

Chile

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. Chile's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that it raises three substantive issues in relation to its domestic legal and administrative framework. The exchange of information framework is also incomplete and measures to ensure appropriate use are not yet in place. The report, therefore, contains five recommendations to address these issues.

Part A: Domestic legal and administrative framework

2. Chile has rules (primary and secondary laws) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Chile. The first filing obligation for a CbC report in Chile commences in respect of fiscal years commencing on or after 1 January 2016. Chile meets all the terms of reference relating to the domestic legal and administrative framework,¹ with the exception of:

- The absence of a definition of an “MNE Group”,²
- The threshold calculation rule which may generate fluctuations from year to year,³
- The absence of enforcement measures on Surrogate Parent Entities in relation to the filing of a CbC report.⁴

Part B: Exchange of information framework

3. Chile 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 however not in effect for 2016. Chile was not able to lodge a Unilateral Declaration. Chile is a signatory of the CbC MCAA and has provided its notifications under Section 8 of this agreement. Chile intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Chile has 50 bilateral relationships activated under the CbC MCAA. However, most of these Qualifying Competent Authority agreements will only be in effect for taxable periods starting 1 January 2017. This is because Chile was not able to submit a Unilateral Declaration. It is recommended that Chile bring the Convention into effect in relation to the fiscal year 2016 and / or continue to take steps to enable exchanges of CbC reports relating to the fiscal year 2016 under existing international agreements.⁵

Part C: Appropriate use

4. Chile does not yet have measures in place relating to appropriate use:⁶ it was therefore not possible to perform a review at this stage. It is recommended that Chile take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

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 of CbC Reporting.

6. Chile has primary law in place for implementing the BEPS Action 13 minimum standard which consists on amendments to the general legal basis for the establishment of any new filing obligations⁷ and secondary law establishing the obligation to present a CbC report.⁸

(a) Parent entity filing obligation

Summary of terms of reference:⁹ 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. Chile has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups¹⁰ 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. There is no definition of an “MNE Group” under Chile’s legislation, as per paragraph 15 of the terms of reference (OECD, 2017). It is thus recommended that Chile introduce this definition in its legal and administrative framework.

9. With respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017)), the reference to EUR 750 million has effect as if it were a reference to the equivalent at the exchange rate observed at 31 December of the indicated tax period published by the Central Bank of Chile.¹¹ This provision is inconsistent with paragraph 8 a) ii. of the terms of reference (OECD, 2017), as it may generate fluctuations from year to year on the threshold to require the filing of CbC reports. It is thus recommended that Chile amend or otherwise clarify this rule so that it would apply in a manner consistent with the terms of reference.¹²

10. No other 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).

11. The first filing obligation for a CbC report in Chile commences in respect of periods commencing on or after 1 January 2016.¹³ The CbC report must be filed on the last business day of June each year following the end of the period to which the CbC report of the MNE Group relates.¹⁴

12. Specific instructions were issued as regards the items to be included in a CbC Report.¹⁵ This explains that “Income – Related Party” should be read as referring to “transactions with related parties”. However, interpretative guidance issued by the OECD in April 2017¹⁶ 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 Chile issue an updated interpretation or clarification of the definitions of “Revenues – Related Party” within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

13. No 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).

14. Chile does not apply or plan to introduce local filing.

(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. Chile's legislation requires a surrogate parent entity to file in Chile when such surrogate parent has been appointed by the MNE Group to do so. Surrogate filing shall occur only when certain conditions are met.¹⁷

(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. Chile's rules provides for mechanisms to enforce compliance by all Ultimate Parent Entities with their filing obligations. There are penalties in place in relation to the filing of a CbC report:¹⁸ (i) penalties for failure to file the transfer pricing obligations, (ii) penalties for incorrect, incomplete or extemporaneous presentation and (iii) penalties for submitting false declaration of transfer pricing documentation. However, it appears that these penalties only apply to Ultimate Parent Entities which are not in line with paragraph 8 (e) i. of the terms of reference (OECD, 2017). It is recommended that Chile introduce enforcement measures applicable to Surrogate Parent Entities.

17. There are no specific processes in place that would allow to take appropriate measures in case Chile is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reported by a Reporting Entity or that a Reporting Entity is failing to comply with respect to CbC Reporting obligations. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017), Chile 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 Chile. Chile meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the definition of an MNE Group (paragraph 8 (a) i. and 15 of the terms of reference (OECD, 2017)), the annual consolidated group revenue threshold calculation rule (paragraphs 8 (a) ii. of the terms of reference (OECD, 2017)) and the absence of enforcement measures on Surrogate Parent Entities (paragraph 8 (e) i. of the terms of reference (OECD, 2017)).

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, 2017).

