imposed on any person who deliberately or negligently contravenes an implementing provision of the CbC Act or defies an official decree imposed.

[22] See Article 15 of the CbC Act.

[23] This includes cases where a reporting entity has not registered with the Fiscal Authority.

[24] See Article 1 of the CbC Act.

[25] It is noted that under Article 8 of the CbC Act, the Fiscal Authority is not required to transmit CbC reports if the transmission is contrary to the public policy (*ordre public*) of the Principality of Liechtenstein. In addition, the Fiscal Authority is not required to transmit CbC reports or parts thereof if the competent foreign authority is not in a position to provide comparable information to the Fiscal Authority.

[26] Liechtenstein indicates that its Parliament has listed 62 jurisdictions with which Liechtenstein agrees to automatically exchange CbC reports. These jurisdictions correspond to the list provided by Liechtenstein in its notification under Section 8 of the CbC MCAA submitted to the OECD's Coordinating Body Secretariat in December 2017.

[27] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA, or the reviewed jurisdictions may not have listed all signatories of the CbC MCAA. Liechtenstein indicates that it will further update its list of exchange partners.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

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Lithuania

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Lithuania's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review.

Part A: Domestic legal and administrative framework:

2. Lithuania has rules (primary and secondary law) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity (UPE) of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Lithuania. The first filing obligation for a CbC report in Lithuania commences in respect of income years beginning on 1 January 2016 or later. Lithuania meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework:

3. Lithuania is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA. It has provided its notifications under Section 8 (e) (ii) of this agreement and intends to exchange information with all signatories. As of 12 January 2018, Lithuania has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Lithuania has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Lithuania meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use:

4. There are no concerns to be reported for Lithuania. Lithuania indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Lithuania meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Lithuania has primary law and secondary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5]

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Lithuania has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the CbC filing requirements, the Lithuanian legislation refers to an "International Corporation Group" (ICG) which itself refer to an "ICG that does not exceed the income limit", the definition of which refers to a consolidated group revenue of "less than EUR 750 000 000 or less than an amount expressed in the local currency which in January 2015 was approximately equal to EUR 750 000 000". While these provisions would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Lithuania, they may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Lithuanian tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[7] However, Lithuania indicates that it will apply this rule[8] in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Lithuania. As such, no recommendation is made but this issue will be further monitored.

9. No other inconsistencies were identified with respect to Lithuania's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Lithuania commences in respect of income years beginning on 1 January 2016 or later.[9] The CbC report must be filed within 12 months of the last day of the income year of the MNE Group.[10]

11. The explanations for filling out a CbC report published by Lithuania mention that "Revenues – Related Party" should be read as referring to revenues arising from "transactions with associated enterprises".[11] However, interpretative guidance issued by the OECD in April 2017[12] explains that "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report*". It is expected that Lithuania issue an updated interpretation or clarification of the definitions of "Revenues – Related Party" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

12. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Lithuania has introduced local filing requirements in respect of income years beginning on 1 January 2016[13] or thereafter.

14. No inconsistencies were identified with respect to the limitation on local filing obligation.[14]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Lithuania's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[15] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

16. Lithuania has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other group company resident in Lithuania.[16] In addition, the State Tax Administration can issue an order to the taxpayer, forcing the submission of the CbC report. If the taxpayer does not comply with the order, administrative penalties are issued.[17] The procedure can be repeated several times. Bilateral consultations with taxpayers can also take place. Lithuania indicates that it is preparing internal procedures in order to validate the notifications received that will apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other group company resident in Lithuania. According to Lithuania, criminal prosecution might be initiated and the provisions of the Criminal Code applied in a case of a person acting maliciously and refusing to file the necessary information.

17. There are no specific processes in place that would allow to take appropriate measures in case Lithuania is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. Lithuania affirms that these procedures are under preparation. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Lithuania has a domestic legal and administrative framework to impose and enforce CbC requirements on the UPE of an MNE Group that is resident for tax purposes in Lithuania. Lithuania meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

19. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

20. Lithuania has domestic legislation that permits the automatic exchange of CbC reports.[18] It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 7 March 2013, in force on 1 June 2014 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements[19] which allow Automatic Exchange of Information in the field of taxation. Lithuania is also committed to the exchange of CbC reports within the European Union under EU Council Directive (2016/881/EU).

21. Lithuania signed the CbC MCAA on 25 October 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 13 November 2017. It intends to exchange information with all signatories of the CbC MCAA. As of 12 January 2018, Lithuania has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU).

22. Lithuania has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016)[20] and indicates that it is currently negotiating a bilateral Competent Authority Agreement with one jurisdiction. Against the backdrop of the still evolving exchange of information framework, at this point in time Lithuania meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time Lithuania meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

24. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

25. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Lithuania indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

26. There are no concerns to be reported for Lithuania in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

27. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Lithuania. Lithuania thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information – QCAAs in effect	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of CbC Reporting introduced in Lithuania by article 61 of the Republic of Lithuania Law on Tax Administration The Republic of Lithuania Law on Tax Administration "Submission of the Reports on Members of Multinational Enterprise Groups": www.e-tar.lt/portal/lt/legalAct/TAR.3EB34933E485/rDLYSrNhXL (accessed 23 April 2018, available in Lithuanian text). Secondary law consists of the rules for the provision of information necessary for implementation of the international cooperation obligations concerning exchange of MNE Groups information approved by Order No VA-47 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 31 May 2017: www.e-tar.lt/portal/lt/legalAct/0c16071045ca11e7846ef01bfffb9b64 (accessed 23 April 2018, available in Lithuanian text).

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018).

[8] See Section I, Paragraph 2.10 of the secondary law.

[9] See Section II, Paragraph 4 of the secondary law.

[10] See Article 61, paragraph 3 of the primary law.

[11] See Annex 3 of the secondary law.

[12] See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

[13] See Section II, Paragraph 4 and Section III, paragraph 8 of the secondary law.

[14] Section III, paragraph 10 of the secondary law.

[15] Section III, paragraph 10 of the secondary law.

[16] See paragraphs12 and 13 of Section III of the secondary law.

[17] See paragraph 2 of Article 187 of Code of Administrative Offences of the Republic of Lithuania (Violation of the Procedure for Submission of Reports, Declarations or Other Documents and Data Required for the Implementation of the Tax Administrator Functions): (…) 2. Violation of the procedure for submission of reports, declarations or other documents and data required for the implementation of the tax administrator functions, delayed submission of or failure to submit reports, declarations or other documents and data required for the implementation of the tax administrator functions, entering incorrect data in reports, declarations or other documents and data required for the implementation of the tax administrator functions submitted to the tax administrator, provision of incorrect data shall impose a warning or a fine from one hundred and fifty to three hundred euros to the persons who are obligated to submit reports, declarations or other documents and data required for the implementation of the tax administrator functions.

[18] See article 61 of the Republic of Lithuania Law on Tax Administration and the and rules for the provision of information necessary for implementation of the international cooperation obligations concerning exchange of MNE Groups information (approved by Order No VA-47 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 31 May 2017).

[19] Lithuania reports tax treaties with Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[20] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

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OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Luxembourg

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Luxembourg's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Luxembourg has rules (primary law) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Luxembourg. The first filing obligation for a CbC report in Luxembourg commences in respect of fiscal years beginning on 1 January 2016 or later. Luxembourg meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Luxembourg is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Luxembourg has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under a bilateral CAA. Luxembourg has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Luxembourg meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Luxembourg. Luxembourg indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3]

Luxembourg meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Luxembourg has primary law in place for implementing the BEPS Action 13 minimum standard[5] (the "CbC Act") establishing the necessary requirements, including the filing and reporting obligations. Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Luxembourg has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have a consolidated group revenue above a certain threshold, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to Luxembourg's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Luxembourg commences in respect of fiscal years beginning on 1 January 2016 or later.[8] The CbC report must be filed within 12 months of the last day of the fiscal year of the MNE Group.[9]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Luxembourg has introduced local filing requirements in respect of fiscal years beginning on 1 January 2016.[10] No inconsistencies were identified with respect to the limitation on local filing obligation.[11]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

12. Luxembourg's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[12] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Luxembourg has legal mechanisms in place to enforce compliance with the minimum standard. There are notification mechanisms in place that apply to the Ultimate Parent Entity and the Surrogate Parent Entity.[13] There are also penalties in place in relation to the filing of a CbC report: (i) penalties for failure to file a CbC report and late filing and (ii) penalties for inaccurate information.[14] Luxembourg's legislation also includes a power to audit a CbC report.[15]

14. There are no specific processes in place that would allow to take appropriate measures in case Luxembourg is notified by another jurisdiction that such other

jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. Luxembourg notes that the provisions of Article 8.2 and Article 9 of the CbC Act would apply.[16] It also indicates that it intends to set up a compliance program and is currently initiating this process. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Luxembourg has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Luxembourg. Luxembourg meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

16. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

17. Luxembourg has domestic legislation that permits the automatic exchange of CbC reports.[17] It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 29 May 2013, in force on 1 November 2014 and in effect for 2016) and to (ii) multiple bilateral Double Tax Agreements.[18]

18. Luxembourg signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 15 May 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. Luxembourg also signed a bilateral Competent Authority agreement (CAA) with the United States. As of 12 January 2018, Luxembourg has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Luxembourg has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[19] Against the backdrop of the still evolving exchange of information framework, at this point in time Luxembourg meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

19. Against the backdrop of the still evolving exchange of information framework, at this point in time Luxembourg meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

20. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

21. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Luxembourg indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

22. There are no concerns to be reported for Luxembourg in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Luxembourg. Luxembourg thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of the Law of 23 December 2016 (the "CbC Act") which transposed the European Union (EU) Council Directive 2016/881/EU of 25 May 2016 relating to the automatic and mandatory exchange of information in the tax field concerning country-by-country reporting for multinational enterprise groups. Luxembourg also indicates that the list of jurisdictions subject to CbC Reporting will be drawn up by the Grand-Ducal Regulation (Article 4 (2) of the CbC Act). The Grand-Ducal Regulation has not yet been published.

[6] Guidance was issued in the form of FAQs: www.impotsdirects.public.lu/fr/echanges_electroniques/CbCR/FAQ.html (accessed 20 April 2018).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] See Article 10 of the CbC Act.

[9] See Article 2 of the CbC Act.

[10] See point (1) of Section II of the Annex of the CbC Act.

[11] It is noted that Luxembourg's rules provide, in accordance with the provisions of European Union (EU) Council Directive 2016/881/EU (Annex III, Section II), that the Constituent Entity resident in Luxembourg shall request its Ultimate Parent Entity to provide it with all information required to enable it to meet its obligations to file a country-by-country report. If despite that, that Constituent Entity has not obtained or acquired all the required information to report for the MNE Group, this Constituent Entity shall file a country-by-country report containing all information in its possession, obtained or acquired, and notify the tax administration that the Ultimate Parent Entity has refused to make the necessary information available. This shall be without prejudice to the right of the tax administration to apply penalties provided for in national legislation and the competent authority of Luxembourg shall inform all EU Member States of this refusal. It is also provided that where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the EU, the MNE Group may designate one of such Constituent Entities to file the country-by-country report conforming to the requirements that would satisfy the

filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the EU. Where a Constituent Entity cannot obtain or acquire all the information required to file a country-by-country report, then such Constituent Entity shall not be eligible to be designated to be the Reporting Entity for the MNE Group.

[12] See point (2) of Section II of the Annex of the CbC Act.

[13] See point (3) of Section II of the Annex of the CbC Act. This also applies to any other Constituent Entity resident in Luxembourg.

[14] See Article 3. (1) of the CbC Act : in case of non-filing or late filing or providing incomplete or inaccurate data, the Reporting Entity may be subject to a penalty up to EUR 250 000.

[15] Luxembourg mentions that as per Article 8 of the CbC Act, the tax administration enjoys the same investigation powers that those applicable for tax assessment procedures for setting or controlling taxes, including all the guarantees provided for this.

[16] As per Article 8 (2) of the CbC Act, the tax administration enjoys the same investigation powers that those applicable for tax assessment procedures for setting or controlling taxes, including all the guarantees provided for this. As per Article 9 of the CbC Act, the provisions of the amended law of tax adaptation measures of 16 October 1934 and of the amended general taxes law of 22 May 1931 apply to Automatic Exchange of Information.

[17] See Article 4 of the CbC Act.

[18] Luxembourg reports the following double tax agreements which are in force: www.impotsdirects.public.lu/fr/conventions/conv_vig.html (accessed 20 April 2018).

The list of double tax agreements under negotiation is the following: www.impotsdirects.public.lu/fr/conventions/conv_neg.html (accessed 20 April 2018).

[19] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Macau (China)

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Macau does not yet have a complete legal and administrative framework in place to implement CbC Reporting and indicates that it will not apply CbC requirements for the 2016 fiscal year. It is recommended that Macau take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Macau does not yet have complete legislation in place for implementing the BEPS Action 13 minimum standard. Macau indicates that the law providing for automatic and spontaneous as well as on-request exchange of tax information was passed in June and became effective as from 1 July 2017. Macau will now begin to design and draft the necessary law for CbC Reporting. At this time, Macau is unable to estimate when the legislation will come into effect. Macau will not apply CbC requirements for the 2016 fiscal year. It is recommended that Macau take steps to implement a domestic legal and administrative framework[1] to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Macau currently does not have in place a network for exchange of information which would allow for Automatic Exchange of Information for CbC Reporting. As a consequence, Macau is not yet able to have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process,[2] it is recommended that Macau take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Macau will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. With respect to terms of reference under review for this first annual peer review,[3] Macau does not yet have measures in place relating to appropriate use. It is recommended

that Macau take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Macau will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Macau does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Macau does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year.

8. Macau indicates that the law providing for automatic and spontaneous as well as on-request exchange of tax information was passed in June and became effective as from 1 July 2017. Macau will now begin to design and draft the necessary law for CbC Reporting. At this time, Macau is unable to estimate when the legislation will come into effect.

9. According to the latest tax returns, company registration records and related records of taxpayers from the tax department of Macau, Macau has identified less than ten multinational enterprise groups (hereafter "MNE Groups") which are likely to fall within the scope of Action 13 minimum standard.

10. Macau indicates that it has not yet decided whether or not it wishes to receive CbC reports on MNE Groups headquartered in other jurisdictions, and has not implemented local filing requirements on resident Constituent Entities of MNE Groups headquartered in another jurisdiction.

Conclusion

11. In respect of paragraph 8 of the terms of reference (OECD, 2017), Macau does not have a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Macau. It is recommended that Macau take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

12. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain

aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

13. Macau does not have in place a network for exchange of information which would allow for Automatic Exchange of Information for CbC Reporting. As a consequence, Macau is not able yet to have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. Macau indicates that it is currently amending the law governing the exchange of tax information to provide for the Automatic Exchange of Information, a necessary element in the implementation of CbC Reporting.

14. It is recommended that Macau take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Macau will not be exchanging CbC reports in 2018.

Conclusion

15. In respect of paragraph 9 (a) of the terms of reference (OECD, 2017), it is recommended that Macau take steps to put in place an exchange of information framework that allows Automatic Exchange of Information that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Macau will not be exchanging CbC reports in 2018.

Part C: Appropriate use

16. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

17. Macau does not yet have measures in place relating to appropriate use. It is recommended that Macau take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Macau will not be exchanging CbC reports in 2018.

Conclusion

18. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), it is recommended that Macau take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Macau will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Macau take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Macau take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Macau take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

Reference

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

Malaysia

Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Malaysia's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one timing issue and one substantive issue in relation to its domestic legal and administrative framework. The report, therefore, contains two recommendations to address these issues. In addition, Malaysia should take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Malaysia will not be exchanging CbC reports in 2018 (except for the CbC reports relating to the fiscal year 2016 that Malaysia would receive under the voluntary parent surrogate mechanism and which it would send to other jurisdictions).

Part A: Domestic legal and administrative framework

2. Malaysia has legislation in place that imposes and enforces CbC requirements on MNE Groups whose UPE is resident for tax purposes in Malaysia.[1] The filing obligation for a CbC report in Malaysia commences in respect of fiscal years commencing on or after 1 January 2017. Malaysia meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of:

- the guidelines containing detailed instructions on the filing of CbC reports, including the content of a CbC report, which are yet to be published,[2]
- the absence of administrative mechanisms in place to enforce compliance by Ultimate Parent Entities with their filing obligations[3]

Part B: Exchange of information framework

3. Malaysia is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is not in force for 2017 (entry into force since 1 May 2017). Malaysia has however submitted a Unilateral Declaration in order to align the effective date of the Convention with the first intended exchanges of CbC reports under the CbC MCAA. Malaysia is also is a signatory of the CbC MCAA. It has provided its notifications under Section 8(e)(i) of this agreement and intends to exchange information under the Multilateral Convention with a large number of other signatories of this instrument. As of 12 January 2018, Malaysia has 46 bilateral relationships activated under the CbC MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process,[4] Malaysia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency

and appropriate use conditions. It is noted that a number of Qualifying Competent Authority agreements are not in effect for the 2017 fiscal year with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place, in particular because the partner jurisdictions did not submit a Unilateral Declaration (with regard to the fact that Malaysia does not have the Convention in effect for its first reporting period). Since Malaysia has taken a number steps including by lodging a Unilateral Declaration, no recommendation is made. Against the backdrop of the still evolving exchange of information framework, at this point in time Malaysia meets the terms of reference relating to the exchange of information framework for the year in review.

Part C: Appropriate use

4. With respect to the terms of reference relating to the appropriate use aspects under review for this first annual peer review,[5] Malaysia indicates that it does not yet have measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country report* (OECD, 2017a).[6] It is recommended that Malaysia ensures that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Malaysia will not be exchanging CbC reports in 2018 (except for the CbC reports relating to the fiscal year 2016 that Malaysia would receive under the voluntary parent surrogate mechanism and which it would send to other jurisdictions).

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Malaysia has primary and secondary legislation in place[7] which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning on or after 1 January 2017. No guidance has been published.[8]

(a) Parent entity filing obligation

Summary of terms of reference:[9] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Malaysia has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. The definition of an Ultimate Parent Entity ("ultimate holding entity)"[10] in Article 3 of Malaysia's CbC Reporting Rules refers to a constituent entity that owns directly or indirectly a sufficient interest in one or more other constituent entities in the MNE group.

There is one important difference between this definition and the definition of an Ultimate Parent Entity in the terms of reference: The definition in Malaysia's rules does not include a condition that the ultimate holding company is required to prepare Consolidated Financial Statements or would be so required if its equity interests were traded on a public securities exchange in Malaysia ("deemed listing provision"). Malaysia however confirms that listed companies and non-listed companies, as well as any other type of entity (notably partnerships), are subject to a requirement to prepare Consolidation Financial Statements (CFS) when they meet certain conditions of shareholding and / or control. Such requirement to prepare CFS may arise under Section 26D of the Financial Reporting Act 1997 [Act 558] which sets out the requirement that financial statements are to be prepared in compliance with "approved accounting standards" which is the financial standard approved by the Malaysian Accounting Standards Board. In relation to the preparation of CFS, Malaysia has adopted the international financial reporting standard through the Malaysian Financial Reporting Standard 10 which provides that an entity which controls one or more other entities (parent entity) is required to prepare the CFS. Further, Section 244 of Malaysia's Companies Act 2016 [Act 777] also requires a company which is a holding company, be it a public or private company, to prepare CFS in accordance with the approved accounting standard.[11]

9. It is also noted that the definition in Malaysia's rules does not make it clear that the ultimate holding entity is a Constituent Entity that owns directly or indirectly a sufficient interest in one or more other Constituent Entities of the 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 tis jurisdiction of tax residence*".[12]

10. Malaysia confirms that the definitions in its legislation should be interpreted in light of the Action 13 minimum standard. The operation of these rules will be monitored to make sure that they apply consistently with the terms of reference.

11. No other inconsistencies were identified with respect to the parent entity filing obligation.[13]

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

12. The first filing obligation for a CbC report in Malaysia applies in respect of reporting fiscal years commencing from 2017. The CbC report must be filed no later than 12 months after the last day of the reporting fiscal year.[14]

13. Article 4 of Malaysia's CbC Reporting Rules lists the information that must be contained in an MNE group's CbC report. However, these rules do not contain detailed arrangements for the submission of a CbC report or a template for completing a CbC report. Malaysia indicates that the "Country-By-Country Reporting Guidelines 2017" are

being prepared at the time the peer review, but these have not yet been released. Malaysia indicates that the "Country-by-Country Report 2017" which contains instructions for the filing of CbC report has been prepared and is now under approval process before it is posted on the website.

14. It is therefore recommended that Malaysia publish detailed guidelines arrangements as soon as possible, prescribing all of, and only, the information as contained in the template in the Action 13 Report (OECD 2015 - Annex III to Chapter V - Transfer Pricing Documentation – Country-by-Country Report) with regard to each jurisdiction in which the MNE Group operates, as well as detailed arrangements for the submission of a CbC report.

15. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

16. Malaysia does not apply or plan to introduce local filing.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

17. Malaysia's legislation requires a "surrogate holding company" to file in Malaysia when such surrogate company has been appointed by the MNE Group to do so. Surrogate filing shall occur only when certain conditions are met.[15]

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

18. Malaysia's legislation specifies that failure to file a CbC report is an offence and, on conviction, a fine of between MYR 20 000 (Malaysian ringgit) and MYR 100 000 and/or up to six months imprisonment may be imposed. In addition, where a person has been convicted, the court may make an order to comply with the CbC Reporting requirement within 30 days or such other period as the court deems fit. There are currently no administrative provisions for penalties or other enforcement mechanisms in cases of non-compliance. Malaysia indicates that it is currently in the midst of extracting information with regards to Malaysia's MNC (Multinational Corporation) that meets the threshold. The administrative mechanisms are also being prepared to ensure the smooth running of the compliance enforcement exercise.

19. There are no specific processes in place that would allow to take appropriate measures in case Malaysia is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reported by a Reporting Entity or that a Reporting Entity is failing to comply with respect to CbC Reporting obligations. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.[16]

20. It is recommended that Malaysia introduce administrative mechanisms to enforce compliance by Ultimate Parent Entities in Malaysia, which do not rely on a person first being convicted of an offence. No other inconsistencies were identified with the effective implementation of CbC Reporting.[17]

Conclusion

21. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Malaysia has a domestic framework to impose CbC requirements on MNE Groups whose UPE is resident for tax purposes in Malaysia. Malaysia meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the guidance on detailed filing requirements (paragraph 8 (b) iv. of the terms of reference (OECD, 2017b)); and (ii) the enforcement mechanisms (paragraph 8 (e) i. of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

22. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

23. Malaysia has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 25 August 2016, in force on 1 May 2017) (the "Convention").[18] The Convention will therefore not be in effect at the start of the commencement of CbC Reporting in Malaysia on 1 January 2017. This means that Malaysia will not be able to exchange (either send or

receive) CbC reports with respect to 2017 fiscal year and will not send or receive CbC reports under the Convention and CbC MCAA on the exchange date in 2019. Malaysia has however lodged a Unilateral Declaration which enables exchanges of CbC reports relating to the fiscal year 2017 (by aligning the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention) [19] with other jurisdictions that have provided the same Unilateral Declarations.

24. Malaysia signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 28 April 2017. It intends to have the CbC MCAA in effect with a large number of Competent Authorities which are signatories to the CbC MCAA and provide a notification under Section 8(1)(e) of the same agreement. As of 12 January 2018, Malaysia has 46 bilateral relationships activated under the CbC MCAA. Malaysia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is noted that a number of Qualifying Competent Authority agreements are not yet in effect for the fiscal year 2017 with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this is because the partner jurisdictions did not submit a Unilateral Declaration (in regard of the fact that Malaysia does not have the Convention in effect for the first reporting period), or the partner jurisdictions considered do not have the Convention in effect for the first fiscal period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA. Since Malaysia has taken a number steps including by lodging a Unilateral Declaration, no recommendation is made. Against the backdrop of the still evolving exchange of information framework, at this point in time Malaysia meets the terms of reference relating to the exchange of information framework for the year in review.

Conclusion

25. Against the backdrop of the still evolving exchange of information framework, at this point in time Malaysia meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

26. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

27. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other

BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Malaysia indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). However, Malaysia has not provided any details in relation to these questions and it was therefore not possible to perform a review at this stage. It is recommended that Malaysia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Malaysia will not be exchanging CbC reports in 2018 (except for the CbC reports relating to the fiscal year 2016 that Malaysia would receive under the voluntary parent surrogate mechanism and which it would send to other jurisdictions).

Conclusion

28. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), it is recommended that Malaysia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Malaysia will not be exchanging CbC reports in 2018 (except for the CbC reports relating to the fiscal year 2016 that Malaysia would receive under the voluntary parent surrogate mechanism and which it would send to other jurisdictions).

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Scope and timing of parent entity filing content of CbC report	It is recommended that Malaysia publish the detailed Guidelines as soon as possible containing instructions for the filing of CbC reports, prescribing all of, and only, the information as contained in the template in the Action 13 Report (Annex III to Chapter V of Transfer Pricing Documentation Country-by-Country Report) with regard to each jurisdiction in which the MNE Group operates.
Part A	Domestic legal and administrative framework - Effective implementation	It is recommended that Malaysia introduce administrative mechanisms to enforce compliance by Ultimate Parent Entities with their filing obligations in the absence of a conviction for an offence.
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that Malaysia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (b) iv. of the terms of reference (OECD, 2017b).

[3] Paragraph 8 (e) i. of the terms of reference (OECD, 2017b).

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[5] Paragraphs 12 (a) of the terms of reference (OECD, 2017b).

[6] These questions were circulated to all members of the Inclusive Framework following the release of the *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017) on 6 September 2017, further to the approval of the Inclusive Framework.

[7] Primary law consists of Malaysia Income Tax Act 1967 and the following amendments (Laws of Malaysia, Act 785, Finance Act 2017): www.hasil.gov.my (accessed 20 April 2018).

The principal Act is amended by inserting after section 112 the following section: Section 112A – Failure to furnish country –by country report. The principal Act is amended by inserting after section 113 the following section: Section 113A – Incorrect returns, information returns or reports. The principal Act is amended by inserting after section 119A the following section: Section 119B – Failure to comply with rules made under paragraph 154(1)(c) on mutual administrative assistance.

Malaysia indicates that the Malaysia Income Tax Act (ITA)1967 is currently being updated to incorporate the 2017 amendment.

Secondary law consists of Income Tax (Country-By-Country Reporting) Rules 2016 (the "CbC Reporting Rules"): www.federalgazette.agc.gov.my (accessed 20 April 2018).

[8] Malaysia indicates that work is in progress for the "CbCR Guidelines 2017".

[9] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[10] Malaysia recently introduced amended rules in its CbC Reporting (Amendment) Rules 2017: the terms "ultimate holding company" have notably been changed to "ultimate holding entity".

[11] Malaysia also notes that the requirement to prepare CFS is tied to the definition of "MNE Group". As such, as long as any one of the Constituent Entities in a Group is required to prepare CFS or would be so required (deeming listing provision), the entire Group will be an MNE Group for the purpose of the CbC rules.

[12] Malaysia also notes that the requirement to prepare CFS is tied to the definition of "MNE Group". As such, as long as any one of the Constituent Entities in a Group is required or would be required to prepare CFS, the entire Group will be an MNE Group for the purpose of the CbC rules.

[13] In Malaysia's previous CbC Reporting Rules 2016 (Article 2), a potential limitation of CbC Reporting had been identified as the Rules would apply to cases where, with respect to an MNE group: (a) *any of its constituent entities have cross-border transactions with other constituent entities; (b) the total consolidated group revenue in the financial year preceding the reporting financial year is at least three billion ringgit; (c) its ultimate holding company is incorporated under the Companies Action 1965 [Act 125] or under any written law and resident in Malaysia; and (d) its constituent entities are incorporated or registered under the Companies Act 1965 or under any written law or under the laws of a territory outside Malaysia and resident in Malaysia*.

It was not clear whether this Article, and in particular clauses a) and d) imposed limits that were inconsistent with the terms of reference. In addition, the definition of a "Multinational corporation group" under Article 3 of the CbC Reporting Rules 2016 referred to a "collection of corporations" and it was unclear whether entities other than corporations would be part of an MNE Group. Malaysia has amended these provisions in the CbC Reporting (Amendment) Rules 2017 by deleting sub-provisions (a) and (d) mentioned above; by referring to "entities" instead of "corporations"; and by referring to Constituent Entities which may be "deemed to be incorporated, registered or established under the Companies Act 2016 or under any written law or under the laws of a territory outside Malaysia and resident in Malaysia. Malaysia confirms that this intends to cover the case of entities which are not companies (e.g. partnerships).

[14] See Article 1 (2) and 7 of the CbC Reporting Rules.

[15] which reflect the conditions set in paragraphs 8 c) iv. a) b) and c) of the terms of reference (OECD, 2017b) for local filing requirements.

[16] Malaysia indicates that a process will be design and constructed soon.

[17] Malaysia indicates that a mechanism will be constructed and design for the purpose of validating whether all Ultimate Parent Entities and Surrogate Parent Entities (SPEs) that were to file in Malaysia did file a CbC report. In addition, penalties for failure to notify the reporting entity, to furnish the report and Incorrect returns will be imposed as stated in the Malaysia Income Tax Act 1967. Finally, the CbCR Guidelines 2017 has yet to be finalised.

[18] Malaysia does not report any list of bilateral exchange of information agreements that are in force and that permit Automatic Exchange of Information.

[19] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Maldives

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Maldives does not yet have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Maldives finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Maldives does not have a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Maldives. Maldives indicates that legislation to impose CbC Reporting is currently being drafted and will be incorporated to the Maldivian Business Profit Act or Regulation during the year 2018. It is recommended that Maldives take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. Maldives is not a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), and is also not a signatory to the CbC MCAA. As of 12 January 2018, Maldives does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference (OECD, 2017) under review,[2] it is recommended that Maldives take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Maldives will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Maldives does not yet have measures in place relating to appropriate use. It is recommended that Maldives take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Maldives will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Maldives does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Maldives does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. Maldives indicates that legislation to impose CbC Reporting is currently being drafted and will be incorporated to the Maldivian Business Profit Act or Regulation during the year 2018.

8. It is recommended that Maldives finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), Maldives does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Maldives. It is recommended that Maldives finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

10. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

11. Maldives does not have a domestic, legal basis for the exchange of information in place. Maldives is not a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), and is also not a signatory to the CbC MCAA. Maldives has signed a TIEA with India, but the Agreement does not permit Automatic Exchange of Information.

12. As of 12 January 2018, Maldives does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Maldives take steps to put in place an exchange of information framework that allows Automatic Exchange of

Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Maldives will not be exchanging CbC reports in 2018.

Conclusion

13. In respect of the terms of reference (OECD, 2017) under review, it is recommended that Maldives take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Maldives will not be exchanging CbC reports in 2018.

Part C: Appropriate use

14. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

15. Maldives does not yet have measures in place relating to appropriate use. It is recommended that Maldives take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Maldives will not be exchanging CbC reports in 2018.

Conclusion

16. It is recommended that Maldives take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Maldives will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Maldives finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information	It is recommended that Maldives take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Maldives take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Malta

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Malta's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Malta has rules (primary and secondary laws) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Malta. The first filing obligation for a CbC report in Malta commences in respect of fiscal years beginning on 1 January 2016 or later. Malta meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Malta is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with a large number of signatories of this agreement which provide notifications under the same agreement. Malta also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Malta has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Malta has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Malta meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Malta. Malta indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Malta meets the terms of

reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Malta has primary law in place to implement the BEPS Action 13 minimum standard which enables the Minister responsible for finance to make rules in relation to the exchange of information,[5] and secondary law (hereafter referred to as the " principal regulations") establishing the necessary requirements, including the filing and reporting obligations.[6] Guidance was not published.[7]

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Malta has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have a consolidated group revenue above a certain threshold, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the definition of an "Excluded MNE Group", the principal regulations state that this refers to a group having total consolidated group revenue of less than EUR 750 000 000 "*or an amount in local currency approximately equivalent to EUR 750 000 000 as of January 2015*" during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year.[9] While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Malta, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Malta tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[10] Malta has indicated that the threshold calculation rule would apply in a manner consistent with the OECD guidance on currency fluctuations, in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Malta. As such, no recommendation is made but this issue will be monitored.

9. No other inconsistencies were identified with respect to Malta's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Malta commences in respect of fiscal years beginning on 1 January 2016 or later.[11] The CbC report must be filed within 12 months of the last day of the fiscal year of the MNE Group.[12]

11. The principal regulations of Malta include a description of the items to be included in a CbC Report (in Section III of Annex III). This explains that this should include notably "*the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with associated enterprises*". However, interpretative guidance issued by the OECD[13] subsequent to the issuance of the principal regulations explains that "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report*". It is expected that Malta issue an updated interpretation or clarification of the definition of "associated enterprises" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

12. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Malta has introduced local filing requirements in respect of fiscal years beginning on 1 January 2017[14] or thereafter. No inconsistencies were identified with respect to the limitation on local filing obligation.[15]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

14. Malta's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[16] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

15. Malta has legal mechanisms in place to enforce compliance with the minimum standard. There are notification mechanisms in place that apply to the Ultimate Parent Entity and the Surrogate Parent Entity.[17] There are also penalties in place in relation to the filing of a CbC report: (i) penalties for failure to file a CbC report[18] and (ii) penalties for failure to file a CbC report in a complete and accurate manner.[19] In addition, Malta states that the Commissioner may use any information gathering power under the Income Tax Acts to obtain any information required in a CbC report.[20]

16. There are no specific processes in place that would allow to take appropriate measures in case Malta is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. Malta indicates that the processes are currently being developed. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

17. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Malta has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Malta. Malta meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

18. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

19. Malta has domestic legislation that permits the automatic exchange of CbC reports.[21] Malta is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 26 October 2012, in force on 1 September 2013 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements.[22] Malta has also implemented EU Council Directive 2016/881/2016 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

20. Malta signed the CbC MCAA on 26 January 2017 and submitted a full set of notifications under section 8 of the CbC MCAA on 8 March 2017. It intends to have the CbC MCAA in effect with a large number of signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. Malta also signed a bilateral CAA with the United States. As of 12 January 2018, Malta has 54 bilateral relationships activated under the CbC MCAA[23] or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Malta has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Malta meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time Malta meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make

adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Malta indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use. It has also provided a copy of its draft guidelines in relation to appropriate use.

24. There are no concerns to be reported for Malta in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for the Malta. Malta thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of Articles 76 and 96 of the Income Tax Act: www.justiceservices.gov.mt (accessed 20 April 2018) and Article 10A of the Income Tax Management Act: www.justiceservices.gov.mt (accessed 20 April 2018).

[6] Secondary law consists of the "Cooperation With Other jurisdiction on Tax Matters Regulations" (the "principal regulations"): http://justiceservices.gov.mt (accessed 20 April 2018) as amended by means of Legal Notice 400 of 2016 entitled "Cooperation with Other Jurisdiction on Tax Matters (Amendment) Regulations, 2016": www.justiceservices.gov.mt (accessed 20 April 2018).

[7] Malta indicates that guidance is currently being finalised and will be published in the coming weeks.

[8] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[9] See annex III, Section 1, point 4 of the principal regulations.

[10] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018).

[11] See Regulation 13(7)(d) of the principal regulations.

[12] See Regulation 13(6) of the principal regulations which has been amended to extend the time frame for filing the CbC report from 9 months to 12 months.

[13] See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

[14] See Article 1 of Section II "General Reporting Requirements" of Annex III of the principal regulations.

