

Brunei Darussalam

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. Brunei Darussalam does not have a legal and administrative framework in place to implement CbC Reporting and indicates that it will not apply CbC requirements for the 2016 fiscal year. It is recommended that Brunei Darussalam take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Brunei Darussalam does not yet have legislation in place for implementing the BEPS Action 13 minimum standard. Brunei Darussalam indicates that its CbC legislation has been drafted and is currently under review. At this time, Brunei Darussalam estimates that the legislation will come into effect by the second half of 2018. Brunei Darussalam indicates that it will apply CbC requirements as of 1 January 2019 with respect to the 2018 fiscal year. It is recommended that Brunei Darussalam take steps to implement a domestic legal and administrative framework¹ to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: Exchange of information framework

3. Brunei Darussalam is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the “Convention”) which is in the process of being ratified. The Convention is not in effect with respect to the fiscal year starting 1 January 2018. This means that Brunei Darussalam will not be able to exchange (either send or receive) CbC reports with respect to 2018 fiscal year under the Convention and CbC MCAA on the first exchange date in 2020. Brunei Darussalam has in place a network for exchange of information which would allow for Automatic Exchange of Information for CbC Reporting: it has multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements. Brunei Darussalam indicates that both Multilateral and Bilateral Competent Authority Agreements models are currently under review. As of 12 January 2018, Brunei Darussalam does not have bilateral relationships activated under the CbC MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review² process, it is recommended that Brunei Darussalam take steps to enable exchanges under existing international agreements of CbC reports relating to the fiscal year 2018 (e.g. lodging a Unilateral Declaration in order to align the effective date of the

Convention with first intended exchanges of CbC reports under the CbC MCAA, or relying on Double Tax Agreements or Tax Information and Exchange Agreements), sign the CbC MCAA or bilateral CAAs, and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. With respect to terms of reference under review for this first annual peer review,³ Brunei Darussalam does not yet have measures in place relating to appropriate use. It is recommended that Brunei Darussalam take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

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. Brunei Darussalam does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:⁴ 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).

(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).

(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).

(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).

(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).

7. Brunei Darussalam does not yet have a legal and administrative framework in place to implement CbC Reporting and it indicates that it will implement CbC Reporting requirements as of 1 January 2019 with respect to the 2018 fiscal year. Brunei Darussalam has confirmed that it has not implemented local filing requirements on resident Constituent Entities of MNE Groups headquartered in another jurisdiction in the meantime.

8. Brunei Darussalam indicates that the legislation for CbC Reporting has already been drafted and is currently under review. At this time, Brunei Darussalam estimates that the legislation will come into effect by the second half of 2018.

9. Brunei Darussalam indicates that there are no MNE Groups currently headquartered in Brunei Darussalam. The Ministry of Finance confirmed that it will verify this information on an ongoing basis through the Estimated Chargeable Income (ECI) and audited Financial Statements submitted by all companies in Brunei Darussalam through the System of Tax Administration and Revenue Services (STARS).

Conclusion

10. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Brunei Darussalam does not have a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Brunei Darussalam. It is recommended that Brunei Darussalam take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

11. 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 network 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).

12. Brunei Darussalam will have sufficient legal basis that permits the automatic exchange of CbC reports. Brunei Darussalam is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) (the “Convention”, signed on 12 September 2017) which is in the process of being ratified. The Convention is not in effect with respect to the fiscal year starting 1 January 2018. This means that Brunei Darussalam will not be able to exchange (either send or receive) CbC reports with respect to 2018 fiscal year under the Convention and CbC MCAA on the first exchange date in 2020. It is recommended that Brunei Darussalam take steps to enable exchanges of CbC reports relating to the fiscal year 2018, e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention,⁵ or relying on Double Tax Agreements or Tax Information and Exchange Agreements. Brunei Darussalam also has multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements.

13. Brunei Darussalam indicates that both Multilateral and Bilateral Competent Authority Agreements models are currently under review. As of 12 January 2018, Brunei Darussalam does not have bilateral relationships activated under the CbC MCAA or under bilateral CAAs. It is recommended that Brunei Darussalam sign the CbC MCAA or bilateral CAAs and take steps to complete its exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

Conclusion

14. In respect of the terms of reference under review, it is recommended that Brunei Darussalam take steps to enable exchanges under existing international agreements of CbC reports relating to the fiscal year 2018 (e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, or relying on Double Tax Agreements or Tax Information and Exchange Agreements), sign the CbC MCAA or bilateral CAAs, and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

Part C: Appropriate use

15. 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).

16. 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), Brunei Darussalam indicates that measures are not yet in place to ensure the appropriate use of information in the six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It had however provided details on the next steps which are being planned to put appropriate measures in place. It is recommended that Brunei Darussalam take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

Conclusion

17. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), it is recommended that Brunei Darussalam take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Brunei Darussalam will not be exchanging CbC reports in 2018.

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 Brunei Darussalam take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that Brunei Darussalam take steps to enable exchanges under existing international agreements of CbC reports relating to the fiscal year 2018 (e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, or relying on Double Tax Agreements or Tax Information and Exchange Agreements), sign the CbC MCAA or bilateral CAAs, and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Brunei Darussalam take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

¹ Paragraph 8 of the terms of reference (OECD, 2017b).

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

³ Paragraph 12 (a) of the terms of reference (OECD, 2017b).

⁴ 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).

⁵ Paragraph 6 of Article 28 of the Convention reads as follows: “[...] Any two or more Parties may mutually agree that the Convention [...] shall have effect for administrative assistance related to earlier taxable periods or charges to tax.”

References

- OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.
- OECD (2017b), “Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting” in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf.
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264115606-en>.



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