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. Chile 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 24 October 2013, in force on 1 November 2016 and in effect for 2017) (the “Convention”) and (ii) bilateral Double Tax Agreements and Tax Information and Exchange Agreements which allow Automatic Exchange of Information.¹⁹ The Convention is not in effect with respect to the fiscal year starting on 1 January 2016. This means that Chile will not be able to exchange (either send or receive) CbC reports with respect to 2016 fiscal year under the Convention and CbC MCAA on the first exchange date in mid-2018. Chile affirms it is not able to lodge a Unilateral Declaration in this respect, but it is taking steps to enable exchanges of CbC reports relating to the fiscal year 2016 with other jurisdictions through the signature of a Supplementary Competent Authority Agreement, in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA. Chile has signed Supplementary Competent Authority Agreements with Colombia, France, Mexico and the United Kingdom to enable exchanges of CbC reports relating to the fiscal year 2016 with these jurisdictions.

21. Chile signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 21 April 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under paragraph (1) (e) of Section 8 of the same agreement. As of 12 January 2018, Chile has 50 bilateral relationships activated under the CbC MCAA. However, most of these Qualifying Competent Authority agreements will only be in effect for taxable periods starting 1 January 2017. This is because Chile was not able to submit a Unilateral Declaration. It is recommended that Chile bring the Convention into effect in relation to the fiscal year 2016 and / or continue to take steps to enable exchanges of CbC reports relating to the fiscal year 2016 under existing international agreements.

Conclusion

22. It is recommended that Chile bring the Convention into effect in relation to the fiscal year 2016 and / or continue to take steps to enable exchanges of CbC reports relating to the fiscal year 2016 under existing international agreements.

Part C: Appropriate use

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

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

24. Chile does not yet have measures in place relating to appropriate use: it was therefore not possible to perform a review at this stage. It is recommended that Chile take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), it is recommended that Chile take steps to ensure that the appropriate use condition is met ahead of the first exchanges 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 - Parent entity filing obligation	It is recommended that Chile introduce the definition of an "MNE Group" in its legal and administrative framework.
Part A	Domestic legal and administrative framework - Parent entity filing obligation annual consolidated group revenue threshold calculation rule	It is recommended that Chile amend or otherwise clarify the annual consolidated group revenue threshold calculation rule applies in a manner consistent with the terms of reference.
Part A	Domestic legal and administrative framework Enforcement measures	It is recommended that Chile introduce enforcement measures applicable to Surrogate Parent Entities.
Part B	Exchange of information framework agreements which allow Automatic Exchange of Information	It is recommended that Chile brings the Convention into effect in relation to the fiscal year 2016 and / or continue to take steps to enable exchanges of CbC reports relating to the fiscal year 2016 under existing international agreements.
Part C	Appropriate use	It is recommended that Chile 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, 2017).

² Paragraphs 8 (a) i. and 15 of the terms of reference (OECD, 2017).

³ Paragraph 8 (a) ii. of the terms of reference (OECD, 2017).

⁴ Paragraph 8 (e) i. of the terms of reference (OECD, 2017).

⁵ Paragraph 9 (a) of the terms of reference (OECD, 2017).

⁶ Paragraph 12 (a) of the terms of reference (OECD, 2017).

⁷ Chile's primary law consists of a general provision in the tax legislation granting power to the Chilean Tax Authority to require information from its taxpayers (article 41, item 6 of Chilean Income Tax Law).

⁸ Chile's secondary law consists of a Resolution setting the obligation to present CbC report (Resolution No. 126/2016) and is available at: www.sii.cl/documentos/resoluciones/2016/reso126.pdf (accessed 11 April 2018) and Annex No. 4 to the Resolution No. 126/2016 provides instructions for filing the CbC report and is available at: www.sii.cl/documentos/resoluciones/2016/reso126_anexo4.pdf (accessed 11 April 2018).

⁹ 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, 2017).

¹⁰ See item B of Resolution No. 126/16.

¹¹ See paragraph (12) of Resolution No. 126/16.

¹² Chile affirms that they will review this issue in the future.

¹³ See paragraph (2) B of Resolution No. 126/16.

¹⁴ See paragraph (3) of Resolution No. 126/16.

¹⁵ See item B, annex 4 of Resolution No. 126/16.

¹⁶ See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

¹⁷ See definition of “Surrogate entity” in annex 6 of Resolution No. 126/16: “a) The ultimate parent or controlling company of the Group is not bound to file the Form N°1937 in its country of tax residence; or b) The country in which the ultimate parent entity is resident for tax purposes has an international agreement in which its country is a Party, but does not have a “Qualified Competent Authority Agreement” in force on the filing date of the Form N°1937; or c) There is a systematic failure in the country of tax residence of the ultimate parent or controlling entity that has been advised by the tax administration of that country, to the member entity or that belongs to the Group resident in Chile for tax purposes.

¹⁸ These are the generic penalties related to the failure to comply with transfer pricing obligations. See article 4 of Resolution No. 126/16.

¹⁹ Chile lists bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions: Ecuador, Paraguay, Peru and Thailand.

References

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