[15] It is noted that Malta's rules provide, in accordance with the provisions of European Union (EU) Council Directive 2016/881/EU (Annex III, Section II), that the Constituent Entity resident in Malta shall request its Ultimate Parent Entity to provide it with all information required to enable it to meet its obligations to file a country-by-country report, in accordance with regulation 13(4)(c). If despite that, that Constituent Entity has not obtained or acquired all the required information to report for the MNE Group, this Constituent Entity shall file a country-by-country report containing all information in its possession, obtained or acquired, and notify the

Commissioner that the Ultimate Parent Entity has refused to make the necessary information available. This shall be without prejudice to the right of the Commissioner to apply penalties provided for in national legislation and the competent authority of Malta shall inform all EU Member States of this refusal. It is also provided that where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the EU, the MNE Group may designate one of such Constituent Entities to file the country-by-country report conforming to the requirements that would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the EU. Where a Constituent Entity cannot obtain or acquire all the information required to file a country-by-country report, then such Constituent Entity shall not be eligible to be designated to be the Reporting Entity for the MNE Group.

[16] See Article 2 of Section II "General Reporting Requirements" of Annex III of the principal regulations.

[17] See Article 3 and 4 of Section II "General Reporting Requirements" of Annex III of the principal regulations. This also applies to any other Constituent Entity resident in Malta.

[18] See Regulation 48(1)(b): penalty of (i) EUR 200; and (ii) EUR 50 for every day during which the default existed; but not exceeding EUR 20 000.

[19] See Regulation 48(2): penalty of (i) in the case of minor errors - (aa) EUR 200 and (bb) EUR 50 for every day during which the default existed; but not exceeding EUR 5 000; and (ii) in the case of significant non-compliance, a penalty of EUR 50 000.

[20] Malta mentions that Regulation 47 states that: "The Commissioner may use any information gathering power under the Income Tax Acts, including those under the provisions of article 10A and article 20 of the Income Tax Management Act, to obtain any information specified in Section III of Annex III to these regulations, notwithstanding that the said information may not be required for the purposes of the Income Tax Acts. The provisions of this regulation shall be interpreted widely in the same manner as the interpretation found in regulation 5".

[21] See amended Regulations 13 (4) and 49 of the principal regulations which extend CbC Reporting with all relevant jurisdictions including non-EU Member States.

[22] Malta indicates that all of its 72 double taxation agreements permit Automatic Exchange of Information and that none of its TIEAs currently in force allow for Automatic Exchange of Information but these are being modified and upgraded to allow Automatic Exchange of Information, due to the negotiation of bilateral Competent Authority Agreements for the Automatic Exchange of Financial Account Information, under the Common Reporting Standard.

[23] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Mauritius

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Mauritius does not have a complete legal and administrative framework in place to implement CbC Reporting and indicates that it will not apply CbC requirements for the 2016 fiscal year. It is recommended that Mauritius take steps to finalise the domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process and put in place measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Mauritius has part of the legislation in place for implementing the BEPS Action 13 minimum standard. Mauritius indicates that it has primary legislation in place to implement CbC Reporting requirements and that the secondary legislation is currently being vetted by the State Law Office. At this time, Mauritius estimates that the secondary legislation will come into effect before the end of the year 2018. Mauritius intends to apply CbC requirements as from fiscal year starting 1 July 2018. It is recommended that Mauritius take steps to finalise the domestic legal and administrative framework[1] to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Mauritius is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided a full set of notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with a large number of jurisdictions that provide notifications under the same agreement. It is noted that Mauritius is in the process of negotiating a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Mauritius has 49 bilateral relationships activated under the CbC MCAA. Mauritius has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. Against the backdrop of the still evolving exchange of information framework, at this point in time, Mauritius meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review[2] process.

Part C: Appropriate use

Mauritius does not yet have measures in place to ensure the appropriate use of information in the six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a).[3] It is recommended that Mauritius take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is noted that Mauritius will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

4. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

5. Mauritius does not yet have complete legislation in place to implement the BEPS Action 13 minimum standard. It is however noted that Mauritius will not be exchanging CbC reports in 2018.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

6. Mauritius does not yet have a complete legal and administrative framework in place to implement CbC Reporting. It is however noted that Mauritius will not be exchanging CbC reports in 2018.

7. Mauritius indicates that it has primary legislation in place to implement CbC Reporting[5] and that secondary legislation is currently being vetted by the State Law Office. The secondary legislation is expected to be gazetted and to come into effect before the end of 2018.

Conclusion

In respect of paragraph 8 of the terms of reference (OECD, 2017b), Mauritius does not have a complete domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Mauritius. It is recommended that Mauritius take steps to finalise the domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.

Part B: The exchange of information framework

8. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

9. Mauritius has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of

Europe, 2011) (signed on 23 June 2015, in force on 1 December 2015 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements (DTAs) and a Tax Information and Exchange Agreements (TIEA) which allow Automatic Exchange of Information.[6]

10. Mauritius signed the CbC MCAA on 26 January 2017 and has submitted a full set of notifications under Section 8 of the CbC MCAA on 25 April 2017. It intends to have the CbC MCAA in effect with a large number of jurisdictions that provide notifications under Section 8(1)(e) of the same agreement. It is noted that Mauritius is in the process of negotiating a bilateral CAA with the United States. As of 12 January 2018, Mauritius has 49 bilateral relationships activated under the CbC MCAA.[7] Mauritius has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. Against the backdrop of the still evolving exchange of information framework, at this point in time Mauritius meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

11. Against the backdrop of the still evolving exchange of information framework, at this point in time Mauritius meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

12. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

13. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Mauritius indicates that measures are not yet in place to ensure the appropriate use of information in the six areas identified in the

OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It is recommended that Mauritius take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Mauritius will not be exchanging CbC reports in 2018.

Conclusion

14. In respect of paragraph 12 (a), it is recommended that Mauritius take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Mauritius will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Mauritius finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that Mauritius take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[5] Section 76 of the Income Tax Act has been amended by the Finance Act of 24 July 2017.

[6] Mauritius indicates it has 42 DTAs and 1 TIEA with the United States in effect which allow for Automatic Exchange of Information. Mauritius indicates it has DTAs with the following countries: Bangladesh, Barbados, Belgium, Botswana, China, Congo, Croatia, Cyprus, Egypt, France, Germany, Guernsey, India, Italy, Kuwait, Lesotho, Luxembourg, Madagascar, Malaysia, Malta, Monaco, Mozambique, Namibia, Nepal, Oman, Pakistan, Qatar, Rwanda, Senegal, Seychelles, Singapore, South Africa, Sri Lanka, Swaziland, Sweden, Thailand, Tunisia, Uganda, United Arab Emirates, United Kingdom, Zambia and Zimbabwe.

Note by Turkey

The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[7] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Mexico

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Mexico's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review. The report therefore contains no recommendation.

Part A: Domestic legal and administrative framework

2. Mexico has rules (primary and secondary laws) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Mexico.[1] The first filing obligation for a CbC report in Mexico commences in respect of fiscal years commencing on or after 1 January 2016. Mexico meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: Exchange of information framework

3. Mexico is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. Mexico has also signed a bilateral competent authority agreement (CAA) with the United States. As of 12 January 2018, Mexico has 51 bilateral relationships activated under the CbC MCAA or under a bilateral CAA with the United States. Mexico has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Mexico meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Mexico. It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Mexico meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Mexico has primary law in place for implementing the BEPS Action 13 minimum standard which consists on amendments to the Mexican Income Tax Law to establish the obligation for required taxpayers to submit CbC, as well as secondary law (hereafter referred to as the "regulations")[5] establishing the necessary requirements, including the filing and reporting obligations. Further guidance has also been added to the secondary law.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Mexico has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[8]

8. In addition, with respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017a)), Mexico's primary law states that the amount of MXN 12 billion (Mexican pesos) may be amended by the Congress of the Union for the year in question in the Revenue Act of the Federation. This provision may be inconsistent with paragraph 8 a) ii. of the terms of reference (OECD, 2017a), as it may generate fluctuations from year to year on the threshold to require the filing of CbC reports. However, Mexico indicates that the sole purpose of this provision is to have a legal vehicle in order change the threshold if such change arises from the 2020 revision. As such, no recommendation is made, but this aspect will be monitored to ensure that there are no yearly fluctuations in the meantime.

9. No other inconsistencies were identified with respect to Mexico's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Mexico commences in respect of periods commencing on or after 1 January 2016. The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[9] [10]

11. Under paragraph 8 (b) ii. of the terms of reference (OECD, 2017a), a CbC report should include all of, and only, the information as contained in the CbC report template, but there is a difference between one item described in the CbC report template and the Mexican secondary legislation:[11]

- in the definition of "number of employees", it is stated that independent contractors shall be reported if they participate in the ordinary activities. However, in the instructions for the CbC report template, MNE Groups "may" include independent contractors but this is not a requirement.[12] Mexico indicates that the requirement for taxpayers to mandatorily report independent contractors as employees is intended to address specific issues related to certain tax planning set-ups in the Mexican context. This aims to provide a more accurate picture in the CbC report for risk assessment purposes.[13] Mexico believes that providing flexibility to taxpayers in the Mexican context in relation to this data would negatively impact the accuracy and usefulness of the CbC information. Although the definition in Mexico's legislation does not mirror the specific instructions in the Action 13 Report (OECD, 2015) by not providing flexibility to taxpayers to report or not independent contractors as employees, this does not seem to raise any significant concern, taking into account the particular domestic context as described by Mexico. This will be monitored.

12. Mexico affirms that in case of interpretation issues regarding definitions, the contents of the TP Guidelines will be applicable - in this case the new chapter V of the Transfer Pricing Documentation Guidelines.[14]

13. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

14. Mexico has introduced local filing requirements as from the reporting period starting on or after 1 January 2016. According to Mexico's primary law, the tax authority may require resident legal entities in Mexico that are subsidiaries of a company resident abroad, or foreign residents having a permanent establishment in Mexico, to file the CbC report "in cases where the tax authorities cannot get the information for that statement through the information exchange mechanisms established in the international treaties

that Mexico has in force; for such effects taxpayers will have a maximum of 120 working days from the date on which the request is notified to provide the information return that this paragraph refers to".

15. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a)), local filing requirements can be required if the CbC report cannot be obtained through the information exchange mechanisms established in the international treaties that Mexico has in force. Although Mexico states that the local filing requirements are in line with the Action 13 minimum standard, this condition does not reflect the details of paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a) to refer to a "Qualifying Competent Authority in effect" to which Mexico is a Party "by the time for filing the Country-by-Country Report" (as the date when the condition relating to a QCAA may be tested).

16. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017a)), local filing requirements can be required if the CbC report cannot be obtained through the information exchange mechanisms established in the international treaties that Mexico has in force. Although Mexico states that the local filing requirements are in line with the Action 13 minimum standard, this condition does not reflect precisely the concept of "Systemic Failure" as defined in paragraph 21 of the terms of reference (OECD, 2017a), and may be interpreted in a broader meaning than a "Systemic Failure". Mexico affirms that the concept of "Systemic Failure" is interpreted as defined in the terms of reference.

17. Where the tax authorities require a CbC report under local filing requirements apply, "taxpayers will have a maximum of 120 working days from the date on which the request is notified to provide the information return that this paragraph refers to. It is unclear when this timeframe would start". Mexico confirms that CbC reports will not be requested under local filing requirements before a reasonable timeframe. Mexico indicates that the identification of any MNE Group to which a request may be send in respect of a CbC report relating to 2016 would not be made before the first exchange of CbC reports deadline in June 2018. This will be monitored.

18. Mexico affirms that in case of interpretation issues regarding local filing, the contents of the TP Guidelines will be applicable - in this case the new chapter V of the Transfer Pricing Documentation Guidelines.[15] Mexico confirms that local filing will be applied in line with paragraph 60 of the Action 13 Report (OECD, 2015): this will be clarified in an internal manual for tax inspectors in order to ensure that local filing can only be required in the circumstances defined by the minimum standard and terms of reference. As such, no recommendation is made but this will be monitored.

19. No other inconsistencies were identified with respect to the limitation on local filing.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

20. With respect to paragraph 8 (d) of the terms of reference (OECD, 2017a), there are no provisions in Mexico's legislation to deactivate local filing in any circumstance.

Mexico's local filing requirements may apply even if there is surrogate filing in another jurisdiction. However, Mexico indicates that if the conditions in the terms of reference are met,[16] the deactivation of local filing will apply. Mexico affirms that in case of interpretation issues regarding local filing, the contents of the TP Guidelines will be applicable - in this case the new chapter V of the Transfer Pricing Documentation Guidelines.[17] In addition, Mexico confirms that the limitation on local filing in case of surrogate filing will be clarified in an internal manual for tax inspectors in order to ensure that local filing will be deactivated in the circumstances defined in terms of reference. As such, no recommendation is made but this will be monitored.

21. No other inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

22. Mexico has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Surrogate Parent Entities. In case of Ultimate Parent Entities, cross-checks or risk assessment using other internal databases apply. There are also penalties in place in relation to the filing of a CbC report for failure:[18] (i) to file a CbC report, (ii) to completely file a CbC report and (iii) to submit it on time. Enforcement powers to compel the production of a CbC report include that government institutions will not contract any goods or services with taxpayers that do not comply with CbC Report.[19] In addition, audit procedures may take place to enforce compliance of CbC Reporting.

23. Mexico indicates that they will make use of internal cross-checks regarding information reflected in CbC, summon the taxpayer for clarifications, asking for complementary CbC submitting and exchange of amended CbC as appropriate measures in case Mexico is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reported by a Reporting Entity or that a Reporting Entity is failing to comply with respect to CbC Reporting obligations. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

24. In respect of paragraph 8 of the terms of reference (OECD, 2017a), Mexico has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Mexico. Mexico meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

25. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017a).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

26. Mexico has domestic legislation that permits the automatic exchange information on CbC reports.[20] It is part to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 27 May 2010, in force on 1 September 2012 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements.[21]

27. Mexico signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 14 December 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. It is noted that Mexico has signed a bilateral QCAA with the United States. As of 12 January 2018, Mexico has 51 bilateral relationships activated under the CbC MCAA and exchanges with the United States under a bilateral agreement. Mexico has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[22] Against the backdrop of the still evolving exchange of information framework, at this point in time, Mexico meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

28. Against the backdrop of the still evolving exchange of information framework, at this point in time, Mexico meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

29. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

30. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Mexico indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017b). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

31. There are no concerns to be reported for Mexico in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

32. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Mexico. Mexico thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017a).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017a).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017a).

[5] Primary law consists of Article 76-A, section III of the Mexican Income Tax Law: www.sat.gob.mx/informacion_fiscal/normatividad/Paginas/2018/leyes_2018.aspx (accessed 25 April 2018). Secondary law consists of sections 3.9.13 to 3.9.17 of the first modifying resolution to the 2017 miscellaneous tax resolution: www.sat.gob.mx/informacion_fiscal/normatividad/Paginas/2017/resolucion_miscelanea_2017.aspx (accessed 25 April 2018).

[6] Guidance consists on further information on (i) submitting procedures, (ii) submitting time periods, (iii) content clarifications and (iv) definitions of information to be reported, which is contained in the body of the secondary provisions.

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017a).

[8] Mexico has updated its regulation and issued a FAQ guidance which is available at the Mexican Government website to address the threshold calculation, to clarify certain definitions and to clarify the source of data, which are available at: www.sat.gob.mx (updated regulation, accessed 20 April 2018) and www.sat.gob.mx (FAQ, accessed 20 April 2018).

[9] See article 29(c) paragraph 1 of the Corporate Income Tax Act 1969.

[10] Mexico has provided for different deadlines to present the CbC report for Surrogate Parent Entities (locally designated Surrogate Parent Entities) in cases in which the end of the fiscal year of the Reporting MNE do not follow the calendar year. When the fiscal year ends either from June to December, the deadline for submission of the CbC Report is 31 December of the year immediately following the declared fiscal year. Mexico has also updated its regulation and issued a FAQ guidance which is available at the Mexican Government website to address the threshold calculation, to clarify certain definitions and to clarify the source of data, which are available at: www.sat.gob.mx (updated regulation, accessed 20 April 2018) and www.sat.gob.mx (FAQ, accessed 20 April 2018).

[11] See section 3.9.17 of the secondary law (first modifying resolution to the 2017 miscellaneous tax resolution).

[11] See definition of "Number of Employees" in Annex III to Chapter V of Action 13 Report (OECD, 2015).

[13] Mexico indicates that there is a common tax planning set-up in the Mexican context which consists of having the work force placed in an ad hoc company of a group, the sole or the main purpose of which being to hold the work force in order to limit the group's tax liability in respect of certain taxes which include the number of employees in their computation formula. Therefore, in-sourcing and out-sourcing of workforce are very common in Mexico, and as such, Mexico believes that requiring taxpayers to include independent contractors as employees would provide a more accurate picture of the employees of a group in the CbC report.

[14] See article 179 of the MITL.

[15] See article 179 of the MITL.

[16] See paragraph 8 (d) of the terms of reference (OECD, 2017b).

[17] See article 179 of the MITL.

[18] Penalty arises to MXN 140 540.

[19] See Article 32-D. Section IV of Mexican Federal Tax Code.

[20] Article 69 of Mexican Federal Tax Code.

[21] Mexico lists tax agreements with Canada and United States, as well as bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions: Austria, Canada, Hong Kong (China), Russia, South Africa, Ukraine and United States. In addition, Mexico has Double Tax Conventions which according to their internal rules and paragraph 9 of the Commentary on Article 26 of the OECD Model Tax Convention, can be interpreted to allow information to be exchanged automatically (subject to confirmation of the treaty partner): Australia, Bahrein, Barbados, Belgium, Brazil, Chile, China (People's Republic of), Colombia, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Iceland, Israel, Italy, Japan, Korea, Kuwait, Latvia, Lithuania, Malta, New Zealand, Netherlands, Norway, Peru, Poland, Portugal, Qatar, Romania, Singapore, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Arab Emirates, United Kingdom and Uruguay.

[22] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2017b), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Monaco

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Monaco's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review with respect to the domestic legal and administrative framework. Monaco should complete its exchange of information framework and have measures in place to ensure the appropriate use of CbC Reports. It is however noted that Monaco will not be exchanging reports in 2018 (but will exchange in 2020 in respect of fiscal year 2018).

Part A: Domestic legal and administrative framework

2. Monaco has rules (primary law) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Monaco. The first filing obligation for a CbC report in Monaco commences in respect of fiscal years commencing on or after 1 January 2018. Monaco meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Monaco is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"), signed on 13 October 2014 and in force on 1 April 2017. The Convention should therefore be in effect at the start of the commencement of CbC Reporting in Monaco on 1 January 2018 (for actual exchanges in 2020). Monaco is also a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with a few signatories of this agreement. As of 12 January 2018, Monaco has eight bilateral relationships activated under the CbC MCAA. It is recommended take further steps to have more Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions. It is however noted that Monaco will not be exchanging CbC reports in 2018 (but will exchange in 2020 in respect of fiscal year 2018).[2]

Part C: Appropriate use

4. Monaco does not yet have measures in place relating to appropriate use.[3] It is recommended that Monaco take steps to ensure that the appropriate use conditions is met ahead of the first exchanges of CbC reports. It is noted that Monaco will not be exchanging CbC reports in 2018 (but will exchange in 2020 in respect of fiscal year 2018).

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and e) the effective implementation of CbC Reporting.

6. Monaco has primary law in place for implementing the BEPS Action 13 minimum standard which consists two Sovereign Ordonnances which set the legal basis for the necessary requirements, including the filing and reporting obligations.[4]

(a) Parent entity filing obligation

Summary of terms of reference:[5] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Monaco has introduced a domestic legal and administrative framework which imposes CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[6]

8. No inconsistencies were identified with respect to Monaco's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Monaco commences in respect of periods commencing on or after 1 January 2018.[7] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[8]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does

not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. To date, Monaco does not apply or plan to introduce local filing.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

12. To date, Monaco does not apply or plan to introduce local filing. Monaco's legislation requires a surrogate parent entity to file in Monaco when such surrogate parent has been appointed by the MNE Group to do so. Surrogate filing shall occur only when certain conditions are met.[9]

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

13. Monaco's rules provide for mechanisms to enforce compliance by all Ultimate Parent Entities with their filing obligations. There are penalties in place for:[10] (i) failure to file a CbC report, (ii) incomplete or inaccurate filing of a CbC report and (iii) failure to submit it on time.

14. There are no specific processes in place that would allow Monaco to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

15. In respect of paragraph 8 of the terms of reference, Monaco has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Monaco. Monaco meets all the terms of reference relating to the domestic legal and administrative framework for the year in review.

Part B: The exchange of information framework

16. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference.

> Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

17. Monaco has domestic legal basis that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"), signed on 13 October 2014, in force on 1 April 2017. The Convention should therefore be in effect at the commencement of CbC Reporting in Monaco on 1 January 2018 (for actual exchanges in 2020).

18. Monaco signed the CbC MCAA on 2 November 2017. It has submitted notifications under section 8 of the CbC MCAA on 1 January 2018. It intends to have the CbC MCAA in effect with a few jurisdictions.[11] As of 12 January 2018, Monaco has 8 bilateral relationships activated under the CbC MCAA. It is recommended that Monaco take further steps to have more Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions.

Conclusion

19. It is recommended that Monaco take further steps to have more Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions. It is however noted that Monaco will not be exchanging CbC reports in 2018 (but will exchange in 2020).

Part C: Appropriate use

20. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

21. Monaco does not yet have measures in place relating to appropriate use. It is recommended that Monaco take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Monaco's primary legislation provides that the tax administration makes use of the CbC reports for the purpose of assessing high-level transfer pricing risks and other risks of erosion of the tax base and of transfer of profits in Monaco, including the risk of non-compliance with transfer pricing rules by members of the MNE group and, where appropriate, for economic and statistical analysis purposes. The tax administration shall not use solely CbC reports to make transfer pricing adjustments.[12] The tax administration does not rely on CbC reports to make transfer pricing adjustments. Monaco indicates that it is planning to draft a policy governing the use of data exchanged, including a definition of the appropriate use of CbC reports as well as guidance on the use of the information contained therein. It adds that CbC reports will be handled under strict use conditions. It is also noted that Monaco will not be exchanging CbC reports in 2018 (but will exchange in 2020).

Conclusion

22. In respect of paragraph 12 (a) of the terms of reference, it is recommended that Monaco take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Monaco will not be exchanging CbC reports in 2018 (but will exchange in 2020).

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	It is recommended that Monaco take further steps to have more Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions.
Part C	Appropriate use	It is recommended that Monaco take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The Sovereign Ordinance No. 6.712 of 14 December 2017 introduced the Multilateral Agreement between Competent Authorities on the Exchange of Declarations Country by Country in Monaco's domestic framework. Monaco's primary law for CbC Reporting consists of the Sovereign Ordonnance No. 6.713 of 14 December 2017 implementing the Multilateral Agreement between Competent Authorities on the exchange of Country-by-Country Report (hereafter the "Sovereign Ordonnance").

[5] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[6] See article 4. of the Sovereign Ordonnance.

[7] See article 6 of the Sovereign Ordinance.

[8] See article 6. of the Sovereign Ordinance.

[9] See article 3 as well as article 2 (7) of the Sovereign Ordinance: the conditions under article 2 (7) reflect the conditions set in paragraphs 8 c) iv. a) b) and c) of the terms of reference (OECD, 2017) for local filing requirements.

[10] See articles 11, 12 and 13 of the Sovereign Ordinance:

article 11 - In the event of a breach of the obligation provided for in Article 4, the Constituent Entity concerned shall be liable to an administrative penalty of EUR 750;

article 12 - Where the Declaration referred to in Article 5 is not transmitted within the period referred to in Article 6, the Reporting Entity concerned shall be liable to an administrative penalty of EUR 10 000. When the Declaration referred to in Article 5 is sent within 30 days of the notification of a formal notice by registered letter with a request for an acknowledgment of receipt to have to regularize its situation, the Reporting Entity concerned is liable to an administrative penalty of EUR 50 000. In the absence of regularization within a period of thirty days following notification of a formal notice served in accordance with the forms provided for in the preceding paragraph, the Reporting Entity concerned shall be liable to an administrative penalty of EUR 100 000.

Article 13 - When the Declaration referred to in Article 5 is incomplete or inaccurate, the Reporting Entity concerned is liable to an administrative penalty of 150 per item containing one or more omissions or inaccuracies, notified by registered letter with acknowledgment of postal receipt. The amount of the administrative penalty is increased to EUR 250, when the reporting entity refrains from regularizing its situation within thirty days of the notification referred to in the previous paragraph. The cumulative amount of the administrative penalties provided for in the first and second paragraphs of this article may not exceed EUR 100 000 for the same ultimate Parent Entity or Substitute Parent Entity in respect of one same declaration.

[11] The Czech Republic, Denmark, France, Germany, Luxembourg, Netherlands, Norway and the United Kingdom.

[12] See article 9 of the Sovereign Ordinance.

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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Netherlands

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. The Netherlands' implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. The Netherlands has rules (primary and secondary laws, as well as guidance) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the Netherlands. The first filing obligation for a CbC report in the Netherlands commences in respect of fiscal years commencing on or after 1 January 2016. The Netherlands meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. The Netherlands is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. The Netherlands has also signed a bilateral competent authority agreement (CAA) with the United States. As of 12 January 2018, the Netherlands has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under a bilateral CAA. The Netherlands has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, the Netherlands meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for the Netherlands. The Netherlands indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] The

Netherlands meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. The Netherlands has primary law in place for implementing the BEPS Action 13 minimum standard which consists on amendments to the Dutch Corporate Income Tax Act to implement rules, as well as secondary law (hereafter referred to as the "regulations")[5] establishing the necessary requirements, including the filing and reporting obligations. Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. The Netherlands has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. In its guidance relating to the definition of an "Excluded MNE Group",[8] reference is made to the situation where the total consolidated group revenue is kept in a different currency: the guidance explains that the threshold should then be determined in that currency, equalling EUR 750 million or a near equivalent amount in domestic currency as of January 2015. While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in the Netherlands, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Dutch tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[9] However, the Netherlands confirms that this paragraph of the guidance is only a reminder of the Action 13 provisions and no departure from the OECD guidance on currency fluctuations is intended. As such, no recommendation is made but this aspect will be further monitored.

9. No inconsistencies were identified with respect to the Netherlands' domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in the Netherlands commences in respect of periods commencing on or after 1 January 2016.[10] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[11]

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. The Netherlands has introduced local filing requirements as from the reporting period starting on or after 1 January 2016.[12] No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. The Netherlands' local filing requirements will not apply if there is surrogate filing in another jurisdiction.[13] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to

enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. The Netherlands has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Constituent Entities in the Netherlands.[14] There are also penalties in place in relation to the filing of a CbC report for failure:[15] (i) to file a CbC report, (ii) to incompletely file a CbC report and (iii) to submit it on time. In addition, any Constituent Entity of a MNE Group that is resident in the Netherlands is obliged to keep records of the financial position and information related to business or activity of the entity and to provide any information that is relevant for their tax position. Penalties or criminal sanctions may be imposed in case the obligations are not met.

15. There are no specific processes in place that would allow to take appropriate measures in case the Netherlands is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. The Netherlands mentions that in addition to existing international consultation procedures, the Dutch Tax and Customs Administration intends to design and develop processes specifically designed for incorrect/incomplete CbC information or non-compliance with respect to CbC obligations. Such notifications will be, in first instance, centrally taken care of by the newly established Dutch Country-by-Country Reporting team and Country-by-Country Reporting coordinator. However, these processes are not in place yet. The Netherlands also notes that article 29h of the Corporate Income Tax Act provides for sanctions in case of non-compliance with CbC obligations. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), the Netherlands has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the Netherlands. The Netherlands meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. The Netherlands has domestic legislation that permits the automatic exchange information on CbC reports.[16] It is part to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 27 May 2010, in force on 1 September 2013 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements.[17] It also implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.[18]

19. The Netherlands signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 24 November 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. It is noted that the Netherlands has signed a bilateral QCAA with the United States. As of 12 January 2018, the Netherlands has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under a bilateral CAA with the United States.

20. The Netherlands has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[19] Against the backdrop of the still evolving exchange of information framework, at this point in time the Netherlands meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time, the Netherlands meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full

functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), the Netherlands indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

24. There are no concerns to be reported for the Netherlands in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for the Netherlands. The Netherlands thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of Chapter VIIA of the Corporate Income Tax Act 1969 (CITA): http://wetten.overheid.nl/BWBR0002672/2018-01-01#HoofdstukVIIa (accessed 23 April 2018). Secondary law consists of Government Gazette No. 47457/2015, providing for regulations on additional transfer pricing documentation requirements: http://wetten.overheid.nl/BWBR0037475/2016-01-01 (accessed 20 April 2018).

[6] Guidance consists on the 2016 Manual for Filing CbC Reports, from the Tax and Customs Administration. The Netherlands indicates that this explains more details about CbC and contains instructions for filling out the fields in the notification portal and important remarks and is available at: www.gegevensportaal.net/cbc/aanmelden/ (accessed 20 April 2018). In addition, the Netherlands published a Policy decision on notification aspects dated November 15, 2016, nr. DGBel 2016-0000184128M, Staatscourant (Official Gazette), November 21, 2016, nr. 63121, https://zoek.officielebekendmakingen.nl/stcrt-2016-63121.html (accessed 20 April 2018).

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] Section 2.2.2 of the "2016 Manual - Filing CbC reports - Part I General".

[9] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018).

[10] See article 6 of the Regulation of the State Secretary for Finance of the Netherlands of 30 December 2015, No. DB/2015/462M, containing requirements for the further implementation of the supplementary documentation obligations for multinational enterprises (Regulation Supplementary Transfer Pricing Documentation Obligations) (Government Gazette No. 47457/2015).

[11] See article 29(c) paragraph 1 of the CITA.

[12] See article 29(c) paragraph 2 of the Corporate Income Tax Act 1969 and paragraph 2.3.4 of the 2016 Manual for Filing CbC Reports.

[13] See article 29(c) paragraph 4 of the Corporate Income Tax Act 1969. The Netherlands announced in the Policy decision dated November 15, 2016 that voluntary parent surrogate filing

would be recognised and that legislation in that respect would be introduced. With regard to the legislative developments, the Netherlands indicates that it intends to temporarily create a legal basis for voluntary parent surrogate filing in the CITA with a retroactive effect to 1 January 2016, in conformity with the OECD guidance.

[14] See article 29(c) paragraph 4 of the CITA. The notification has to be done on the last day of the MNE's Fiscal Year at the latest (and, with regard to Fiscal Years commencing in 2016: on September 1, 2017, at the latest); the use of an online notification tool, www.gegevensportaal.net/cbc/aanmelden/ (accessed 20 April 2018), is mandatory.

[15] See article 29(h) of the CITA: in respect of these offences, the Minister can impose an administrative penalty pursuant to Article 23, paragraph 4, of the Dutch Criminal Code: on 18 April 2017, the Dutch Parliament passed an amendment raising the penalty to a maximum amount of the sixth category as referred to in Article 23, paragraph 4, of the Dutch Criminal Code or EUR 820 000. For the imposition of a penalty, guidance is issued. According to the guidance, a penalty of 25% of the maximum amount, or EUR 205 000, is imposed in the case of gross negligence and a penalty of 50% of the maximum amount, or EUR 410 000, is imposed in the case of intent. The penalty imposed in a particular case may be lower or higher (up to the maximum amount), depending on the specific circumstances in that particular case.

[16] Article 6 of the Dutch International Assistance (Levying of Taxes) Act.

[17] The Netherlands lists tax agreements with Curaçao ("Belastingregeling Nederland-Curacao" // Tax regulation Netherlands – Curaçao) and with Aruba and Sint Maarten ("Belastingregeling voor het Koninkrijk // Tax regulation for the Kingdom of the Netherlands") (the Netherlands further indicates the "Belastingregeling Nederland-Curacao" (Tax regulation Netherlands – Curacao) is a statute law as well, which applies to the Netherlands and Curacao. Article 25 of this regulation allows for the exchange of information, including automatic exchange. In addition, the "Belastingregeling voor het Koninkrijk" (Tax regulation for the Kingdom of the Netherlands) is a statute law which applies to the Netherlands, Aruba and Sint Maarten. Article 37 of this regulation allows for the exchange of information, including automatic exchange); as well as bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions: Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Brazil, Bulgaria, Canada, China (People's Republic of), Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Ghana, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Korea, Kosovo, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Morocco, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom and United States.

[18] The Netherlands indicates that the translation of Chapter VII (a) of the Dutch CITA which was provided with the questionnaire for the reviewed jurisdiction was the current legislation at that time, which served only to implement the provision of BEPS Action 13. Since then, a few provisions have been added to implement EU Directive 2016/881. The adapted text of Chapter VII(a) of the CITA entered into force on 5 July 2017. One of the adaptations was to section 29h of the CITA. Therefore, since 5 July 2017, non-compliance with the notification obligations of article 29d of the CITA is a punishable offence as well. The penalty is the same as for non-compliance with the filing obligations of article 29c of the CITA.

[19] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

New Zealand

Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. New Zealand's implementation of the Action 13 minimum standard meets all applicable terms of reference.[1] The report, therefore, contains no recommendations. However, it is noted that an obligation on an entity to file a CbC Report in New Zealand only arises upon a notification being issued by the Inland Revenue and the effectiveness of this system should be monitored.

Part A: Domestic legal and administrative framework

2. New Zealand has not introduced specific legislation for CbC Reporting. Instead, New Zealand will rely on existing powers in the Tax Administration Act 1994, which allow the Commissioner of the Inland Revenue to require the provision of information or documents necessary or relevant for any purpose relating to the administration or enforcement of taxes. This is supported by guidance on the Inland Revenue website describing the requirements imposed on groups. Each MNE group within the scope of CbC Reporting whose Ultimate Parent Entity is resident in New Zealand will be contacted in writing by the Inland Revenue and notified that it is required to submit a CbC Report, together with details of the required form and content of the CbC Report. In respect of paragraph 8 of the terms of reference (OECD, 2017a), no inconsistencies were identified. However, it is noted that no obligation to file a CbC Report arises unless notification is given by the Inland Revenue. It is therefore key to the effectiveness of this system that the Inland Revenue correctly identifies all New Zealand resident entities that are the Ultimate Parent Entity of an MNE group within the scope of CbC Reporting and issues a notification, and this should be monitored.

Part B: Exchange of information framework

3. New Zealand is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the CbC MCAA. It has provided its notifications under Section 8 (e) (i) of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. It is noted that New Zealand has signed a bilateral QCAA with the United States. As of 12 January 2018, New Zealand has 51 bilateral relationships activated under the CbC MCAA and under a bilateral Competent Authority agreement (CAA). New Zealand has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information

framework, at this point in time New Zealand meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for New Zealand. New Zealand indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017b). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use. New Zealand meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[3]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. New Zealand has not introduced specific legislation for CbC Reporting. Instead, New Zealand will rely on existing powers in the Tax Administration Act 1994, which allow the Commissioner of the Inland Revenue to require the provision of information or documents necessary or relevant for any purpose relating to the administration or enforcement of taxes. This is supported by guidance on the Inland Revenue website describing the requirements imposed on groups. Each MNE group within the scope of CbC Reporting whose Ultimate Parent Entity is resident in New Zealand will be contacted in writing and notified that they are required to submit a CbC Report, together with details of the required form and content of the CbC Report.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. The New Zealand Inland Revenue identifies all New Zealand resident entities that are the Ultimate Parent Entities of an MNE group with consolidated group income in a fiscal year of EUR 750 million or more. The Inland Revenue then writes to the entity to notify it that it is required to file a CbC Report for the following fiscal year.[5] No obligation to file a CbC Report arises until such notification is sent. An Ultimate Parent Entity is also sent details of the Action 13 Report (OECD, 2015) and OECD guidance on CbC Reporting, and so all definitions contained in OECD publications are indirectly incorporated into New Zealand's CbC Reporting framework. New Zealand also indicates that any additional guidance issued by the OECD would be forwarded to the Ultimate Parent Entities concerned.

