

## Croatia

### 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. Croatia's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that Croatia should take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. The report therefore contains one recommendation to address this issue.

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

2. Croatia has rules (primary and secondary laws) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Croatia. The first filing obligation for a CbC report in Croatia commences in respect of tax years beginning on or after 1 January 2016. Croatia meets all the terms of reference relating to the domestic legal and administrative framework.<sup>1</sup>

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

3. Croatia 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. Croatia signed the CbC MCAA on 6 July 2017 and has submitted a full set of notifications under Section 8 of the same agreement. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under Section 8(1)(e) of the same agreement. Croatia also indicates that it is in the process of signing a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Croatia has 51 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Croatia 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 Croatia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.<sup>2</sup>

#### *Part C: Appropriate use*

4. Croatia does not yet have measures in place to ensure the appropriate use of information<sup>3</sup> in the six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a).<sup>4</sup> It is

recommended that Croatia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

## 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. Croatia has primary and secondary laws (hereafter the “Ordinance”) in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.<sup>5</sup> No guidance has been published.

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

Summary of terms of reference:<sup>6</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. Croatia has introduced a domestic legal and administrative framework which imposes a 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>7</sup>

8. No inconsistencies were identified with respect to the parent entity filing obligation.<sup>8</sup>

### *(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 Croatia commences in respect of tax years beginning on or after 1 January 2016.<sup>9</sup> The CbC report must be filed within 12 months of the last day of the reporting fiscal year of the MNE Group.<sup>10</sup>

10. Croatia’s secondary law includes a definition of the items to be included in a CbC Report (Articles 109 and following of the Ordinance). This notably explains that this should include notably “*the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with related enterprises*”.<sup>11</sup> However, interpretative guidance issued by the OECD in April 2017,<sup>12</sup> subsequent to the issuance of the CbC Act, 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”. Croatia indicates that it will issue an updated definition or a clarification of the definition of “related enterprises” 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. Croatia has introduced local filing requirements in respect of tax years beginning on 1 January 2017 or later.<sup>13</sup> No inconsistencies were identified with respect to the limitation on local filing obligation.

***(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. Croatia’s local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.<sup>14</sup> 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. Croatia has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other Constituent Entities of the MNE Group resident in Croatia.<sup>15</sup> There are also penalties in relation to the filing of a CbC report:

(i) penalty for failure to file, (ii) penalty for late filing and (iii) penalty for inaccurate and incomplete filing.<sup>16</sup>

15. There are no specific process in place to take appropriate measures in case Croatia 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), Croatia has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Croatia. Croatia 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. Croatia has sufficient legal basis that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 11 October 2013, in force on 1 June 2014 and in effect for 2016) which allows Automatic Exchange of Information in the field of taxation. Croatia has also implemented EU Council Directive 2016/881/2016 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

19. Croatia signed the CbC MCAA on 6 July 2017 and has submitted a full set of notifications under Section 8 of the same agreement on 2 August 2017. Croatia intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under Section 8(1)(e) of the same agreement. Croatia also indicates that it is in the process of signing a bilateral CAA with the United States. As of 12 January 2018, Croatia has 51 bilateral relationships activated under the CbC MCAA<sup>17</sup> or exchanges under the EU Council Directive (2016/881/EU). Croatia 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 Croatia meets the terms of reference.

### Conclusion

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

### Part C: Appropriate use

21. 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).

22. 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), Croatia 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 Croatia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

### Conclusion

23. In respect of paragraph 12 (a), it is recommended that Croatia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

## 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	It is recommended that Croatia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

### Notes

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

<sup>2</sup> Paragraph 9 (a) of the terms of reference (OECD, 2017b).

<sup>3</sup> Paragraph 12 (a) of the terms of reference (OECD, 2017b).

<sup>4</sup> These questions were circulated to all members of the Inclusive Framework following the release of *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.

<sup>5</sup> Primary law consists of the Act on Administrative Cooperation in the Field of Taxation (the “Act”) (See Section 4 Articles 34 and 35 for Automatic exchange of information on the country-by-country report). Amendments to the Act are in force as from 1 of January 2018 (Official Gazette 130/2017). Secondary law consists of the Ordinance issued by the Ministry of Finance (hereafter referred to as the “Ordinance”) on the Automatic Exchange of Information in the field of taxation. The Ordinance transposes the provisions of the following European Directives into the legal order of the Republic of Croatia: (1) Annex I and Annex II of Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation (hereinafter: Directive 2014/107/EU) and (2) Annex III of 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 (SL L 146, 3. 6. 2016) (hereinafter: Council Directive (EU) 2016/881).

<sup>6</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>7</sup> See Section 4 Articles 34 and 35 of the Act.

<sup>8</sup> It is noted that under amended Article 35 paragraph 1 of the Act, the threshold calculation for currency fluctuations for MNE groups whose Ultimate Parent Entity is located in a jurisdiction other than Croatia will be applied in accordance with OECD guidance.

<sup>9</sup> See Article 35(2) of Section 4 of the Act and Article 123(1) of the Ordinance.

<sup>10</sup> See Article 35(1) of Section 4 of the Act and Article 123(1) of the Ordinance.

<sup>11</sup> See Article 114 of the Ordinance.

<sup>12</sup> See [www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf](http://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf) (OECD, 2018).

<sup>13</sup> See Article 123(2) of the Ordinance.

<sup>14</sup> See Articles 105 and 106 of the Ordinance.

<sup>15</sup> See Articles 107 of the Ordinance.

<sup>16</sup> Under amended Article 66(1.2) of Section 5 of the Act: a monetary fine in the amount of HRK 2 000.00 to 200 000.00 (Croatian kunas) will be imposed for the misdemeanour on the legal person who files inaccurate stipulated report, incomplete stipulated report or does not file the stipulated report within the deadline to the Ministry of Finance, Tax Administration and under; and under Article 66(1.4), a monetary fine in the amount of HRK 2 000.00 to 20 000.00 will be imposed against the responsible person for the misdemeanours under paragraph 1.2.

<sup>17</sup> 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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