

Kazakhstan

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

Summary of key findings

2. Kazakhstan's implementation of legislation for the Action 13 minimum standard meets all applicable terms of reference (OECD, 2017^[2]), except for the following:

- It is recommended that Kazakhstan clarify the exact scope, conditions and legal basis under the minimum standard and/ or the exchange of information framework for the exemption in case of state secrets.

3. It is recommended that Kazakhstan take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which will meet the confidentiality, consistency and appropriate use prerequisites and with which Kazakhstan has an international exchange of information agreement in effect that allows for the automatic exchange of tax information. This recommendation remains unchanged since the 2017/2018 peer review.

4. It is recommended that Kazakhstan take steps to implement processes or 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 ahead of its first exchanges of information.

5. It is recommended that Kazakhstan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. This recommendation remains unchanged since the 2017/2018 peer review.

6. It was recommended in Kazakhstan's 2018/2018 report 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. Kazakhstan has issued guidance suspending local filing requirement until further notice¹ so this recommendation is removed.

7. It was recommended in Kazakhstan's 2017/2018 report that Kazakhstan 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 Kazakhstan. As Kazakhstan's local filing requirement is currently suspended until further notice, this recommendation is removed but the situation will be monitored.

Part A: The domestic legal and administrative framework

8. Kazakhstan has primary law and subordinate legislation in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements including the filing and reporting obligations.²

(a) Parent entity filing obligation

9. 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.

10. Kazakhstan's legislation includes a filing exemption in the case of state secrets, as follows: "The form of CbC reporting and the procedure for its completion are approved by the authorized body. Reporting provided for in this paragraph, containing information that constitutes state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets, is presented in a part that does not contain information constituting state secrets."³ Kazakhstan's legislation does not specify 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 "state secrets", 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." It is therefore recommended that Kazakhstan clarify the exact scope, conditions and legal basis under the minimum standard and/ or the exchange of information framework for such an exemption.

11. No other inconsistencies were identified with respect to Kazakhstan's domestic legal framework in relation to the parent entity filing obligation.⁴

(b) Scope and timing of parent entity filing

12. The first filing obligation for a CbC report in Kazakhstan commences in respect of financial years beginning on or after 1 January 2016. The CbC report must be filed within 12 months of the reporting fiscal year of the MNE Group.⁵

13. With respect to paragraph 8 b) ii. of the terms of reference (OECD, 2018^[1]), it is noted that Kazakhstan's rules provide for a full or partial filing exemption as described in paragraph 7. Such an exemption 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). It is therefore recommended that Kazakhstan clarify the exact scope and legal basis under the minimum standard and/or the exchange of information framework for such an exemption.

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

(c) Limitation on local filing obligation

15. Kazakhstan has introduced local filing requirements in respect of financial years beginning on or after 1 January 2016.

16. The circumstances under which local filing may occur under Kazakhstan's legislation are wider than allowed under the minimum standard. Examples of cases where local filing may be required under Kazakhstan's legislation, but would not be permitted under the minimum standard, include:

17. where the Ultimate Parent Entity of an MNE group is required to file a CbC report in the jurisdiction of residence, but has not complied with this obligation.⁶ 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.

18. 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.⁷ This is wider than paragraph 8(c) iv. b) of the terms of reference (OECD, 2018^[1]) permit.

19. For Surrogate Parent Entities and Constituent Entities, it is noted that Kazakhstan's legislation requires a notarised copy of the CbC report in case the report is filed in paper (article 7-3(1)).

20. It was recommended in Kazakhstan's 2018/2018 report 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. Kazakhstan has issued guidance suspending local filing requirement until further notice⁸ so this recommendation is removed.

21. With respect to paragraph 8(c) v. of the terms of reference (OECD, 2018^[1]), there is no provision in Kazakhstan'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 Kazakhstan, 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 Kazakhstan. It was recommended in Kazakhstan's 2017/2018 report that Kazakhstan 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 Kazakhstan. As Kazakhstan's local filing requirement is currently suspended until further notice this recommendation is removed but the situation will be monitored

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

22. It is unclear whether Kazakhstan's legislation provides for the deactivation of local filing in case of surrogate filing. Kazakhstan state that this will be the case, this point will be monitored.