8. No inconsistencies were identified with respect to the parent entity filing obligation. However, the effectiveness of this framework relies on the Inland Revenue being able to identify all New Zealand resident entities that are the Ultimate Parent Entity of an MNE Group within the scope of CbC Reporting and issuing a notification, and this should be monitored.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC Report in New Zealand applies in respect of reporting fiscal years commencing on or after 1 January 2016. Guidance issued by the Inland Revenue sets out the information which must be included in a CbC Report, which is all of, and only, the information required under the minimum standard, and the Excel spreadsheet sent by the Inland Revenue to Ultimate Parent Entities for completion accurately reflects the OECD CbC Template. The CbC report must be filed by 12 months after the last day of the reporting fiscal year. The Ultimate Parent Entity is sent details of the Action 13 Report (OECD, 2015) and OECD guidance on CbC Reporting (OECD, 2018), and so all definitions and interpretative guidance contained in OECD publications are reflected. New Zealand also indicates that any additional guidance issued by the OECD would be forwarded to the Ultimate Parent Entities concerned.

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. New Zealand does not apply or plan to introduce local filing.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

12. New Zealand does not apply or plan to introduce local filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

13. New Zealand has a system in place to monitor compliance with CbC Reporting. Because Ultimate Parent Entities are identified by the Inland Revenue well in advance of the filing deadline and receive notification of their obligation to file a CbC Report, it is possible for the Inland Revenue to monitor compliance by these groups. New Zealand also has existing rules in place to enforce compliance and impose penalties as appropriate.[6]

14. There are no specific processes in place that would allow to take appropriate measures in case New Zealand is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. New Zealand notes that the administration of CbC Reporting is being carried out by International Revenue Strategy at Inland Revenue, which area is also responsible for exchanges of information. Accordingly, they will be able to follow up quickly any errors or non-compliance notified by other jurisdictions. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

15. No inconsistencies were identified with respect to the effective implementation.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017a), no inconsistencies were identified. However, the effectiveness of New Zealand's framework relies on the Inland Revenue being able to identify all New Zealand resident entities that are the Ultimate Parent Entity of an MNE group within the scope of CbC Reporting and issuing a notification, and this should be monitored.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017a).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. New Zealand has domestic legislation that permits the automatic exchange of CbC reports.[7] It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 26 October 2012, in force on 1 March 2014 and in effect for 2016),[8] and (ii) to 38 bilateral tax conventions in effect for 2016 which allow Automatic Exchange of Information.

19. New Zealand signed the CbC MCAA on 12 May 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 23 February 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. It is noted that New Zealand has signed a bilateral QCAA with the United States. As of 12 January 2018, New Zealand has 51 bilateral relationships activated under the CbC MCAA and under a bilateral CAA. New Zealand has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[9] Against the backdrop of the still evolving exchange of information framework, at this point in time New Zealand meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

20. Against the backdrop of the still evolving exchange of information framework, at this point in time New Zealand meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

22. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make

adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), New Zealand indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017b). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use. It has also provided a copy of its internal guidance on appropriate use.

23. There are no concerns to be reported for New Zealand in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017a), there are no concerns to be reported for New Zealand. New Zealand thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017a).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017a).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017a).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017a).

[5] New Zealand notes that MNE Groups with 31 December balance dates are required to collect CbC data for the 12 months beginning 1 January 2016. For 31 March and 30 June balance date MNE Groups, they are required to collect CbC data for the 12 months beginning 1 April 2016 and 1 July 2016 respectively.

[6] New Zealand notes that CbC reports will be requested under section 17 of the Tax Administration Act 1994. It is an offence not to comply with a notice issued under section 17. An offence occurs where a MNE does not provide, or knowingly does not provide, information to Inland Revenue when required to do so by a tax law (sections 143 and 143A of the Tax Administration Act 1994). These sections are part of the day-to-day administration of our tax law, so New Zealand has considerable experience in their application. If there is non-compliance with a section 17 notice then an application for a court order can be sought under section 17A of the Tax Administration Act 1994. This section is part of the day-to-day administration of the tax law, so New Zealand has considerable experience in its application.

[7] The Convention on Mutual Administrative Assistance in Tax Matters and section BH 1 of the Income Tax Act 2007.

[8] New Zealand also lodged a Unilateral Declaration dated 4 January 2018 on “the effective date for exchanges of information under the Multilateral Competent Authority Agreement on the exchange of Country-by-Country Reports” to have effect from 1 January 2016 for CbC Reporting with jurisdictions that have not deposited their instruments of ratification by 31 August 2015.

[9] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

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Nigeria

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Based on final primary law not yet published, Nigeria's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that it raises one issue in relation to the exchange of information framework and one issue in relation to the appropriate use of CbC Reports. The report contains, therefore two recommendations to Nigeria to continue to take steps to address these issues.

Part A: Domestic legal and administrative framework

2. Nigeria has rules (primary law) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Nigeria. The first filing obligation for a CbC report in Nigeria commences in respect of fiscal years commencing on or after 1 January 2018. Based on final primary law not yet published, Nigeria meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Nigeria is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which came into force on 1 September 2015. Nigeria is also a signatory to the CbC MCAA and it intends to submit its notifications under section 8 of the CbC MCAA soon. It is recommended that Nigeria continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Nigeria will not be exchanging reports in 2018.[2]

Part C: Appropriate use

4. Nigeria is recommended to continue to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.[3] It is however noted that Nigeria will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on

local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Nigeria has primary law in place for implementing the BEPS Action 13 minimum standard which consists on a legal basis for the establishment of any new filing obligations and establishes the necessary requirements, including the filing and reporting obligations.[4] The legal basis was already approved by the Federal Government and is scheduled for publication in the government gazette.

(a) Parent entity filing obligation

Summary of terms of reference:[5] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Nigeria has introduced a domestic legal and administrative framework which imposes CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[6]

8. The definition of "Excluded MNE group" reads "*with respect to any Accounting Year of the Group, a Group having total consolidated group revenue of less than one Hundred and sixty Billion Naira (NGN 160 billion) during the Accounting Year immediately preceding the Reporting Accounting Year as reflected in its Consolidated Financial Statements for such preceding Accounting Year"*.[7] While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Nigeria, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Nigerian tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[8] Nigeria confirms that this paragraph of the guidance is only a reminder of the Action 13 provisions and no departure from the OECD guidance on currency fluctuations is intended and that Nigeria intends to clarify this point through issuing guidelines or a FAQ. As such, no recommendation is made but this aspect will be further monitored.

9. No inconsistencies were identified with respect to Nigeria's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Nigeria commences in respect of periods commencing on or after 1 January 2018.[9] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[10]

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. Nigeria has introduced local filing requirements[11] as from the reporting period starting on or after 1 January 2018.[12] No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Nigeria's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[13] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. Nigeria has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Constituent Entities in Nigeria.[14] There are also penalties in place in relation to

the filing of a CbC report for failure:[15] [16] (i) to file a CbC report, (ii) to correctly file a CbC report and (iii) to submit it on time.[17]

15. There are no specific processes in place that would allow to take appropriate measures in case Nigeria is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017), based on primary law approved but not yet published in the official gazette, Nigeria meets all the terms of reference relating to the domestic legal and administrative framework for the year in review.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Nigeria has a domestic legal basis for the exchange of information in place. Section 8(i) of the FIRSEA[18] and Section 45 of the Companies Income Tax Act empowers the Federal Inland Revenue Service to exchange information and documents with other jurisdictions for tax purpose, which will be possible once the CbC MCAA is ratified.[19] Nigeria notes that the FIRS has a functional Exchange of Information Unit which undertakes the exchange of information function on behalf of the Competent Authority of Nigeria.[20]

19. Nigeria is party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 29 May 2013, in force on 1 September 2015 and in effect for 2016). Nigeria also has a number of Double Taxation Agreements which allow Automatic Exchange of Information.[21]

20. Nigeria has signed the CbC MCAA, and it intends to submit its notifications under section 8 of the CbC MCAA soon. It is recommended that Nigeria continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Nigeria will not be exchanging reports in 2018.

Conclusion

21. It is recommended that Nigeria continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Nigeria will not be exchanging reports in 2018.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. Nigeria does not yet have measures in place relating to appropriate use. It is recommended that Nigeria take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Nigeria will not be exchanging CbC reports in 2018.

Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), Nigeria is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Nigeria will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	It is recommended that Nigeria to continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions.
Part C	Appropriate use	Nigeria is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] Nigeria's primary law consists of the Income Tax (Country-by-Country Reporting) Regulations 2018, which was approved and it is scheduled for publication in the government gazette.

[5] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[6] Part II, article 3 of the primary law.

[7] Part V, article 15 of the primary law.

[8] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018).

[9] Part V, article 16 of the primary law.

[10] Part III, article 9 of the primary law.

[11] Part II, article 4 of the primary law.

[12] Part V, article 16 of the primary law.

[13] Part II, article 5 of the primary law.

[14] Nigeria notes that a validation mechanism for the filing of CbC reports by ultimate Parent Entities and Surrogate Parent Entities shall be launched upon the enactment of the local legislation. Meanwhile, all MNEs are mandated (by law) to file income tax returns (including transfer pricing returns) annually. Filing compliance is currently being validated through a combination of a Compliance Program, risk assessment and tax audit. In the case of CbC reports, the existing mechanism for validating income tax returns may be adopted and, if need be, supplemented with additional measures.

[15] See Part II, articles 11 and 12 of the primary law: article 11 - Late filing of Country-by-Country Report: *Where a Reporting Entity fails to file the Country-by-Country Report to the Service on or before the date specified in regulation 9 of these Regulations, the Service shall impose an administrative penalty of Ten Million Naira Only (NGN 10 000 000) in the first instance and One*

Million Naira only (NGN 1 000 000) for every month in which the failure continues. Article 12 - Filing an incorrect or false Country-by-Country Report: *Where a Reporting Entity files an incorrect or false Country-by-Country Report, the Service shall impose an administrative penalty of Ten Million Naira only (NGN 10 000 000).*

[16] As regards enforcement measures, Nigeria also notes that the Federal Inland Revenue Service (FIRS), which is the Federal Tax Authority in Nigeria has wide powers under Nigeria laws to address non-compliance, they are: (i) It may request the company to produce the report (Sections 26 and 27 of the Federal Inland Revenue Service Establishment Act (FIRSEA), Section 60 of the Companies Income Tax Act and Section 32 of the Petroleum Profits Tax Act). (ii) It may conduct search and seizure or seal-off the premises where information that may lead to the production of the report is suspected to have been kept (Sections 29, 30 and 36 of FIRSEA 2007 and Section 64 of the Companies Income Tax Act). (iii) It may approach the statutory agency that regulates the operations of the company, where applicable, (e.g. Central Bank of Nigeria if the company is a financial institution) under Section 8(i) of FIRSEA 2007 to obtain information that may lead to the production of the report. (iv) Where a third party (such as the Stock Exchange etc.) is in possession of the report, the FIRS under Section 27 (1) of FIRSEA 2007 is empowered to request 'any person it considers necessary' - whether in possession or suspected to be in possession of such report to furnish the FIRS within a specified time frame, irrespective of the legal obligation to keep such report. In addition, The FIRS may institute legal action at the Tax Appeal Tribunal or Federal High Court, which may be escalated up to the Supreme Court to compel the company to make the report available (Section 1 (2)(b), 49 and 59 FIRSEA, 2007). Finally, Section 42 FIRSEA provides for offence and punishment in respect of incorrect information and records, while the explanations above deals with non-compliance.

[17] In addition, Nigeria included a general anti-avoidance provision in their regulation. In case of arrangements to which the main purpose is to avoid any obligation under these regulations, the regulation shall have effect as if the arrangements had not been entered into.

[18] The Federal Inland Revenue Service Establishment Act.

[19] The CbC MCAA has been ratified by the Federal Executive Council (Council of Ministers) but the instrument of ratification has not yet been deposited with the OECD Secretariat because the primary legislation on CbC report has not been enacted.

[20] Nigeria indicates that the processes of this unit have been reviewed by the Global Forum during the Nigerian Phase 2 Peer Review for the EOI upon request. The unit has an effective EOI manual with which it carries on its functions. Nigeria notes that it will strengthen the unit and expand the scope of its manual to also undertake the exchange of CbC reports.

[21] With the following countries: Belgium, Canada, China (People's Republic of), Czech Republic, France, Netherlands, Pakistan, Philippines, Romania, Slovak Republic, South Africa and United Kingdom.

References

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Norway

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Norway's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one substantive issue in relation to its domestic legal and administrative framework. The report, therefore, contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. Norway has rules (primary and secondary laws, as well as guidance) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Norway. The first filing obligation for a CbC report in Norway commences in respect of accounting years beginning on or after 1 January 2016. Norway meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the local filing mechanism which may be triggered in circumstances that are wider than those set out in the minimum standard[2]

Part B: Exchange of information framework

3. Norway is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under the same agreement. It is also noted that Norway has signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Norway has 52 bilateral relationships activated under the CbC MCAA or exchanges under the bilateral CAA. Norway has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Norway meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.[3]

Part C: Appropriate use

4. There are no concerns to be reported for Norway. Norway indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the

OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[4] Norway meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[5]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Norway has primary law and secondary law (hereafter referred to as the "Regulations") in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[6] Guidance has also been published.[7]

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Norway has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue,[9] whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the parent entity filing obligation, the definition of a "parent company"[10] in the Regulations does not contain the same level of detail as in paragraph 18. ii. of the terms of reference (OECD, 2017b): there is no provision specifying that no other "enterprise" of the group owns directly or indirectly a sufficient interest such that it is required to prepare Consolidated Financial Statements, which could lead to a situation where there are two parent companies in an MNE Group headquartered in Norway, both having to file a CbC report. However, Norway indicates that under Norwegian legislation (Accounting Act Section 1 – 3), a person is considered to be a parent company only if that person has decisive influence over an enterprise through a majority of votes by way of agreement of shares or other ownership interests, which means that it is only in very limited circumstances that two enterprises in Norway would both qualify at the same time as a parent company having CbC Reporting obligations. In addition, in the event that more than one enterprise in the Group is obliged to file a report, the Group may appoint one of the enterprises to comply with the reporting obligation,[11] which would impose filing requirements only on one parent company in the Group.

9. The definition of a parent company in Norway*'s* legislation can apply to impose a CbC filing requirement on one or several entities in Norway that are themselves included in the Consolidated Financial Statement of another entity, considered as an "Ultimate

Parent Entity" in another jurisdiction as per the terms of reference. This definition is completed by a specific provision[12] which provides that a parent company in Norway would be exempted to file a CbC report where another company in the capacity of being a parent company shall file an equivalent report according to the domestic legislation in its jurisdiction of residence. However, these provisions may still in isolation (formally) trigger an instance of local filing requirement on the Norwegian enterprises when there are no CbC requirements on the Ultimate Parent Entity in the other jurisdiction[13] (which may technically give rise to a duplication of the CbC reports filed under both the primary and secondary filing requirements by the parent company in Norway). However, Norway confirms that where the primary filing requirement would operate as a local filing requirement, the Regulations (i) allow that only one entity would be required to file one CbC report which would satisfy the obligation of all entities[14] and (ii) this filing obligation would not operate if the CbC report is filed by a Surrogate Parent Entity.[15] [16] Finally, Norway also confirms that the provisions relating to the primary filing obligation could not apply to cover other instances of local filing which would not be admitted under the terms of reference.[17] As such, no recommendation is issued but this aspect will be monitored.

10. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

11. The first filing obligation for a CbC report in Norway commences in respect of accounting years beginning on or after 1 January 2016.[18] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[19]

12. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Norway has introduced local filing requirements in respect of income years beginning on or after 1 January 2017.[20]

14. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), local filing is required where "*the jurisdiction where the parent company is a resident does not have a qualifying agreement on automatic exchange of reports in effect by the expiration of the year in which a report shall be filed* (…)". Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in Norway's legislation. Under Norway's legislation, local filing may be required in circumstances where there is no current international agreement between Norway and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. It is recommended that Norway take steps to ensure that local filing can only be required in circumstances permitted under the minimum standard and set out in the terms of reference, in particular to prevent local filing in the absence on an international agreement. It is noted that in practice this issue should only arise where local filing is imposed on a Constituent Entity in an MNE group where the Ultimate Parent Entity is resident in a country with which Norway does not have an international agreement and the other conditions where local filing is permitted, set out in the terms of reference, are not met. In this context, Norway indicates that it has a wide Tax Treaty network and is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) and the CbC MCAA, and that Norway is currently in the process of updating their Tax Information Exchange agreements to include Automatic Exchange of Information. Norway further indicates that local filing is only required from 2019 in respect of the accounting year 2017, and as such, Norway will have sufficient time to propose the necessary amendments to its Parliament before local filing becomes effective. It is thus likely that no Constituent Entities will be affected by this wider obligation.

15. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017b)), local filing requirements can be required if the tax authorities have notified the enterprise in Norway that the jurisdiction where the parent company is a resident does not comply with an agreement (…) or for other reasons do not exchange reports with Norway. However, this condition does not reflect the details of paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017b) in particular in regard of the concept of "Systemic Failure", and may be interpreted in a broader meaning than the situation of a "Systemic Failure". Norway however confirms that this provision was adapted to fit into Norway's Tax Assessment Act and that it will be interpreted in a manner consistent with the terms of reference. As such, no recommendation is made but this aspect will be further monitored.

16. No other inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

17. Norway's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE Group.[21] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

18. Norway has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the enterprises that are part of a group resident in Norway.[22] There are also penalties in relation to the filing of a CbC report: (i) penalties for failure to file, (ii) penalties for failure to file on time and (iii) penalties for filing CbC report with obvious errors.[23]

19. There are no specific processes in place that would allow to take appropriate measures in case Norway is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

20. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Norway has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Norway. Norway meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the local filing conditions (paragraphs 8 (c) iv. b) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

21. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain

aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

22. Norway has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 27 May 2010, in force on 1 June 2011 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements[24] which allow Automatic Exchange of Information in the field of taxation.

23. Norway signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 19 December 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under Section 8(1)(e) of the same agreement. It is noted that Norway has signed a bilateral CAA with the United States and is also exploring possibilities for negotiating bilateral CAAs with other treaty partners, which have not signed the CbC MCAA. As of 12 January 2018, Norway has 52 bilateral relationships activated under the CbC MCAA[25] or exchanges under the bilateral CAA. Norway has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Norway meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

24. Against the backdrop of the still evolving exchange of information framework, at this point in time Norway meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

25. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

26. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Norway indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

27. There are no concerns to be reported for Norway in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

28. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Norway. Norway thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Limitation on local filing	It is recommended that Norway take steps to ensure that local filing can only be required in circumstances permitted in the terms of reference.
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b).

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[4] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] Primary law consists of the Tax Administration Act Sections 8-12: https://lovdata.no/dokument/NL/lov/2016-05-27-14/KAPITTEL_8#KAPITTEL_8 (available in Norwegian text, accessed 20 April 2018); Secondary law consist of the regulations to the Tax Administration Act (Regulations): https://lovdata.no/dokument/SF/forskrift/2016-11-23-1360/KAPITTEL_6#KAPITTEL_6 (available in Norwegian text, accessed 20 April 2018).

[7] Guidance consists of Country-by-Country reporting information published on the website of The Norwegian tax Administration: www.skatteetaten.no/en/business-and-organisation/reporting-and-industries/bransjer-med-egne-regler/internprising/country-by-country-reporting/ (accessed 26 April 2018).

[8] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[9] It is noted that the reporting obligation of an enterprise other than a « parent company » (local filing) does not apply if the reason that the parent company abroad does not file an equivalent report is that the Group's revenue does not exceed the threshold amount set in the legislation in the residence jurisdiction of the parent company determined according to the Model legislation.

[10] See Section 8-12-1(1) a. Under Section 8-12-1(1) a. of the Regulations, Norway indicates that it defines the terms "parent company" to have the same effect as "Ultimate Parent Entity".

[11] See Section 8-12-4 of the Regulations.

[12] Section 8-12-5 "Exemption from the obligation to file a report for a parent company": A parent company's obligation to file a report according to the Tax Administration Act Section 8-12 paragraph 1 does not apply where another company in the capacity of being a parent company shall file an equivalent report according to the domestic legislation in its residence jurisdiction.

[13] This would correspond to the first condition for local filing described under paragraph 8.(c).iv.a) of the terms of reference (OECD, 2017b).

[14] As per Section 8-12-4 of the Regulations. See paragraph 8.(c). v of the terms of reference (OECD, 2017b).

[15] Section 8-12-4 of the Regulations would also apply in this situation. See paragraph 8.(d) of the terms of reference (OECD, 2017b).

[16] Norway also indicates that where the CbC report filed by the parent company in Norway is filed under the primary filing obligation in such circumstances (as a form of local filing), the CbC report will be exchanged with other jurisdictions.

[17] In particular, Norway indicates that the primary filing obligation could not operate as a form of local filing where (i) the Ultimate Parent Entity is required to file a CbC report in its jurisdiction of residence but has failed to do so; (ii) the Ultimate Parent Entity is required to file a CbC report in its jurisdiction of residence but there is no international agreement between this jurisdiction and Norway; (iii) the Ultimate Parent Entity is required to file a CbC report in its jurisdiction of residence but there has been failure under the QCAA other than a systemic failure between this jurisdiction and Norway.

[18] See the "Provision on entry into force and effect" in Section 8-12 of The Tax Administration Act.

[19] Previously, Norway's Regulations provided that CbC report needed to be filed by 31 December of the year after the accounting year of the MNE Group. In certain instances, the accounting period may not correspond to the calendar year (e.g. an accounting period 31 January 2016 – 1 February 2017) and the CbC report would have been filed more than 12 months after the end of the accounting period (e.g. by 31 December 2018 in this example). This would have resulted in a CbC report being filed later than the date stated in the terms of reference and in the CbC report being subsequently exchanged with a partner jurisdiction later than the timeline envisaged in the Action 13 Report (OECD, 2015). Norway has however amended Section 8-12-7 of the Regulations on 23 November 2017 to state that CbC reports must be filed within 12 months of the expiration of the accounting year. This applies for CbC reports as required under section 8-12 [entry in force provision] filed in respect of the 2016 fiscal year.

[20] See Section 8-12 (2) of the Tax Administration Act.

[21] See Section 8-12-6 of the Regulations.

[22] See Section 8-12 (3) of the Tax Administration Act. Norway also indicates that the Tax Administration has a register of taxpayers, and are able to identify Ultimate Parent Entities that are obliged to file CbC Reports to the Norwegian Tax Authorities

[23] Norway indicates that the general sanction system in the Tax Administration Act applies to CbC Reporting and that in their experience, these sanctions are sufficient and effective. The Tax Administration Act includes two kinds of penalties for failure to file a CbC Report: coercive fine and additional tax. If the CbC Report is filed late or where there are obvious errors in the filed information, a daily coercive fine may be imposed under the Tax Administration Act Section 14-1. The coercive fine is NOK 500 per day, limited to NOK 52 500 until the correct information is submitted. Additional tax may also be imposed if information in the CbC report is incorrect or incomplete or the failure to submit mandatory information when the failure to provide information can lead to tax benefits under the Tax Administration Act section 14-3.

[24] See list of Norway's bilateral agreements: www.regjeringen.no/en/topics/the-economy/taxes-and-duties/tax-treaties-between-norway-and-other-st/id417330/ (accessed 20 April 2018).

[25] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

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Pakistan

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Pakistan's implementation of the Action 13 minimum standard meets all applicable terms of reference, in relation to its domestic legal and administrative framework. It is recommended that Pakistan put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Pakistan has (primary) law that impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Pakistan. The first filing obligation for a CbC report in Pakistan commences in respect of accounting years beginning on or after 1 January 2016. Based on the (primary) law and amendments to this law,[1] Pakistan meets all the terms of reference relating to the domestic legal and administrative framework.[2]

Part B: Exchange of information framework

3. Pakistan is part to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") (signed on 14 September 2016, in force on 1 April 2017). The Convention is therefore not in effect with respect to the fiscal year starting on 1 July 2016. This means that Pakistan will not be able to exchange (either send or receive CbC reports with respect to the fiscal starting on 1 July 2016 under the Convention and CbC MCAA on the first exchange date in mid-2018. It is recommended that Pakistan take steps to enable exchanges of CbC reports relating to the fiscal year starting on 1 July 2016, e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention,[3] or relying on Double Tax Agreements or Tax Information and Exchange Agreements. Pakistan is also a signatory of the CbC MCAA (signed on 21 June 2017). It has not yet provided notification under section 8 of this agreement. As of 12 January 2018, Pakistan does not have bilateral relationships activated under the CbC MCAA. It is recommended that Pakistan take steps to enable exchanges in respect of the first fiscal year and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions.[4]

Part C: Appropriate use

4. In respect of the terms of reference under review,[5] Pakistan does not yet have measures in place relating to appropriate use. It is recommended that Pakistan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting. Based on the (primary) law and amendments to this law, Pakistan meets all the terms of reference relating to the domestic legal and administrative framework.

6. Pakistan has (primary) law in place to implement the BEPS Action 13 minimum standard.[6] In addition, it has issued amendments to Chapter – IVA of the Income Tax Act.[7]

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Pakistan has primary legislation which imposes a CbC filing obligation on Ultimate Parent Entities of MNE groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE group are included in the CbC report and no entity is excluded from CbC Reporting other than the permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified in respect of the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Pakistan commences in respect of periods commencing on or after 1 January 2016.[9] [10] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[11] However, for tax year 2017, CbC reports shall be filed within "not later than fifteen months after the last day of the reporting fiscal year of the MNE group".[12] This will be monitored to ensure that the filing deadline in the cases of Reporting Fiscal years

commencing as from 1 January and before 31 March 2016 will not impact the ability of Pakistan to meet its obligations relating to the exchange of information under the terms of reference.[13]

10. No inconsistencies were identified in respect of the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Pakistan has introduced local filing requirements as from the reporting period starting on or after 1 January 2017 or thereafter.[14]

12. No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Pakistan's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[15]

14. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

15. Pakistan has legal mechanisms in place to enforce compliance with the minimum standards: there are notification mechanisms in place that apply to Ultimate Parent Entities, Surrogate Parent Entities as well as Constituent Entities.[16] Pakistan has penalties

in place in relation to the filing of a CbC report for failure: (i) to file a CbC report, (ii) to incompletely file a CbC report and (iii) to submit it on time.[17]

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017), Pakistan meets the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Pakistan does not have a domestic, legal basis for the exchange of information in place. Pakistan is part to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") (signed on 14 September 2016, in force on 1 April 2017). The Convention is therefore not in effect with respect to the fiscal year starting on 1 July 2016. This means that Pakistan will not be able to exchange (either send or receive CbC reports with respect to the fiscal starting on 1 July 2016 under the Convention and CbC MCAA on the first exchange date in mid-2018. It is recommended that Pakistan take steps to enable exchanges of CbC reports relating to the fiscal year starting on 1 July 2016, e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention,[18] or relying on Double Tax Agreements or Tax Information and Exchange Agreements.

19. Pakistan signed the CbC MCAA on 21 June 2017, but did not submit a full set of notification under section 8 of the CbC MCAA. As of 12 January 2018, Pakistan does not have bilateral relationships activated under the CbC MCAA. It is recommended that Pakistan take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions.

Conclusion

20. In respect of the terms of reference under review, it is recommended that Pakistan take steps to enable exchanges in respect of the first fiscal year and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

22. Pakistan does not yet have measures in place relating to appropriate use.[19] It is recommended that Pakistan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

23. It is recommended that Pakistan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information	It is recommended that Pakistan take steps to enable exchanges in respect of the first fiscal year and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Pakistan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] S.R.O. number 144(I)/2018, published on 9 February 2018. See www.fbr.gov.pk/DislpaySRO/6321 (accessed 20 April 2018).

[2] Paragraph 8 of the terms of reference (OECD, 2017).

[3] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[6] Chapter – VIA of the Income Tax Act.

[7] S.R.O. number 144(I)/2018, published on 9 February 2018. See www.fbr.gov.pk/DislpaySRO/6325 (accessed 23 April 2018).

[8] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[9] Article 27G(3) of the Income Tax Act.

[10] The tax year in Pakistan is from 1 July – 30 June. However, a taxpayer can request for the Commissioner's approval to adopt a different tax year (e.g. the calendar year). See Article 74 of the Income Tax Ordinance 2001.

The year 1 July 2016 – 30 June 2017 is the tax year 2017.

[11] See Article 27G of the Income Tax Act.

[12] Article 27G(1) of the Income Tax Act.

[13] Paragraph 9 (d) of the terms of reference (OECD, 2017).

[14] Article 27E of the Income Tax Act in conjunction with Article 27G(3) of the Income Tax Act (as implemented by S.R.O. 144(I)/2018).

[15] Article 27F of the Income Tax Act.

[16] Articles 27B and 27C of the Income Tax Act.

[17] Article 27O of the Income Tax Act and Section 182 of the Ordinance.

[18] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

[19] Pakistan included provisions on appropriate use in Article 27H of the Income Tax Act. Pakistan indicates that guidance on appropriate use is currently being developed and will be issued shortly.

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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Panama

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Panama does not have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Panama finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Panama does not have a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Panama. It is recommended that Panama take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. Panama is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 27 October 2016, in force on 1 July 2017 and thus not in effect for 2016). It is not a signatory to the CbC MCAA. As of 12 January 2018, Panama does not yet have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that Panama take steps to put in place a domestic, legal basis for the exchange of information as soon as possible, taking into account its legislative process, enable exchanges of CbC reports relating to the fiscal years for which the reporting requirements will apply and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Panama will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Panama does not yet have measures in place relating to appropriate use. It is recommended that Panama take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Panama will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Panama does not have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Panama does not yet have its legal and administrative framework in place to implement CbC Reporting. It did not indicate whether it intended to implement CbC Reporting requirements for the 2016 fiscal year.

8. Panama reports that the status of the legislation process is in an early stage. Panama confirms its intention to comply with the terms of reference as set out in the Action 13 guidance.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), Panama does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Panama. It is recommended that Panama take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.

Part B: The exchange of information framework

10. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

11. Panama does not have a domestic, legal basis for the exchange of information in place. Panama is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 27 October 2016, in force on 1 July 2017). This means that Panama will not be able to exchange (either send or receive) CbC reports with respect to the 2016 and 2017 fiscal years under the Convention and CbC MCAA.

12. Panama has not signed the CbC MCAA and does not have Qualifying Competent Authority Agreements (QCAAs) in effect. As of 12 January 2018, Panama does not yet have bilateral relationships activated under the CbC MCAA.

13. It is recommended that Panama take steps to enable exchanges of CbC reports, in particular:

- bringing the Convention into force as soon as possible e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention),
- signing the CbC MCAA and have QCAAs in effect.

14. It is however noted that Panama will not be exchanging CbC reports in 2018.

15. Panama notes that it is aware of the absence of an administrative framework for the exchange of information. Panama indicates that it is currently making efforts to implement the domestic legal framework.

Conclusion

16. In respect of paragraph 9 (a) of the terms of reference (OECD, 2017), Panama does not have an exchange of information framework that allows Automatic Exchange of Information. It is recommended that Panama take steps to put in place a legal domestic basis for the exchange of information as soon as possible, taking into account its legislative process, enable exchanges of CbC reports relating to the fiscal years for which the reporting requirements will apply and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Panama will not be exchanging CbC reports in 2018.

Part C: Appropriate use

17. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use conditions. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

18. Panama does not yet have measures in place relating to appropriate use. It is recommended that Panama take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Panama will not be exchanging CbC reports in 2018.

Conclusion

19. It is recommended that Panama take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Panama will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Panama take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.
Part B	Exchange of information framework	It is recommended that Panama take steps to put in place a domestic, legal basis for the exchange of information as soon as possible, taking into account its legislative process, enable exchanges of CbC reports relating to the fiscal years for which the reporting requirements will apply and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Panama take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraphs 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Paraguay

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Paraguay does not have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Paraguay finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Paraguay does not yet have a complete domestic legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. It is recommended that Paraguay take steps to implement a domestic legal and administrative framework[1] to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Paraguay does not have a legal and domestic framework for the exchange of information in place. Paraguay is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) and has not signed the MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process,[2] it is recommended that Paraguay take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Paraguay will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Paraguay does not yet have measures in place relating to appropriate use. It is recommended that Paraguay take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Paraguay will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Paraguay does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Paraguay does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. Paraguay confirms that, in the meantime, it is has not implemented local filing requirements on resident Constituent Entities of MNE Groups headquartered in another jurisdiction.

8. Paraguay indicates that there are no MNE Groups headquartered in Paraguay, which are required to file CbC reports. The source of this information is the Tax Administration database.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), Paraguay does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Paraguay. It is recommended that Paraguay take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

10. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

11. Paraguay does not have a legal and domestic framework for the exchange of information in place. Paraguay is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) and is not a signatory to the CbC MCAA. Paraguay does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.[5]

12. As of 12 January 2018, Paraguay does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Paraguay take steps to put in

place an EOI framework and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Paraguay will not be exchanging CbC reports in 2018.

Conclusion

13. In respect of paragraph 9 (a) of the terms of reference (OECD, 2017), Paraguay does not have an exchange of information framework that allows Automatic Exchange of Information. It is recommended that Paraguay take steps to put in place such a framework and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Paraguay will not be exchanging CbC reports in 2018.

Part C: Appropriate use

14. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

15. Paraguay does not yet have measures in place relating to appropriate use. It is recommended that Paraguay take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Paraguay will not be exchanging CbC reports in 2018.

Conclusion

16. It is recommended that Paraguay take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Paraguay will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Paraguay take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information	It is recommended that Paraguay take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Paraguay take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraphs 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[5] Paraguay notes that it has officially requested to be part of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. It is currently waiting for the Convention approval to sign the MAAC.

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Peru

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Peru's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that Peru should take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Peru will not be exchanging CbC reports in 2018.

Part A: Domestic legal and administrative framework

2. Peru has rules (primary and secondary laws) to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Peru. The first filing obligation for a CbC report in Peru commences in respect of fiscal years commencing on or after 1 January 2017. Peru meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Peru is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention") (signed on 25 October 2017 and not in force for 2017). Peru is not a signatory of the CbC MCAA yet. Peru does not have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. Against the backdrop of the still evolving exchange of information framework, at this point in time, it is recommended that Peru take steps to enable exchanges of CbC reports relating to the fiscal year 2017 and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Peru will not be exchanging reports in 2018.[2]

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Peru indicates that it is taking steps to have measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It is recommended that Peru ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Peru will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Peru has primary[4] and secondary[5] law in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Peru has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to Peru's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Peru commences in respect of periods commencing on or after 1 January 2017.[7] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[8]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the

confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Peru indicates that it has introduced local filing requirements as from the reporting period starting on or after 1 January 2017.[9] No inconsistencies were identified with respect to the local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

12. Peru's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[10] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

13. Peru has legal mechanisms in place to enforce compliance with the minimum standard: Peru has penalties in place in relation to the filing of a CbC report for failure:[11] (i) to file a CbC report, (ii) to correctly file a CbC report and (iii) to submit it on time.

