

## Senegal

1. Senegal was first reviewed during the 2017/2018 peer review. This report is supplementary to Senegal's 2017/2018 peer review report (OECD, 2018<sup>[1]</sup>). Since the last peer review, Senegal has introduced primary legislation in order to implement CbC Reporting requirements. The first filing obligation for a CbC report in Senegal commences in respect of financial years beginning on or after 1 January 2018.

### Summary of key findings

2. Senegal's implementation of the Action 13 minimum standard meets all applicable terms of reference (OECD, 2017<sup>[2]</sup>), except for the following:

- It is recommended that Senegal define the concepts of an "Ultimate Parent Entity", "MNE Group", "Group" and "Constituent Entity" in a manner consistent with the terms of reference,
- It is recommended that Senegal publish the content and format of a CbC report,
- It is recommended that Senegal amend or otherwise clarify the annual consolidated revenue threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than Senegal 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,
- It is recommended that Senegal 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,
- It is recommended that Senegal have enforcement measures in case of an incomplete or erroneous filing of a CbC report.

3. It is recommended that Senegal take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use prerequisites and with which Senegal 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 Senegal have in place the necessary 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. It is however noted that Senegal will not be exchanging CbC reports in 2019.

5. It is recommended that Senegal 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. It is however noted that Senegal will not be exchanging CbC reports in 2019.

## Part A: The domestic legal and administrative framework

6. Senegal has introduced primary legislation in 2018 to implement the BEPS Action 13 minimum standard. Secondary law and / or guidance have not been published.

### *(a) Parent entity filing obligation*

7. Senegal 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.

8. Under Senegal's primary legislation, legal persons meeting certain conditions are required to file an annual declaration with the tax administration, within 12 months following the end of each fiscal year, which includes the breakdown of the group's activities, profits and various economic, accounting and tax aggregates per geographic location. The legal persons concerned by this requirement are legal persons established in Senegal, fulfilling the following conditions: (i) they prepare consolidated financial statements; (ii) they own or control, directly or indirectly, one or more legal entities outside Senegal, or they have branches outside Senegal; (iii) they have an annual consolidated turnover (excluding tax) of XOF 491 000 000 000 (CFA Francs) or more, during the fiscal year preceding the one which the declaration relates to; (iv) they are not owned by one or more legal entities located in Senegal which are subject to the filing of this declaration, or established outside Senegal and required to file a similar declaration in accordance with a foreign legislation.

9. With respect to the definition of an "Ultimate Parent Entity", Senegal's legislation refers to a legal person preparing 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 Senegal ("*deemed listing provision*"), as required under paragraph 18 i. of the terms of reference. In addition, it is unclear whether the first condition relates to an obligation to prepare consolidated financial statements under accounting principles applicable in Senegal or whether it could apply to legal persons that prepare such statements without being required to do so. It is also unclear whether the legislation would apply to entities which do not have legal personality.

10. 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 Senegal's primary law, which instead contains the following conditions in the primary filing obligation provisions: the Ultimate Parent Entity is "*not owned by one or more legal entities located in Senegal which are subject to the filing of this declaration, or established outside Senegal and required to file a similar declaration in accordance with a foreign legislation*".<sup>1</sup>

11. In light of the above, it is recommended that Senegal complete the definition of an "Ultimate Parent Entity" in a manner consistent with the terms of reference.

12. Finally, there is no definition of an "MNE Group", a "Group" and a "Constituent Entity" in Senegal's primary legislation. It is recommended that Senegal introduce these definitions in its domestic legal and administrative framework.

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

***(b) Scope and timing of parent entity filing***

14. The first filing obligation for a CbC report in Senegal commences in respect of fiscal periods commencing on or after 1 January 2018. The CbC report must be filed within 12 months after the closing of the fiscal year.

15. Senegal's primary law states that the content and format of the CbC report will be set by a ministerial decree.<sup>2</sup> It is recommended that Senegal publish the ministerial decree in due course, 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.

16. According to Senegal's legislation, the filing of a CbC report may be requested from a Constituent Entity in Senegal in certain circumstances (local filing) with respect a legal person which would have been required to file a CbC report if it were established in Senegal. With respect to entities established in Senegal, the legislation provides for an annual consolidated revenue threshold of XOF 491 000 000 000 (CFA Francs).<sup>3</sup> While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Senegal, 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 Senegal) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.<sup>4</sup> It is thus recommended that Senegal 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 Senegal.

