

Canada

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. Canada's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one substantive issue in relation to its domestic legal and administrative framework. The report, therefore, contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. Canada has legislation in place that imposes and enforces CbC requirements on MNE Groups whose UPE is resident for tax purposes in Canada. The filing obligation for a CbC report in Canada commences in respect of fiscal years commencing after 2015 (i.e. on or after 1 January 2016). Canada meets all the terms of reference relating to the domestic legal and administrative framework,¹ with the following exception:

- the local filing mechanism which may be triggered in circumstances that are wider than those set out in the minimum standard.²

Part B: Exchange of information framework

3. Canada 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 (e) (i) of this agreement and intends to exchange information with a large number of signatories. It is noted that Canada has signed a bilateral QCAA with the United States. As of 12 January 2018, Canada has 46 bilateral relationships activated under the CbC MCAA. Canada has taken steps to have Qualifying Competent Authority Agreements (QCAA) 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 Canada meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.³

Part C: Appropriate use

4. There are no concerns to be reported for Canada. Canada 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.⁴ Canada meets the terms

of reference relating to the appropriate use aspects under review for this first annual peer review.⁵

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. Canada has legislation in place which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning after 2015.⁶ The Canada Revenue Agency also issued Guidance in 2017.⁷

(a) Parent entity filing obligation

Summary of terms of reference:⁸ 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. Canada has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have consolidated group above a certain threshold,⁹ 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 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 Canada applies in respect of reporting fiscal years commencing after 2015 (i.e. on or after 1 January 2016). The CbC report must be filed by the later of (i) 12 months after the last day of the reporting fiscal year, and (ii) if notification of systemic failure has been received by a constituent entity, 30 days after receipt of the notification. Notifications of systemic failure are only relevant where local filing is triggered. Therefore the filing deadline for Ultimate Parent Entities resident in Canada should always be within 12 months of the last day of the reporting fiscal year.

10. Guidance issued by the CRA includes a description of the items to be included in a CbC Report. This explains that "'Revenues – Unrelated Party' should be read as referring to revenues arising from transactions between unrelated entities which deal at arm's length" and

"Revenues – Related Party" should be read as referring to revenues arising from entities not dealing at arm's length". However, interpretative guidance issued by the OECD in April 2017,¹⁰ subsequent to the CRA guidance, explains that "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report*". It is expected that Canada issue an updated interpretation or clarification of the definitions of "Revenues – Unrelated Party" and "Revenues – Related Party" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

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

(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).

12. Canada has introduced local filing requirements which apply to reporting fiscal years commencing after 2015 (i.e. on or after 1 January 2016).¹¹

13. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), under Canada's legislation, local filing applies where an MNE group has a Constituent Entity resident in Canada 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 a qualifying competent authority agreement in effect to which Canada is a Party on or before the end of 12 months after the end of the reporting fiscal year. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) 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 Canada's legislation. Under Canada's legislation, local filing may be required in circumstances where there is no current international agreement between Canada and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. In its response to the CbC peer review questionnaire for the reviewed jurisdiction, Canada explained that it is party to the Convention on Mutual Administrative Assistance in Tax Matters and has 93 bilateral tax conventions which provide for Automatic Exchange of Information. As such, there will be relatively few cases where Canada does not have a current international agreement with the residence jurisdiction of the Ultimate Parent Entity of an MNE group. Nevertheless, it is recommended that Canada amend the above condition or otherwise

take steps to ensure that the CbC Reporting local filing obligation will apply only in the circumstances contained in the terms of reference.

14. No other inconsistencies were identified with respect to the limitation on local filing obligations.

(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).

15. Canada's local filing requirements will not apply if there is surrogate filing in another jurisdiction. 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).

16. Canada has mechanisms in place to identify MNE groups whose Ultimate Parent Entity is resident in Canada and to enforce compliance with the minimum standard. The International and Large Business Directorate of the CRA will catalogue large MNE groups with their Ultimate Parent Entity resident in Canada; 100% of these groups are subject to risk assessment in multiple areas of potential non-compliance, and may be selected for audit or other compliance actions as a result. There are also penalties in cases of (i) non-filing or (ii) inaccurate or incomplete filing of a CbC Report.¹² In addition, Canada indicates that section 233 of the Act authorizes the Minister of National Revenue to demand information from persons required to file information returns. Failure to comply with demands under this section can affect the level of penalties assessed under subsection 162(10) of the Act.

17. Canada notes the following specific processes in place that would allow it to take appropriate measures in case Canada 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: in Canada, section 231.2 of the Act provides that, notwithstanding any other provision of the Act, the Minister of National Revenue may, by notice, require that any person provide information or any document for any purpose relating to the administration or enforcement of the Act. When a taxpayer refuses to produce the information in response to a request under the requirements provision set out in section 231.2 of the Act, a compliance order pursuant to section 231.7 of the Act can be sought. Provisions of section 231.7 of the Act are used to obtain compliance with the Minister's request for any access, assistance, information or

documents sought by the Minister under section 231.1 or section 231.2 of the Act.¹³ No inconsistencies were identified with respect to the effective implementation.