14. There are no specific processes in place that would allow Peru to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Peru has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Peru. Peru meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

16. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

17. Peru signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention") (signed on 25 October 2017). Peru indicates that the Convention will enter into force in the near future. The Convention will therefore not be in effect at the start of commencement of CbC Reporting in Peru on 1 January 2017. This means that Peru will not be able to exchange (either send or receive) CbC reports with respect to the 2017 fiscal year and will not send or receive CbC reports under the Convention and CbC MCAA on the exchange date in 2019. It is recommended that Peru take steps to enable exchanges of CbC reports relating to the fiscal year 2017, e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention, or relying on Double Tax Agreements or Tax Information and Exchange Agreements.

18. Peru also has a treaty network for exchange of information that include Tax Information Exchange Agreements with the United States and Ecuador, as well as Double Tax Agreements with Brazil, Canada, Chile, Korea, Mexico, Portugal and Switzerland which allow Automatic Exchange of Information. Also Peru has a Decision 578 of the Andean Community Commission (it includes to Ecuador, Colombia and Bolivia).

19. Peru does not have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. Peru indicates that it is currently evaluating steps to have QCAAs in effect with these jurisdictions.

20. Against the backdrop of the still evolving exchange of information framework, at this point in time, it is recommended that Peru take steps to enable exchanges of CbC reports relating to the fiscal year 2017 and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Peru will not be exchanging reports in 2018.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time, in respect of paragraph 9 (a) of the terms of reference (OECD, 2017b), it is recommended that Peru take steps to enable exchanges of CbC reports relating to the fiscal year 2017 and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Peru will not be exchanging reports in 2018.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Peru indicates that is currently preparing guidance to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It is recommended that Peru take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Peru will not be exchanging CbC reports in 2018.

Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), Peru is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Peru will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information – EOI framework and QCAAs in effect	Against the backdrop of the still evolving exchange of information framework, at this point in time, it is recommended that Peru take steps to enable exchanges of CbC reports relating to the fiscal year 2017 and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	Peru is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Peru will not be exchanging CbC reports in 2018.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[4] Peru's Primary law consists of article 32-A of the Income Tax Law (modified by Legislative Decree No. 1,312/2016).

[5] Secondary law consists of articles 116, 117 and 118, as well its related complementary provisions of the regulation of the Income Tax Law, through No. 333-2017-EF supreme decree.

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] See first complementary transitory provision of the secondary law. Peru indicates that has a taxable exercise defined in article 57 of the Peruvian Income Tax Law, in the following terms: "For the purposes of this Law, the taxable exercise begins on January 1 of each year and ends on December 31, in all cases the commercial exercise must coincide with the taxable exercise, without exception." Therefore, Peruvian MNE groups only follow calendar years.

[8] See article 32-A of the Income Tax Law. Peru indicates that according to subsection g, the term "annually" implies that CbC must submitted by taxpayers the following year the fiscal year to which the CbC Reporting corresponds. Likewise, the aforementioned subsection states that the deadline for submitting CbC will be established by SUNAT through a superintendence resolution. Although the Resolution of the Superintendency that regulates the form, the deadline and the conditions for the presentation of the informative CbC affidavit has not yet been published, to this date it would be projected the submitting of the aforementioned affidavit for the third week of the month of October, according to the maturity schedule that would correspond to the period of September 2018. In this way, CbC reports will be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates. Furthermore, Peru indicates that has a taxable exercise defined in article 57 of the Peruvian Income Tax Law, in the following terms: "For the purposes of this Law, the taxable exercise begins on January 1 of each year and ends on December 31, in all cases the commercial exercise must coincide with the taxable exercise, without exception." Therefore, Peruvian MNE groups only follow calendar years.

[9] See first transitory provision of the secondary law.

[10] See article 116 of the secondary law.

[11] See subsection 2, 4 and 8 of article 176 of the Tax Code. According to these subsections, it is a punishable offense:

(2) Not to submit affidavit within the established deadlines. The penalty is a fine equivalent to 0.6% of net income, which cannot be less than 10% of a UIT (Unidad Impositiva Tributaria) or more than 25 UIT.

(4) Submit statements incompletely or not in conformity with reality. The penalty is a fine equivalent to 30% of UIT.

(8) Failure to file the affidavit without taking under consideration the guidelines and conditions established by SUNAT. It is punishable with a fine equivalent to 30% of a UIT.

Furthermore, new penalties have been approved by virtue of Legislative Decree N° 1311, published on December 31, 2016 that modified subsection 27 of article 177 of the Tax Code. Failure to show or to file the documentation and information referred to in subparagraph g) of article 32-A of the Income Tax Law; which, among others, support the informative affidavits Local Report, Master Report and / or Country-by-Country Report, is a punishable offense with a fine equivalent to 0.6% of net income, which cannot be less than 10% of a UIT or more than 25 UIT.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Poland

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Poland's implementation of the Action 13 minimum standards meets all applicable terms of reference, except that it raises one interpretative and one substantial issue in relation to its domestic legal and administrative framework. The report, therefore, contains two recommendations to address these issues. In addition, it is recommended that Poland have in place measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Poland has rules (primary law and secondary legislation) that impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Poland. The first filing obligation for a CbC report in Poland commences in respect of fiscal years commencing on or after 1 January 2016. Poland meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the annual consolidated revenue threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than Poland which may deviate from the guidance issued by the OECD. Although such deviation may be unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 standard,[2]
- the definition of "accumulated earnings", which lacks detail as to the treatment of permanent establishments,[3]

Part B: Exchange of information framework

3. Poland is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 9 July 2010, in force on 1 October 2011 and in effect for 2016). Poland has signed the CbC MCAA and submitted a full set of notifications under section 8 of the CbC MCAA. It has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. Poland has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Poland has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Against the backdrop of the still evolving exchange of information framework, at this point in time Poland meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[4]

Part C: Appropriate use

4. In respect of the terms of reference under review,[5] Poland does not yet have measures in place relating to appropriate use. It is recommended that Poland take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Poland has primary law[6] in place to implement the BEPS Action 13 minimum standard. In addition to this, Poland has an additional regulation[7] (secondary law) in place regarding the detailed scope of information provided on the MNE Group and the specific rules of its preparation. No guidance has been published.

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Poland has primary legislation which imposes a CbC filing obligation on Ultimate Parent Entities of MNE groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE group are included in the CbC report and no entity is excluded from CbC Reporting other than the permitted by the Action 13 report (OECD, 2015).[9]

8. The definition of "MNE group" refers to "a group that recorded a consolidated group revenue for the previous financial year exceeding the threshold value of EUR 750 000 000; where the consolidated financial statements of the capital group are prepared in a currency other than EUR, the translation of the value of consolidated revenue into EUR for the purpose of its benchmarking against the threshold value shall take place according to the last exchange rate published by the European Central Bank as at the last day of the financial year preceding the reporting financial year; in such a case, currencies other than EUR shall be translated applying the exchange rate of each of them against EUR." While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Poland, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Polish tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group. It is thus recommended that Poland amend or otherwise clarify that this rule would apply in a manner consistent with the OECD guidance on currency fluctuations in

respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Poland.

9. No other inconsistencies were identified with respect to Poland's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Poland commences in respect of periods commencing on or after 1 January 2016. The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[10]

11. With respect to paragraph 8 (b) iv. of the terms of reference (OECD, 2017), it is noted that in the definition of "accumulated earnings", there is no specific rule relating to the treatment of permanent establishments. However, in the specific instructions for the CbC report template in the Action 13 Report (OECD, 2015), accumulated earnings related to permanent establishments should be reported by the legal entity of which it is a permanent establishment. It is recommended that Poland include the specific rule relating to permanent establishments in the definition of "accumulated earnings".

12. No other inconsistencies were identified in respect of the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Poland has introduced local filing requirements as from the reporting period starting on or after 1 January 2017 or thereafter.[11]

14. No inconsistencies were identified with respect to the limitation on local filing obligation.[12] [13] [14]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Poland's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[15]

16. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

17. Poland has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Constituent Entities which have a filing requirement under local filing rules.[16] There are also penalties in place in relation to the filing of a CbC report for failure: (i) to file a CbC report, (ii) to incompletely file a CbC report, (iii) to submit it on time and (iv) of notification of the CbC Reporting requirement.[17]

18. There are no specific processes in place that would allow to take appropriate measures in case Poland is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

19. In respect of paragraph 8 of the terms of reference, Poland meets the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the annual consolidated revenue threshold calculation rule (paragraph 8 (a) ii. of the terms of reference (OECD, 2017)) and (ii) the content of a CbC report (paragraph 8 (b) iv. of the terms of reference (OECD, 2017)).

Part B: The exchange of information framework

20. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

21. Poland has domestic legislation that permits the automatic exchange of CbC reports.[18] Poland is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 9 July 2010, in force on 1 October 2011 and in effect for 2016).

22. Poland has signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 12 July 2017. It has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. Poland has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Poland has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Poland has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[19] Against the backdrop of the still evolving exchange of information framework, at this point in time Poland meets the terms of reference.

Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time Poland meets the terms of reference.

Part C: Appropriate use

24. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

25. Poland does not yet have measures in place relating to appropriate use. It is recommended that Poland take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

26. In respect of paragraph 12 (a) it is recommended that Poland take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation – annual consolidated group revenue threshold	It is recommended that Poland clarify that the annual consolidated group revenue threshold calculation rule applies without prejudice of the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Poland.
Part A	Domestic legal and administrative framework – Definition of "accumulated earnings"	It is recommended that Poland clarify the treatment of permanent establishments in the definition of "accumulated earnings".
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that Poland take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017).

[3] Paragraph 8.b.iv. of the terms of reference (OECD, 2017).

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[6] Poland's primary law consists of art. 82 – 88 (section V) of the Act of 9 March 2017 on the exchange of tax information with other countries (Official Journal of 27 March 2017).

[7] Regulation of the minister of economic development and finance of 13 June 2017 (Official Journal of 21 June 2017).

[8] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[9] Article 82(1)c, article 84 (in conjunction with article 82(1)c) and article 104(2+3) of the Act of 9 March 2017 on the exchange of tax information with other countries (Official Journal of 27 March 2017).

[10] Article 83(1) of the Act of 9 March 2017 on the exchange of tax information with other countries.

[11] Article 84(2) of the Act of 9 March 2017 on the exchange of tax information with other countries.

[12] Local filing in Poland may apply to permanent establishments.

[13] Where a Constituent Entity (referred to in Article 84) fails to receive the data required in the Information on the MNE Group from the Parent Entity of the MNE Group, it shall forward the data in its possession and notify thereof in the Information on the MNE Group (Article 85 of the Act of 9 March 2017 on the exchange of tax information with other countries).

[14] It is noted that Article 6 of the EOI Act states that "The provisions restricting making legally protected data available, except for classified information, shall not apply to the disclosure of tax

information to the minister competent for public finance, a body of the National Revenue Administration authorised by it, the Head of the National Revenue Administration or its authorised representative, in accordance with the procedure and to the extent provided by the Act." Poland indicates that this Article constitutes a general carve-out of the information provided under the EOI Act from data protection/state secrecy legislation, i.e. a taxpayer cannot invoke this legislation to refuse the provision of information. The only exception is information classified by the State as restricted/secret/ top secret. The classification of information is done by the State authority. Poland does not foresee any application of this provision to CBC Reporting due to the scope of information provided therein.

[15] Article 84(2) of the Act of 9 March 2017 on the exchange of tax information with other countries.

[16] Article 86 of the Act of 9 March 2017 on the exchange of tax information with other countries.

[17] Article 90 and 91 of the Act of 9 March 2017 on the exchange of tax information with other countries.

[18] Act of 9 March 2017 on the exchange of tax information with other countries (Official Journal of 27 March 2017).

[19] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Portugal

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Portugal's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review and no recommendation is made.

Part A: Domestic legal and administrative framework

2. Portugal has rules (primary law) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in Portugal. The first filing obligation for a CbC report in Portugal commences in respect of periods commencing on or after 1 January 2016. Portugal meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Portugal is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. It is noted that Portugal has signed a bilateral QCAA with the United States. As of 12 January 2018, Portugal has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Portugal has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Portugal meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Portugal. Portugal indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Portugal meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Portugal has legislation in place (Primary law[5] - no secondary legislation was required) which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning on or after 1 January 2016.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Portugal has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to Portugal's domestic legal framework in relation with the parent entity filing obligation.[7] [8] [9]

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Portugal commences in respect of periods commencing on or after 1 January 2016.[10] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[11]

10. No inconsistencies were identified with respect to Portugal's domestic legal framework in relation with the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Portugal has introduced local filing requirements as from the reporting period starting on or after 1 January 2017.[12]

12. Local filing requirements may apply in Portugal in three situations.[13] Portugal affirms that a Portuguese Constituent Entity would only be subject to local filing if the Ultimate Parent Entity of the MNE Group to which it belongs exceeds the threshold for filing a CbC report in its own jurisdiction of residence. This will be monitored.[14]

13. No other inconsistencies were identified with respect to the limitation on local filing obligation.[15]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

14. Portugal's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[16] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

15. Portugal has legal mechanisms in place to enforce compliance with the minimum standard: there are penalties for (i) failure to the file and (ii) for late filing or (iii) inaccurate filing of a CbC report.[17] There are also notification mechanisms in place that apply to Constituent Entities in Portugal.[18]

16. Portugal affirms that in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete

information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report, a penalty is applicable. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

17. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Portugal has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Portugal. Portugal meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

18. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

19. Portugal has domestic legislation that permits the automatic exchange of CbC reports.[19] It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 27 May 2010, in force on 1 March 2015 and in effect for 2016). Portugal has not provided a list of bilateral Double Tax Agreements and a Tax Information and Exchange Agreement which allow Automatic Exchange of Information. Portugal is also committed to the exchange of CbC reports within the European Union under EU Council Directive (2016/881/EU).

20. Portugal signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 16 June 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement.[20] It is noted that Portugal has signed a bilateral QCAA with the United States on 2 October 2017. As of 12 January 2018, Portugal has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Portugal has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[21] Against the backdrop of the still evolving exchange of information framework, at this point in time Portugal meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time Portugal meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Portugal indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

24. There are no concerns to be reported for Portugal in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Portugal. Portugal thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Portugal's primary law consists of Article 121-A of the Portuguese Tax Code (as amended by Law No. 7-A/2016 and by Law No. 98/2017).

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] Portugal states that the definition of Reporting Entity is provided in paragraphs 1 and 2 of article 121-A, which state that a CbC report must be filed by an Ultimate Parent Entity, a Surrogate Parent Entity or a Constituent Entity if the conditions of paragraph 2 of article 2 of the Model Legislation occur. Portugal is preparing guidance on the filing of the CbC report and on the filing of the communication of the identity of the reporting entity. This guidance identifies which entities are obliged to file a CbC report and expressly refers that any Constituent Entity belonging to an MNE group shall file a CbC report if: (i) it is the UPE of the Group; (ii) it is the SPE of the group; (iii) it has been appointed by the group to file CbC; (iv) any of the entities described on article 2 paragraph 2 of the Model Legislation.

[8] In the legislation, Qualifying Competent Authority Agreement (QCAA) is defined as "*an agreement that is between a jurisdiction or a third country that requires the automatic exchange of country-by-country reports*". Portugal indicates that according to articles 161 (i) and 165 (i) of the Portuguese Constitution, International Agreements in the tax area must always be approved by the Portuguese parliament, and as such, a QCCA only can be signed if there is an International Agreement between the involved parties.

[9] Portugal indicates that where local filing requirements apply in Portugal, a Portuguese Constituent Entity would only be subject to local filing if the Ultimate Parent Entity of the MNE Group to which it belongs exceeds the threshold for filing a CbC report in its own jurisdiction of residence. Portugal indicates that the application of this threshold results from the wording of article 121-A(1) and (2) of the Portuguese Tax Code, and will be clarified in future guidance on the filing of the CbC report and on the filing of the communication of the identity of the Reporting Entity. This will be monitored.

[10] See Article 121-A of the Portuguese Tax Code.

[11] See Article 121-A (3) of the Portuguese Tax Code.

[12] See Article 14 of Law No. 98/2017 (transitory provision).

[13] Article 121-A (2): A Constituent Entity resident in the Portuguese territory, which is not the Ultimate Parent Entity of a MNE Group, is also obliged to submit a country-by-country report regarding each Fiscal Year, in case one of the following conditions are met:

a) It is directly or indirectly owned or controlled by non- residents entities which are not obliged to file such report;

b) The jurisdiction where the Ultimate Parent Entity is resident for tax purposes has an current International Agreement with Portugal, but on the date foreseen in number (8) for filing of the country-by-country report, there is not a Qualifying Competent Authority Agreement in effect;

c) There has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Tax and Custom Authority to the Constituent Entity.

[14] It is also noted that Article 121-A, paragraph 8 provides that "in case there is more than one Constituent Entity of the same MNE group that are resident for tax purposes in European Union, and one or more of the conditions foreseen in paragraph 2 are applicable, the MNE Group may designate one of those Constituent Entities to file the country by country report regarding any Reporting Fiscal Year within the deadline foreseen in paragraph 4, and it should communicate to Tax and Customs Authority that such report is intended to satisfy the filing requirement of all the Constituent Entities of such MNE group which are resident in European Union for fiscal purposes". Portugal confirms that this provision applies in all situations where there is more than one Constituent Entity resident in Portugal, even if the MNE Group has no entities in another EU country and therefore would be in line with Terms of Reference 8(c) v.

[15] It is noted that Portugal's rules provide that the Constituent Entity resident in Portugal shall request its Ultimate Parent Entity to provide it with all information required to enable it to meet its obligations to file a country-by-country report, in accordance with article 121-A. If despite that, that Constituent Entity has not obtained or acquired all the required information to report for the MNE Group, this Constituent Entity shall file a country-by-country report containing all information in its possession, obtained or acquired, and notify the Tax and Customs Authority that the Ultimate Parent Entity has refused to make the necessary information available. This shall be without prejudice to the right to apply penalties provided for in national legislation.

[16] See Article 121-A (9) of the Portuguese Tax Code.

[17] See article 117 (6) of the General Regime of Tax Infractions (RGIT), available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/rgit/pages/regime-geral-das-infraccoes-tributarias-indice.aspx (accessed 23 April 2018). Portugal indicates that this article covers both cases of non-filing or late filing, as it establishes a fine from EUR 500 to EUR 10 000 for non-filing by the time limit provided by law, as well as an extra of 5% fine per day in case of any additional delay in filing the report. In case of inaccuracies on the information included in the report, the general penalty defined for inaccuracies on relevant fiscal documentation will apply (article 119 (1) from RGIT). In these cases a fine between EUR 375 to EUR 22 000 is applicable.

[18] See Article 121-A (4) of the Portuguese Tax Code.

[19] See 121-A and 121-B of Corporate Income Tax Act, which covers automatic exchange CbC Reports to be effective for taxable periods starting on or after 1 January 2016.

[20] Portugal has a total of 48 exchange relationships activated under the CbC MCAA, of which 41 are effective for taxable periods starting on or after 1 January 2016.

[21] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

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Qatar

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Qatar's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one interpretive, one timing and one substantive issue in relation to its domestic legal and administrative framework. The report, therefore, contains three recommendations to address these issues. In addition, it is recommended that Qatar complete the exchange of information framework as well as measures to ensure appropriate use. Qatar indicates that there is a commitment of the tax department to postpone the CbC requirements in Qatar to 1 January 2017.

Part A: Domestic legal and administrative framework

2. Qatar has draft legislation that imposes and enforces CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Qatar. The first filing obligation for a CbC report in Qatar commences in respect of accounting years beginning on or after 1 January 2016. Qatar indicates that there is a commitment of the tax department to postpone the CbC requirements in Qatar to 1 January 2017. Qatar meets all the terms of reference[1] relating to the domestic legal and administrative framework, with the exception of:

- the filing instructions to submit a CbC report which have not yet been published by Qatar (in the situation where CbC requirements would apply for fiscal years starting on 1 January 2016).
- the start date on local filing requirements, which is 1 January 2016. As Qatar's legislation will only come into force in 2018, it is recommended that Qatar prorogue the local filing requirements (in the situation where CbC requirements would apply for fiscal years starting on 1 January 2016).
- the absence of penalties to enforce compliance.

Part B: Exchange of information framework

3. Qatar is part to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") (signed on 10 November 2017). The instruments of ratification have not yet been deposited, therefore the Convention will not be in effect at the start of the commencement of CbC Reporting requirements. This means that Qatar will not be able to exchange (either send or receive CbC reports with respect to the fiscal starting on 1 January 2016 under the Convention and CbC MCAA on the first exchange date in mid-2018. Qatar indicates that it has already begun the process of ratification. It is

recommended that Qatar take steps to enable exchanges of CbC reports, e.g. notably depositing its instrument of ratification, carrying on any internal process so that the Convention is brought into effect and lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention,[2] or relying on Double Tax Agreements or Tax Information and Exchange Agreements. Qatar is also a signatory of the CbC MCAA (signed on 19 December 2017), but did not yet provide a full set of notifications under section 8 of this agreement. As of 12 January 2018, Qatar does not have bilateral relationships activated under the CbC MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process,[3] it is recommended that Qatar take steps to bring the Convention into effect and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions. It is however noted that Qatar indicates that there is a commitment of the tax department to postpone the CbC requirements in Qatar to 1 January 2017 and therefore Qatar would not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[4] Qatar does not yet have measures in place relating to appropriate use. It is recommended that Qatar take steps to finalise the measures for appropriate use ahead of the first exchanges of information. It is however noted that Qatar indicates that there is a commitment of the tax department to postpone the CbC requirements in Qatar to 1 January 2017 and therefore Qatar would not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Qatar has draft legislation in place to implement the BEPS Action 13 minimum standard.[5] No guidance has been published. The draft legislation has been approved by the Council of Ministers and Qatar expects it to come into force before the beginning of February 2018. It is however noted that Qatar indicates that there is a commitment of the tax department to postpone the CbC requirements in Qatar to 1 January 2017.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Qatar has primary legislation which imposes a CbC filing obligation on Ultimate Parent Entities of MNE groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. The definition of "Excluded MNE group" refers to "a *Group having, with respect to any Fiscal Year of the Group, total consolidated group revenue of less than (QAR 3 000 000 000) 3 billion Qatari Riyals during the Fiscal Year immediately preceding the Reporting Fiscal Year, as reflected in its Consolidated Financial Statements, for such preceding Fiscal Year"*.[7] While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Qatar, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Qatari tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[8] Qatar indicates that it will issue a guidance note that clarifies the impact of fluctuations on the filing threshold. As such, no recommendation is made but this issue will be further monitored.

9. No other inconsistencies were identified in respect of the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in Qatar commences in respect of periods commencing on or after 1 January 2016.[9] [10] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[11] It is however noted that Qatar indicates that there is a commitment of the tax department to postpone the CbC requirements in Qatar to 1 January 2017.

11. The filing instructions to submit a country-by country report have not yet been published by Qatar. Qatar indicates that it is currently at drafting stage. It is recommended that Qatar publish the instructions relating to the format of a CbC report (in the situation where CbC requirements would apply for fiscal years starting on 1 January 2016).

12. No other inconsistencies were identified in respect of the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Qatar has introduced local filing requirements as from the reporting period starting on or after 1 January 2016 or thereafter.[12] Qatar indicates that there is a commitment of the tax department to postpone local filing to reporting periods starting on or after 1 January 2017 or thereafter. An administrative decision on this will be issued subsequently. As Qatar's legislation will only come into force in 2018, it is recommended that Qatar prorogue the local filing requirements (in the situation where CbC requirements would apply for fiscal years starting on 1 January 2016).[13]

14. No other inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Qatar's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[14]

16. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

17. Qatar has legal mechanisms in place to enforce compliance with the minimum standards: there are notification mechanisms in place that apply to Ultimate Parent Entities, Surrogate Parent Entities as well as Constituent Entities.[15] [16] Qatar does not have

penalties in place in relation to the filing of a CbC report, but it indicates that it is currently implementing penalties into the Income Tax Law. It is recommended that Qatar introduce penalties to enforce compliance with the minimum standards.

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017), Qatar meets the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the rules or guidance on other aspects of the filing requirements of the CbC Report (paragraph 8 (b) iv. of the terms of reference (OECD, 2017)),[17] (ii) the start date on local filing requirements (paragraph 8 (c) iv. (b) of the terms of reference (OECD, 2017))[18] and (iii) the absence of penalties to enforce compliance (paragraph 8 (e) i. of the terms of reference (OECD, 2017)).

Part B: The exchange of information framework

19. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

20. Qatar is part to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") (signed on 10 November 2017). The instruments of ratification have not yet been deposited, therefore the Convention will not be in effect at the start of the commencement of CbC Reporting requirements. This means that Qatar will not be able to exchange (either send or receive CbC reports with respect to the fiscal starting on 1 January 2016 under the Convention and CbC MCAA on the first exchange date in mid-2018. Qatar indicates that it has already begun the process of ratification. It is recommended that Qatar take steps to enable exchanges of CbC reports, e.g. notably depositing its instrument of ratification, carrying on any internal process so that the Convention is brought into effect and lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention,[19] or relying on Double Tax Agreements or Tax Information and Exchange Agreements.

21. Qatar signed the CbC MCAA on 19 December 2017, but did not submit a full set of notification under section 8 of the CbC MCAA. As of 12 January 2018, Qatar does not have bilateral relationships activated under the CbC MCAA. It is recommended that Qatar take steps to bring the Convention into effect and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions. It is however noted that Qatar indicates that there is a commitment of the tax department to postpone the CbC requirements in Qatar to 1 January 2017 and therefore Qatar would not be exchanging CbC reports in 2018.

Conclusion

22. It is recommended that Qatar take steps to enable exchanges of CbC reports, e.g. notably depositing its instrument of ratification, carrying on any internal process so that the Convention is brought into effect and lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention, or relying on Double Tax Agreements or Tax Information and Exchange Agreements and in addition to bring the Convention into effect and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions. It is however noted that Qatar indicates that there is a commitment of the tax department to postpone the CbC requirements in Qatar to 1 January 2017 and therefore Qatar would not be exchanging CbC reports in 2018.

Part C: Appropriate use

23. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

24. Qatar does not yet have measures in place relating to appropriate use. It is recommended that Qatar finalise the measures on appropriate use ahead of the first exchanges of information. Qatar indicates that there is a commitment of the tax department to implement measures with regards to appropriate use. These measures still need to be formalised and finalised. It is however noted that Qatar indicates that there is a commitment of the tax department to postpone the CbC requirements in Qatar to 1 January 2017 and therefore Qatar would not be exchanging CbC reports in 2018.

Conclusion

25. It is recommended that Qatar take steps to finalise the measures for appropriate use ahead of the first exchanges of information. It is however noted that Qatar indicates that there is a commitment of the tax department to postpone the CbC requirements in Qatar to 1 January 2017 and therefore Qatar would not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - scope and timing of parent entity filing content of CbC report	It is recommended that Qatar publish the instructions relating to the format of a CbC report (in the situation where CbC requirements would apply for fiscal years starting on 1 January 2016).
Part A	Domestic legal and administrative framework – Limitation on local filing	It is recommended that Qatar prorogue the local filing requirements (in the situation where CbC requirements would apply for fiscal years starting on 1 January 2016).
Part A	Domestic legal and administrative framework – Effective implementation – penalties	It is recommended that Qatar introduce penalties to enforce compliance with the minimum standards.
Part B	Exchange of information	It is recommended that Qatar take steps to enable exchanges of CbC reports, e.g. notably depositing its instrument of ratification, carrying on any internal process so that the Convention is brought into effect and lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention, or relying on Double Tax Agreements or Tax Information and Exchange Agreements and in addition to bring the Convention into effect and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions.
Part C	Appropriate use	It is recommended that Qatar take steps to finalise the measures for appropriate use ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[5] Draft of the Decision of the Minister of Finance No. … (2018) on Country-by-Country Reports ("the Decision"):

The Income Tax Law promulgated by Law No. (21) of 2009 and the Commercial Companies Law promulgated by Law No (11) for the year 2015.

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[7] Article 1 of the Decision.

[8] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold of the "*Guidance on the Implementation of Country-by-Country Reporting*" (OECD, 2018).

[9] Article 7 of the Decision.

[10] The tax year is normally a calendar year, unless requested otherwise.

[11] Article 5 of the Decision.

[12] Article 7 of the Decision.

[13] Notably in respect of paragraph 8 (c) iv. (b) of the terms of reference (OECD, 2017) for which the testing time is no later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group.

[14] Article 2(3) of the Decision.

[15] Article 3 of the Decision.

[16] Notification for the financial year ending on 31 December 2016 has been postponed by 31 December 2017 or at the date of which a decision of the President shall be issued.

[17] In the situation where CbC requirements would apply for fiscal years starting on 1 January 2016.

[18] In the situation where CbC requirements would apply for fiscal years starting on 1 January 2016.

[19] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

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Romania

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Romania's implementation of the Action 13 minimum standards meets all the applicable terms of reference in relation to its domestic legal and administrative framework. In addition, it is recommended that Romania finalise its exchange of information framework as well as have measures to ensure appropriate use ahead of the first exchanges of information.

Part A: Domestic legal and administrative framework

2. Romania has rules that impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Romania. The first filing obligation for a CbC report in Romania commences in respect of fiscal years commencing on or after 1 January 2016. Romania meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Romania is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 15 October 2012, in force on 1 November 2014 and in effect for 2016). As of 12 January 2018, Romania does not yet have bilateral relationships activated under the CbC MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process,[2] it is recommended that Romania finalise the signing process of the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. Romania has recently sent the declaration to sign the CbC MCAA to the OECD. Romania expects to have a number of QCAAs in effect before the date of the first exchanges of CbC reports and indicates that it intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of this same agreement. It is also noted that Romania will exchange CbC reports with 28 jurisdictions under the EU directive on exchange of information (EU Directive 2016/881/EU).

Part C: Appropriate use

4. Because Romania does not have measures in place in all six areas for appropriate use, it is recommended that Romania take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.[3]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Romania has primary law[4] and secondary law[5] in place for implementing the BEPS Action 13 minimum standard. No guidance has been issued so far.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Romania has legislation which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the definition of an "Excluded MNE Group", the provisions of the primary law, refer to a group having total consolidated group revenue of less than EUR 750 000 000 "or an amount in local currency approximately equivalent to EUR 750 000 000, as reflected in its consolidated financial statements for such preceding fiscal year".[7] While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Romania, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Romanian tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group. However, Romania confirms that it will apply this rule in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Romania. As such, no recommendation is made but this issue will be further monitored.

9. No other inconsistencies were identified with respect to Romania's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing of a CbC report in Romania commences in respect of periods commencing on or after 1 January 2016.[8] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[9]

11. Romania's secondary legislation includes a description of the items to be included in a CbC Report. This explains that under the "Aggregated revenue value" part of table 1, the reporting entity shall disclose the following information: *(a) the amount of income of all entities of the multinational enterprise group in the relevant tax jurisdiction generated by transactions with affiliated persons, (b) the amount of revenue of all the entities of the multinational enterprise group in the relevant tax jurisdiction generated by transactions with independent person;* (…). However, interpretative guidance issued by the OECD explains that: "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report*." It is expected that Romania issue an updated interpretation or clarification of the definition of "Aggregated revenue value" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

12. No inconsistencies were identified in respect of the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Romania has introduced local filing requirements as from the reporting period starting on or after 1 January 2017 or thereafter.[10]

14. No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Romania's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[11]

16. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

17. Romania has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Constituent Entities in Romania.[12] There are also penalties in place in relation to the filing of a CbC report for failure: (i) to file a CbC report, (ii) to file a complete CbC report and (iii) to submit it on time.[13]

18. There are no specific processes in place that would allow to take appropriate measures in case Romania is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017a), Romania meets the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

20. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017a).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

21. Romania does not have a domestic, legal basis for the exchange of information in place. Romania is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 15 October 2012, in force on 1 November 2014 and in effect for 2016).

22. Romania has three exchange of information agreements in force.[14] These do not provide Automatic Exchange of Information, but do permit exchange of information on request.

23. As of 12 January 2018, Romania does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Romania finalise the signing process of the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. Romania has recently sent the declaration to sign the CbC MCAA to the OECD. Romania expects to have a number of QCAAs in effect before the date of the first exchanges of CbC reports and indicates that it intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of this same agreement.

24. It is also noted that Romania will exchange CbC reports with 28 jurisdictions[15] under the EU directive on exchange of information (EU Directive 2016/881/EU).

Conclusion

25. It is recommended that Romania finalise the signing process of the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

26. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

27. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Romania indicates that measures are in place to ensure the appropriate use of information, but not in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017b). Because Romania does not have measures in place in all six areas for appropriate use, it is recommended that Romania take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

28. It is recommended that Romania take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	It is recommended that Romania finalise the signing process of the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Romania take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017a).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017a).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017a).

[4] Law no. 207/2015 on Code of Fiscal Procedure (as amended at supplemented by the Government Emergency Ordinance no. 42/2017).

[5] Order No. 3049 from 24 October 2017 regarding the approval of the model and content of "country-by-country report" form.

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017a).

[7] Art. 291-3 and Annex 3 section 1 point 4 of Law no. 207/2015.

[8] Art.291-3 (4) and Annex III section 2 point 2 of Law no. 207/2015 and Article 3(1) of Order No. 3049.

[9] Art.291-3 (1) of Law no. 207/2015 and Article 3(2) of Order No. 3049.

[10] Annex III section 2 point 2 of Law no. 207/2015.

[11] Annex III section 2 point 6 of Law no. 207/2015.

[12] Annex III section 2 point (8) of Law no. 207/2015 and Article 4(1) of Order No. 3049.

[13] Art. 336(2) lit.l) – m of Law no. 207/2015.

[14] With Guernsey, Jersey and Isle of Man.

[15] Including Gibraltar.

References

OECD (2017a), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2017b), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Russian Federation

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Russia's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises three substantive issues in relation to its domestic legal and administrative framework.

