

Austria

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

Summary of key findings

2. Austria's implementation of the Action 13 minimum standard meets all applicable terms of reference.

3. Austria's 2017/2018 peer review included a recommendation relating to the definition of "MNE Group". Austria has since taken steps to address this recommendation by updating its legislative guidance.¹ The recommendation issued in the 2017/2018 peer review has been removed.

Part A: The domestic legal and administrative framework

4. Austria has primary law in place that implements the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.² Austria issued explanatory remarks to the government bill that has now become the Federal Act containing the primary legislation pertaining to CbC Reporting.³ It has also issued guidance.⁴

(a) Parent entity filing obligation

5. Austria's 2017/2018 peer review included a recommendation relating to the definition of "MNE Group" which Austria defines as 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 was unclear whether this would capture a situation where an enterprise resident for tax purposes in one jurisdiction is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction as described in paragraph 15 of the terms of reference. It was thus recommended that Austria amend or otherwise clarify the definition to ensure that this situation is covered.

6. Austria reiterates its position that the definition does capture this situation and has sought to clarify this by updating its legislative guidance to include an example which illustrates its intended definition of "MNE Group".⁵ On this basis, this recommendation is removed.

(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. No changes were identified with respect to the limitation on local filing obligation.

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

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

(e) Effective implementation

10. No changes were identified with respect to the effective implementation.⁶

Conclusion

11. In light of the steps Austria has taken since its 2017/2018 peer review to clarify the definition of “MNE Group” (paragraphs 8(a) i. and iii. and paragraph 15 of the terms of reference), Austria now meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

12. As of 31 May 2019, Austria has 67 bilateral relationships in place, including those activated under the CbC MCAA, under bilateral QCAAs, 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, Austria has taken steps to have qualifying competent authority agreements in effect with jurisdictions of the Inclusive Framework that currently meet the confidentiality, consistency and appropriate use conditions. Regarding Austria’s exchange of information framework, no inconsistencies with the terms of reference identified.⁷

(b) Content of information exchanged

13. Austria 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 .

14. One jurisdiction provided peer input for the reviewed jurisdiction in relation to the content of information exchanged. No concerns were reported.

(c) Completeness of exchanges

15. Austria 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 and intends to incorporate these into its Internal Organization Handbook .

16. One jurisdiction provided peer input for the reviewed jurisdiction in relation to the completeness of exchanges. No concerns were reported.

(d) Timeliness of exchanges

17. Austria 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 .

18. One jurisdiction provided peer input for the reviewed jurisdiction in relation to the timeliness of exchanges. No concerns were reported.

(e) Temporary suspension of exchange or termination of QCAA

19. Austria 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 and intends to incorporate these into its Internal Organization Handbook.

20. One jurisdiction provided peer input for the reviewed jurisdiction in relation to a temporary suspension of exchange or termination of a QCAA. No concerns were reported.

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

21. Austria 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 and intends to incorporate these into its Internal Organization Handbook.

22. One jurisdiction provided peer input for the reviewed jurisdiction in relation to the requirement for a consultation before determining systemic failure or significant non-compliance. No concerns were reported.

(g) Format for information exchange

23. Austria confirms that it uses the OECD XML Schema and User Guide (OECD, 2017^[6]) for the international exchange of CbC reports.

24. One jurisdiction provided peer input for the reviewed jurisdiction in relation to the format for information exchange. No concerns were reported.

(h) Method for transmission

25. Austria indicates that it uses the Common Transmission System to exchange CbC reports.⁸

26. One jurisdiction provided peer input for the reviewed jurisdiction in relation to the method for transmission. No concerns were reported.

Conclusion

27. Austria 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. Austria meets all the terms of reference regarding the exchange of information.

Part C: Appropriate Use

Appropriate use

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

29. One jurisdiction provided peer input for the reviewed jurisdiction in relation to appropriate use. No concerns were reported.

Conclusion

30. Austria 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 <https://findok.bmf.gv.at/findok?execution=e1s1>.

² Primary law consists of the Federal Act on Standardised Transfer Pricing Documentation in its version of 8 March 2017, including three annexes.

³ 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.

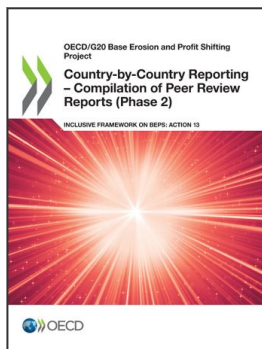
⁴ See “Guidance on Transfer Pricing Documentation” published on 4 December 2017 (BMF-010221/0519-IV/8/2017).

⁵ The example reads: “An Austrian Ltd. (AG) has an Austrian 100% subsidiary. The subsidiary in turn has a PE in Slovakia. Austrian Ltd. (AG) is required to prepare consolidated financial statements in accordance with the applicable accounting rules. In this situation, there is an MNE Group. In addition, the Austrian 100% subsidiary prepares separate financial statements in respect of the PE in Slovakia for financial reporting, regulatory, tax reporting, or internal management control purposes. The three entities are considered Constituent Entities of the MNE Group, the Ultimate Parent Entity of which is Austrian Ltd. (AG).”

⁶ Austria’s 2017/2018 peer review included a general monitoring point relating to the absence of a specific process 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. This monitoring point remains in place.

⁷ 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.

⁸ Countries exchanging under the EU Council Directive (2016/881/EU) use the Common Communication Network (CCN).



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