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

***(c) Limitation on local filing obligation***

18. Senegal has introduced local filing requirements as from the reporting period starting on or after 1 January 2018.<sup>5</sup> A legal person established in Senegal 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 (which have adopted regulations imposing the filing of a CbC report similar to that required in Senegal, which have concluded an agreement with Senegal for the automatic exchange of CbC reports and which comply with the obligations arising from such agreement)<sup>6</sup>, and which would be required to file the CbC report if it were established in Senegal, 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 Senegal, or in a country or territory included in the above list, has been designated for that purpose.<sup>7</sup>

19. With respect to the conditions under which local filing may be required (paragraph 8(c) iv. b) of the terms of reference), under Senegal's legislation, local filing applies where an MNE Group has a Constituent Entity established in Senegal 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 an international agreement with Senegal allowing the

automatic exchange of CbC reports. Paragraph 8(c) iv. b) of the terms of reference 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 Senegal's legislation. Under Senegal's legislation, local filing may be required in circumstances where there is no current international agreement between Senegal and the residence jurisdiction of the Ultimate Parent Entity. It is recommended that Senegal amend its primary law or otherwise 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 of an international agreement.

20. With respect to the conditions under which local filing may be required (paragraph 8(c) iv. c) of the terms of reference), under Senegal's legislation, local filing applies where an MNE group has a Constituent Entity established in Senegal which is not the Ultimate Parent Entity of the Group, and the jurisdiction of the Ultimate Parent Entity has concluded an agreement with Senegal 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 which limit local filing to the instances of "Systemic Failure" as defined in paragraph 21 of the terms of reference (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. It is recommended that Senegal amend its primary legislation or otherwise clarify that local filing will only apply if there is a "Systemic Failure".

21. No other inconsistencies were identified in respect of the limitation on local filing. It is noted that, in the absence of a published list (see above), no local filing requirements currently apply in Senegal.

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

22. Under paragraph 8(d) of the terms of reference, 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. Senegal's local filing requirements will not apply if there is surrogate filing in another jurisdiction which is listed in a list of states or territories which have adopted regulations imposing the filing of a CbC report similar to that required in Senegal, which have concluded an agreement with Senegal for the automatic exchange of CbC reports and which comply with the obligations arising from such agreement.

23. It is unclear whether local filing would be "deactivated" in respect of jurisdictions which allow voluntary parent surrogate filing, being noted that the list mentioned above has not yet been published at this point in time. This will be monitored.

24. No other inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing. It is noted that, in the absence of a published list (see comments above), no local filing requirements currently apply in Senegal.

***(e) Effective implementation***

25. Senegal has introduced penalties in place in relation to the filing of a CbC report for failure to file and late filing.<sup>8</sup> There are however no penalties or enforcement measures in relation to incomplete or erroneous filing of a CbC report. It is recommended that

Senegal implement enforcement measures in case of incomplete or erroneous filing of a CbC report.

26. There are no specific processes in place that would allow Senegal 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***

27. In respect of paragraph 8 of the terms of reference, Senegal 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 Senegal. Senegal 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); (ii) the format and information to be reported in the CbC report (paragraph 8(b) ii. and iv. of the terms of reference); (iii) the annual consolidated group revenue threshold rule (paragraphs 8(a) ii. of the terms of reference); (iv) the local filing conditions (paragraphs 8(c) iv. b) and c) of the terms of reference); (v) the enforcement measures in case of an incomplete or erroneous filing of a CbC report (paragraphs 8(e) of the terms of reference).

28. It is recommended that Senegal finalise its domestic legal and administrative framework as soon as possible. Specifically, it is recommended that Senegal:

- 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;
- publish the content and format of a CbC report;
- amend or otherwise clarify the annual consolidated revenue threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than Senegal which may deviate from the guidance issued by the OECD;
- 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; and
- have enforcement measures in place in case of incomplete or erroneous filing.

## **Part B: The exchange of information framework**

### ***(a) Exchange of information framework***

29. As of 31 May 2019, Senegal has no bilateral relationships in place for the exchange of CbC reports. It is recommended that Senegal 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 Senegal has an international exchange of information agreement in effect that allows for the automatic exchange of tax information. The recommendation in the 2017/2018 peer review remains in place. It is however noted that Senegal will not be exchanging CbC reports in 2019.