Part A: Domestic legal and administrative framework

2. Russia has rules (primary law) that impose and enforce CbC requirements on the Ultimate Parent Entity (UPE) of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Russia. The first filing obligation for a CbC report in Russia commences in respect of fiscal years beginning on 1 January 2017 or later with a voluntary filing mechanism is allowed for financial years beginning from 1 January 2016. Russia meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the filing exemption which relates to information relating to military-industrial cooperation and strategic enterprises,[2]
- the conditions for local filing which do not appear to be in line with the terms of reference,[3]
- enforcement provisions not applied for the first three reporting periods.[4]

Part B: Exchange of information framework

3. Russia is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA. Russia has provided its notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. As of 12 January 2018, Russia has 48 bilateral relationships activated under the CbC MCAA.[5] Russia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. Against the backdrop of the still evolving exchange of information framework, at this point in time Russia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[6]

Part C: Appropriate use

4. There are no concerns to be reported for Russia. Russia indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the

OECD Guidance on the appropriate use of information contained in Country-by-Country reports (OECD, 2017a)*.*[7] It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use. Russia meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[8]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Russia has primary law (hereafter the "Tax Code") in place for implementing the BEPS Action 13 minimum standard, establishing the necessary requirements, including reporting obligations.[9] Secondary law has not yet been published.[10] Guidance was not published.[11]

(a) Parent entity filing obligation

Summary of terms of reference:[12] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Russia has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on UPEs of MNE Groups above a certain threshold of revenue.[13]

8. With respect to paragraph 8 (a) iv. of the terms of reference (OECD, 2017b),[14] Russia's rules[15] provide for a full or partial filing exemption as follows: "*A country-by-country report and global documentation containing information which constitutes State secrets and (or) information which is directly and (or) indirectly indicative of military-industrial co-operation with foreign states which is carried on in accordance with Federal Law No. 114-FZ of 19 July 1998 "Concerning Military-Industrial Co-Operation of the Russian Federation with Foreign States" shall be submitted without the inclusion of information which constitutes State secrets and (or) information which is directly and (or) indirectly indicative of military-industrial co-operation with foreign states*" and "*Where a country-by-country report contains information regarding members of multinational group of companies which have been included in the list of strategic enterprises and strategic joint stock companies in accordance with the legislation of the Russian Federation and regarding subsidiary companies thereof, information concerning the activities of those members shall be transmitted to the competent authorities of foreign states (territories) in accordance with Article 142.5 of this Code only on condition that the taxpayer submitting the country-by-country report presents in relation to those members the appropriate prior consent of a federal executive body authorized by the Government of the Russian Federation to the submission of that information"*. Russia does not detail the exact scope and grounds for this exemption under the minimum standard and / or the exchange of information framework. The minimum standard states

that "*no exemptions from filing the Country-by-Country Report should be adopted apart from the exemptions outlined in this section* [exemption based on the EUR 750 million threshold]. *In particular, no special industry exemption should be provided, no general exemption for investment funds should be provided, and no exemption for non-corporate entities or non-public corporate entities should be provided*". Russia explained that in the first case, enterprises are not exempt from an obligation to prepare and submit a CbC report; a CbC report will be presented but it would not contain information, which constitutes State secrets.[16] Other information would be shown. In the second case, the Tax Code does not exempt members of an international group of companies from submission of Country-by-Country Report, but imposes requirements on a particular category of participants on compliance with the special procedure that they must perform before submitting the report. Russia indicates this is an administrative formality. It is however unclear in the second case what the consequences would be in a situation where a taxpayer would not comply in practice with this special procedure and whether there may be cases where a CbC report may not be filed or not exchanged.[17] It is recommended that Russia clarify the exact scope and legal basis under the minimum standard and/ or the exchange of information framework for such exemptions. However, it is noted that the first filing obligation for a CbC report in Russia commences in respect of fiscal years beginning on or after 1 January 2017.

9. With respect to the CbC filing requirements, the Russian legislation[18] states that the CbC filing requirement is not applicable for a Russian MNE group if the consolidated group revenue is less than RUB 50 billion (Russian roubles) in the immediately preceding fiscal year. While these provisions would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Russia, they may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Russian tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group. Russia confirms that this rule would apply in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Russia. As such, no recommendation is made but this aspect will be further monitored.

10. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

11. The first filing obligation for a CbC report in Russia commences in respect of financial years beginning on 1 January 2017 or thereafter, with a voluntary filing mechanism is allowed for financial years beginning from 1 January 2016.[19] The CbC report must be filed within 12 months of the last day of the reporting fiscal year of the MNE Group.[20]

12. With respect to paragraph 8 b) ii. of the terms of reference (OECD, 2017b), it is noted that Russia's rules[21] provide for a full of partial filing exemption as described in paragraph 7. Such exemptions may potentially lead to the filing of a CbC report that does not include all of the information as contained in the CbC report template in the Action 13 Report (OECD, 2015).[22] It is therefore recommended that Russia clarify the exact scope and legal basis under the minimum standard and / or the exchange of information framework for such an exemption.

13. Russia indicates that the draft of filing instructions and format of a CbC report and the procedure for submission, which will be included in the secondary legislation (decree of the Federal Tax Service of Russian Federation), has been published, but does not yet have effect. Russia confirms that the filing instructions and format will be published in due course. As such, no recommendation is made but this aspect will be monitored.

14. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.[23]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

15. Russia has introduced local filing requirements in respect of financial years beginning on 1 January 2017 or thereafter.[24]

16. With respect to paragraph 8 c) iv. of the terms of reference (OECD, 2017b), it is noted that according to Russia's legislation,[25] local filing applies in Russia as a default rule and a CbC report has to be submitted by an entity of an MNE group with exemptions being provided if all the following conditions are met:[26]

- the legislation of the state (territory) in question requires the submission to the competent authorities of a country-by-country report containing information similar to the information provided for in clause 1 of Article 105.16-6 of the Code;

- the state (territory) in question is a Party to an international agreement of the Russian Federation on the international automatic exchange of country-by-country reports as at the end of the period specified in paragraph 3 of clause 2 of this Article for the submission of a country-by-country report for the relevant reporting period;

- the state (territory) in question is not on the list of states (territories) which systematically fail to fulfil obligations associated with the automatic exchange of country-by-country reports, as approved by the federal executive body in charge of control and supervision in the area of taxes and levies; and

- the state (territory) in question has been notified by the appropriate member of the multinational group of companies of the member of the multinational group of companies which is responsible for submitting the country-by-country report (if the legislation of the state (territory) in question contains a requirement for such notification);

17. In addition, paragraph 7(1) of Article 105.16-3 of the Tax Code provides for another case of local filing: local filing can be required upon request of the Federal Executive Body if it possesses information received from Competent Authorities of foreign States indicating that the parent company or the surrogate parent entity of the MNE Group fails to fulfil the obligation to submit a CbC report.

18. The circumstances under which local filing may occur under Russia's legislation appear to be wider than permitted under the terms of reference. Examples of cases where local filing may be required under Russia's legislation, but would not be permitted under the minimum standard, include:

- where there is an international instrument and a QCAA in effect between Russia and the jurisdiction of residence of the Ultimate Parent Entity but the Ultimate Parent Entity has not complied with its obligation to file a CbC Report[27] or where there is no international instrument and the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but has not complied with this obligation.[28] These are normally situations for which it is up to the jurisdiction of residence of the Ultimate Parent Entity to deal with, through its enforcement measures.
- where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but there is no international agreement between Russia and this jurisdiction.[29] Russia indicates under paragraph 6 the Article 105.16-3 of the Tax Code, also taking in account number of signatories of Convention on Mutual Administrative Assistance in Tax Matters and double taxation treaties a taxpayer should submit a CbC report in case of the absence of a Qualifying Competent Authority Agreement (regardless of whether there is an International Agreement. Russia notes that in practice, the probability of filing a CbC report in such circumstances is extremely low.

19. It is recommended that Russia amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference.

20. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference, according to Russia's legislation[30] "*a state (territory) shall be included in the list of states (territories) which systematically fail to fulfil obligations associated with the automatic exchange of country-by-country reports if the competent authority of that state (territory) fails to fulfil (suspends the fulfilment of) obligations laid down in an international agreement of the Russian Federation on the automatic exchange of country-by-country reports or if for other reasons the automatic exchange of country-by-country reports with the Russian Federation is not maintained."* Although this condition does not reflect the details of paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017b) in particular in regard of the concept of "Systemic Failure", and may be interpreted in a broader meaning than the situation of a "Systemic Failure", Russia confirms that it will apply this provision in accordance with the wording of these terms of reference. As such, no recommendation is made but this aspect will be monitored.

21. No other inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

22. Russia's local filing requirements will not apply if there is surrogate filing in another jurisdiction by a group entity as appointed by the Ultimate Parent Entity.[31] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

23. Russia has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to taxpayers in Russia.[32] There are also penalties in place in relation to the filing of a CbC report or a notification of participation:[33] (i) penalties for failure to file within the established time limit and (ii) penalties for filing information containing inaccurate information.

24. With respect to paragraph 8 e) ii. of the terms of reference (OECD, 2017b), it is noted that under Russia's legislation, the penalties in relation to the filing of the CbC report or the notification of participation will not be imposed for offences relating to reporting periods commencing in 2017, 2018 or 2019.[34] It is recommended that Russia amend its legislation or otherwise takes steps to ensure that enforcement provisions and monitoring relating to the CbCR's effective implementation are provided for as contained in the terms of reference as from the first reporting period.[35]

25. There are no specific processes to take appropriate measures in case Russia is notified by another jurisdiction that it has reason to believe with respect to a Reporting Entity that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

26. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Russia has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Russia. Russia meets all the terms of reference relating to the domestic legal and administrative

framework, with the exception of (i) the filing exemption which relates to information relating to military-industrial cooperation and strategic enterprises (paragraph 8 (a) iv. and (b) ii. of the terms of reference (OECD, 2017b)), (ii) the local filing conditions (paragraph 8 (c) iv. of the terms of reference (OECD, 2017b)) and (iii) the enforcement provisions (paragraph 8 (e) ii. of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

27. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

28. Russia has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") (signed on 3 November 2011, in force on 1 July 2015 and in effect for 2016).

29. Russia signed the CbC MCAA on 26 January 2017 and submitted a full set of notifications under section 8 of the CbC MCAA on 28 November 2017. Russia intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. As of 12 January 2018, Russia has 48 bilateral relationships activated under the CbC MCAA.[36] Russia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions.[37] Against the backdrop of the still evolving exchange of information framework, at this point in time, Russia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

30. Against the backdrop of the still evolving exchange of information framework, at this point in time, Russia meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

31. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

32. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Russia has provided information that the obligation to comply with the appropriate use of CbC reports is enshrined in writing in its law and this binds all tax administration employees. It has provided details in relation to all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a), enabling it to answer "yes" to the additional questions on appropriate use.

33. There are no concerns to be reported for Russia in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

34. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Russia. Russia meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation – filing exemption and content of a CbC report	It is recommended that Russia clarify the exact scope and legal basis under the minimum standard and / or the exchange of information framework for the filing exemption in relation to military-industrial cooperation and strategic enterprises.
Part A	Domestic legal and administrative framework – Limitation on local filing obligation	It is recommended that Russia amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference.
Part A	Domestic legal and administrative framework – Effective implementation	It is recommended that Russia amend its legislation or otherwise takes steps to ensure that enforcement provisions and monitoring relating to the CbCR's effective implementation are provided for as contained in the terms of reference as from the first reporting period.
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraphs 8 (a) iv. and (b) ii. of the terms of reference (OECD, 2017b).

[3] Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b).

[4] Paragraph 8 (e) ii. of the terms of reference (OECD, 2017b).

[5] This number includes two non-reciprocal relationships (Cyprus and Cayman Islands).

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[6] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[7] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[8] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[9] Primary law consists of the Federal Law dated 27 November 2017 No340-FZ "On amending part one of the Tax Code of the Russian Federation with regard to implementing international exchange of information and documentation on multinational enterprise groups" (Tax Code). See http://publication.pravo.gov.ru/Document/View/0001201711270075 (accessed 20 April 2018). See Chapter 14.4 of the Tax Code.

[10] Russia indicates that secondary legislation (decree of the Federal Tax Service of the Russian Federation) will contain provisions of the regulations to include format of the CbC Report and instructions for its completion and that such regulation will be based on Action 13 Report (OECD, 2015) and related documents.

[11] Russia indicates that clarifications with respect to CbCR will be provided by the Ministry of Finance of the Russian Federation, as and when requested by the taxpayers.

[12] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[13] It is noted under paragraph 3 of Article 105.16-1 of the Tax Code that the Central Bank of Russia, State government bodies and local government bodies are not deemed to be members of the MNE group for the purposes of the CbC Reporting. Russia further indicates that the Central Bank of Russia is a public body and it does not carry out any commercial activity.

[14] It is noted that the minimum standard does not envisage any exemptions from filing the CbC report (paragraph 55 of the Action 13 Report, OECD, 2015).

[15] See paragraph 5 of Article 105.16-3 of the Tax Code

[16] Russia indicates that within the BEPS framework approved during the G20 meeting in September 2013, the countries had committed to take all necessary separate and collective actions with due regards to sovereignty and that for Russia, the issues of military-industrial cooperation and issue of State secrets are directly related to the Russia's sovereignty. Russia further indicates that under Article 21 of the Multilateral Convention on Mutual Administrative Assistance in tax matters, the provisions of the Convention shall not be construed so as to impose the requested State the obligation to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State, and to supply information which would disclose any trade, business, industrial, commercial or professional; secrets or trade process, or information the disclosure of which would be contrary to public policy.

[17] Russia indicates that taxpayers (tax residents of the Russian Federation) are interested in filling a CbC report accurately in the Russian Federation, since a failure to submit a CbC report in the Russian Federation could trigger local filing in other jurisdictions.

[18] See paragraph 6(3) of Article 105.16-3 of the Tax Code. It is also noted that for a Russian parent company that prepares consolidated financial statements in a currency other than the currency of Russia, the consolidated group revenue threshold will be determined using the average exchange rate of the currency of the consolidated financial statements to the rouble of Russia as established by the Central Bank of the Russian Federation for the financial year preceding the reporting period.

[19] See paragraph 2 and paragraph 5 of the Article 2 of the Federal Law dated 27 November 2017 # 340-FZ «On amending part one of the Tax Code of the Russian Federation with regard to implementation international exchange information and documents on multinational enterprise group.

[20] See paragraph 2(3) of Article 105.16-3 of the Tax Code.

[21] See paragraph 5 of Article 105.16-3 of the Tax Code.

[22] See Annex III to Chapter V Transfer Pricing Documentation – Country-by-Country Report (OECD, 2015).

[23] It is noted that the second point of paragraph 3 of Article 105.16-6 of the Tax Code relates to the source of data and includes "tax records" as a possible source of data.

[24] See paragraphs 2 and 5 of Article 2 of the Tax Code.

[25] See paragraph 2 of Article 105.16-3 of the Tax Code.

[26]See paragraphs 6, 6(1) and 6(2) of Article 105.16-3 of the Tax Code

[27] Assuming there is no systemic failure.

[28] See paragraph 7(1) of Article 105.16-3 of the Tax Code. Local filing would not be permitted in this circumstance under paragraph 8 (c) iv. a) of the terms of reference (OECD, 2017). Russia however indicates that: this provision will apply if the FTS (Federal Tax Service) of Russia has information from competent authorities on non-performance of an obligation by a parent company of the MNE group on the base of cooperation of competent authorities (on the request of the FTS of Russia or voluntary delivery of such information from foreign competent authorities). According to Russia, this provision would avoid a situation where Russia would be forced to consider another jurisdiction as non-cooperative because of failure of filing by another parent company of an MNE group and inability or non-effectiveness of enforcement measures by the competent authority.

[29] Local filing would not be permitted in this circumstance under paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b).

[30] See paragraph 8 of Article 105.16-3 of the Tax Code.

[31] See paragraphs 6 and 6(1) of Article 105.16-3 of the Tax Code.

[32] See Article 105.16-2 of the Tax Code.

[33] Under Article 129.9 of the Tax Code, an unlawful failure to submit a notification of participation in a multinational group of companies within the established time limit or the submission of a notification of participation in a multinational group of companies containing inaccurate information will result in the recovery of a fine of RUB 50 000; and under Article 129.10, an unlawful failure to submit a country-by-country report within the established time limit or the submission of a country-by-country report containing inaccurate information will result in the recovery of a fine of RUB 100 000.

[34] See paragraph 7 the Article 2 of the Federal Law on November 27, 2017 # 340-FZ «On amending part one of the Tax Code or the Russian Federation with regard to implementing international exchange of information and documentation on multinational enterprise groups». Russia explains that penalties will not be imposed for offences relating to financial years 2017, 2018 and 2019 to allow time for the taxpayers to adopt the new rules of CbC Reporting. Russia further submits that taxpayers are committed to filling the CbCR accurately to avoid local filing in other jurisdictions and also that failure to file a CbC report would constitute an additional risk factor for analysing the activities of the taxpayer.

[35] Russia indicates that in accordance with Article 15.6 of the Administrative Offences (Violations) Code of the Russian Federation, an administrative penalty in the amount of RUB 300 - 500 is to be imposed on chief executives who fail or refuse to submit to the tax authorities, documents or other data drawn up in the established procedure as well as distorted or incomplete data of such type, necessary for exercising tax control. See www.multitran.ru/c/m.exe?t=4195720_1_2&s1=%CA%EE%C0%CF (accessed 20 April 2018).

Additionally, taking into consideration that CbCR applies to large taxpayers, the imposition of administrative sanctions to chief-executives can damage business reputation. In Russia's view, this measure will force taxpayers to fulfil their obligations.

[36] This number includes two non-reciprocal relationships (Cyprus and Cayman Islands).

[37] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA, or the reviewed jurisdiction may not have listed all signatories of the CbC MCAA. Russia confirms that it will further update its list of exchange partners.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

San Marino

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. San Marino does not have a legal and administrative framework in place to implement CbC Reporting and indicates that it will not apply CbC requirements for the 2016 fiscal year. It is recommended that San Marino take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. San Marino does not yet have legislation in place for implementing the BEPS Action 13 minimum standard.[1] San Marino indicates that the CbC requirements are in the early stages of drafting. At this time, San Marino estimates that the legislation will be issued by 31 December 2018. San Marino indicates that it will apply CbC requirements as of 1 January 2019 with respect to the 2019 fiscal year. It is recommended that San Marino take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.

Part B: Exchange of information framework

3. San Marino is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") (signed on 21 November 2013, in force on 1 December 2015 and in effect for 2016). San Marino is not a signatory to the CbC MCAA. It is recommended that San Marino take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that San Marino will not be exchanging CbC reports in 2018.[2]

Part C: Appropriate use

4. San Marino does not yet have measures in place relating to appropriate use.[3] It is recommended that San Marino take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that San Marino will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. San Marino does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. San Marino does not yet have a legal and administrative framework in place to implement CbC Reporting and it indicates that it will implement CbC Reporting requirements for the 2019 fiscal year starting 1 January 2019. San Marino has confirmed that it has not implemented local filing requirements on resident Constituent Entities of MNE Groups headquartered in another jurisdiction in the meantime.

8. San Marino indicates that that the legislation for CbC Reporting is currently in early drafting stages. At this time, San Marino believes that the legislation will come into effect by 1 January 2019.

9. San Marino indicates that there are no MNE Groups currently headquartered in San Marino.

Conclusion

10. In respect of paragraph 8 of the terms of reference (OECD, 2017), San Marino does not have a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in San Marino. It is recommended that San Marino take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.

Part B: The exchange of information framework

11. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

12. San Marino does not yet have domestic legislation that permits the automatic exchange CbC reports. San Marino is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"), signed on 21 November 2013, in force on 1 December 2015 and in effect for 2016.

13. San Marino is not a signatory to the CbC MCAA. As of 12 January 2018, San Marino does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that San Marino take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that San Marino will not be exchanging CbC reports in 2018.

Conclusion

14. In respect of the terms of reference under review, it is recommended that San Marino take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that San Marino will not be exchanging CbC reports in 2018.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. San Marino does not yet have measures in place relating to appropriate use. It is recommended that San Marino take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that San Marino will not be exchanging CbC reports in 2018.

Conclusion

17. It is recommended that San Marino take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that San Marino will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that San Marino take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.
Part B	Exchange of information framework	It is recommended that San Marino take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that San Marino take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Saudi Arabia

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Saudi Arabia does not have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Saudi Arabia take steps to finalise the domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Saudi Arabia does not have complete legislation in place for implementing the BEPS Action 13 minimum standard. Saudi Arabia indicates that it has put in place its Enforcement rules (part of the primary legislation) to implement exchange of information provisions for tax purposes with other jurisdictions under the Saudi Arabia's effective treaties. The enforcement rules for CbC Reporting will be triggered once the CbC MCAA is ratified and once a Council of Ministers decision is granted to approve the application of the provisions of the enforcement rules on the CbC MCAA. Such enforcement rules once approved will be the basis for obliging reporting entities to submit the CbC information as per the implementation rules (secondary legislation), which will be issued by the Minister of Finance once the primary legislation is in place. It is recommended that Saudi Arabia take steps to finalise the domestic legal and administrative framework[1] to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Saudi Arabia is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect in 2017. Saudi Arabia indicates it is currently in the process of obtaining the necessary approval from the higher authorities to sign the CbC MCAA. As of 12 January 2018, Saudi Arabia does not have bilateral relationships activated under the CbC MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review[2] process, it is recommended that Saudi Arabia take steps to sign the CbC MCAA and also have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Saudi Arabia will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. Saudi Arabia does not yet have measures in place relating to appropriate use.[3] It is recommended that Saudi Arabia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Saudi Arabia will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Saudi Arabia does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Saudi Arabia does not yet have its legal and administrative framework in place to implement CbC Reporting. Saudi Arabia does not intend to implement CbC Reporting requirements for the 2016 fiscal year.

8. Saudi Arabia indicates that its primary legislation will consist of the ratification of the CbC MCAA after it is signed to bring it into effect as part of Saudi local law and the Enforcement rules[5] to implement the exchange of information provisions for tax purposes with other jurisdictions under the Saudi Arabia's effective treaties. The enforcement rules for CbC Reporting will be triggered once the CbC MCAA is ratified and once a Council of Ministers decision is granted to approve the application of the provisions of the enforcement rules on the CbC MCAA. Such enforcement rules once approved will be the basis for obliging reporting entities to submit the CbC information as per the implementation rules (secondary legislation), which will be issued by the Minister of Finance once both of the CbC agreement and the enforcement rules are inforce. Saudi Arabia also indicates that it will rely on domestic provision under their Income Tax Law to oblige reporting entities to comply with CbC requirements.[6]

9. At this time, Saudi Arabia estimates that the primary legislation implementing the CbC Reporting requirements will be in effect by the second quarter of 2018.

Conclusion

10. In respect of paragraph 8 of the terms of reference (OECD, 2017), Saudi Arabia has not yet implemented a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Saudi Arabia. It is recommended that Saudi Arabia take steps to finalise the domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

11. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain

aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

12. Saudi Arabia has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 29 May 2013, in force on 1 April 2016 and in effect for 2017).

13. Saudi Arabia has not signed the CbC MCAA. Saudi Arabia indicated that it is currently in the process of obtaining the necessary approval from the higher authorities to sign the CbC MCAA. Once approved Saudi Arabia is going to ratify such agreement promptly to bring it into force as part of its local laws. As of 12 January 2018, Saudi Arabia does not have bilateral relationships activated under the CbC MCAA. It is recommended that Saudi Arabia take steps to sign the CbC MCAA and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Saudi Arabia will not be exchanging CbC reports in 2018.

Conclusion

14. In respect of the terms of reference (OECD, 2017) under review, it is recommended that Saudi Arabia take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Saudi Arabia will not be exchanging CbC reports in 2018.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. Saudi Arabia does not yet have measures in place relating to appropriate use. It is recommended that Saudi Arabia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Saudi Arabia will not be exchanging CbC reports in 2018.

Conclusion

17. In respect of paragraph 12 (a), it is recommended that Saudi Arabia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Saudi Arabia will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Saudi Arabia finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Saudi Arabia sign the CbC MCAA and also take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions
Part C	Appropriate use	It is recommended that Saudi Arabia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[5] Saudi Arabia indicates that the Enforcement rules was issued with the following title: "The Special Regulations for Addressing Failures to Report Information for Tax Purposes in Accordance with the Provisions of Conventions to which the Kingdom of Saudi Arabia is a Party" as per a decision of Council of Ministers no. (706) dated 30/11/1438H corresponding to 22 August 2017.

[6] See Articles 59 and 61 of Saudi Arabia's Income Tax Law.

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Senegal

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Senegal does not yet have a legal and administrative framework in place to implement CbC Reporting. CbC requirements should first apply for taxable years commencing on or after 1 January 2018. It is recommended that Senegal finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part A: Domestic legal and administrative framework

2. Senegal has prepared draft primary law to implement the BEPS Action 13 minimum standard, which is final drafting stage. The next step will be the adoption by the Parliament. Senegal indicates that CbC requirements will apply for taxable years commencing on or after 1 January 2018. It is recommended that Senegal finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. Senegal is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is not in effect for 2016. It is also a signatory to the CbC MCAA but has not provided its notifications under Section 8 of this agreement. As of 12 January 2018, Senegal does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that Senegal take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Senegal will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Senegal does not yet have measures in place relating to appropriate use. It is recommended that Senegal take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Senegal will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Senegal does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Senegal has prepared draft primary law to implement the BEPS Action 13 minimum standard, which is final drafting stage. The next step will be the adoption by the Parliament. Senegal indicates that CbC requirements will apply for taxable years commencing on or after January 1, 2018. It is recommended that Senegal finalise the domestic legal and administrative framework in relation to CbC requirements as soon as possible.

Conclusion

8. In respect of paragraph 8 of the terms of reference (OECD, 2017), Senegal does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Senegal. It is recommended that Senegal finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

9. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

10. Senegal is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), signed on 4 February 2016, in force on 1 December 2016. It is not in effect for 2016 but will be in effect as from the 2017 fiscal year.

11. Senegal is also a signatory to the CbC MCAA (signed on 4 February 2016) but has not provided its notifications under Section 8 of this agreement. As of 12 January 2018, Senegal does not have bilateral relationships activated under the CbC MCAA. It is recommended that Senegal take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use

prerequisites. It is however noted that Senegal will not be exchanging CbC reports in 2018.

Conclusion

12. In respect of the terms of reference under review, it is recommended that Senegal take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Senegal will not be exchanging CbC reports in 2018.

Part C: Appropriate use

13. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

14. Senegal does not yet have measures in place relating to appropriate use. It is recommended that Senegal take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Senegal will not be exchanging CbC reports in 2018.

Conclusion

15. It is recommended that Senegal take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Senegal will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Senegal finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Senegal take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Senegal take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Seychelles

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. The Seychelles does not yet have a legal and administrative framework in place to implement CbC Reporting. It is recommended that the Seychelles finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. The Seychelles does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the Seychelles. It is recommended that the Seychelles take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. The Seychelles is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 24 February 2015, in force on 1 October 2015, in effect for 2016). It is not a signatory to the CbC MCAA. As of 12 January 2018, the Seychelles does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that the Seychelles take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that the Seychelles will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] the Seychelles does not yet have measures in place relating to appropriate use. It is recommended that the Seychelles take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that the Seychelles will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. The Seychelles does not yet have legislation in place in order to implement CbC Reporting.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. The Seychelles does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year.

8. A draft of regulations relating to CbC Reporting has been finalised in December 2017. A consultation phase is currently ongoing and is expected to be closed by the end of February 2018. The draft regulations will then be presented to the Attorney General's Office. The Attorney General's Office will examine the draft which should take a maximum of two months. The Seychelles noted that it will follow the Action 13 model legislation.

9. It is recommended that the Seychelles finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Conclusion

10. In respect of paragraph 8 of the terms of reference, the Seychelles does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in The Seychelles. It is recommended that the Seychelles take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

11. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

12. The Seychelles does not have a domestic, legal basis for the exchange of information in place. The Seychelles is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 24 February 2015, in force on 1 October

2015, in effect for 2016). It is not a signatory to the CbC MCAA. The Seychelles does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.

13. As of 12 January 2018, the Seychelles does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that the Seychelles take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that the Seychelles will not be exchanging CbC reports in 2018.

Conclusion

14. In respect of the terms of reference under review, it is recommended that the Seychelles take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that the Seychelles will not be exchanging CbC reports in 2018.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. The Seychelles does not yet have measures in place relating to appropriate use. It is recommended that the Seychelles take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that the Seychelles will not be exchanging CbC reports in 2018.

Conclusion

17. In respect of paragraph 12 (a) it is recommended that the Seychelles take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that the Seychelles will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that the Seychelles finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information	It is recommended that the Seychelles take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that the Seychelles take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Singapore

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Singapore's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Singapore has rules (primary and secondary legislation as well as guidance) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity (UPE) of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Singapore. The first filing obligation for CbC reports in Singapore commences in respect of financial years beginning on or after 1 January 2017, with a voluntary parent filing mechanism for the financial year beginning on or after 1 January 2016. Singapore meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Singapore is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for part of 2016. Singapore is also a signatory to the CbC MCAA and has provided its notifications under Section 8 of this agreement on 14 July 2017. Singapore intends to exchange CbC reports relating to fiscal years beginning on or after 1 January 2017, as well as CbC reports relating to the fiscal year 2016, filed under the voluntary parent filing mechanism. As of 12 January 2018, Singapore has 41 bilateral relationships activated under the CbC MCAA.[2] With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual review process,[3] Singapore has taken steps to have Qualifying Competent Authority Agreements (QCAAs) in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. Against the backdrop of the still evolving exchange of information framework, at this point in time Singapore meets the terms of reference.

Part C: Appropriate use

4. There are no concerns to be reported for Singapore. Singapore indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[4]

Singapore meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[5]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Singapore has primary and secondary legislation in place[6] to implement the BEPS Action 13 minimum standard. Guidance has been published.[7]

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Singapore has primary legislation which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups[9] above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the filing obligations of reporting entities in Singapore, no entity will be excluded from CbC Reporting unless written notice is given by the Comptroller, after taking into account prescribed factors, that a prescribed person need not comply in relation to the filing of the CbC reports as prescribed by law.[10] The CbCR regulations provide that, where such notice is given, the Comptroller may give notice to one or more other Constituent Entities of the MNE Group to submit a CbC report in place of the Ultimate Parent Entity (UPE).[11] The prescribed factors are:

1. the Government is the sole shareholder of the ultimate parent entity of the Type A group; and
2. a country-by-country report by the ultimate parent entity would contain information, the disclosure of which would be contrary to Singapore's vital interests.

9. Singapore confirms that this designation provision will only apply to an MNE Group that has satisfied all of the prescribed factors.[12] In addition, Singapore confirms that the designation provision will apply only in cases where every Constituent Entity which shall be given notice by the Comptroller to file a CbC report is already required to prepare CFS under FRS 110 or an equivalent financial reporting standard in a country outside Singapore. It adds that the Comptroller shall give written notice to all the Constituent Entities of the Type A group which are "parents of a sub-group" where the total consolidated group revenue of such sub-groups exceeds the threshold for filing a CbC report. Finally, Singapore has also confirmed that it is unlikely that a Constituent Entity that is the parent of a sub-group will be resident outside Singapore. Where this is

the case, the Comptroller will give written notice to the ultimate parent entity of the MNE group, which will be required to obtain the CbC report for the "foreign subgroup" from the foreign Constituent Entity and to file this CbC report in Singapore. No recommendation is made, but the use of the designation provision will be monitored to ensure this understanding is correct and the provision is only applied in exceptional cases.

10. No other inconsistencies were identified with respect to Singapore's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

11. The first filing obligation for a CbC report in Singapore applies in respect of financial years beginning on or after 1 January 2017[13] with a voluntary parent filing mechanism for financial years beginning on or after 1 January 2016.[14]

12. The CbC report must be filed within 12 months from the end of the Ultimate Parent Entity's financial year.[15] It is noted that the Comptroller may allow a CbC report to be file later than this date.[16] No recommendation is made but this aspect will be further monitored to ensure that any extension of the filing deadline will not impact the ability of Singapore to meet its obligations relating to the exchange of information under the terms of reference.[17]

13. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[18]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

14. Singapore indicates that it will introduce local filing requirements in the future.[19] Singapore's provisions in the primary law allow the Minister to make regulations on local filing. These provisions are drafted in a broad way[20] but Singapore indicates that it will ensure its local filing requirements are aligned with the terms of reference under paragraph 8 (c). This will be monitored to ensure that if local filing requirements are introduced, these requirements would comply with the terms of reference under paragraph 8 (c).

15. No other inconsistencies were identified with respect to the limitation on local filing.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

16. Singapore indicates that it will introduce local filing requirements in the future.[21] Singapore confirms that local filing requirements will not apply if there is surrogate filing in another jurisdiction and will provide for this in its secondary legislation. This will be monitored to ensure that if local filing requirements are introduced, these requirements should be deactivated in case of surrogate filing in a manner consistent with the terms of reference under paragraph 8 (d).

17. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

18. Singapore has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities resident for tax purposes in Singapore.[22] There are also penalties in relation to the filing and notification for filing of a CbC report: (i) penalties for failure to file a CbC report, (ii) daily default penalty in case of continuing offence and (iii) penalties for inaccurate information.[23]

19. With respect to specific processes in place that would allow Singapore to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report, Singapore indicates that the Inland Revenue Authority of Singapore (IRAS) has an existing process for AEOI of financial account information to deal with situations when notified by another jurisdiction that there are errors in the information sent by IRAS. In such a situation, IRAS would notify the reporting entity on the error details within 3 business days. Additional time (i.e. 30 calendar days) will be given for the reporting entity to rectify the errors and submit a corrected file. Follow up email reminders will be sent if the reporting

entity fails to submit the corrected file by the deadline. This process will be adapted for CbCR purposes. In addition, the IRAS will investigate the claim and if it is substantiated, penalties may be imposed under Section 105M of the Income Tax Act. This aspect will be further monitored.

Conclusion

20. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Singapore has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose UPE is resident for tax purposes in Singapore. Singapore meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

21. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

22. Singapore has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to (i) the Multilateral Convention on Mutual Administrative Assistance in Tax Matter (the "Convention"), as amended by the 2010 Protocol, (signed on 29 May 2013, in force on 1 May 2016 and in effect for 2017) and (ii) multiple bilateral Double Tax Agreements, which allow Automatic Exchange of Information in the field of taxation.[24] Since the Convention will be in effect for the year 2017, Singapore will be able to exchange (either send or receive) CbC reports as of 1 January 2017. However, the Convention is not in effect with respect to the fiscal year starting on 1 January 2016. This means that Singapore will not be able to exchange (either send CbC reports which were filed under the voluntary parent filing mechanism - or receive) CbC reports with respect to 2016 fiscal year under the Convention and CbC MCAA on the first exchange date in mid-2018. As Singapore allows an Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Singapore to file a CbC report for 2016 under a voluntary parent filing mechanism, it has lodged a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention.[25]

23. Singapore signed the CbC MCAA on 21 June 2017 and submitted a full set of notifications under section 8 of the CbC MCAA on 14 July 2017. It intends to exchange CbC reports with a large number of jurisdictions that provide notifications under Section 8(1)(e) of the same agreement. As of 12 January 2018, Singapore has 41 bilateral relationships activated under the CbC MCAA.[26] Singapore has taken steps to have Qualifying Competent Authority Agreements (QCAAs) in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is noted that some Qualifying Competent Authority agreements are not in effect for fiscal year 2017 with jurisdictions of the Inclusive Framework that meet the

confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or the partner jurisdictions considered may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA, or the reviewed jurisdiction may not have listed all signatories of the CbC MCAA. Singapore indicates that it will further update the list of intended exchange partners before the first exchanges of CbC reports. Against the backdrop of the still evolving exchange of information framework, at this point in time Singapore meets the terms of reference. It is noted that Singapore will not be exchanging CbC reports in 2018.[27]

Conclusion

24. Against the backdrop of the still evolving exchange of information framework, at this point in time Singapore meets the terms of reference.

Part C: Appropriate use

25. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

26. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Singapore indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

27. There are no concerns to be reported for Singapore in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

28. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Singapore. Singapore thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] There is also one additional non-reciprocal relationship with Cyprus.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[4] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] Primary law consists of sections 105I, 105J, 105K, 105L, 105M, 105N, 105P of the Income Tax Act of Singapore (IRAS): https://sso.agc.gov.sg (accessed 23 April 2018). Secondary legislation consists of the "Country by Country Regulations 2018" (hereafter the "CbCR regulations"), published on 5 February 2018: www.egazette.com.sg/gazetteViewDetail.aspx?ct=sls&subscriber=0 (accessed 23 April 2018).

[7] Guidance consists of the e-Tax Guide first published on 10 Oct 2016 and further revised (edition dated 11 July 2017, accessed 23 April 2018) by the Inland Revenue Authority of Singapore: www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguide_Income%20Tax_Country-by-Country%20Reporting_2nd.pdf (accessed 23 April 2018).

