

Portugal

1. Portugal was first reviewed during the 2017/2018 peer review. This report is supplementary to Portugal's 2017/2018 peer review report (OECD, 2018^[1]). The first filing obligation for a CbC report in Portugal commences in respect of financial years beginning on or after 1 January 2016.

Summary of key findings

2. Portugal's implementation of the Action 13 minimum standard meets all applicable terms of reference (OECD, 2017^[2]) for the year in review.

Part A: The domestic legal and administrative framework

3. Portugal has legislation in place (Primary law¹ – no secondary legislation was required) 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.²

(a) Parent entity filing obligation

4. No changes were identified with respect to the parent entity filing obligation. Portugal's 2017/2018 peer review included a monitoring point to clarify the definition of Reporting Entity and the scope of the filing obligation. Portugal has prepared guidance on the filing of the CbC report. Portugal expressly confirmed in the guidance that it should be interpreted in light of the OECD guidelines on BEPS Action 13 implementation. In view of this update and of the guidance issued, the monitoring point is removed.

5. Portugal's 2017/2018 peer review also included a monitoring point to clarify the application of the adequate threshold for filing a CbC report where local filing requirements apply in Portugal. The threshold was expressly included in the guidance on the filing of CbC report. In view of the guidance issued, the monitoring point is removed.

(b) Scope and timing of parent entity filing

6. No changes were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

7. Portugal's 2017/2018 report contained a monitoring point on the application of local filing requirement in line with the OCED guidance on currency fluctuations. Portugal affirms that a Portuguese Constituent Entity would only be subject to local filing if the Ultimate Parent Entity of the MNE Group (UPE) is not obligated to file a CbC in its jurisdiction of tax residence following the conditions in line with the action 13 minimum standard; or, the jurisdiction in which the UPE is resident for tax purposes has a current International Agreement to which Portugal is a party but does not have a Qualifying Competent Authority Agreement in effect or there has been a Systemic Failure. In view of this clarification included, the monitoring point is removed.

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

8. No changes were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

9. Portugal's 2017/2018 peer review included a general monitoring point concerning the fact that was no specific process that would allow it to take appropriate measures in case Portugal 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. Since the 2017/2018 peer review, Portugal has provided updated information, explaining that, in such a situation, the Portuguese Tax and Customs Authority will notify the Reporting Entity of the identified error, incompleteness or non-compliance, asking for the submission of a correct CbC report. Other appropriate measures will be taken if necessary. Once a corrected CbC report has been submitted to Portugal, it will then be exchanged with other jurisdictions shortly thereafter. In view of this update and specific process, the monitoring point is removed.

Conclusion

10. There is no change to the conclusion in relation to the domestic legal and administration framework for Portugal since the previous peer review. Portugal meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework***(a) Exchange of information framework***

11. As of 31 May 2019, Portugal has 67 bilateral relationships in place, including those activated under the CbC MCAA, under bilateral CAAs and under the EU Council Directive (2016/881/EU). Within the context of its international exchange of information agreements that allow automatic exchange of information, 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.³ Regarding Portugal's exchange of information framework, no inconsistencies with the terms of reference were identified.

(b) Content of information exchanged

12. Portugal has processes in place that are intended to ensure that each of the mandatory fields of information as required in the CbC template are present in the information exchanged. It has provided details in relation to these procedures.

(c) Completeness of exchanges

13. Portugal has processes in place that are intended to ensure that CbC reports are exchanged with all tax jurisdictions listed in Table 1 of a CbC reporting template with which it should exchange information as per the relevant QCAAs. It has provided details in relation to these procedures.

(d) Timeliness of exchanges

14. Portugal has processes in place that are intended to ensure that the information to be exchanged is transmitted to the relevant jurisdictions in accordance with the timelines

provided for in the relevant QCAAs and terms of reference. It has provided details in relation to these procedures.

(e) Temporary suspension of exchange or termination of QCAA

15. Portugal has processes in place that are intended to ensure that a temporary suspension of the exchange of information or termination of a relevant QCAA be carried out only as per the conditions set out in the QCAA. It has provided details in relation to those processes.

(f) Consultation with other Competent Authority before determining systemic failure or significant non-compliance

16. Portugal has a written procedure in place that are intended to ensure that the Competent Authority consults with the other Competent Authority prior to making a determination that there is or has been significant non-compliance with the terms of the relevant QCAA or that the other Competent Authority has caused a systemic failure. It has provided details in relation to those procedures.

(g) Format for information exchange

17. Portugal confirms that it uses the OECD XML Schema and User Guide (OECD, 2017^[3]) for the international exchange of CbC reports.

(h) Method for transmission

18. Portugal indicates that it uses the Common Transmission System to exchange CbC reports.⁴

Conclusion

19. Portugal has in place the necessary processes and written procedures to ensure that the exchange of information is conducted in a manner consistent with the terms of reference relating to the exchange of information framework. Portugal meets all the terms of reference regarding the exchange of information.

Part C: Appropriate use

20. No changes were identified in respect of appropriate use. There were no recommendations issued in the 2017/2018 peer review.

Conclusion

21. Portugal meets all the terms of reference relating to the appropriate use 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	-

Notes

¹ 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).

² Portugal's guidance on the filing of the CbC report is incorporated in Resolution No. 383-A/2017.

³ No inconsistency with the terms of reference will be identified where a QCAA is not in effect with one or more jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions, but this is due to circumstances that are not under the control of the reviewed jurisdiction. This may include, for example, where the other jurisdiction intends to exchange CbC reports using the MCAA but it does not have the Convention in effect for the relevant fiscal period, or where the other jurisdiction has declined to have a QCAA in effect with the reviewed jurisdiction

⁴ Countries exchanging under the EU Council Directive (2016/881/EU) use the Common Communication Network (CCN).



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