

Australia

1. Australia was first reviewed during the 2017/2018 peer review. This report is supplementary to Australia's 2017/2018 peer review report (OECD, 2018^[1]). The first filing obligation for a CbC report in Australia applies to reporting fiscal years commencing on or after 1 January 2016.

Summary of key findings

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

3. Australia's 2017/2018 peer review included a recommendation that Australia amend its rules or otherwise ensure that its administrative practice operates in a way whereby local filing is only required in the circumstances contained in the terms of reference. Australia has published updated guidance on 1 February 2018 which amends its administrative practice in order for local filing to operate in accordance with the terms of reference. As such, the recommendation with respect to local filing issued in the 2017/2018 peer review is removed.

Part A: The domestic legal and administrative framework

4. Australia has primary law in place which implements the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.¹ Guidance has also been published and updated on 1 February 2018.²

(a) Parent entity filing obligation

5. Australia's 2017/2018 peer review included a monitoring point in relation to the fact that its legislation did not include the situation of an Ultimate Parent 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 (i.e. the "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.³ Australia reports an update in this respect: on 8 May 2018, the Australian Government presented its annual Budget which included an announcement that it would amend the definition of a significant global entity⁴ the intent being to align more closely the automatic operation of the definition of a significant global entity to the "deemed listing provision" as provided in the terms of reference (paragraph 18.i. of the terms of reference), without the need for the Commissioner to use the determination power mentioned above or other information gathering powers.⁵ Draft legislation has been released for consultation.⁶ As legislation has not yet been passed, the monitoring point remains in place.

6. Australia's 2017/2018 peer review included a monitoring point relating to the annual consolidated revenue filing threshold which may be incompatible with the OECD guidance on currency fluctuations (OECD, 2018^[5]).⁷ Guidance was expected to be published which would include an example on "differing currency thresholds", clarifying that Australia's provisions should operate consistently with the OECD guidance. This guidance has been published on 1 February 2018⁸ and as such, the monitoring point is removed. No other changes were identified with respect to the parent entity filing obligation.⁹

(b) Scope and timing of parent entity filing

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

(c) Limitation on local filing obligation

8. Australia's 2017/2018 peer review included a recommendation that Australia amend its rules or otherwise ensure that its administrative practice operates in a way whereby local filing is only required in the circumstances contained in the terms of reference: Australia's framework provided that local filing could be required in circumstances where an Ultimate Parent Entity was obligated to file a CbC report in its jurisdiction of tax residence but failed to do so, which was not permitted under the terms of reference. Australia has published updated guidance on 1 February 2018 which amends its administrative practice in order for local filing to operate in accordance with the terms of reference.¹⁰ Therefore, the recommendation with respect to local filing issued in the 2017/2018 peer review is removed.

9. Australia's 2017/2018 peer review included monitoring points relating to the conditions under which local filing may be applied.¹¹ Australia published updated guidance on 1 February 2018 which amends its administrative practice in order for local filing to operate in accordance with the terms of reference.¹² As such, the monitoring points are removed. No other changes were identified with respect to the local filing obligation.

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

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

(e) Effective implementation

11. No changes were identified with respect to the effective implementation.

Conclusion

12. The conclusion in relation to the domestic legal and administration framework for Australia is updated since the previous peer review: Australia 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

13. As of 31 May 2019, Australia has 65 bilateral relationships in place, including those activated under the CbC MCAA and under a bilateral CAA. Within the context of its international exchange of information agreements that allow automatic exchange of information, 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. Regarding Australia's exchange of information framework, no inconsistencies with the terms of reference identified.¹³

(b) Content of information exchanged

14. Australia 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 processes.

(c) Completeness of exchanges

15. Australia 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 processes.

(d) Timeliness of exchanges

16. Australia 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 processes.

17. Despite these processes, Australia indicates that a number of CbC reports were exchanged late. These late exchanges were due to an automated system error which has since been corrected and therefore no recommendation is required.

(e) Temporary suspension of exchange or termination of QCAA

18. Australia 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

19. Australia has processes 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 processes.

(g) Format for information exchange

20. Australia 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

21. Australia indicates that it uses the Common Transmission System to exchange CbC reports.

Conclusion

22. Australia has in place the necessary processes 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. Australia meets all the terms of reference regarding the exchange of information.

Part C: Appropriate use

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

24. No information or peer input was received for the reviewed jurisdiction suggesting any issues with appropriate use. There are no concerns to be reported in respect of appropriate use.