[8] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[9] It is noted that Singapore's CbCR regulations defines two types of groups: (i) a "*Type A group means "a group of entities related through ownership or control in such a way that the group is either (a) required to prepare consolidated financial statements for financial reporting purposes under FRS 110 or an equivalent financial reporting standard in a country outside Singapore; or (b) would have been so required if equity interests in any of the entities were traded on any stock*

exchange in Singapore or elsewhere". A "Type B group" means "*a single entity with one or more permanent establishments*".

In addition, it is noted that the definition of a "Constituent Entity" is provided in Singapore's guidance which is binding for taxpayers according to Singapore. It is defined as follows: "*A Constituent Entity of the MNE group is (i) 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 the MNE group were traded on a public securities exchange; (ii) any such business unit that is excluded from the MNE group's Consolidated Financial Statements solely on size or materiality grounds; and (iii) any permanent establishment of any separate business unit of the MNE group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes*".

[10] See sections 105L (1B) and 105P (2) (ba) of the Income Tax Act of Singapore.

[11] See section 5(3) of the CbCR Regulations. In such a case, the Constituent Entity must submit a CbC report for all the Constituent Entities of the MNE Group in respect of which the first-mentioned Constituent Entity is required under FRS 110 or an equivalent financial reporting standard in a country outside Singapore to prepare Consolidated Financial Statements, or would have been so required if the equity interests of the first-mentioned Constituent Entity were traded on any stock exchange in Singapore or elsewhere.

[12] Singapore also confirmed that this provision will apply in very exceptional cases where the disclosure and subsequent exchange of information would constitute a breach of public policy (*ordre public*) as per Article 21.2.d) of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

[13] See section 3 of the CbCR regulations and paragraph 3.3 of the e-Tax Guide on CbCR.

[14] See CbCR Filing Requirements on IRAS: www.iras.gov.sg/IRASHome/Quick-Links/International-Tax/Country-by-Country-Reporting--CbCR-/ (accessed 23 April 2018).

[15] See section 4(2) of the CbCR regulations and paragraph 3.4 of e-Tax guide on CbCR.

[16] See section 4 (2) of the CbCR regulations.

[17] Paragraph 9 (d) of the terms of reference (OECD, 2017b).

[18] It is noted that the content of a CbC report, as well as instructions to complete a CbC report, are contained in Singapore's guidance: see e-Tax Guide (accessed 23 April 2018) dated 11 July 2017 (www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguide_Income%20Tax_Country-by-Country%20Reporting_2nd.pdf) (accessed 23 April 2018).

[19] The current CbCR regulations do not contain any provisions introducing local filing requirements. Singapore confirms that local filing requirements can only be introduced through secondary legislation.

[20] See Article 105P. (1A) of the Income Tax Act of Singapore (IRAS) which provides as follows: "*The Minister may also make regulations to enable the Comptroller to obtain a country-by-country report or its equivalent in a case where the Comptroller is unable to obtain the report or its equivalent from the tax authority of a country in accordance with the Action 13 Report because —*

the Government does not have a CbCR exchange agreement with the government of that country; or

the Government has a CbCR exchange agreement with the government of that country, but the Minister is of the opinion that the agreement is not operating effectively".

[21] The current CbCR regulations do not contain any provisions introducing local filing requirements. Singapore confirms that local filing requirements can only be introduced through secondary legislation.

[22] Singapore indicates that IRAS will identify the relevant UPEs from databases and send filing notices to them. UPEs which receive the filing notices but are of the view that they are not required to file would need to inform IRAS of the reasons. Reminders may be sent to identify UPEs one month before their filing due dates. To ensure effectiveness, IRAS may also carry out a post-implementation review in mid-2019 to assess whether policies and procedures are working as intended.

[23] See section 105M of the Income Tax Act of Singapore. The penalties for failure to file a CbC report is a fine not exceeding SGD 1 000 (Singapore dollars) and in default of payment, an imprisonment for a term not exceeding 6 months and a further fine not exceeding SGD 50 for every day during which the offence continues. The penalties for inaccurate filing of a CbC report is a fine not exceeding SGD 10 000 or imprisonment for a term not exceeding 2 years or both.

[24] These DTAs can be retrieved from IRAS' website https://www.iras.gov.sg/irashome/Quick-Links/International-Tax/

[25] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

[26] There is also one additional non-reciprocal relationship with Cyprus.

[27] Except for the CbC reports relating to the fiscal year 2016 that Singapore would receive under the voluntary parent surrogate mechanism and which it would send to other jurisdictions.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

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Slovak Republic

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. The Slovak Republic's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. The Slovak Republic has rules (primary law) that impose and enforce CbC requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in the Slovak Republic. The first filing obligation for a CbC report in the Slovak Republic commences in respect of the fiscal years beginning on 1 January 2016 or later. The Slovak Republic meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. The Slovak Republic is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016 and is also a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under the same agreement. The Slovak Republic has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, the Slovak Republic has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. The Slovak Republic has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, the Slovak Republic meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for the Slovak Republic. The Slovak Republic indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in

relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] The Slovak Republic meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. The Slovak Republic has primary law in place for implementing the BEPS Action 13 minimum standard, establishing the necessary requirements including the filing and reporting obligations.[5] No guidance has been published.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. The Slovak Republic has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).[7]

8. No inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in the Slovak Republic commences in respect of the fiscal year of the MNE group beginning on or after 1 January 2016.[8] The CbC report must be filed within 12 months after the end of the reporting fiscal year of the MNE Group.[9]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. The Slovak Republic has introduced local filing requirements in respect of reporting fiscal years beginning on or after 1 January 2017.[10] No inconsistencies were identified with respect to the limitation on local filing obligation.[11]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

12. The Slovak Republic's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[12] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. The Slovak Republic has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other Constituent Entity.[13] The Slovak Republic indicates that it is currently analysing possible mechanisms how to validate that the entities with filing obligations actually file a CbC report. There are also penalties in place in relation to the obligations for CbC Reporting which include penalties for failure to file the CbC report.[14]

14. The Slovak Republic notes the following specific processes in place that would allow to take appropriate measures in case the Slovak Republic is notified by another

jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report:

- Under Article 3(2) of the Tax Administration Act: a tax administrator shall perform tax administration in close cooperation with a taxable entity and other persons and shall advise them of their procedural rights and obligations if provided so by this Act. The tax administrator shall be obliged to deal with any matter which is the subject of tax administration, to attend to it without undue delay and expeditiously, and shall use the most suitable means leading to the correct determination and assessment of tax.
- Under Article 13(8) of the Tax Administration Act: if a filing has any deficiencies due to which it does not qualify for a discussion, the competent authority shall invite the taxable entity to eliminate such deficiencies according to its instruction and within the specified time limit. It shall also advise the taxable entity of the consequences connected with the failure to eliminate them.

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017b), the Slovak Republic has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the Slovak Republic. The Slovak Republic meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

16. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

17. The Slovak Republic has domestic legislation that permits the automatic exchange of CbC reports.[15] It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 29 May 2013, in force on 1 March 2014 and in effect for 2016) which allows the Automatic Exchange of Information. The Slovak Republic has also implemented EU Council Directive 2016/881/2016 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

18. The Slovak Republic signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 15 March 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1) (e) of the same agreement. The Slovak Republic also signed a bilateral CAA with the United States on 21 June 2017. As of 12 January 2018,

Slovak Republic has 54 bilateral relationships activated under the CbC MCAA[16] or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. The Slovak Republic has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, the Slovak Republic meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

19. Against the backdrop of the still evolving exchange of information framework, at this point in time the Slovak Republic meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

20. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

21. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), the Slovak Republic indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use. The Slovak Republic has also provided a copy of its guidance of appropriate use.

22. There are no concerns to be reported for the Slovak Republic in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference, there are no concerns to be reported for the Slovak Republic. The Slovak Republic thus meets these terms of reference.

Summary of recommendations on the implementation of country-by-country repotting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017) on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of Act 43/2017 Coll. amending and supplementing Act No. 442/2012 Coll. on International Assistance and Cooperation in Tax Administration adopted on 1 February 2017 (hereafter referred to as the "Act"). No secondary law or guidance was issued.

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] See Article 22b of the Act.

[8] See Article 24b(1) of the Act.

[9] See Article 22b(1) of the Act.

[10] See Article 24b (2) of the Act.

[11] See Article 22c of the Act. It should be noted in the English translation of Article 22c (1) that the word "not " has been erroneously omitted from the first sentence. The Slovak Republic confirms that this is a translation mistake. There is thus no issue to be reported in this respect.

[12] See Article 22d of the Act.

[13] See Article 22e of the Act. It also indicates that in addition to the obligations and the sanctions in the Act, it is possible to use the provisions of the Tax Administration Act 563/2009 of Coll. (chapter four: Tax Enforcement Proceedings): www.finance.gov.sk/en/Default.aspx?CatID=405 (accessed 23 April 2018).

[14] See Article 22g of the Act: the Tax Authority will impose a penalty of up to EUR 10 000 for failure to file the CbC report and a penalty of up to EUR 3 000 for failure to make the appropriate notifications; in both cases the penalty will be imposed repeatedly for repeat offences.

[15] See Article 22b of the Act.

[16] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

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OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Slovenia

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Slovenia's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Slovenia has rules (primary and secondary law, as well as guidance) that impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Slovenia. The first filing obligation for a CbC report in Slovenia commences in respect of fiscal years commencing on or after 1 January 2016. Slovenia meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Slovenia is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016. It is also a signatory to the CbC MCAA and it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Slovenia has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Slovenia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, Slovenia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Slovenia. Slovenia indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Slovenia meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and e) the effective implementation of CbC Reporting.

6. Slovenia has primary law (hereafter the "Tax Procedure Act") and secondary law (hereafter the "Rules") in place which implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5] Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Slovenia has primary legislation to impose a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to Slovenia's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing of a CbC report in Slovenia commences in respect of periods commencing on or after 1 January 2016.[8] [9] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[10]

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Slovenia has introduced local filing requirements as from the reporting period starting on or after 1 January 2017 or thereafter.[11]

12. No inconsistencies were identified with respect to the limitation on local filing obligation.[12]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Slovenia's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[13]

14. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

15. Slovenia has legal mechanisms in place to enforce compliance with the minimum standard: there are data comparison[14] mechanisms by the Agency of the Republic of Slovenia for Public Legal Records and Related Services. There are also penalties in place[15] in relation to the filing of a CbC report for failure: (i) to file a CbC report, (ii) to file a complete CbC report and (iii) to submit it on time. In addition, Slovenia indicates that the tax administration can verify whether all Slovene Ultimate Parent Entities have filed the CbC reports' by comparing the number of filed CbC reports' and the identity of those Ultimate Parent Entities with the number and identity of Slovene Ultimate Parent Entities that have exceeded the threshold of 750 million EUR consolidated group revenue

– the latter data is obtained from the Consolidated Financial Statements which are gathered by the Agency of the Republic of Slovenia for Public Legal Records and Related Services.

16. There are no specific processes in place that would allow Slovenia to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report, however Slovenia indicates that penalties may be imposed under article 397 of the Tax Procedure Act. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

17. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Slovenia has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Slovenia. Slovenia meets the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

18. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

19. Slovenia has sufficient legal basis in its domestic legislation to automatically exchange information on CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 27 May 2010, in force on 1 June 2011 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements which allow Automatic Exchange of Information.[16] It also implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

20. Slovenia signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under Section 8(1)(e) (ii) of the CbC MCAA on 20 December 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under paragraph (1)(e) of Section 8 of the same agreement. As of 12 January 2018, Slovenia has 53 bilateral relationships activated under the CbC MCAA[17] or exchanges under the EU Council Directive (2016/881/EU). Slovenia has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against

the backdrop of the still evolving exchange of information framework, at this point in time, Slovenia meets the terms of reference regarding the exchange of information framework.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time, Slovenia meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Slovenia indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

24. There are no concerns to be reported for Slovenia in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Slovenia. Slovenia thus meets the terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

	Aspect of the implementation that should be improved	Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of a Decree ratifying the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports and an Act amending the Tax Procedure Act (ZDavP-2J) to implement CbC Reporting requirements of the BEPS Action 13 and to transpose the EU Council Directive 2016/881/EU as regards mandatory Automatic Exchange of Information in the field of taxation (DAC4) – which is transposed in the Tax Procedure Act through Articles 248b, 255i, 255j, 255k, 255l and 397 of its consolidated text. The Decree can be accessed at www.uradni-list.si/_pdf/2016/Mp/m2016081.pdf (accessed 23 April 2018) and the act amending the Tax Procedure Act can be accessed at www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2016-01-2685?sop=2016-01-2685 (accessed 23 April 2018).

Secondary law entered into force on 1 July 2017 and consists of the rules amending the rules on the implementation of the Tax Procedure Act and can be accessed at www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2016-01-2685?sop=2016-01-2685 (accessed 23 April 2018). The secondary legislation notably implements technical guidance based on the OECD CbCR XML Reporting Schema, detailed guidance for filing CbC reports and the content of the CbC Reporting Notification template. Slovenia has also published a Technical Protocol (hereafter: Technical Guidance) regarding the form and method of delivery of CbC Reports to the Slovene tax administration (Financial Administration of the Republic of Slovenia, hereafter the "tax administration").

[6] Slovenia indicates that general online guidance is available on the internet page of the tax administration at www.fu.gov.si/en/supervision/podrocja/mednarodna_izmenjava/cbcr/ (accessed 23 April 2018). On this webpage, taxpayers can find general information about CbC Reporting. The webpage provides links to the OECD internet page on the BEPS project including the Action 13. Slovenia's tax administration has also prepared a booklet in the form of Frequently Asked Questions (FAQs), which is published on the website and will be updated from time to time. An updated version of the FAQs was published in October 2017.

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] See Article 65(1) of the Tax Procedure Act.

[9] A transitional provision regarding the first filing and exchange of the CbC report is provided for Constituent Entities (in case of local filing) and Surrogate Parent Entities, which shall first report

in respect of the fiscal year commencing on or after 1 January 2017: see Article 65(2) of the Tax Procedure Act.

[10] See Article 255i (2) of the Tax Procedure Act.

[11] See Article 255i (4) of the Tax Procedure Act, which refers back to the Directive; item B. 3.3. of the section "Method of completing the template – CbC Reporting Notification" of the rules; and question 7 of the guidance.

[12] It is noted that under item B. 3.3. of the section "Method of completing the template – CbC Reporting Notification" of the Rules, it is stated that where an MNE Group has more than one Constituent Entities that are resident for tax purposes in Slovenia and no other constituent entity of such MNE group has been appointed Reporting Entity, the entities that are resident for tax purposes in Slovenia may agree that only one of them will file the CbC report but they must notify the tax authority thereof.

[13] See article 255i (4) of the Tax Procedure Act; item B. 3.3. of the section "Method of completing the template – CbC Reporting Notification" of the rules; and question 7 of the guidance.

[14] Slovenia affirms that the tax administration can verify whether all Ultimate Parent Entities have filed the CbC reports by comparing the number of filed CbC reports as well as the identity of the Ultimate Parent Entities with the number and identity of Ultimate Parent Entities that have exceeded the threshold of 750 M EUR consolidated group revenue

[15] See article 397 of the Tax Procedure Act: (1) A fine of from EUR 800 to EUR 10 000 shall be imposed on individual sole traders or individuals who perform independent activities, a fine of from EUR 1 200 to EUR 15 000 shall be imposed on legal persons, and a fine of from EUR 3 200 to EUR 30 000 shall be imposed on legal persons deemed medium-sized or large companies under the Companies Act for failing to: 1. submit a tax return or failing to submit it in the prescribed manner or within the prescribed time limits (paragraphs three to five of Article 51, Articles 297, 297a, 297b, 307 and Articles 356 to 369); (…) failure by the ultimate parent entity to provide a country-by-country report or failure to provide it in the prescribed manner or within the specified time limit (paragraph two of Article 255i) (…) (2) The responsible person of an individual sole trader or the responsible person of an individual who performs independent activities shall be fined from EUR 400 and EUR 4,000 for the offences referred to in the preceding paragraph. (…) (3) The responsible person of a legal person shall be fined from EUR 600 to EUR 4 000 for the offences referred to in paragraph one of this Article, while the responsible person of a legal person deemed a medium-sized or large company under the Companies Act shall be fined for the aforementioned offences from EUR 800 to EUR 4 000.

[16] Slovenia lists bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions: Albania, Armenia, Austria, Azerbaijan, Belgium, Belarus, Bosnia and Herzegovina, Bulgaria, Canada, China (People's Republic of), Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, India, Iran, Ireland, Isle of Man, Israel, Italy, Japan, Kazakhstan, Korea, Kosovo, Kuwait, Latvia, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Qatar, Romania, Russia, Serbia, Singapore, Slovak Republic, Spain, Sweden, Switzerland, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States and Uzbekistan.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[17] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

South Africa

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. South Africa's implementation of the Action 13 minimum standard meets all applicable terms of reference.

Part A: Domestic legal and administrative framework

2. South Africa has rules (primary and secondary law) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in South Africa. The first filing obligation for a CbC report in South Africa commences in respect of fiscal years beginning on 1 January 2016 or later. South Africa meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. South Africa is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with a large number of other signatories of this agreement which provide notifications. As of 12 January 2018, South Africa has 51 bilateral relationships activated under the CbC MCAA or exchanges under a bilateral competent authority agreement. South Africa has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time South Africa meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[2]

Part C: Appropriate use

4. There are no concerns to be reported for South Africa. South Africa indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] South Africa meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing (a) the parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and ((e) the effective implementation.

6. South Africa has primary law in place for implementing the BEPS Action 13 minimum standard[5] establishing the necessary requirements, including the filing and reporting obligations. Secondary law[6] including a 'public notice'[7] (issued under section 29(1)(b) of the Tax Administration Act and which also has the status of secondary law) have also been published.

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. South Africa has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have a consolidated group revenue above a certain threshold, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to South Africa's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in South Africa commences in respect of fiscal years beginning on 1 January 2016 or later.[9] The CbC report must be filed within 12 months of the last day of the fiscal year of the MNE Group.[10]

10. Article 4.2. of the CbC regulations refers, for the information to be contained in a CbC report, to the Annex III of Chapter V of the *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 Final Report* (OECD, 2015). This reference includes a definition of "Revenues – Related Party". However, interpretative guidance issued by the OECD in April 2017, subsequent to the CbC regulations, explains that "for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report (OECD, 2015), should be interpreted as the Constituent Entities listed in Table 2 of the CbC report". It is expected that South

Africa issue an updated interpretation or clarification of the definitions of "Revenues – Unrelated Party" and "Revenues – Related Party" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. South Africa has introduced local filing requirements in respect of fiscal years beginning on 1 January 2016.[11] No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. South Africa's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[12] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

14. South Africa has legal mechanisms in place to enforce compliance with the minimum standard. There are processes in place that allow for the monitoring of filing entities.[13] There are also penalties in place in relation to the filing of a CbC report:

(i) penalties for failure to abide by reporting obligations and (ii) penalties for inaccurate information. This does not stem from provisions specific to CbC Reporting but from the comprehensive administrative penalty scheme and criminal sanctions scheme of the Tax Administration Act.[14]

15. In case South Africa is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report, South Africa would trigger the spontaneous exchange of information procedure within the tax administration, using the latter's enforcing powers if necessary. As no exchange of CbC reports has yet occurred, this aspect will be further monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), South Africa has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in South Africa. South Africa meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. South Africa has domestic legislation that permits the automatic exchange of CbC reports.[15] It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 3 November 2011, in force on 1 March 2014 and in effect for 2016), as well as multiple double tax agreements allowing for Automatic Exchange of Information.

19. South Africa signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 23 June 2017. It intends to have the CbC MCAA in effect with a large number of other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. South Africa has signed bilateral competent authority agreements (CAA) with the United States and with Hong Kong. As of 12 January 2018, South Africa has 51 bilateral relationships activated under have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[16] Against the backdrop of the still evolving exchange of information framework, at this point in time South Africa

meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

20. Against the backdrop of the still evolving exchange of information framework, at this point in time South Africa meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

21. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

22. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), South Africa indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

23. There are no concerns to be reported for South Africa in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

24. In respect of paragraph 12 (a) of the terms of reference, there are no concerns to be reported for South Africa. South Africa thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of the amendment to the Tax Administration Act No. 28 of 2011.

[6] Secondary law published on 23 December 2016 consists of "Regulations for purposes of paragraph (b) of the definition of "international tax standard" in section 1 of the Tax Administration Act, 2011, promulgated under section 257 of the Act, specifying the changes to the Country-by-Country Reporting Standard for Multinational Enterprises" (hereafter "the CbC regulations").

[7] Public notice published on 28 October 2016 setting out the record keeping requirements for purposes of CbC Reporting as well as transfer pricing reporting and auditing in general.

[8] The "summary of terms of reference" is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[9] See article 7 of the CbC regulations.

[10] See article 5 of the CbC regulations. It is noted that a Public Notice 1308 (notice published in terms of section 25 of the Tax Administration Act 2011 on 8 December 2017) has extended the first filing deadline of a CbC report until 28 February 2018 for Reporting Fiscal Years commencing before 1 March 2016. This will be monitored to ensure that the filing deadline in the cases of Reporting Fiscal years commencing as from 1 January and before 1 March 2016 will not impact the ability of the South Africa to meet its obligations relating to the exchange of information under the terms of reference.

[11] See article 7 of the CbC regulations.

[12] See paragraph 3 of article 2 of the CbC regulations.

[13] This is described as an administrative practice by the South African Revenue Service, which has analysed the group financial statements of groups headquartered in South Africa with a view to identifying those that meet or approach the total consolidated group revenue threshold to qualify as MNE Groups.

[14] These schemes are set out in chapters 15, 16, 17 and 26 of the Tax Administration Act: the comprehensive administrative penalty scheme of Chapter 15 (public notice under section 210(2)) or 16 (understatement penalty under section 222) of the TA Act applies, as well as criminal sanctions under Chapter 17 (for example, section 234(d) or (g); (h)(i)) of the TA Act. Enforcement scheme under TA Act, in particular section 26, Chapter 3, 4 & 5, applies in addition to sanctions for non-compliance listed above. In addition, under section 46(2)(b) of the TA Act, the SARS may require relevant material held or kept by a connected person, as referred to in paragraph (d)(i) of the definition of 'connected person' in the Income Tax Act, 1962, in relation to the taxpayer, located outside the Republic. If a taxpayer fails to provide material referred to in subsection (2)(b) of the TA Act, the material may not be produced by the taxpayer in any subsequent proceedings, unless a competent court directs otherwise on the basis of circumstances outside the control of the taxpayer and any connected person referred to in paragraph (d)(i) of the definition of 'connected person' in the Income Tax Act, in relation to the taxpayer.

[15] Section 108(1) of the Income Tax Act, 1962, read with section 231 of the Constitution of the Republic of South Africa. Act 108 of 1996, provide for the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and DTA's (ratified and published in the Government Gazette), to be effective as if they had been incorporated into the Income Tax Act and therefore becomes part of South Africa's domestic law.

[16] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

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Spain

Summary of key findings

1. Consistent with the agreed methodology**,** this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Spain's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises three definitional, interpretational and substantive issues in relation to its domestic legal and administrative framework. The report therefore contains three recommendations to address these issues.

Part A: Domestic legal and administrative framework

2. Spain has legislation in place that imposes and enforces CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Spain. The filing obligation for a CbC report in Spain commences in respect of fiscal years commencing on or after 1 January 2016. Spain meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the annual consolidated revenue threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than Spain[2] which may deviate from the guidance issued by the OECD. Although such deviation may be unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 standard,
- the definition of the Constituent Entities to be included in a CbC report which appears to be incomplete,[3] and
- the scenarios in which local filing may be required that are wider than those set out in the minimum standard.[4]

Part B: Exchange of information framework

3. Spain is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the CbC MCAA. It has provided its notifications under Section 8 (e) (i) of this agreement and intends to exchange information under the Multilateral Convention with a large number of non-EU signatories. In addition, Spain will exchange CbC reports within the EU in accordance with EU Council Directive (2016/881/EU). As of 12 January 2018, Spain has 52 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under a bilateral CAA. Spain has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Spain meets the terms of reference

relating to the exchange of information framework aspects under review for this first annual peer review.[5]

Part C: Appropriate use

4. There are no concerns to be reported for Spain. Spain indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[6] Spain meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[7]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Spain has primary and secondary legislation[8] in place which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning on or after 1 January 2016.

(a) Parent entity filing obligation

Summary of terms of reference:[9] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Spain has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 Report (OECD, 2015).

8. There are however a number of areas where the parent entity filing obligation appears to be inconsistent with the terms of reference:

- Under Spain's legislation (Article 13(1) of the regulation), any company resident in Spain having the status of a "dominant company" is required to file a CbC Report. However the definition does not include an entity that would be required to prepare consolidated financial statements if its equity interests were traded on a public securities exchange in Spain ("deemed listing provision"), as required under paragraph 18 i. of the terms of reference (OECD, 2017b). Spain explains that the Spanish Commercial Code imposes a requirement to prepare Consolidated Financial Statements on commercial companies which are non-listed, if certain conditions are met (e.g. control).[10] It is however noted that certain types of entities, in particular "civil companies" ("*sociedades civiles*") are not

subject to this requirement to prepare Consolidated Financial statements, which could include the holding company of a group engaged in commercial activity. Spain indicates that it is not aware of such existing structures where a civil company would be an Ultimate Parent Entity of an MNE group, and that this would be a very rare occurrence. However, Spain also indicates that in the event where such a structure was identified, it would be likely that the civil company, as the dominant company, would be considered as being required to prepare Consolidated Financial Statements and thus required to file a CbC report as the Ultimate Parent Entity of the MNE Group, in accordance with the terms of reference. Spain further indicates that it would issue guidance or rulings to clarify this if such cases were to arise. As such, no recommendation is issued but this will be monitored.

- Under the terms of reference, Constituent Entities include any business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size and materiality grounds. This requirement does not appear to be included in the Spanish legislation. Under the terms of reference, a permanent establishment should only be separately disclosed as a Constituent Entity in a CbC Report if a separate financial statement for the permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes is prepared. However, Article 14 of the regulation appears to require all permanent establishments to be separately disclosed as Constituent Entities.

9. It is recommended that Spain clarify or introduce changes to ensure that the definition of a Constituent Entity is consistent with the terms of reference.

10. In respect of the entities required to file a CbC report, Spain's legislation states that "Entities referred to in paragraph 1 of Article 13 of this Regulation are required to submit the CbC report herein specified only if the aggregate turnover of all persons or entities of the group is at least EUR 750 million in the 12 months prior to the first day of the fiscal year concerned". While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Spain, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Spanish tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[11] It is thus recommended that Spain amend this rule so that it would apply in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Spain, when local filing requirements are applicable.

11. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

12. The first filing obligation for a CbC report in Spain applies in respect of reporting fiscal years commencing on or after 1 January 2016. The CbC report must be filed no later than 12 months after the last day of the reporting fiscal year.

13. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[12]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

14. Spain has introduced local filing requirements which apply to reporting fiscal years commencing on or after 1 January 2016.[13]

15. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), local filing may be required under Spain's legislation where no agreement exists between Spain and the jurisdiction of the Ultimate Parent Entity of the MNE group for the automatic exchange of CbC reports. It is not clear that this requires there to be an international agreement (i.e. a tax convention or tax information exchange agreement) for Automatic Exchange of Information in place. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in Spain's legislation. Under Spain's legislation, local filing may be required in circumstances where there is no current international agreement between Spain and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. It is recommended that Spain amend the above condition or otherwise take steps to ensure that local filing can only be required in the circumstances contained in the terms of reference.

16. No other inconsistencies were identified with respect to the limitation on local filing obligations.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

17. Spain's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[14] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

18. Spain has legal mechanisms in place to enforce compliance with the minimum standard. There are notification mechanisms in place as the Spanish legislation requires that any company resident in Spain that is part of a group that falls within the scope of CbC Reporting must notify the tax authority of the tax jurisdiction of the Constituent Entity in the group that is required to submit a CbC report. In cases of non-compliance, Spain indicates it will apply general enforcement rules found in Spain's General Tax Law 58/2003 of 23rd December 2003 which comprises penalties and sanctions if a company resident in Spain fails to notify the tax authority in Spain. Spain indicates that the General Tax law of December 2003 also covers penalties in relation to the filing obligations of a CbC report including penalties for failure to file, and late, incorrect or incomplete filing.

19. There are no specific processes in place that would allow to take appropriate measures in case Spain is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

20. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Spain has a domestic framework to impose CbC requirements on MNE Groups whose UPE is resident for tax purposes in Spain. Spain meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of apparent inconsistencies with the terms of reference with respect to (i) the annual consolidated group revenue threshold when local filing applies (paragraphs 8 (a) ii. of the terms of reference (OECD, 2017b)), (ii) the definition of Constituent Entity (paragraph 8 (a) iii. of the terms of reference (OECD, 2017b)); and (iii) the conditions for local filing (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

21. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

22. Spain has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 11 March 2011, in force on 1 January 2013 and in effect for 2016) and (ii) a number of double tax agreements and tax information and exchange agreements (TIEAs).[15] Spain is also committed to the exchange of CbC reports within the European Union under EU Council Directive (2016/881/EU).

23. Spain signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 31 March 2017. It intends to have the CbC MCAA in effect with a large number of the non-EU Competent Authorities which are signatories to the CbC MCAA and provide a notification under Section 8(1)(e) of the same agreement. This is in addition to all EU Member States under the EU Directive.

24. As of 12 January 2018, Spain has 52 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under a bilateral CAA.[16] Spain has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Spain meets the terms of reference.

Conclusion

25. Against the backdrop of the still evolving exchange of information framework, at this point in time Spain meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

26. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

27. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Spain indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

28. There are no concerns to be reported for Spain in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

29. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Spain. Spain thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation – annual consolidated group revenue threshold	It is recommended that Spain amend the annual consolidated group revenue threshold calculation rule so that it applies in a manner consistent with the OECD guidance on currency fluctuations, when local filing requirements are applicable.
Part A	Domestic legal and administrative framework - Parent entity filing obligation – Definition of Constituent Entity	It is recommended that Spain amend or otherwise clarify the definition of a Constituent Entity in a manner consistent with the terms of reference.
Part A	Domestic legal and administrative framework - Limitation on local filing	It is recommended that Spain amend its legislation or otherwise take steps to ensure that local filing is only required in the circumstances contained in the terms of reference.
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017b).

[3] Paragraph 8 (a) iii. of the terms of reference (OECD, 2017b).

[4] Paragraph 8 (c) iv. a) b) and c) of the terms of reference (OECD, 2017b).

[5] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[6] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[7] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[8] Primary law consists of Corporate Tax Law, 27/2014, 27 November (Article 18). Secondary legislation consists of Regulation of the corporate tax law (the "regulation"), approved by Royal Decree 634/2015, 10 July (Articles: 13 and 14)). Secondary law consists of an Order of 28 December 2016 approving the Form to be used for filing a CbC report in Spain (Orden HFP/1978/2016, de 28 de diciembre, por la que se aprueba el modelo 231 de Declaración de información país por país: www.boe.es/buscar/doc.php?id=BOE-A-2016-12484, accessed 23 April 2018).

[9] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[10] Spain indicates that under Article 18.2 of the Corporation Tax Law, the term "dominant company" is comparable to "parent company" under Article 42 of the Spanish Code of Commerce which is required to prepare consolidated annual accounts. Article 18.2 of the Corporation Tax Code also provides that "there is a group when an entity holds or can control another or other [companies] according to the criteria established in Article 42 of the Commercial Code, regardless of its residence and the obligation to prepare consolidated annual accounts". This means that in certain specific cases, a dominant company may not be required to draw up Consolidated Financial

Statements, but it will be considered as the dominant company of a group and will be required, in most cases, to file the CbC report under the Corporation Tax Code.

[11] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold of the "Guidance on the Implementation of Country-by-Country Reporting" (OECD, 2018).

[12] It is noted that Spain's legislation and guidance do not contain any provision relating to the "Source of data" to complete a CbC report. Spain indicates that it will provide for clarifications in this respect if difficulties or inconsistencies in CbC reports are detected. This will be monitored.

[13] See Article 13.1 paragraph 2 of the regulation. These requirements apply to Constituent Entities that are tax resident in Spain as well as to permanent establishments of non-resident entities.

[14] See Article 13.1 paragraph 3 of the regulation.

[15] Listed here: www.minhafp.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/cdi.aspx (accessed 23 April 2018). All double tax agreements allow Automatic Exchange of Information except with Switzerland and Panama.

[16] Spain indicates that it will further update the list of jurisdictions it intends to exchange CbC reports with, before the first exchanges of information in June 2018. Note: Spain also has an exchange relationship with Gibraltar on the basis of the EU Council Directive (2016/881/EU).

References

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Sri Lanka

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Sri Lanka does not yet have a complete legal and administrative framework in place to implement CbC Reporting and indicates that it will not apply CbC requirements for the 2019/2020 fiscal year.[1] It is recommended that Sri Lanka finalise the domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part A: Domestic legal and administrative framework

2. Sri Lanka does not yet have legislation in place to implement the BEPS Action 13 minimum standard.[2] Sri Lanka indicates that amendments are needed in secondary law. At this time, Sri Lanka estimates that amendments to secondary legislation[3] will come into effect in 2018. Sri Lanka indicates that it will apply CbC requirements as of 1 April 2019. Sri Lanka has draft secondary legislation, following the model legislation provided by BEPS Action 13 which is to be passed sometime soon. It is recommended that Sri Lanka finalise the domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Sri Lanka currently does not have a network for exchange of information in effect which would allow for Automatic Exchange of Information for CbC Reporting. Sri Lanka is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"). Sri Lanka does not yet have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is recommended that Sri Lanka take steps to join the Convention and have it in force for taxable years starting as from 1 April 2019 and have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Sri Lanka will not be exchanging CbC reports in 2018.[4]

Part C: Appropriate use

4. In respect of the terms of reference under review,[5] it is recommended that Sri Lanka take steps to ensure that the appropriate use condition is met ahead of the first

exchanges of information. It is however noted that Sri Lanka will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Sri Lanka does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Sri Lanka does not yet have a legal and administrative framework in place to implement CbC Reporting and it indicates that it will implement CbC Reporting requirements for the 2019/2020 fiscal year.

8. Sri Lanka indicates that that the legislation for CbC Reporting is currently in draft stages. At this time, Sri Lanka estimates that the legislation will come into effect during 2018.

9. Sri Lanka is willing to introduce an obligation on the ultimate parent entities to file a CbC report within 12 months of the end of the fiscal year if the consolidated annual turnover is equal to or higher than LKR 115 billion (Sri Lankan rupee).[7] Sri Lanka affirms that intends to introduce definitions in accordance with those in Action 13 minimum standard.

Conclusion

10. In respect of paragraph 8 of the terms of reference, Sri Lanka does not yet have a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Sri Lanka. It is recommended that Sri Lanka take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

11. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

12. Sri Lanka does not yet have domestic legislation that permits the automatic exchange CbC reports in place and thus may not implement CbC Reporting requirements for the 2018 fiscal year. Since Sri Lanka is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"), it will not be in effect at the start of the commencement of CbC Reporting in Sri Lanka on 1 January 2019. Sri Lanka has a

treaty network for exchange of information that includes Double Tax Agreements with forty-four jurisdictions plus a multilateral Agreement with SAARC.[8]

13. Sri Lanka does not have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Sri Lanka will not be exchanging CbC reports in 2018.

