

## Costa Rica

### 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. Costa Rica's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that it raises two issues in relation to its domestic legal and administrative framework, one issue in relation to the exchange of information framework and one issue in relation to the appropriate use of CbC Reports. The report contains, therefore four recommendations to address these issues.

#### *Part A: Domestic legal and administrative framework*

2. Costa Rica has rules (primary law) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Costa Rica. The first filing obligation for a CbC report in Costa Rica commences in respect of fiscal years commencing on or after 1 January 2017. Costa Rica meets all the terms of reference relating to the domestic legal and administrative framework,<sup>1</sup> with the exception of:

- the definition of “Ultimate Parent Entity” which is yet to be introduced or completed<sup>2</sup> and
- the filing deadline of a CbC report.<sup>3</sup>

#### *Part B: Exchange of information framework*

3. Costa Rica is a signatory to 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. It is also a signatory to the CbC MCAA and has recently provided its notifications under Section 8 of this agreement in order to have bilateral relationships activated in the next round of activations. As of 12 January 2018, Costa Rica does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Costa Rica continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions.<sup>4</sup> Costa Rica expects to have a number of QCAAs in effect before the date of the first exchanges of CbC reports and indicates that it intends to exchange information with a large number of signatories of the CbC MCAA. It is however noted that Costa Rica will not be exchanging reports in 2018.

#### *Part C: Appropriate use*

4. Costa Rica does not yet have measures in place relating to appropriate use.<sup>5</sup> Costa Rica is recommended to take steps to ensure that the appropriate use condition is

met ahead of the first exchanges of CbC reports. It is however noted that Costa Rica 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 of CbC Reporting.

6. Costa Rica has primary law in place for implementing the BEPS Action 13 minimum standard which consists on a legal basis for the establishment of any new filing obligations and establishes the necessary requirements, including the filing and reporting obligations.<sup>6</sup>

### *(a) Parent entity filing obligation*

Summary of terms of reference:<sup>7</sup> 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. Costa Rica has introduced a domestic legal and administrative framework which imposes CbC filing obligation on 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 by the Action 13 report (OECD, 2015).<sup>8</sup>

8. With respect to the definition of “Ultimate Parent Entity”<sup>9</sup> in Costa Rica's rules does not make it clear that an entity cannot be an Ultimate Parent Entity if another Constituent Entity holds an interest in that entity (i.e. the ultimate holding company must be the top level holding company in the MNE group). It is recommended that Costa Rica amend or otherwise clarify that the definition of Ultimate Parent Entity in the CbC Reporting Rules is consistent with the terms of reference.

9. No other inconsistencies were identified with respect to Costa Rica'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).

10. The first filing obligation for a CbC report in Costa Rica commences in respect of fiscal years beginning on or after 1 January 2017.<sup>10</sup> The CbC report must be filed no later than 31 December after the end of each reporting fiscal year of the MNE Group,<sup>11</sup> noting that the ordinary tax year starts on 1 October and ends on 30 September.<sup>12</sup> The CbC reports shall be filed by 31 December of the year following the reporting fiscal year of the MNE Group. For the 2017 tax year (starting on October 1, 2016 and ending on September 30, 2017), the CbC report shall be filed by the last business day of December 2018.<sup>13</sup> Costa Rica affirms that the CbC Reports will be available for the first exchange of information at the end of April 2019. This will be monitored to ensure that the filing deadline will not impact the ability of the Costa Rica to meet its obligations relating to the exchange of information under the terms of reference.

11. For the following fiscal years, this results in a CbC report being filed later than the date in paragraph 8 (b) iii. of the terms of reference (OECD, 2017a).<sup>14</sup> As a result, the CbC report may subsequently be exchanged with a partner jurisdiction later than the timeline envisaged in the Action 13 Report.<sup>15 16</sup> It is recommended that Costa Rica amend its rules or otherwise ensures that a CbC report is not filed later than 12 months after the end of the accounting period and that is not subsequently exchanged later than 15 months after the end of the accounting period with partner jurisdictions.

12. 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).

13. Costa Rica 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).

14. Costa Rica's legislation requires a surrogate parent entity to file in Costa Rica when such surrogate parent has been appointed by the MNE Group to do so. Surrogate filing shall occur only when certain conditions are met.<sup>17</sup>

*(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).

15. Costa Rica's rules provides for mechanisms to enforce compliance by all Ultimate Parent Entities with their filing obligations. There are penalties in place for failure:<sup>18</sup> (i) to file a CbC report, (ii) to completely file a CbC report and (iii) to submit it on time.

16. There are no specific processes in place that would allow to take appropriate measures in case Costa Rica 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*

17. In respect of paragraph 8 of the terms of reference (OECD, 2017a), Costa Rica meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the definition of "Ultimate Parent Entity" which is yet to be introduced or completed (Paragraphs 8 (a) iii and 18 of the terms of reference (OECD, 2017a)) and the filing deadline of a CbC report (paragraph 8 (b) iii. of the terms of reference (OECD, 2017a)).

**Part B: The exchange of information framework**

18. 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, 2017a).

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).