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Canada 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 Canada. Canada meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the local filing conditions (paragraphs 8 (c) iv. b) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

19. 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).

20. Canada has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 3 November 2011, in force on 1 March 2014 and in effect for 2016), and (ii) 93 bilateral tax conventions which allow Automatic Exchange of Information.¹⁴

21. Canada signed the CbC MCAA on 11 May 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 6 February 2017. It intends to have the CbC MCAA in effect with the Competent Authorities of a large number of signatories to the CbC MCAA that provide a notification under Section 8(1)(e) of the same agreement. It is noted that Canada has signed a bilateral QCAA with the United States. As of 12 January 2018, Canada has 46 bilateral relationships activated under the CbC MCAA or exchange under the bilateral CAA.¹⁵ Canada has taken steps to have QCAAs 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). It is noted that some QCAAs are not in effect for fiscal year 2016 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 the reviewed jurisdiction may not have listed all signatories of the CbC MCAA. Canada indicates that it will further update the list of intended exchange partners. Against the backdrop of the still evolving exchange of information framework, at this point in time Canada meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

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

Part C: Appropriate use

23. 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).

24. 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), Canada 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.

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

Conclusion

26. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Canada. Canada 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	It is recommended that Canada amend the local filing condition or otherwise take steps to ensure that the CbC Reporting local filing obligation will apply only in the circumstances contained in the terms of reference.
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

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

² Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b).

³ Paragraph 9 (a) of the terms of reference (OECD, 2017b).

⁴ These questions were circulated to all members of the Inclusive Framework following the release of the *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a) on 6 September 2017, further to the approval of the Inclusive Framework.

⁵ Paragraph 12 (a) of the terms of reference (OECD, 2017b).

⁶ Primary law consists of the Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.)), Section 233.8 – Country-by-country report.

⁷ Guidance RC4651 released on 2 March 2017.

⁸ 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).

⁹ With respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017)), where the MNE Group draws up, or would draw up, its Consolidated Financial Statements in a currency other than euros, consolidated group revenues must be converted into euros at the prevailing exchange rate at the date of transactions or, if this is not practical, using an average exchange rate for the period as published by the Bank of Canada. Consistent with OECD guidance, where the Ultimate Parent Entity of a group is resident in another jurisdiction, and that jurisdiction has implemented a reporting threshold that is a near equivalent of EUR 750 million as at 1 January 2015, an MNE group that complies with this local threshold will not be subject to local filing in Canada.

¹⁰ See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

¹¹ These local filing requirements apply only to Constituent Entities that are resident in Canada.

¹² Penalties may be applicable to the filing of an RC4649 in Canada under the following legislative provisions: (1) **Subsection 162(5) of the Act:** Subsection 162(5) of the Act (<http://laws-lois.justice.gc.ca/eng/acts/I-3.3/>, accessed 11 April 2018) provides a penalty for the failure of any person to provide any information required on a prescribed form made pursuant to the Act or the Regulations. The penalty for the failure to provide the information is \$100, and is applicable to each such failure; (2) **Subsection 162(7) of the Act:** Subsection 162(7) of the Act provides a

penalty for the failure to file an information return as and when required by the Act and for the failure to comply with a duty or obligation imposed under the Act or the Regulations. The penalty is equal to CAD 25 (Canadian dollars) per day of default, subject to a CAD 100 minimum and a CAD 2 500 maximum; (3) **Paragraphs 162(10)(a) and (b) of the Act:** The penalty under subsection 162(10) of the Act applies in two mutually exclusive situations described by paragraphs 162(10)(a) and (b). The first situation arises where a person or partnership, knowingly or under circumstances amounting to gross negligence, fails to file an information return as and when required by any of sections 233.1 to 233.4 or section 233.8. Where no demand has been served for the return under section 233, the penalty is CAD 500 per month for up to 24 months. If a demand is served and not complied with, the penalty is CAD 1 000 per month. It begins to run from the month in which the return was required to be filed. The second situation arises where a person or partnership that is required to file a return under any of sections 233.1 to 233.4 or section 233.8 has, knowingly or under circumstances amounting to gross negligence, failed to comply with a demand served under section 233 to file the return. The penalty in this case is CAD 1 000 per month for up to 24 months. It begins to run from the month in which the demand was served. The maximum penalty for failure to file a CbC report is therefore CAD 24 000.

¹³ These provisions came into force in June 2001 and provide a civil court remedy with regard to obtaining compliance. This allows the CRA to file an application to the court seeking a compliance order. If the application is successful, a judge orders the person to provide access, assistance, information or documents sought by the Minister. Failure or refusal to comply with a compliance order can result in a person being found in contempt of court under subsection 231.7(4), and thus subject to appropriate punishments by the Court. Typically, the punishment for failure or refusal to comply with a compliance order is the imposition of a fine or possibly imprisonment for repeated contempt orders.

¹⁴ Canada indicates that it has 93 Tax treaties in effect (www.fin.gc.ca/treaties-conventions/treatystatus-eng.asp, accessed 11 April 2018) which all allow for the Automatic Exchange of Information.

¹⁵ There are also two non-reciprocal QCAAs in effect with Bermuda and the Cayman Islands.

References

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