Conclusion

14. It is recommended that Sri Lanka take steps to complete its exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. Sri Lanka does not yet have measures in place relating to appropriate use. It is recommended that Sri Lanka take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Sri Lanka will not be exchanging CbC reports in 2018.

Conclusion

17. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), Sri Lanka is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Sri Lanka will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework – parent entity filing obligation	It is recommended that Sri Lanka finalize its steps to implement a legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Sri Lanka take steps to join the Convention and have it in force for taxable years starting as from 1 January 2019 and have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Sri Lanka take steps to ensure that the appropriate use condition is met.

Notes

[1] The Fiscal Year is the period of 12 months commencing from 1 April and ending on 31 March of the following year.

[2] Paragraph 8 of the terms of reference (OECD, 2017).

[3] Sri Lanka affirms that intends to follow the model legislation provided by BEPS Action 13 subject to the laws and provisions of the domestic Acts.

[4] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[7] According to the January 2015 average exchange rate of Euro to Sri Lankan Rupee measured by the Sri Lankan Central Bank.

[8] Sri Lanka indicates that it has already carried out exchanges of information on request under its existing double tax agreements.

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Sweden

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Sweden's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Sweden has rules (primary law and guidance) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity (UPE) of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Sweden. The first filing obligation for a CbC report in Sweden commences in respect of reporting fiscal years beginning on 1 January 2016 or later. Sweden meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Sweden is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which is in effect for 2016, and it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. Sweden has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Sweden has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Sweden has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Sweden meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Sweden. Sweden indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Sweden meets the terms

of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Sweden has primary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.[5] Guidance has also been published.[6]

(a) Parent entity filing obligation

Summary of terms of reference:[7] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Sweden has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on UPEs of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to Sweden's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Sweden commences in respect of reporting fiscal years beginning on 1 January 2016 or later.[8] The CbC report must be filed within 12 months of the last day of reporting fiscal year end[9] of the MNE Group.

10. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Sweden has introduced local filing requirements in respect of reporting fiscal years beginning on 1 January 2016[10] or later.

12. Under Sweden's law, local filing requirements can be triggered if "the jurisdiction in which the Ultimate Parent Entity is resident does not have a Qualifying Competent Authority Agreement for filing such reports in effect to which Sweden is a Party" by the time that the CbC report should be filed with the Swedish Tax Authority.[11] Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition (a) in Sweden's legislation. However, Sweden confirms that in practice the law will be applied in a manner consistent with the OECD terms of reference. Sweden also indicates that this is reflected in its legislative preworks which state that a Qualifying Competent Authority Agreement presupposes that both countries are parties to an international treaty, such as the treaty of the European Council or the OECD Convention and therefore, it needs not be stated in the conditions. As such, no recommendation is made but this will be monitored.

13. No other inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

14. Sweden's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.[12] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

15. Sweden has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other group company resident in Sweden.[13] Sweden indicates there are no penalties in place in relation to late or inaccurate filing of a CbC report. However, the Swedish tax authority could file for an injunction including a penalty. If the CbC report is not produced after such an injunction, the penalty could be deemed payable by the courts.

16. There are no specific processes in place that would allow to take appropriate measures in case Sweden is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

17. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Sweden has a domestic legal and administrative framework to impose and enforce CbC requirements on the UPE of an MNE Group that is resident for tax purposes in Sweden. Sweden meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

18. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

19. Sweden has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011),

(signed on 27 May 2010, in force on 1 September 2011 and in effect for 2016). Sweden has also implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards to the mandatory Automatic Exchange of Information in the field of taxation.

20. Sweden signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 6 July 2017. It intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. Sweden also signed a bilateral CAA with the United States. As of 12 January 2018, Sweden has 53 bilateral relationships activated under the CbC MCAA[14] or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Sweden has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Sweden meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time Sweden meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Sweden indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports*

(OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

24. There are no concerns to be reported for Sweden in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for the Sweden. Sweden thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law implementing CbC Reporting consists of law SFS 2011:1244 amending the Swedish Administrative Tax Code (*Svensk författningssamling 2011:1244 Ch. 33a*) (hereafter the "Tax Code"). The Swedish tax Agency provided an in-office translation of the CbC Reporting sections included in Chapter 33a of the Tax Code.

Sweden indicates that objective of secondary law (*Skatteförfarandeförordningen (2011:1261) Ch. 7, par. 2 a)* is to ensure that the main business activity(ies) of each constituent entity is stated in accordance with table 2 of the Annex III of the Transfer Pricing documentation – CbC Report.

[6] The Swedish tax agency provides a technical user guide to enable MNEs to be compliant with Swedish legislation, which follows the OECD schema and guidelines, available at www.skatteverket.se/cbcr (accessed 23 April 2018). The text is available in Swedish only. In addition, the Swedish tax authority provides legal guidance on its external website "Rättslig vägledning".

[7] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[8] See CbC Peer Review Questionnaire – Question 6(j)

[9] See Para 11 of the Chapter 33a of the Tax Code

[10] See Para 11 of the Chapter 33a of the Tax Code

[11] See Article 2 of Para 5 of Chapter 33a of the Tax Code.

[12] See Para 7 of Chapter 33a of the Tax Code.

[13] See Paras 8 and 9 of Chapter 33a of the Tax Code.

[14] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Switzerland

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Switzerland's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Switzerland has rules (primary and secondary law) that impose and enforce CbC requirements on the Ultimate Parent Entity of multinational enterprise group ("MNE" Group) that is resident for tax purposes in Switzerland. The first filing obligation for a CbC report in Switzerland will apply in respect of reporting fiscal years beginning on or after 1 January 2018. Switzerland meets all the terms of reference relating to the domestic legal and administrative framework.[1]

Part B: Exchange of information framework

3. Switzerland is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) which came into force on 1 January 2017. The Convention is therefore not in effect with respect to the fiscal year starting on 1 January 2016. It is noted that Switzerland allows an Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Switzerland to file a CbC report for reporting fiscal years 2016 and 2017 under a voluntary parent surrogate mechanism. Switzerland has submitted a Unilateral Declaration to align the effective date of the Convention with the first intended exchanges of information on CbC reports under the CbC MCAA (as permitted under paragraph 6 of Article 28 of the Convention), in order to enable exchanges of CbC reports relating to the reporting fiscal years 2016 and 2017 with other jurisdictions that also provide the same Unilateral Declaration. Switzerland is also a signatory of the CbC MCAA (signed on 27 January 2016). It has provided notifications under Section 8 of this agreement and it intends to have the CbC MCAA in effect with all members of the Inclusive Framework and all signatories to the CbC MCAA as of the notification date (1 December 2017). As of 12 January 2018, Switzerland has 49 bilateral relationships activated under the CbC MCAA. Against the backdrop of the still evolving exchange of information framework, at this point in time Switzerland meets the terms of reference.[2]

Part C: Appropriate use

4. There are no concerns to be reported for Switzerland. Switzerland indicates that measures are in place to ensure the appropriate use of information in all six areas

identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] Switzerland meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and ((e) the effective implementation.

6. Switzerland has primary legislation (the "CbCR law") and secondary legislation[5] to implement the BEPS Action 13 minimum standard, establishing the necessary requirements including the filing and reporting obligations. No guidance has been published.

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Switzerland has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. It is noted that there is no definition of an "MNE Group" in the CbCR law. However, Switzerland indicates that such definition in the CbCR law is not required, as the definition contained in the CbC MCAA is directly applicable under the Swiss legal framework.

9. With respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017b)), it is noted that a Constituent Entity resident in Switzerland may be required to file a CbC report in certain circumstances (local filing)[7] where the MNE Group whose Ultimate Parent Entity, which would not be resident in Switzerland, would have a certain total consolidated group revenue that the Federal Council will set in accordance with the international standards.[8] The Federal Council has set the annual consolidated group revenue threshold to trigger the filing obligation at CHF 900 million Swiss Francs.[9] Further the explanation report to the CbCR ordinance clarifies that Switzerland will not require a local filing from a Constituent Entity (which is a Swiss tax resident) if the MNE Group does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[10]

10. No inconsistencies were identified with respect to the parent entity filing obligation.[11]

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

11. The first filing obligation for a CbC report in Switzerland will apply in respect of reporting fiscal years beginning on or after 1 January 2018. In addition, Switzerland allows Ultimate Parent Entities of MNE Groups resident in Switzerland to file a CbC report for earlier reporting fiscal years under a "voluntary parent surrogate filing" mechanism.[12] The CbC report will have to be filed within 12 months after the end of the reporting fiscal year of the MNE Group.[13]

12. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Switzerland introduced a local filing requirement in respect of reporting fiscal years beginning on or after 1 January 2018.[14]

14. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), local filing requirements can be required if the "*jurisdiction of residence of the Ultimate Parent Entity is not a partner jurisdiction"*.[15] Switzerland explains that the provision for local filing does not contain an explicit reference to "Qualifying Competent Authority Agreement". However, for the purpose of local filing the CbCR law Act refers to the term "partner jurisdiction". *A "Partner jurisdiction" is defined as "a country or territory with which Switzerland has agreed to automatically exchange CbC reports"*.[16] Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". The condition in Switzerland`s CbCR law may be interpreted as being wider than this, as applying to situations where there is no current international agreement between Switzerland and the residence jurisdiction of the

Ultimate Parent Entity, which is not permitted under the terms of reference. However, Switzerland confirms that the local filing provision contained in the CbCR law will be applied only in line with the Model Legislation and terms of reference. This was also the intention of the Swiss Federal Council and was confirmed by the Swiss Parliament. The dispatch of the Swiss Federal Council to the Swiss Parliament specifically mentions this point as follows: "*Les cas de figure permettant d'appliquer le mécanisme secondaire devraient être limités à ceux recommandés par le modèle de législation interne mis à disposition par l'OCDE dans le rapport sur l'action 13*." (« *The cases in which the secondary mechanism may apply should be limited to those that are recommended in the Model Legislation made available by the OECD in the Action 13 Report*").[17] Switzerland quoted on the website of the State Secretariat for International Finance SIF a reference to the above-cited paragraph in the dispatch.[18]

15. No inconsistencies were identified with respect to the limitation on local filing obligation. [19] [20]

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

16. Switzerland's local filing requirements would not apply if there was surrogate filing in another jurisdiction by an MNE group.[21]

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

17. Switzerland has legal mechanisms in place to enforce compliance with the minimum standard in its CbCR law. There are notification mechanisms that would apply to Ultimate Parent Entities and Surrogate Parent Entities in Switzerland.[22] There are also penalties in relation to the filing and registration obligations of CbC Reporting:[23]

(i) penalties for non-filing or late filing (ii) penalties for incorrect or inaccurate filing and (iii) general penalties for non-compliance with the Swiss Federal Tax Administration's orders. Switzerland may also conduct inspections to verify that the obligations of the Constituent Entities are fulfilled.[24]

18. With respect to specific processes in place that would allow to take appropriate measures in case Switzerland is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report, Switzerland reports the following procedure: according to Articles 16 and 22 of the CbCR law, the Swiss

Federal Tax Administration would be able to request from the concerned Reporting entity to correct an incorrect or incomplete report or to comply with the CbCR law and the applicable agreement (e.g. the CbC MCAA).[25]

Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Switzerland has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Switzerland. Switzerland meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

20. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

21. Switzerland has domestic legislation that permits the automatic exchange of CbC reports.[26] It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") (signed on 15 October 2013, entered into force on 1 January 2017). Switzerland has submitted a Unilateral Declaration to align the effective date of the Convention with the first intended exchanges of information on CbC reports under the CbC MCAA (as permitted under paragraph 6 of Article 28 of the Convention[27]), in order to enable exchanges of CbC reports relating to the reporting fiscal years 2016 and 2017[28] with other jurisdictions that also provide the same Unilateral Declaration.

22. Switzerland is also a signatory of the CbC MCAA (signed on 27 January 2016) and has submitted a full set of notifications under Section 8. It intends to have the CbC MCAA in effect with all members of the Inclusive Framework and all signatories to the CbC MCAA as of the notification date (1 December 2017). Switzerland indicates that it has not yet decided whether it will be negotiating bilateral QCAAs. As of 12 January 2018, Switzerland has 49 bilateral relationships activated under the CbC MCAA. Switzerland has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[29] Against the backdrop of the still evolving exchange of information framework, at this point in time Switzerland meets the terms of reference.

Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time Switzerland meets the terms of reference.

Part C: Appropriate use

24. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

25. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Switzerland indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

26. There are no concerns to be reported for Switzerland in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

27. In respect of paragraph 12 (a) of the terms of reference, there are no concerns to be reported for Switzerland. Switzerland thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] The Swiss Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals ("CbCR law") being the Primary Law in Switzerland (see www.admin.ch/opc/fr/classified-compilation/20162186/index.html, accessed 23 April 2018), the Swiss Ordinance on the International Automatic Exchange of Country-by-Country Reports of Multinationals ("CbCR ordinance") being the Secondary Law in Switzerland (see www.admin.ch/opc/fr/classified-compilation/20171498/index.html, accessed 23 April 2018 and the corresponding explanation report www.newsd.admin.ch/newsd/message/attachments/49805.pdf, accessed 23 April 2018).

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] See Article 8 of the CbCR law.

[8] See Article 6 of the CbCR law.

[9] See Article 3 of the CbCR ordinance.

[10] See explanation report to Article 3 of the CbCR ordinance « *Même lorsqu'il atteint le seuil de CHF 900 millions (francs), un groupe d'entreprises multinationales ne doit pas fournir de déclaration si le seuil fixé en monnaie nationale de l'État de résidence de la société mère n'est pas atteint et qu'il correspond à EUR 750 millions, valeur au 1er janvier 2015 » (Even when it reaches the threshold of CHF 900 million, a group of multinational enterprises is not obliged to provide a declaration if the threshold fixed in the national currency of the State of residence of the parent company is not reached and if it corresponds to EUR 750 million, value as of 1 January 2015*).

[11] It is noted that in Article 2 letter f (definition of an Ultimate Parent Entity), reference is not made specifically to a public securities market exchange "in Switzerland" in relation to the deeming listing provision.

[12] See Article 30 of the CbCR law. Groups can submit a country-by-country report if they so wish for tax periods before 2018. The Act provides that the Federal Tax Administration (FTA) will transmit these reports on the basis of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports to partner states from 2018.

[13] See Article 11.1 and Article 2 letter j of the CbCR law. Switzerland indicates that Article 2 letter j of the CbCR law refers to the following Swiss laws, which define "Fiscal Year": Article 31 para. 2 of the Federal Act of 14 December 1990 on the harmonization of the direct taxes of cantons and municipalities (StHG), (www.admin.ch/opc/fr/classified-compilation/19900333/index.html, accessed 23 April 2018): "The fiscal period corresponds to the commercial period."; and Article 79 para. 2 of the Federal Act of 14 December 1990 on the federal direct tax (DBG), (www.admin.ch/opc/fr/classified-compilation/19900329/index.html, accessed 23 April 2018): "The fiscal period corresponds to the commercial period."

[14] See Article 8 of the CbCR law.

[15] See Article 8 of the CbCR law.

[16] See Article 2 letter b of the CbCR law.

[17] See page 44, www.admin.ch/opc/fr/federal-gazette/2017/33.pdf (accessed 23 April 2018). Switzerland further indicates that the dispatch will be considered by courts when interpreting the Swiss CbCR law.

[18] www.sif.admin.ch/sif/en/home/themen/informationsaustausch/automatischer-informationsaustausch/cbcr.html (accessed 23 April 2018): "Swiss business units of groups which are domiciled abroad can be obliged to submit a country-by-country report in Switzerland in certain cases. However, as Switzerland indicated in the dispatch of 23 November 2016 (accessed 23 April 2018), this obligation will be restricted to cases for which the OECD Model Law makes provision for in the report on BEPS action 13."

[19] See Article 8 of the CbCR law: it is noted that local filing by Constituent Entities is required upon request of the Swiss tax administration subject to meeting the conditions for local filing.

[20] It is noted that Article 11 paragraph 2 of the CbCR law provides, in case of local filing, that the deadline for submission of the CbC report begins on the day on which the Federal Tax Administration (FTA) requests CbC report in writing from the Constituent Entity resident in Switzerland.

[21] See Article 8 paragraph 2 and Article 9 of the CbCR law.

[22] See Article 10 of the CbCR law.

[23] See Articles 12, 25 and 26 of the CbCR law. Article 12 of the CbCR law contains a penalty for late filing or failure to file of 200 Swiss Francs per day after the filing deadline (with a maximum of CHF 50 000 (Swiss Francs). Article 25 of the CbCR law contains a maximum penalty of CHF 100 000 for wilfully incorrect or incomplete CbC reports. Article 26 of the CbCR law contains a maximum penalty of CHF 10 000 for not following the administrative order of the Swiss Federal Tax Administration issued according to Article 22 of the CbCR law.

[24] See Article 22 of the CbCR law:

"1. The Swiss tax administration shall supervise the performance of the obligations arising from the applicable Convention and this Law on their completeness and conformity with the international standard on the basis of the information available".

2. If it finds that a constituent entity resident in Switzerland has not fulfilled or has only partially fulfilled its obligations, it shall grant it an opportunity to remedy the shortcomings found. It sets an appropriate time limit by making it aware of the measures provided for in para. 3.

3. If the entity has not remedied the shortcomings within the time limit, the AFC may: a. Require the books, supporting evidence and other documents of the entity or examine them on site; b. Require oral or written information.

4. In case of dispute, the Swiss tax administration makes a decision.

5. Upon request, it shall issue a decision on the following: a. The qualification of the reporting entity within the meaning of the applicable agreement and this Act; b. The content of the country-by-country declaration under the applicable Convention and this Act.

See also Article 26 of the CbCR law: "Any person who, in the context of a review under Article 22 intentionally fails to comply with a decision served on him by an authority subject to the penalty in the present Article shall be punishable by a fine not exceeding CHF 10 000".

[25] See Article 16 of the CbCR law: "1. The Swiss tax administration shall ensure the proper application of the applicable Convention and of this Act. 2. It shall take all necessary measures and arrangements to this end. 3. It may prescribe the use of specific forms and require certain forms to be transmitted in electronic form only".

See also Article 22 described above.

[26] For further details, see footnote 4.

[27] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] *Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax*."

[28] In respect of reporting fiscal years 2016 and 2017, Switzerland intends to send CbC reports that were filed in Switzerland under a voluntary parent surrogate filing mechanism.

[29] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Thailand

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Thailand does not have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Thailand finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Thailand does not have a legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. It is recommended that Thailand finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1]

Part B: Exchange of information framework

3. Thailand is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) and has not signed the MCAA. As of 12 January 2018, Thailand does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that Thailand steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Thailand will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[3] Thailand does not yet have measures in place relating to appropriate use. It is recommended that Thailand take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Thailand will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Thailand does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Thailand does not have a legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. Thailand indicates that it intends to implement the CbC Reporting requirements during the year 2018.

8. Thailand notes that draft Transfer Pricing legislation is currently in a legislative process and expected to come into effect by the end of 2018. However, this legislation does not explicitly impose CbC Reporting requirements. Thailand indicates that the Transfer Pricing legislation could function as a basis for secondary legislation to impose CbC Reporting. Thailand state that it will start drafting CbC Reporting legislation in 2018, subject to the Transfer Pricing legislation process.

9. It is recommended that Thailand finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Conclusion

10. In respect of paragraph 8 of the terms of reference (OECD, 2017), Thailand does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Thailand. It is recommended that Thailand finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

11. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

12. Thailand does not have a legal and domestic framework for the exchange of information in place.

13. Thailand is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) and has not signed the MCAA. As of 12 January 2018, Thailand does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Thailand steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Thailand will not be exchanging CbC reports in 2018.

Conclusion

14. It is recommended that Thailand steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Thailand will not be exchanging CbC reports in 2018.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. Thailand does not yet have measures in place relating to appropriate use. It is recommended that Thailand take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Thailand will not be exchanging CbC reports in 2018.

Conclusion

17. It is recommended that Thailand take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Thailand will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Thailand finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Thailand steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Thailand take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Turkey

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. It is recommended that Turkey finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure and appropriate use.

Part A: Domestic legal and administrative framework

2. Turkey does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Turkey. It is recommended that Turkey take steps to finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.[1] Specifically, it is recommended that Turkey ensure that local filing requirements will only apply consistently with the terms of reference.[2]

Part B: Exchange of information framework

3. Turkey has not yet completed a domestic legal basis for the exchange of information. Turkey has signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) on 3 November 2011, which is not in force yet. The Convention was ratified by the Turkish parliament on 20 May 2017 and Turkey expects that the process to the Convention entry into force will be completed soon. Turkey has Double Taxation Agreements with 88 countries, 83 of them are in effect that allow Automatic Exchange of Information. As of 12 January 2018, Turkey does not yet have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[3] it is recommended that Turkey take steps to have the Convention in force as soon as possible and have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Turkey will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,[4] because Turkey does not have measures in place in all six areas, it is recommended that Turkey take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Turkey will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Turkey has primary legislation in place regarding transfer pricing documentation requirements.[5] Turkey does not yet have secondary legislation in place for CbC Reporting purposes. No guidance has been issued so far.

7. Turkey reports draft secondary legislation is close to become final. The Secretariat has not received an official translation of the draft legislation. According to Turkey, the draft legislation is in line with the Action 13 report (OECD, 2015).

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

8. Turkey reports that the draft legislation requires local filing under one or more of the following conditions:

- The Ultimate Parent Entity of the MNE Group is not obligated to file a CbC Report in its jurisdiction of tax residence; or
- There is no Qualifying Competent Authority Agreement for the exchange of CbC report between the Turkish Revenue Administration and the competent authority in the relevant country in which Ultimate Parent Entity resides; or
- There has been a systemic failure.

9. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a) provides that a jurisdiction may require local filing if "the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report". This is narrower than the above condition in Turkey's draft legislation. According to Turkey, there are no specific separate definitions of "QCAA" and "International Agreement". Therefore, under Turkey's draft legislation, local filing may be required in circumstances where there is no current international agreement between Turkey and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. In its response to questions raised during the CbC peer review report drafting process, Turkey explained that it is party to the Convention and has 88 bilateral tax conventions (83 in effect) which provide for Automatic Exchange of Information. As such, there will be relatively few cases in practice where Turkey does not have a current international agreement with the residence jurisdiction of the Ultimate Parent Entity of an MNE group which has Constituent Entities in Turkey. Nevertheless, it is recommended that Turkey amend the above condition or otherwise takes steps to ensure that the CbC Reporting local filing obligation will only apply in the circumstances contained in the terms of reference.

10. No other inconsistencies were identified with respect to the limitation on local filing obligations.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

11. Turkey does not yet have its legal and administrative framework complete to implement CbC Reporting.

12. Turkey intends to apply CbC requirements for taxable years commencing on or after 1 January 2017. It is therefore recommended that Turkey take steps to finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, in line with the terms of reference.

Conclusion

13. In respect of paragraph 8 of the terms of reference (OECD, 2017a), Turkey does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the UPE of an MNE Group that is resident for tax purposes in Turkey. It is recommended that Turkey take steps to finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible. Specifically, it is recommended that Turkey ensure that local filing requirements will apply consistently with the terms of reference.

Part B: The exchange of information framework

14. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017a).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

15. Turkey has not yet completed a domestic legal basis for the exchange of information. Turkey has signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) on 3 November 2011. The Convention was ratified by the Turkish parliament on 20 May 2017 and Turkey expects that the process to the Convention entry into force will be completed soon. Turkey is not a signatory to the CbC MCAA. Turkey has Double Taxation Agreements with 88 countries, 83 of them are in effect[7] that allow Automatic Exchange of Information

16. As of 12 January 2018, Turkey does not yet have bilateral relationships activated under the CbC MCAA.

17. It is recommended that Turkey take steps to enable exchanges of CbC reports, in particular:

- bringing the Convention into force as soon as possible, notably depositing its instrument of ratification, carrying on any internal process so that the Convention is brought into effect and lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention; [8 9]
- signing the CbC MCAA;
- having QCAAs in effect.

Conclusion

18. It is recommended that Turkey take steps to have the Convention in force as soon as possible and have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Turkey will not be exchanging CbC reports in 2018.

Part C: Appropriate use

19. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

20. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Turkey indicates that measures are currently being developed to ensure the appropriate use of information in all six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017b). Because Turkey does not have measures in place in all six areas, it is recommended that Turkey take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Turkey will not be exchanging CbC reports in 2018.

Conclusion

21. In respect of paragraph 12 (a) it is recommended that Turkey take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Turkey will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Turkey take steps to finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, in line with the terms of reference.
Part A	Domestic legal and administrative framework – local filing conditions	It is recommended that Turkey amend the conditions for local filing or otherwise takes steps to ensure that the CbC Reporting local filing obligation will only apply in the circumstances contained in the terms of reference.
Part B	Exchange of information	It is recommended that Turkey take steps to have the Convention in force as soon as possible and have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Turkey take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017a).

[2] Paragraph 8 (c) iv. of the terms of reference (OECD, 2017a).

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017a).

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017a).

[5] General transfer pricing law: Article 13 of the Corporate Income Tax Law (the CITL No. 5520).

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017a).

[7] Turkey has TIEAs with Bermuda and Jersey, but they only permit exchange of information on request.

[8] Paragraph 6 of Article 28 of the Convention reads as follows: "[…] Any two or more Parties may mutually agree that the Convention […] shall have effect for administrative assistance related to earlier taxable periods or charges to tax."

[9] Reliance on Double Tax Agreements or Tax Information and Exchange Agreements may also be a possible route.

References

OECD (2017a), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD (2017b), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

Ukraine

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Ukraine does not have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Ukraine finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Ukraine does not yet have a complete domestic legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. It is recommended that Ukraine take steps to implement a domestic legal and administrative framework[1] to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Ukraine is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 27 May 2010, in force on 1 September 2013 and in effect for 2016). It is not a signatory to the CbC MCAA. As of 12 January 2018, Ukraine does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,[2] it is recommended that Ukraine take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Ukraine will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. Ukraine does not yet have measures in place relating to appropriate use.[3] It is recommended that Ukraine take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Ukraine will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Ukraine does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:[4] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

7. Ukraine does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year.

8. The steps for implementing new legislation in Ukraine are: (1) drafting legislation, (2) public discussion, (3) discussion within the Government, (4) approval by the Government, (5) submitting to the Parliament, (6) discussion within the Tax and Customs Committee of the Parliament, (7) first reading at the Parliament / voting / approval, (8) development of the draft law, (9) second reading at the Parliament / voting / approval, (10) submitting to the President for the signing and (11) signing by the President.

9. Ukraine states that in accordance with the information provided by the State Fiscal Service of Ukraine, there are about 100 MNE Groups, which could be considered as headquartered in Ukraine (i.e. place of management). Roughly, not more than ten of them comply with the threshold of EUR 750 million. There is no legislatively prescribed place of management test as well as mechanism for monitoring whether particular MNE is headquartered from Ukraine. State Fiscal Service performs such analysis according to its internal procedures based on the information, submitted by taxpayers (e.g. tax returns, financial statements, reports on beneficiary owners, etc.) and information available from open sources.

Conclusion

10. In respect of paragraph 8 of the terms of reference (OECD, 2017), Ukraine does not yet have a complete domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Ukraine. It is recommended that Ukraine take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

11. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

12. Ukraine does not have a domestic, legal basis for the exchange of information in place. Ukraine is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 27 May 2010, in force on 1 September 2013 and in effect for 2016). It is not a signatory to the CbC MCAA. Ukraine does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.

13. As of 12 January 2018, Ukraine does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Ukraine take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Ukraine will not be exchanging CbC reports in 2018.

Conclusion

14. In respect of the terms of reference under review, it is recommended that Ukraine take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Ukraine will not be exchanging CbC reports in 2018.

Part C: Appropriate use

15. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

16. Ukraine does not yet have measures in place relating to appropriate use. It is recommended that Ukraine take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Ukraine will not be exchanging CbC reports in 2018.

Conclusion

17. It is recommended that Ukraine take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Ukraine will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Ukraine take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Ukraine take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Ukraine take steps to ensure that the appropriate use condition is met.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[3] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[4] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

References

OECD (2017), "Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting" in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.

United Kingdom

Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of Country-by-Country (CbC) reports. The United Kingdom's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one interpretative issue in relation to its domestic legal and administrative framework. The report, therefore, contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. The United Kingdom has rules (primary and secondary law, as well as guidance) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in the United Kingdom. The first filing obligation for a CbC report in the United Kingdom commences in respect of fiscal years commencing on or after 1 January 2016. The United Kingdom meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the annual consolidated revenue threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than the United Kingdom[2] which may deviate from the guidance issued by the OECD. Although such deviation appears unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 standard.

Part B: Exchange of information framework

3. The United Kingdom is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also is a signatory of the Multilateral Competent Authority Agreements for exchanges of CbC reports (CbC MCAA); it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. The United Kingdom has also signed a bilateral Competent Authority Agreement with the United States, and has active bilateral arrangements with Guernsey, Jersey, the Isle of Man, Bermuda, the Cayman Islands and Hong Kong. It anticipates entering into additional bilateral QCAAs. As of 12 January 2018, the United Kingdom has 58 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under bilateral CAAs. The United Kingdom has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality,

consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time the United Kingdom meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.[3]

Part C: Appropriate use

4. There are no concerns to be reported for the United Kingdom. The United Kingdom indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[4] The United Kingdom meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[5]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. The United Kingdom has primary law in place for implementing the BEPS Action 13 minimum standard which enables the government to issue regulations on CbC Reporting. In 2016 and 2017, the United Kingdom issued such regulations (hereafter referred to as the "regulations")[6] establishing the necessary requirements, including the filing and reporting obligations. Guidance has also been published.[7]

(a) Parent entity filing obligation

Summary of terms of reference:[8] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. The United Kingdom has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017b)), where the MNE Group draws up, or would draw up, its Consolidated Financial Statements in a currency other than euros, the reference to EUR 750 million has effect as if it were a reference to the equivalent in that currency at the average exchange rate for the accounting period.[9] While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in the United Kingdom, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in

another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a United Kingdom tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.[10] The operation of the annual consolidated group revenue threshold calculation rule will be further monitored, including by the United Kingdom. It is recommended that if the operation of the rule becomes an issue, the United Kingdom will at that time take steps to ensure that it applies in a manner consistent with the OECD guidance on currency fluctuations.

9. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in the United Kingdom applies in respect of periods commencing on or after 1 January 2016.[11] The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.[12]

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.[13]

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. The United Kingdom has introduced local filing requirements as from the reporting periods starting on or after 1 January 2016.[14]

13. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), local filing requirements can be required if the "jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has entered into an International Agreement but has not entered into exchange arrangement[15] with the United Kingdom's Revenue and Customs in respect of the accounting period to which the report relates".[16] Although this condition does not reflect the details of paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) to

refer to a "Qualifying Competent Authority in effect" to which the United Kingdom is a Party "by the time for filing the Country-by-Country Report" (as the date when the condition relating to a QCAA may be tested), the United Kingdom confirms that it will apply this provision in accordance with the wording of these terms of reference. As such, no recommendation is made but this aspect will be further monitored.

14. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017b)), local filing requirements can be required if the exchange arrangements with the United Kingdom's Revenue and Customs and the appropriate authority of the jurisdiction in which the Ultimate Parent Entity has filed a CbC report are not operating effectively and the Constituent Entity in the United Kingdom has been notified in that respect by Revenue and Customs.[17] Although this condition does not reflect the details of paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017b) in particular in regard of the concept of "Systemic Failure", and may be interpreted in a broader meaning than the situation of a "Systemic Failure", the United Kingdom confirms that it will apply this provision in accordance with the wording of these terms of reference. As such, no recommendation is made but this aspect will be further monitored.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. The United Kingdom's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[18] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

16. The United Kingdom has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Constituent Entities in the United Kingdom.[19] There are also penalties in place in relation to the filing of a CbC report: (i) penalties for failure to file a CbC report,[20] (ii) daily default penalty[21] and (iii) penalties for inaccurate information.[22] The United Kingdom's regulations also include a power to audit a CbC report.

17. There are no specific processes in place that would allow to take appropriate measures in case the United Kingdom is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a

Reporting Entity with respect to its obligation to file a CbC report. The United Kingdom indicates that its legislation includes a power to audit a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017b), the United Kingdom has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the United Kingdom. The United Kingdom meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the annual consolidated group revenue threshold (paragraphs 8 (a) ii. of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

19. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference (OECD, 2017b)).

20. The United Kingdom has domestic legislation that permits the automatic exchange of CbC reports.[23] It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 27 May 2010, in force on 1 October 2011 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements which allow Automatic Exchange of Information.[24] It also implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

21. The United Kingdom signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 2 December 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. The United Kingdom has also signed a bilateral Competent Authority Agreement with the United States, and has active bilateral arrangements with Guernsey, Jersey, the Isle of Man, Bermuda, the Cayman Islands and Hong Kong. It anticipates entering into additional bilateral QCAAs. As of 12 January 2018, the United Kingdom has 58 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU)[25] and under bilateral CAAs.[26] The United Kingdom has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).[27] Against the backdrop of the still evolving

exchange of information framework, at this point in time the United Kingdom meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

22. Against the backdrop of the still evolving exchange of information framework, at this point in time the United Kingdom meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

23. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference (OECD, 2017b)).

24. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), the United Kingdom indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

25. There are no concerns to be reported for the United Kingdom in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

26. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for the United Kingdom. The United Kingdom thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation - annual consolidated group revenue threshold	The operation of the annual consolidated group revenue threshold calculation rule will be further monitored, including by the United Kingdom. It is recommended that if the operation of the rule becomes an issue, the United Kingdom will at that time take steps to ensure that it applies in a manner consistent with the OECD guidance on currency fluctuations.
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017b).

[3] Paragraph 9 (a) of the terms of reference (OECD, 2017b).

[4] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[5] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[6] Primary law consists of a general provision in the Finance Act 2015 s122 Country by Country Reporting www.legislation.gov.uk/ukpga/2015/11/section/122/enacted, accessed 23 April 2018. Secondary law consists of regulations introduced by a Statutory Instrument 2017/497 The Taxes (*Base Erosion and Profit Shifting*) (*Country by Country Reporting*) (*Amendment*) *Regulations 2017* which amended the Statutory Instrument 2016/237 The Taxes *(Base Erosion and Profit Shifting) (Country by Country Reporting) Regulations 2016*.

[7]Guidance was published on 26 February 2016: www.gov.uk/government/publications/country-by-country-reporting-updated (accessed 23 April 2018). Additional guidance was published on 16 August 2017, including the directions relating to how CbC reports will be filed and directions relating to the filing of CbC reports on an XML schema.

[8] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[9] See paragraph (2) of regulation 4.

[10] See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold of the "Guidance on the Implementation of Country-by-Country Reporting" (OECD, 2018).

[11] See paragraph (1) of regulation 3A.

[12] See paragraph (1) of regulation 3A.

[13] It is noted that guidance on CbC Reporting was published on 26 February 2016: taking into account this guidance with the further amendments and clarifications contained in Statutory Instrument 2017/497 (which came into force on 20 April 2017 and includes provisions which have amended or clarified some former provisions), no inconsistencies were identified.

[14] See regulation 3B and paragraph (3) of regulation 5; paragraphs (3) and (4) of regulation 3B; paragraph (1) of regulation 6; and paragraph (5)(a) of regulation 3B.

[15] The United Kingdom indicates that the term "Qualifying Competent Authority Agreement" is not defined in the legislation but that the term "exchange arrangement" has the same effect.

[16] See paragraph (2) of regulation 6.

[17] See paragraph (3) of regulation 6.