19. Costa Rica has domestic legislation that permits the automatic exchange of CbC reports.<sup>19</sup> 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 1 March 2012, in force on 1 August 2013 and in effect for 2016) and (ii) a number of bilateral Double Tax Agreements and a Tax Information and Exchange Agreement which allow Automatic Exchange of Information.<sup>20</sup>

20. Costa Rica signed the CbC MCAA on 27 January 2016 and has recently provided its notifications under Section 8 of this agreement in order to have bilateral relationships

activated in the next round of activations. As of 12 January 2018, Costa Rica does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Costa Rica continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. Costa Rica expects to have a number of QCAs in effect before the date of the first exchanges of CbC reports and indicates that it intends to exchange information with a large number of signatories of the CbC MCAA. It is also noted that Costa Rica will not be exchanging reports in 2018.

### **Conclusion**

21. It is recommended that Costa Rica continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Costa Rica will not be exchanging reports in 2018.

## **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: 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).

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), Costa Rica indicates that is currently preparing guidance 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, 2017b). It is recommended that Costa Rica take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Costa Rica will not be exchanging CbC reports in 2018.

### **Conclusion**

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017a), Costa Rica is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Costa Rica 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 – parent filing obligation	It is recommended that Costa Rica complete its definition of “Ultimate Parent Entity” so that it is in line with the terms of reference.
Part A	Domestic legal and administrative framework - Scope and timing of parent entity filing – filing date	It is recommended that Costa Rica amend its rules or otherwise ensures that a CbC report is not filed later than 12 months after the end of the accounting period and not subsequently exchanged more than 15 months after the end of the accounting period with partner jurisdictions.
Part B	Exchange of information framework	It is recommended that Costa Rica continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions.
Part C	Appropriate use	Costa Rica is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

## Notes

<sup>1</sup> Paragraph 8 of the terms of reference (OECD, 2017b).

<sup>2</sup> Paragraphs 8 (a) iii and 18 of the terms of reference (OECD, 2017b).

<sup>3</sup> Paragraph 8 (b) iii of the terms of reference (OECD, 2017b).

<sup>4</sup> Paragraph 9 (a) of the terms of reference (OECD, 2017b).

<sup>5</sup> Paragraph 12 (a) of the terms of reference (OECD, 2017b).

<sup>6</sup> Costa Rica’s primary law consists of the Resolution n° DGT-R-001-2018, published on 11 January 2018.

<sup>7</sup> 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).

<sup>8</sup> See article 2 of the primary law.

<sup>9</sup> Paragraph 18 of the terms of reference (OECD, 2017b).

<sup>10</sup> See article 5 (i) of the primary law.

<sup>11</sup> Costa Rica indicates that the determinative declaration must be submitted no later than 15 December 2017.

<sup>12</sup> Costa Rica’s legislation allows the authorization of a special tax year period, which coincides with the calendar year (from 1 January to 31 December).

<sup>13</sup> Costa Rica affirms that if a taxpayer follows the special period with a year closing on 31 December 2017, it must file the income tax return on 15 March 2018 and the CbC Report on the last business day of December 2018.

<sup>14</sup> “The CbC report is required to be filed no later than 12 months after the last day of the reporting Fiscal year of the MNE Group”.

<sup>15</sup> See the Model Multilateral Competent Authority Agreement, Model Competent Authority Agreement on the basis of a DTC, Model Competent Authority Agreement on the basis of a TIAE



in the Action 13 Report (OECD, 2015), which envisage that the CbC reports should be exchanged as soon as possible and no later than 18 months after the last day of the fiscal year of the Reporting entity of the MNE Group for the first year for which CbC requirements are applicable, and no later than 15 months after the last day of the fiscal year of the Reporting entity of the MNE Group for subsequent years.

<sup>16</sup> For example, for an MNE Group with a fiscal year 1 October 2017 and ending on 30 September 2018, the CbC report would have to be filed together with by December 31 2019 and exchanged later than 15 months after the last day of the fiscal year of the Reporting entity of the MNE Group.

<sup>17</sup> See article 2.2. of the primary law.

<sup>18</sup> See article 6 of the primary law: Failure to supply the information required in this resolution corresponding to the country-by-country report will be sanctioned in accordance with Article 83 of the Tax Standards and Procedures Code. Article 83 of General Tax Code provides a pecuniary penalty equivalent of two percent (2%) of the gross income of the offending subject shall be applied in the period of the income tax, prior to that in which the infringement occurred, with a minimum of ten base salaries and a maximum of one hundred base salaries. If there are errors in the information provided, the penalty will be one percent (1%) of the base salary for each incorrect record, understood as a record of tax-relevant information about a natural or legal person or other entities without legal personality (For this natural year one base salary is CRC 426 200 (Costa Rican colones) which is equal to USD 774).

<sup>19</sup> See article 106.IV of the Tax Code.

<sup>20</sup> Costa Rica lists bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions (in force): Germany and Spain. Costa Rica also lists agreements permitting exchange of information (TIEAs) with the following jurisdictions (in force): Argentina, Canada, Finland, France, Mexico, Netherlands, Norway, Sweden and United States. It is also part of the Central American Assistance, Convention that includes the following jurisdictions: El Salvador, Guatemala, Honduras and Nicaragua.

## References

- OECD (2017a), “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](http://www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf).
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