Conclusion

25. Australia 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 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” as provided by Subdivision 960-U of the Income Tax Assessment Act 1997.

² Updated guidance is accessible here: www.ato.gov.au/business/international-tax-for-business/in-detail/transfer-pricing/country-by-country-reporting/country-by-country-reporting-guidance/. Australia’s 2017/2018 peer review report mentioned that updated guidance was released on 19 December 2017 which was then considered a publicly available document. Australia confirms that this updated guidance was subsequently published as finalised on 1 February 2018, and that earlier guidance mentioned in Australia’s 2017/2018 peer review (“Country-by-Country Reporting: Exemption Guidance” dated 26 September 2016 and “Country-by-Country reporting: Questions and Answers” dated 30 November 2016) have been removed and are no longer applicable.

³ Australia confirms that the use of this determination power would overcome difficulties where certain entities have not prepared consolidated financial statements in accordance with accounting principles.

⁴ Australia notes that the definition of a significant global entity used for Australian CbC Reporting is also used for other purposes not related to CbC Reporting.

⁵ Australia notes that the changes envisaged may also allow a sub-group of entities in a group to be a relevant Group for CbC reporting purposes when an Investment Entity is in the chain of ownership above the sub-group. Australia expects that any change would be consistent with the accounting principles as permitted in Questionv1.1 in Section III of the OECD’s Guidance on the Implementation of Country-by-Country Reporting

⁶ <https://treasury.gov.au/consultation/c2018-t311619/>

⁷ 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.

⁸ The updated guidance (www.ato.gov.au/Business/International-tax-for-business/In-detail/Transfer-pricing/Country-by-Country-reporting/Country-by-Country-Reporting-Guidance/?page=3#Exemptions) includes an example on “differing currency thresholds” which clarifies that where the annual income of a global group would exceed Australia’s threshold of A\$ 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 will be considered.

⁹ Australia's 2017/2018 peer review also included monitoring points relating to the powers of the Commissioner to determine that an entity is to be considered as a significant global entity for CbC purposes, to the powers to grant exemptions and to the filing obligations of dormant entities. These monitoring points remain in place.

¹⁰ See www.ato.gov.au/Business/International-tax-for-business/In-detail/Transfer-pricing/Country-by-Country-reporting/Country-by-Country-Reporting-Guidance/?page=3#Exemptions. Australia confirms that local filing will not be imposed if an Ultimate Parent Entity (UPE) of a foreign MNE Group is under an obligation to file a CbC report in its jurisdiction of residence, regardless of the fact that this UPE has - or has not - complied with its filing obligations.

¹¹ in relation to the fact that local filing should not apply in the absence of an International Agreement and that local filing may only apply in case of "systemic failure" rather than in cases 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.

¹² The updated guidance published on 1 February 2018 (www.ato.gov.au/Business/International-tax-for-business/In-detail/Transfer-pricing/Country-by-Country-reporting/Country-by-Country-Reporting-Guidance/?page=3#Exemptions) includes the following details:

"If, on the date on which a CbC report is due to be lodged, you have a global parent entity resident for tax purposes in a foreign jurisdiction and that entity is under an obligation to file a CbC report in that jurisdiction, we will not seek the CbC report from you.

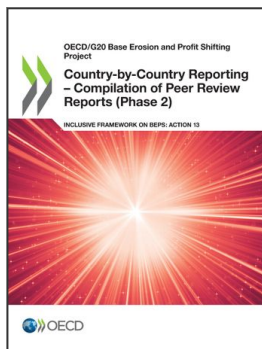
There are two exceptions to this concession. This concession will not apply if, on the date on which a CbC report is due to be lodged, either:

- the foreign jurisdiction in which the global parent entity is resident for tax purposes has an International Agreement with Australia, but there is no Competent Authority Agreement in effect for automatic exchange of CbC reports between the ATO and the relevant authority of the other jurisdiction

- there is a Competent Authority Agreement as described above in effect, but we have notified you that there has been a systemic failure in the operation of that Agreement".

Australia confirms that the term "systemic failure" in its guidance has the same meaning as in paragraph 21 of the terms of reference (OECD, 2017^[21]). Australia also confirms that this updated guidance aligns its administrative practice with the terms of reference (paragraphs 8 (c) (iv) (b) and (c)).

¹³No 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.



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