(e) Effective implementation

23. Kazakhstan has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to taxpayers in Kazakhstan.⁹ There are also penalties in place for failure to (i) file a CbC report, (ii) correctly file a CbC report and (iii) submit a report on time.¹⁰

24. There are no specific processes to take appropriate measures in case Kazakhstan 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

25. In respect of paragraph 8 of the terms of reference, Kazakhstan 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 Kazakhstan. Kazakhstan meets all the terms of reference relating to the domestic legal and administrative framework, with the exception that it is recommended that Kazakhstan clarify the exact scope, conditions and legal basis under the minimum standard and/or the exchange of information framework for the exemption in case of state secrets

Part B: The exchange of information framework

(a) Exchange of information framework

26. As of 31 May 2019, Kazakhstan has no bilateral relationships in place for the exchange of CbC reports. It is recommended that Kazakhstan 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 and with which Kazakhstan has an international exchange of information agreement in effect that allows for the automatic exchange of tax information

(b) Content of information exchanged

27. Kazakhstan does not have processes or written procedures in place that are intended to ensure that each of the mandatory fields of information required in the CbC reporting template are present in the information exchanged.

(c) Completeness of exchanges

28. Kazakhstan does not have processes or written procedures in place that are intended to ensure that CbC reports are exchanged with all tax jurisdictions listed in Table 1 of a CbC report with which it should exchange information as per the relevant QCAA.

(d) Timeliness of exchanges

29. Kazakhstan does not have processes or written procedures 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 QCAs.

(e) Temporary suspension of exchange or termination of QCAA

30. Kazakhstan does not have processes or written procedures in place that are intended to ensure that a temporary suspension of the exchange of information or termination of a relevant QCAA would be carried out only as per the conditions set out in the relevant QCAA.

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

31. Kazakhstan does not have processes or written procedures in place that are intended to ensure that its Competent Authority consults with the other Competent Authority before making a determination of systemic failure or significant non-compliance with the terms of the relevant QCAA by that other Competent Authority.

(g) Format for information exchange

32. Kazakhstan has not confirmed the format that will be used for the international exchange of CbC reports.

(h) Method for transmission

33. Kazakhstan has not confirmed its encryption or electronic data transmission methods.

Conclusion

34. It is recommended that Kazakhstan take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites and with which Kazakhstan has an international exchange of information agreement in effect that allows for the automatic exchange of tax information. This recommendation remains unchanged since the 2017/2018 peer review.

35. Further, it is recommended that Kazakhstan take steps to implement processes or 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 ahead of its first exchanges of information.

Part C: Appropriate use

36. Kazakhstan does not yet have measures in place relating to appropriate use. It is recommended that Kazakhstan take steps to have measures in place relating to appropriate use ahead of the first exchanges of information.

Conclusion

37. 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	It is recommended that Kazakhstan clarify the exact scope, conditions and legal basis under the minimum standard and/ or the exchange of information framework for the exemption in case of state secrets.
Part B	Exchange of information framework	It is recommended that Kazakhstan 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 and with which Kazakhstan has an international exchange of information agreement in effect that allows for the automatic exchange of tax information.
Part B	Exchange of information framework	It is recommended that Kazakhstan take steps to implement processes or 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 ahead of its first exchanges of information.
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 information.

Notes

¹ http://kgd.gov.kz/sites/default/files/pages/informacionnoe_pismo_0.docx.

² The Order of the Minister of Finance of the Republic of Kazakhstan dated February 14, 2018 No. 178, amending:

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

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

³ Статья 7-3. Межстрановая отчетность, article 7(3).

⁴ For Surrogate Parent Entities and Constituent Entities, it is noted that Kazakhstan's legislation requires a notarised copy of the CbC report in case the report is filed in paper (Статья 7-3. Межстрановая отчетность, article 7-3(1)).

⁵ Chapter 1, article 2 (Order of the Minister of Finance of the Republic of Kazakhstan dated February 14, 2018 No. 178).

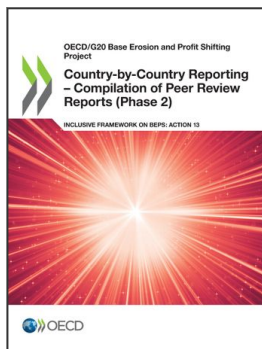
⁶ Статья 7-3. Межстрановая отчетность, article 7-3(3)(1).

⁷ Статья 7-3. Межстрановая отчетность, article 7-3(3)(1).

⁸ http://kgd.gov.kz/sites/default/files/pages/informacionnoe_pismo_0.docx

⁹ Статья 7-3. Межстрановая отчетность, article 5-1(1).

¹⁰ Статья 7-3. Межстрановая отчетность, article 5-1(4).



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