***(b) Content of information exchanged***

30. Senegal does not have processes or written procedures 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 is recommended that Senegal have such processes or written procedures in place ahead of its first exchanges of information. It is however noted that Senegal will not be exchanging CbC reports in 2019.

***(c) Completeness of exchanges***

31. Senegal 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 reporting template with which it should exchange information as per the relevant QCAAs. It is recommended that Senegal have such processes or written procedures in place ahead of its first exchanges of information. It is however noted that Senegal will not be exchanging CbC reports in 2019.

***(d) Timeliness of exchanges***

32. Senegal 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 QCAAs and terms of reference. It is recommended that Senegal have such processes or written procedures in place ahead of its first exchanges of information. It is however noted that Senegal will not be exchanging CbC reports in 2019.

***(e) Temporary suspension of exchange or termination of QCAA***

33. Senegal does not have process 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 be carried out only as per the conditions set out in the QCAA. It is recommended that Senegal have such processes or written procedures in place ahead of its first exchanges of information. It is however noted that Senegal will not be exchanging CbC reports in 2019.

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

34. Senegal does not have processes or written procedures 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 is recommended that Senegal have such processes or written procedures in place ahead of its first exchanges of information. It is however noted that Senegal will not be exchanging CbC reports in 2019.

***(g) Format for information exchange***

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

***(h) Method for transmission***

36. Senegal has not indicated that it uses the Common Transmission System, or any other mechanism, to exchange CbC reports.

**Conclusion**

37. The recommendation in the 2017/2018 peer review for Senegal to take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites remains in place and with which it has an international exchange of information agreement in effect that allows for the automatic exchange of tax information.

38. Further, it is recommended that Senegal has the necessary 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 in place ahead of its first exchanges of information. It is however noted that Senegal will not be exchanging CbC reports in 2019.

**Part C: Appropriate use**

39. No changes were identified in respect of appropriate use. The recommendation in the 2017/2018 peer review for Senegal to take steps to have measures in place relating to appropriate use remains in place. It is however noted that Senegal will not be exchanging CbC reports in 2019.

**Conclusion**

40. The recommendation for Senegal take steps to ensure that the appropriate use condition is met ahead of its first exchanges of information remain in place. It is however noted that Senegal will not be exchanging CbC reports in 2019.

## 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 as soon as possible. Specifically, it is recommended that Senegal: <ul style="list-style-type: none"> <li>- 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;</li> <li>- publish the content and format of a CbC report;</li> <li>- amend or otherwise clarify the annual consolidated revenue threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than Senegal which may deviate from the guidance issued by the OECD;</li> <li>- 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;</li> <li>- have enforcement measures in place in case of incomplete or erroneous filing.</li> </ul>
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 and with which Senegal 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 Senegal have in place the necessary 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.
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

<sup>1</sup> It appears that these provisions may in fact trigger an instance of local filing for entities in Senegal 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. However, where such a filing obligation would occur under the "primary" filing provision of Senegal's legislation, it is unclear whether the provisions of paragraph I. 3. of Article 31 ter would apply to (i) allow an MNE Group to designate one Constituent Entity to file the CbC report (see paragraph 8.(c).v. of the terms of reference) and to (ii) deactivate this filing obligation when a CbC report is made available through surrogate filing (see paragraph 8.(d) of the terms of reference).

<sup>2</sup> See Article 31 paragraph I. 2.

<sup>3</sup> See Article 31 paragraph I. 3 which refers back to paragraph 1 which contains the threshold.

<sup>4</sup> 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](http://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf).

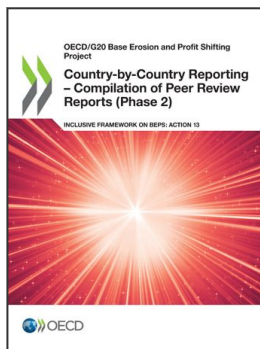
<sup>5</sup> See paragraph III of Article 31 ter.

<sup>6</sup> See paragraph II of Article 31 ter. Such list shall be set by a ministerial decree. The list has not yet been published.

<sup>7</sup> See Article 31 ter paragraph I.3.

<sup>8</sup> Cf. paragraph b) of Article 667 of the General Tax Code: Failure to produce the CbC report within the legal deadlines is sanctioned by a fine of XOF 25 000 000 (CFA Francs).





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