

Belgium

Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Belgium's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Belgium has rules (primary and secondary law, as well as guidance) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in Belgium. The first filing obligation for a CbC report in Belgium commences in respect of periods commencing on or after 1 January 2016. Belgium meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework

3. Belgium is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Belgium has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Belgium 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 (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Belgium meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.²

Part C: Appropriate use

4. There are no concerns to be reported for the Belgium. Belgium indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional questions on appropriate use.³ Belgium meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.⁴

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Belgium has primary law and secondary laws⁵ 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.⁶

(a) Parent entity filing obligation

Summary of terms of reference:⁷ Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Belgium 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, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

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

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Belgium commences in respect of periods commencing on or after 1 January 2016.⁸ The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.⁹

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.¹⁰

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the

confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Belgium has introduced local filing requirements as from the reporting period starting on or after 1 January 2016.¹¹

12. No inconsistencies were identified with respect to the limitation on local filing obligation.¹²

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

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Belgium's local filing requirements will not apply if there is surrogate filing in another jurisdiction.¹³ No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. Belgium has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place to ensure that all Ultimate Parent Entities and Surrogate Parent Entities that are to file a CbC report do so.¹⁴ There are also penalties in place in relation to the filing of a CbC report in cases of (i) non-filing, (ii) incorrect filing or (iii) incomplete filing.¹⁵ Belgium further states that the risk of a tax audit rises significantly on cases of non-compliance with the CbC report filing obligation.

15. There are no specific processes in place that would allow to take appropriate measures in case Belgium 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 monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Belgium 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 Belgium. Belgium meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. Belgium has legal basis in its domestic legislation to automatically exchange information on CbC reports: it has signed the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (CbC MCAA) on 27 January 2016 and has ratified it (the law ratifying this agreement was published in the Belgian Official Gazette on 24 November 2017).

19. Belgium is part of (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 4 April 2011, in force on 1 April 2015 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements allowing for Automatic Exchange of Information.¹⁶ It has also implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation (DAC4) (Law of 31 July 2017, published in the Belgian Official Gazette on 11 August 2017).

20. Belgium signed the CbC MCAA on 27 January 2016 and has submitted a full set of notifications under section 8 of the CbC MCAA on 1 December 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under section 8(1)(e) of the same agreement. Belgium also signed a bilateral Competent Authority Agreement (CAA) with the United States in July 2017. Belgium indicates that it is also open for other similar negotiations. As of 12 January 2018, Belgium has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Belgium 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 (including legislation in place for fiscal year 2016).¹⁷ Against the backdrop of the still evolving exchange of information framework, at this point in time Belgium meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time Belgium meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Belgium indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use.

24. There are no concerns to be reported for Belgium in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Belgium. Belgium thus meets these terms of reference.

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 Paragraph 8 of the terms of reference (OECD, 2017b).

² Paragraph 9 (a) of the terms of reference (OECD, 2017b).

³ These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

⁴ Paragraph 12 (a) of the terms of reference (OECD, 2017b).

⁵ Primary law consists of the Program Law of 1 July 2016 (www.ejustice.just.fgov.be, accessed 10 April 2018). Relevant articles start from page 10 under “Section 3. – Prix de transfert”. Secondary law consists of a Royal Decree of 28 October 2016 (relevant pages: 18-46 and 132-144).

⁶ Guidance can be accessed by logging in to www.fisconetplus.be and subsequently opening the following URL: https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/income-taxes/administrative-directives-and-comments/circular-letters/circular-letters-procedure/4d0cb7b9-14ef-4e43-ba9d-7edb1abcb5 (accessed 19 April 2018).

⁷ The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

⁸ See Art. 64 (2°) of the aforementioned Program Law of 1 July 2016.

⁹ See Art. 321/2 para. 1 of the Belgian Income Tax Code.

¹⁰ Belgium has published on its official website (“Service Public Fédéral Finances”) the updated OECD guidance as of April 2017 and indicates that it intends to apply it in Belgium. This will be monitored.

¹¹ According to Art. 321/2, para. 2 of the Belgian Income Tax Code, local filing is required when 12 months after the end of the fiscal year, a QCAA is not in effect between Belgium and the jurisdiction of the ultimate parent entity, which may be interpreted as being wider than permitted under the terms of reference (i.e. in the absence of an international agreement). Belgium however clarified in an official guidance that local filing is required in the circumstances contained in the terms of reference (see Circular 2017/C/56 relating to the additional transfer pricing filing requirements published on 4 September 2017, paragraph 14: “the Ultimate Parent Entity shall prepare and file a CbC report for its group but there is, no later than by 12 months after the last day of the reporting period, an international agreement but no QCAA providing for the Automatic Exchange of Information of such CbC report with Belgium”).

¹² It is noted that the Belgian rules provide, in accordance with the provisions of European Union (EU) Council Directive 2016/881/EU (Annex III, Section II), that where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the EU, the MNE Group may designate one of such Constituent Entities to file the country-by-country report conforming to the requirements that would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the EU. Where a Constituent Entity cannot obtain or acquire all the information required to file a country-by-country report, then such Constituent Entity shall not be eligible to be designated to be the Reporting Entity for the MNE Group. Belgium indicates that this provision applies in all situations where there is more than one Constituent Entity resident in Belgium, including when the MNE Group has no other Constituent Entities in another EU Member State. The operation of this rule will be monitored to ensure its consistency with Terms of Reference 8(c) v.

¹³ See art. 321/2, para. 3 of the Belgian Income Tax Code.

¹⁴ See art. 321/3 of the Belgian Income Tax Code.

¹⁵ See art. 445, para. 3 of the Belgian Income Tax Code: a penalty ranging from EUR 1 250 to EUR 25 000 may be imposed.

¹⁶ Belgium reports agreements that allow for the Automatic Exchange of Information with the following jurisdictions: Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China (People's Republic of), Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of Congo, Denmark, Ecuador, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Gabon, Germany, Georgia, Ghana, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Kazakhstan, Korea, Kosovo, Latvia, Lithuania, Luxembourg, Macau (China), Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Tajikistan, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela and Viet Nam.

Note by Turkey

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

¹⁷ It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

References

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