[18] See paragraph (5)(a) - for reference to voluntary parent surrogate filing - and paragraph (6) of regulation 3B.

[19] See paragraph (3) of regulation 3A for Ultimate Parent Entities, being noted that United Kingdom Constituent Entities are also subject to notification requirements pursuant to paragraph (2) of regulation 3C whereby they are requested to notify the identity of the Reporting Entity.

[20] See regulation 12: "A person is liable to a penalty of GBP 300 if the person fails to comply with regulations 3A(1), 3A(2), 3B(3), 3B(4), 3C(3) or 11.

[21] See regulation 13 : "If— (a) a penalty under regulation 12 is assessed; and (b) the failure in question continues after the person has been notified of the assessment, the person is liable to a further penalty, for each subsequent day on which the failure continues, of an amount (subject to regulation 19) not exceeding GBP 60 for each such day".

[22] See regulation 14:

(1) Where— (a) a person provides inaccurate information when filing a CBC report; and (b) condition A or B is met, the person is liable to a penalty not exceeding GBP 3 000 in respect of the report to which the inaccuracy relates.

(2) Where— (a) a person provides inaccurate information when responding to a direction under regulation 11; and (b) condition A or B is met, the person is liable to a penalty not exceeding GBP 3 000 in respect of each CBC report to which the inaccuracy relates.

(3) Condition A is that the person knows of the inaccuracy at the time information is provided but does not inform Revenue and Customs at that time.

(4) Condition B is that the person— (a) discovers the inaccuracy after the information is provided; and (b) fails to take reasonable steps to inform Revenue and Customs of that discovery.

[23] In the Taxation (International and Other Provisions) Act 2010, s. 2 and Finance Act 2006 s. 173 (1).

[24] The United Kingdom did not provide a list of these agreements.

[25] This includes exchanges with Cyprus and Gibraltar.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[26] In addition, a bilateral arrangement has been signed by the United Kingdom with Chile in order to enable exchanges for fiscal years commencing on or after 1 January 2016.

[27] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

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United States

Summary of key findings

1. Consistent with the agreed methodology**,** this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of Country-by-Country (CbC) reports. The United States' implementation of the Action 13 minimum standard meets all applicable terms of reference**,** except that it raises one definitional issue in relation to its domestic legal and administrative framework. The report, therefore, contains one recommendation to address this issue. The United States' competent authority should also continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.

Part A: Domestic legal and administrative framework

2. The United States has rules (primary and secondary law, as well as guidance) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in the United States. The first filing obligation for a CbC report in the United States commences in respect of fiscal years commencing on or after 30 June 2016. In addition, the United States has allowed US MNE Groups to file a CbC report for earlier reporting periods beginning on or after 1 January 2016 under a "parent surrogate filing" mechanism. The United States meets all the terms of reference relating to the domestic legal and administrative framework,[1] with the exception of:

- the exclusion of revenue other than "unrelated business taxable income" (UBTI) from the definition of "revenues" for certain tax-exempt entities,[2]

Part B: *Exchange of information framework*

3. The United States will rely on double tax conventions (DTCs) and tax information exchange agreements (TIEAs) permitting Automatic Exchange of Information as well as the Convention on Mutual Administrative Assistance in Tax Matters to exchange CbC reports with its intended partners. As of 12 January 2018, the United States' competent authority has signed 34 arrangements with competent authorities of other jurisdictions of the Inclusive Framework. The United States' competent authority should continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.

Part C: Appropriate use

4. The United States indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.[3] The United States meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.[4]

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. The United States has primary law and secondary law in place which implements the BEPS Action 13 minimum standard, and has also issued guidance in this respect.[5]

(a) Parent entity filing obligation

Summary of terms of reference:[6] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. The United States has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report[7] and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the determination of the annual consolidated group revenue,[8] it is noted that in relation to Constituent Entities which are certain types of tax-exempt organisations or with respect to certain tax-favoured plans or schemes, the definition of "revenue" includes only revenue reflected in "unrelated business taxable income" (UBTI),[9] being income not related to the main tax-exempt function of the entity, and thus generally subject to tax. This is different to the definition of "revenues" in the Action 13 minimum standard[10] and in guidance issued by the OECD in April 2017 which states that "*In determining whether the total consolidated group revenue of an MNE Group is less than EUR 750 million (…), all the revenue that is (or would be) reflected in the consolidated financial statements should be used*".[11] The United States explains that the definition in its law is not inconsistent with the minimum standard and that tax-exempt organisations (TEOs) derive funding to pursue their tax-exempt purpose from a variety of sources. Funding derived from donations from the public, grants from governmental entities and other TEOs, and fees for activities associated with the tax exempt purpose (such as hospital fees or educational tuition) is not taxable income to the TEO. The TEO is taxable on its UBTI, which consists of income from a trade or business unrelated to its charitable, educational, or other tax-exempt purpose as well as certain rents, royalties, interest or annuities received from controlled entities. The United States' CbC regulations

define revenue of a TEO by reference to the TEOs UBTI. The United States further explains that, although donations, grants, hospital fees, adoption fees, tuition, and the like might be considered "revenue" in a broad accounting sense (there is no other accounting label for those items), it does not believe those items constitute the revenue of a business enterprise as contemplated by Action 13 and accordingly should not be included in the definition of revenues for purposes of CbC Reporting. Nevertheless, it is recommended that the United States ensure that the definition of "consolidated group revenue" for the purposes of applying the threshold is consistent with the definition in the Action 13 minimum standard, as further clarified by OECD guidance.

9. No other inconsistencies were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing of a CbC report in the United States commences in respect of the reporting period of a U.S. MNE Group[12] commencing on or after 30 June 2016.[13] In addition, the United States has allowed US MNE Groups to file a CbC report for earlier reporting periods beginning on or after 1 January 2016 under a "parent surrogate filing" mechanism.[14]

11. With respect to the content of the CbC report (paragraph 8 (b) ii. and iv. of the terms of reference (OECD, 2017b)), in relation to Constituent Entities which are certain types of tax-exempt organisations or with respect to certain tax-favoured plans or schemes, the definition of "revenue" includes only revenue that is UBTI. This is different to the definition of "revenues in the Action 13 minimum standard[15] and as further clarified in OECD guidance (which does not envisage any exclusion of any amounts).[16] The United States explains that items of funding derived by TEOs which are not qualified as UBTI do not constitute the revenue of a business enterprise as contemplated by Action 13 and accordingly should not be included in the definition of revenues for purposes of completing Table 1 of a CbC report. The United States notes that the overwhelming majority of a TEO's "revenues" are derived from donations, grants, fundraising activities, and fees from the public for its tax-exempt activities, and all of the profits are devoted to the TEO's tax-exempt purpose. Very little, and in most cases none, of a TEO's "revenue" is derived from related party transactions. The United States also notes that U.S. TEOs, other than churches, are required to make some information publicly available, including information relating to related party transactions.[17]

12. In addition, the United States indicates that some TEOs own interests in subsidiaries that would be consolidated under U.S. GAAP if the TEO were a publicly traded corporation. The vast majority of such subsidiaries are U.S. entities that are non-taxable because they are organized as partnerships, single-owner limited liability companies, or tax-exempt corporations. A small minority of the subsidiaries are foreign entities, some of which are investment companies organized in low-tax jurisdictions, and some of which are tax-exempt entities in their tax jurisdiction of residence. TEOs can

enter into transactions with taxable foreign subsidiaries. Based on the United States' review of the publicly-available Forms 990 of several of the larger U.S. TEOs, it was found that most related party transactions of TEOs involve simple transfers of cash or property (mainly funding and donations) to related domestic TEOs for use in their tax-exempt activities. The most common related party service transaction involves fundraising to support the charitable or educational purpose. Moreover, in many cases, related party service and property transactions are reflected at cost. Transactions between a TEO and its investment entity typically consist of capital contributions from the TEO, which would not be revenue under any definition, and distributions from the investment entity. Nevertheless, it is recommended that the United States ensure that the definition of "revenue" for the purposes of completing Table 1 is consistent with the definition in Action 13 minimum standard, as further clarified by OECD guidance.

13. The CbC report must be filed with the US Ultimate Parent Entity's income tax return for the taxable year, in or with which the reporting period ends, on or before the due date (including extensions) for filing that return or as otherwise prescribed by the Form 8975 (to be used to file a CbC report).[18] The United States indicates that this is generally within 8.5 months of the taxable year end. However, because the CbC report may be prepared based on a reporting year that ends within the taxable year, in certain instances, the reporting period will end more than 12 months before the tax return is filed. This may result in a CbC report being filed later than the date recommended in the Action 13 minimum standard. As a result, the CbC report may subsequently be exchanged with a partner jurisdiction later than the timeline envisaged in the Action 13 Report (OECD, 2015).[19] The United States indicates that such instances should be minimal and would be mitigated by the fact that the United States will be exchanging CbC reports on an at least monthly basis. As the United States will anticipate the exchange of information deadlines with its treaty partners, no recommendation is made but this aspect will be further monitored to ensure that the filing deadline in these limited cases will not impact the ability of the United States to meet its obligations relating to the exchange of information under the terms of reference.[20]

14. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

15. The United States does not apply or plan to introduce local filing.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

16. The United States does not apply or plan to introduce local filing.[21]

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

17. The United States' rules provide for mechanisms to enforce compliance by all US Ultimate Parent Entities and Surrogate Parent Entities[22] with their filing obligations: the United States indicates that penalties may apply for failure to file a CbC report under a general regime provided for in the Internal Revenue Code (I.R.C. § 6038(b)). This penalty regime should allow the US tax authorities to compel the production of the information required in a CbC report.

18. The United States indicates that the statute of limitations with respect to a tax return that requires a CbC report generally will not begin to run until the CbC report is filed (once the CbC report is required under US law); if the taxpayer establishes a reasonable cause for the failure to file the CbC report, the statute of limitation will not begin to run with respect to the item(s) related to the CbC report until the CbC report is filed.[23] In addition, the United States indicates that it will develop a process to identify taxpayers reporting revenue of USD 850 million or more on their US tax return to monitor their compliance with the CbC Reporting requirement, and will follow up with those taxpayers that have not filed.

19. However, it appears that the provisions under (I.R.C. § 6038(b)) would not address shortcomings in relation to incomplete or erroneous filing of a CbC report relating to a US Constituent Entity which would be part of a US MNE Group.[24] The United States notes that there are return-preparer penalties (which may include a fine or imprisonment) which may apply for providing false or fraudulent information as to a material matter. Additionally, in cases where there is no external return preparer, similar penalties may apply for entity officials that sign the return on behalf of an entity as well as the entity on whose behalf the return is signed. In addition, although set forth in Treas. Reg. § 1.6038-4, the U.S. CbC Reporting regulations were issued under the authority of sections 6001, 6011, 6012, 6031, and 6038 of the Internal Revenue Code. Those provisions provide authority for the Treasury Department and the IRS to issue regulations requiring taxpayers to furnish information that is deemed necessary to determine whether the taxpayer is liable to tax. Those provisions provide authority for the IRS to request information directly from the taxpayer to the extent the IRS deems such information necessary to determine whether the taxpayer is liable to tax. The IRS indicates that it will develop a process to notify taxpayers and to request missing information or correction of

erroneous information if it discovers that there are deficiencies or errors in a filed CbC Report. As such, no recommendation is made but this will be monitored.

20. The United States indicates that the IRS is currently developing a process to take any appropriate measure if another competent authority notifies the IRS that it has reason to believe that an error may have led to incorrect or incomplete reporting with respect to a Reporting Entity, or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

21. In respect of paragraph 8 of the terms of reference (OECD, 2017b), the United States has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose UPE is resident for tax purposes in the United States. The United States meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the exclusion of revenue other than UBTI from the definition of "revenues" (paragraphs 8. (a) ii. and 8 (b) ii. and iv. of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

22. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

23. The United States has a legal framework that permits the automatic exchange of CbC reports. The United States indicates that it has:

1. double tax conventions (DTCs) permitting Automatic Exchange of Information with Australia, Austria, Bangladesh, Barbados, Belgium, Bermuda, Bulgaria, Canada, China (People's Republic of), Cyprus,[25] Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Malta, Morocco, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Sri Lanka, Spain, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, and Venezuela;
2. tax information exchange agreements (TIEAs) permitting Automatic Exchange of Information with Antigua and Barbuda, Aruba, Bailiwick of Jersey, Barbados, Bermuda, Bonaire, Saba, and Saint Eustatius, Brazil, British Virgin Islands, Cayman Islands, Colombia, Curaçao, Dominica, Dominican Republic, Gibraltar, Grenada, Guernsey, Guyana, Honduras, Isle of Man, Jamaica, Liechtenstein, Marshall Islands, Mauritius, Mexico, Monaco, Panama, Peru, Saint Lucia, Sint Maarten and Trinidad and Tobago.

3. the Convention on Mutual Administrative Assistance in Tax Matters (signed 28 June 1989, and in force since 1 April 1995), not amended by the 2010 Protocol.

24. The United States' competent authority indicates that it is actively negotiating QCAAs with all Inclusive Framework jurisdictions with respect to which the United States has a legal instrument permitting the Automatic Exchange of Information and which have satisfied the United States' data safeguards and confidentiality review. As of 12 January 2018, it has concluded bilateral arrangements on the basis of these instruments with 34 competent authorities of the following jurisdictions:[26] [27] in addition, the United States will be spontaneously exchanging CbC reports with respect to fiscal year beginning in 2016 with France. A number of additional bilateral arrangements are also expected to be signed soon. While noting that some time is needed for bilateral negotiations, the United States' competent authority should continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.

Conclusion

25. The United States' competent authority should continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.

Part C: Appropriate use

26. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

27. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), the United States indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country*

reports (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.

28. There are no concerns to be reported for the United States in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

29. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for the United States. The United States thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework: determination of the "consolidated group revenue" threshold and definition of "revenue" - Content of CbC report	It is recommended that the United States ensure that the definition of "consolidated group revenue" for the purposes of applying the threshold is consistent with the definition in the Action 13 minimum standard, as further clarified by OECD guidance; and that the definition of "revenue" for the purposes of completing Table 1 is consistent with the definition in Action 13 minimum standard, as further clarified by OECD guidance.
Part B	Exchange of information framework	The United States' competent authority should continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.
Part C	Appropriate use	-

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017b).

[2] Paragraph 8. (a) ii. and 8. (b) ii. and iv. of the terms of reference (OECD, 2017b).

[3] These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

[4] Paragraph 12 (a) of the terms of reference (OECD, 2017b).

[5] Primary law consists of provisions in Title 26 of the United States Code (U.S.C. §§ 6001, 6011, 6012, 6031 and 6038). The United States indicates that these provisions provide general authority to request information from taxpayers, including CbC Reporting. Secondary law consists of Treasury Regulations § 1.6038-4 which set forth the specific requirements to file CbC reports (secondary law). Guidance has also been issued (Revenue Procedure 2017-23, 2017-7 I.R.B. 915) to address parent surrogate filing for reporting periods that begin before the effective date of Treasury Regulations § 1.6038-4 (i.e. before 30 June 2016).

[6] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

[7] It is noted that the rules exclude from the definition of a "business entity" entities which are properly classified as trusts under § 301.7701-4 (except grantor trusts within the meaning of section 671, all or a portion of which is owned by a person other than an individual). The United States clarified that the Treasury regulations concerning the definition of a trust distinguish between "ordinary trusts" and "business trusts." The difference, in sum, is that an ordinary trust is created to protect and preserve assets for beneficiaries and a business trust is engaged in a regular trade or business activity that would ordinarily be conducted through a corporation or partnership. Business trusts are not properly characterized as trusts for U.S. tax purposes and thus are classified as business entities for purposes of CbC Reporting. Ordinary trusts are properly classified as trusts for U.S. tax purposes and generally are not treated as business entities for purposes of CbC Reporting. However, the U.S. CbC Reporting regulations also treat any trust as a business entity if all, or a portion, of the trust is treated as owned by a person other than an individual under I.R.C. § 671 (a "grantor trust").

[8] Paragraph 8. (a) ii. of the terms of reference (OECD, 2017b).

[9] See Treas. Reg. § 1.6038-4(d)(3)(ii).

[10] See Part C. Specific instructions in the Annex III to Chapter V of Transfer Pricing Documentation – Country-by-Country Report (OECD, 2015): "Revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenue should exclude payments received from other Constituent Entities that are treated as dividends in the payer's tax jurisdiction".

[11] See question IV.2. in *"Guidance on the implementation of Country-by-Country Reporting"* (OECD, 2018).

[12] See definition of "US MNE Group" in Treas. Reg. § 1.6038-4(b)(5).

[13] See Treas. Reg. § 1.6038-4(k)

[14] See Revenue Procedure 2017-23 (2017-7 I.R.B. 915)

[15] See Part C. Specific instructions in the Annex III to Chapter V of Transfer Pricing Documentation – Country-by-Country Report. It is also noted that the minimum standard does not envisage any exemptions from filing the CbC report (paragraph 55 of the Action 13 Report, OECD, 2015).

[16] See question 1.2 in part II in *"Guidance on the implementation of Country-by-Country Reporting"* (OECD, 2018): "*When financial statements are used as the source of the data to complete the CbC template, which items shown in the financial statements should be reported as Revenues in Table 1? All revenue, gains, income, or other inflows shown in the financial statement prepared in accordance with the applicable accounting rules relating to profit and loss, such as the income statement or profit and loss statement, should be reported as Revenues in Table 1 (…)"*.

[17] U.S. TEOs, other than churches, are required to make their income tax return, Form 990, publicly available. Many TEOs publish their Forms 990 on their websites, and others can be accessed via Guidestar.org. Schedule R of Form 990 requires the TEO to provide certain information, including the name, address, primary activity, and legal domicile, with respect to all controlled foreign and domestic disregarded entities, partnerships, corporations, and trusts. Additionally, Schedule R requires detailed information with respect to related party transactions, including identification of the related parties, the types of transactions between the related parties, the amount of the transactions, and the method (e.g., cost or fair market value) used to determine the amount of the transaction.

[18] See Treas. Reg. § 1.6038-4(f).

[19] Please refer to the Model Multilateral Competent Authority Agreement, Model Competent Authority Agreement on the basis of a DTC, Model Competent Authority Agreement on the basis of a TIEA which envisage that the CbC reports should be exchanged as soon as possible and no later than 18 months after the last day of the fiscal year of the Reporting Entity of the MNE Group for the first year for which CbC requirements are applicable, and no later than 15 months after the last day of the fiscal year of the Reporting Entity of the MNE Group for subsequent years.

[20] Paragraph 9 (d) of the terms of reference (OECD, 2017b).

[21] It is noted that the United States' legal and administrative framework allows only surrogate filing for MNE Groups whose Ultimate Parent Entity is tax resident in a US territory or possession and that have a Constituent Entity within the United States.

[22] It is noted that the US legal and administrative framework allows only surrogate filing for MNE Groups whose Ultimate Parent Entity is tax resident in a US territory or possession and that have a Constituent Entity within the United States.

[23] See Internal Revenue Code § 6501(c)(8).

[24] The dollar penalty for failure to furnish information set out under subsection (b) appears to apply for failure to furnish information with respect to any foreign business required under paragraph (1) of subsection (a).

[25] Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[26] Australia, Belgium, Bermuda, Brazil, Canada, Colombia, Czech Republic, Denmark, Estonia, Finland, Greece, Guernsey, Iceland, Ireland, Isle of Man, Italy, Jamaica, Jersey, Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, South Africa, Sweden and the United Kingdom.

[27] It is noted that some bilateral arrangements are not yet concluded with some jurisdictions of the Inclusive Framework which have law in place for the fiscal year 2016.

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Uruguay

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Uruguay does not yet have a complete legal and administrative framework in place to implement CbC Reporting. It is recommended that Uruguay finalize its domestic legal and administrative framework in relation to CbC requirements as soon as possible. For the moment, Uruguay's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that it raises five timing, interpretative and substantive issues in relation to its domestic legal and administrative framework, which relate to the finalisation of the domestic legal and administrative framework. The report contains, therefore one recommendation to address these issues.

Part A: Domestic legal and administrative framework

2. Uruguay has rules (primary law) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Uruguay.[1] The first filing obligation for a CbC report in Uruguay commences in respect of fiscal years commencing on or after 1 January 2017. It is recommended that Uruguay finalize its domestic legal and administrative framework in relation to CbC requirements as soon as possible. For the moment,[2] Uruguay meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of:

- the definitions of "Ultimate Parent Entity" and "Constituent Entity" which are yet to be introduced or completed,[3]
- the absence of a specific amount for the revenue threshold[4] established under Uruguay's law to trigger the CbC Reporting obligation,
- the absence of a deadline for filing a CbC report,[5]
- the conditions for local filing which need to be amended or clarified,[6]
- the absence of a provision whereby a single Constituent Entity of the same MNE Group may be designated to file the CbC report which would satisfy the local filing requirement of all the Constituent Entities.[7]

Part B: Exchange of information framework

3. Uruguay is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which came into force on 1 December 2016. It will be in force for fiscal years starting as from 1 January 2017 (Uruguay's CbC requirements will apply for periods commencing on or after 1 January 2017). Uruguay is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Uruguay has 49 bilateral relationships

activated under the CbC MCAA. Against the backdrop of the evolving exchange of information framework, at this point in time Uruguay meets the terms of reference relating to the exchange of information framework for the year in review. It is noted that Uruguay will not be exchanging reports in 2018.[8]

Part C: Appropriate use

4. Uruguay has not yet provided information on measures relating to appropriate use.[9] Uruguay is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Uruguay will not be exchanging CbC reports in 2018.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. Uruguay has primary law in place for implementing the BEPS Action 13 minimum standard.[10] Uruguay indicates that a regulatory decree is to be published. No guidance has been published yet.

(a) Parent entity filing obligation

Summary of terms of reference:[11] Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Uruguay has primary legislation to impose a CbC filing obligation on Ultimate Parent Entities of MNE Groups of large economic dimension.[12] The legislation is however incomplete at this moment. Uruguay indicates that it is currently updating its legal framework which includes publishing a regulatory decree, which will introduce a number of details.

8. With respect to the definition of an "Ultimate Parent Entity", there is no such definition in Uruguay's primary law. Although the law makes reference to the Ultimate Parent Entity as one of the reporting entities, there is no definition of this term. Uruguay affirms this definition will be introduced by secondary law definition in a manner consistent with the terms of reference. It is recommended that Uruguay introduce a definition of an "Ultimate Parent Entity" consistent with the terms of reference.[13]

9. There is also no definition of a "Constituent Entity" in Uruguay's legislation.[14] [15] Uruguay affirms that the regulatory decree will expressly introduce this definition in a manner consistent with the terms of reference. It is recommended that Uruguay introduce this definition in its domestic legal and administrative framework.

10. The domestic legislation makes reference to a consolidated revenue threshold above which the filing obligation is triggered, the amount of which would be set in the secondary law.[16] Uruguay indicates that the threshold amount will be specified by the secondary law, taking into account the equivalent amount in domestic currency of EUR 750 million in a manner consistent with the terms of reference. It is recommended that Uruguay introduce a threshold amount consistent with the terms of reference.[17]

11. No other inconsistencies were identified with respect to Uruguay's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

12. The first filing obligation for a CbC report in Uruguay commences in respect of periods commencing on or after 1 January 2017.[18] There is no filing deadline in Uruguay's primary law.[19] Uruguay indicates that it will follow the terms of reference to allow the CbC reports being filed within 12 months as from the end of the fiscal year: this would be introduced in the regulatory decree in a manner consistent with the terms of reference. It is recommended that Uruguay introduce a filing deadline for the submission of the CbC reports in its secondary law, consistent with the terms of reference.[20]

13. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

14. Uruguay has introduced local filing requirements as from the reporting period starting on or after 1 January 2017.[21] Local filing applies as a "default rule" i.e. it would apply unless certain conditions (exceptions) are met: local filing requirements will apply in all circumstances unless the CbC report is submitted by a reporting entity of the MNE Group to a tax administration with which Uruguay has a Competent Authority Agreement on the exchange of information in effect, held within the framework of international agreements or conventions, and the said report can be effectively exchanged with the Tax Administration (DGI). This is wider than the circumstances when local filing may be

required under paragraph 8 (c) iv. a) b) and c) of the terms of reference (OECD, 2017). Examples of cases where local filing may be required under Uruguay's primary law, but would not be permitted under the minimum standard, include:

- where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but has not complied with this obligation,[22]
- where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but there is no international agreement between Uruguay and this jurisdiction,[23]
- where the tax authority in the residence jurisdiction of the Ultimate Parent Entity of an MNE Group has failed to exchange the MNE Group's CbC report with Uruguay, but this falls short of systemic failure (e.g. there has been an isolated failure).[24]

15. It is recommended that Uruguay amend its legislation or otherwise takes steps (e.g. completing the conditions in the secondary law) to ensure that local filing is only required in the circumstances contained in the terms of reference.

16. In addition, with respect to paragraph 8 (c) v. of the terms of reference (OECD, 2017), there is no provision in Uruguay's primary legislation to provide that, where local filing is required and there is more than one Constituent Entity of the same MNE Group that is resident for tax purposes in Uruguay, one Constituent Entity be designated to file the CbC report which would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in Uruguay. Uruguay affirms that the regulatory decree will expressly introduce a provision to allow one Constituent Entity to be designated to file the CbC report which would satisfy the filing requirement of all the Constituent Entities of such MNE Group in a manner consistent with the terms of reference. It is recommended that Uruguay implement this provision consistent with the terms of reference.

17. No other inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

18. Uruguay's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[25] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference)..

19. Uruguay has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to all taxpayers and entities which would be part of the MNE Group in Uruguay. There are also penalties in place in relation to the filing of a CbC report for failure:[26] a penalty applies in case of any formal infringements related to the transfer pricing regime. In addition, the general powers of the tax administration would be applicable.[27]

20. There are no specific processes in place that would allow Uruguay to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report.[28] As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

21. In respect of paragraph 8 of the terms of reference (OECD, 2017), Uruguay has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Uruguay. Uruguay meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the definitions of "Ultimate Parent Entity" and "Constituent Entity" (paragraphs 8 (a) i. and iii. and 18 of the terms of reference (OECD, 2017)); (ii) the annual consolidated group revenue threshold (paragraphs 8 (a) ii. of the terms of reference (OECD, 2017)); (iii) the deadline for filing a CbC report (Paragraph 8 (b) iii. of the terms of reference (OECD, 2017)); (iv) the local filing conditions (paragraphs 8 (c) iv. a) b) and c) of the terms of reference (OECD, 2017)) and (v) the provision whereby a single Constituent Entity may be designated to file the CbC report which would satisfy the local filing requirement of all Constituent Entities (paragraph 8 (c) v. of the terms of reference (OECD, 2017)).

Part B: The exchange of information framework

22. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

23. Uruguay has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 1 June 2016, in force on 1 December 2016). The Convention is therefore not in effect with respect to the fiscal year starting 1 January 2016. It will however be in force for fiscal years starting as from 1 January 2017 (Uruguay's CbC requirements will apply for periods commencing on or after 1 January 2017).

24. Uruguay signed the CbC MCAA on 30 June 2016 and submitted a full set of notification under section 8 of the CbC MCAA on 30 March 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. As of 12 January 2018, Uruguay has 49 bilateral relationships activated under the CbC MCAA. Uruguay indicates that it has no other intended QCAAs at the moment.[29] Against the backdrop of the evolving exchange of information framework, at this point in time Uruguay meets the terms of reference relating to the exchange of information framework for the year in review. It is noted that Uruguay will not be exchanging reports in 2018.

Conclusion

25. Against the backdrop of the evolving exchange of information framework, at this point in time Uruguay meets the terms of reference regarding the exchange of information framework under review for this first annual peer review process. It is noted that Uruguay will not be exchanging reports in 2018.

Part C: Appropriate use

26. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

27. Uruguay does not yet have measures in place relating to appropriate use. Uruguay affirms that the regulatory decree will expressly introduce mechanisms to ensure appropriate use of CbC Reports in a manner consistent with the terms of reference. It is recommended that Uruguay take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Uruguay will not be exchanging CbC reports in 2018.

Conclusion

28. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), Uruguay is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Uruguay will not be exchanging CbC reports in 2018.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	It is recommended that Uruguay finalise its domestic legal and administrative framework as soon as possible. Specifically, it is recommended that Uruguay: - introduce or complete the definitions of an "Ultimate Parent Entity" and "Constituent Entity" in a manner that is consistent with the terms of reference; - set an amount for the annual consolidated group revenue threshold in a manner that is consistent with the terms of reference; - set a deadline for filing a CbC report in a manner that is consistent with the terms of reference; - amend the conditions for local filing or otherwise take steps to ensure that local filing can only be required in the circumstances contained in the terms of reference; - implement a provision whereby a single Constituent Entity of the same MNE Group may be designated to file the CbC report which would satisfy the local filing requirement of all the Constituent Entities in Uruguay.
Part B	Exchange of information framework	-
Part C	Appropriate use	Uruguay is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Uruguay affirms that the regulatory decree will expressly introduce items to address the recommendations made in line with the specific terms of reference.

[3] Paragraphs 8 (a) i. and iii. and 18 of the terms of reference (OECD, 2017).

[4] Paragraphs 8 (a) ii. of the terms of reference (OECD, 2017).

[5] Paragraphs 8 (b) iii. of the terms of reference (OECD, 2017).

[6] Paragraph 8 (c) iv. a) b) and c) of the terms of reference (OECD, 2017).

[7] Paragraph 8 (c) v. of the terms of reference (OECD, 2017).

[8] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[9] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[10] Uruguay's primary law consists of Law 19.484 of 5 January 2017, which is available at https://parlamento.gub.uy/documentosyleyes/leyes/ ley/19484 (accessed 23 April 2018).

[11] The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

[12] The domestic legislation does not expressly make reference to above a certain threshold of revenue. It is expected that the threshold amount will be specified by the secondary law, taking into account the equivalent amount in domestic currency of EUR 750 million.

[13] Paragraph 18 of the terms of reference (OECD, 2017).

[14] Uruguay indicates that although there is no specific reference to the term "Constituent Entity" or "business unit", the law makes reference to the notion of "entity" (which, from a technical point of view, is understood in a broad sense). It notes that the law was written in a broad sense, allowing the regulatory decree to introduce some terms (or define them) in a more restricted way. The following subparagraphs make reference to this notion (see first subparagraph, article 46 ter, Title 4 of the 1996 T.O: "*The IRAE taxpayers that are part of a multinational group of large economic dimension, when fall within the definition of related parties provided in the following subparagraph, will be subject to the country by country rules stated in this article. The provision of this paragraph also apply to the head offices and their permanent establishments, when one of them is an IRAE taxpayer, and other resident entities of a multinational group with their foreign subsidiaries, branches, permanent establishments or other type of non-resident entities related to them, as long as they are part of a multinational group of large economic dimension*".

[15] Uruguay indicates that its law does not make a specific reference to the term "Consolidated Financial Statements". However, it is understood that the general accounting principles should be followed. Specific references to the accounting principles or any other accounting terms would be added in the regulatory decree. It is also noted that Uruguay adopts the International Accounting Standards. As a general principle, commercial companies are subject to these standards pursuant to Decree N° 291/2014, in the wording given by Decree N° 372/2015. Under particular circumstances, other accounting rules can be specifically imposed by a particular competent regulatory body (e.g. for Financial Institutions, Public Companies, etc.).

[16] See fourth subparagraph, article 46 ter, Title 4 of the 1996 T.O.: "*the multinational groups of large economic dimension, mentioned in the first subparagraph of this article, will be those whose consolidated revenue exceeds the threshold amount set by the Executive Branch*".

[17] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017).

[18] See ninth subparagraph, article 46 ter, Title 4 of the 1996 T.O.

[19] See fifth subparagraph, article 46 ter, Title 4 of the 1996 T.O.

[20] Paragraph 8 (b) iii. of the terms of reference (OECD, 2017).

[21] See fifth subparagraph, article 46 ter, Title 4 of the 1996 T.O.

[22] Local filing would not be permitted in this circumstance under paragraph 8 (c) iv. a) of the terms of reference (OECD, 2017).

[23] Local filing would not be permitted in this circumstance under paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017).

[24] Local filing would not be permitted in this circumstance under paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017).

[25] See fifth and sixth subparagraph, article 46 ter, Title 4 of the 1996 T.O.

[26] See article 46 bis of Title 4 of the 1996 T.O.: this article provides a fine up to the equivalent of approximately USD 200 000 for cases such as failure to file a sworn declaration or to file the presentation of the transfer pricing documentation report. This penalty shall be applicable gradually according to the severity of the violation and other circumstances prescribed by law. Failure to comply with CbC obligations will be also subject to the general rules stated in the Tax Code.

[27] Uruguay indicates that any taxpayer that is resident in Uruguay is obliged to keep records of the financial position and information related to business or activity of the entity, to require the taxpayer's appearance before the DGI or pertinent authority, to provide information and to perform tax audits of real estate and chattel properties held or occupied by the taxpayer. Penalties

may be imposed in case the obligations are not met: Article 70 of the Tax Code states that the taxpayers and other responsible agents are obligated to collaborate in the fields of determination, audit and investigation undertaken by the Tax Administration. In particular, they are obligated to file tax returns, reports, or any other documentation asked by the Tax Administration; communicate any change in its particular situation; facilitate the audit process undertaken by the tax inspectors. Article 469 of the Law 17.930 (in the wording provided by article 68 of Law 18.083) provides a fine up to the equivalent of approximately USD 200 000 in the case of the infringement of the said article 70 of the Tax Code, among other situations. This penalty shall be applicable gradually according to the severity of the violation and other circumstances prescribed by law.

[28] Uruguay indicates that it has a general penalty-system in place: both for refusing to provide information or for hindering the actions of a tax official, the Tax Administration (DGI) may impose administrative penalties of between UYU 350 (Uruguayan peso and UYU 6 660 (USD 12 to USD 230) for 2016 (USD 1: UYU 29).

Furthermore, Uruguay notes that article 68 of the Tax Code provides that the Tax Administration has the most extensive powers of "inspection" and "investigation". Additionally, article 306 of the Law 18.996 clarifies that the powers provided by the article 68 above mentioned authorize the General Directorate of the DGI to request information both within the framework of a particular inspection or with general purposes by means of a resolution. The non-compliance of providing that information within the scope of this article shall be punished with an administrative fine. This penalty can be aggravated according to the seriousness of the infringement, in such a case the fine can be increased up a thousand times the maximum fine described before (i.e. USD 230 000).

Finally, where a person is in contempt (including open disobedience with an official's orders), penal sanctions of 3-18 months imprisonment may eventually apply (article 173, Criminal Code).

[29] It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

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OECD/G20 Base Erosion and Profit Shifting Project

Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 13

Under the Action 13 Minimum Standard, jurisdictions have committed to foster tax transparency by requesting the largest multinational enterprise groups (MNE Groups) to provide the global allocation of their income, taxes and other indicators of the location of economic activity. This unprecedented information on MNE Groups' operations across the world will boost tax authorities' risk-assessment capabilities. The Action 13 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review process. The peer review of the Action 13 Minimum Standard is proceeding in stages with three annual reviews in 2017, 2018 and 2019. The phased review process follows the phased implementation of Country-by-Country (CbC) Reporting. Each annual peer review process will therefore focus on different aspects of the three key areas under review: the domestic legal and administrative framework, the exchange of information framework, and the confidentiality and appropriate use of CbC reports. This first annual peer review report reflects the outcome of the first review which focused on the domestic legal and administrative framework. It contains the review of 95 jurisdictions which provided legislation or information pertaining to the implementation of CbC Reporting.

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