

Curaçao

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. Curacao does not have a legal and administrative framework in place to implement CbC Reporting. It is recommended that Curacao take steps to finalise the 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. Curacao does not have legislation in place for implementing the BEPS Action 13 minimum standard. Curacao indicates that its primary legislation relating to CbC Reporting requirements is currently going through the legislative process and that the secondary legislation will follow soon. At this time, Curacao estimates that the primary legislation will come into effect in the first half of 2018. With the introduction of this CbC legislation in 2018, the element of voluntary filing of Country-by-Country reports is taken up in said legislation. Hence, the filing of Country-by-Country reports on a voluntary basis by taxpayers will be available for fiscal years 2016 and 2017.¹ It is recommended that Curacao take steps to finalise the domestic legal and administrative framework² 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. Curacao is a Party 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, and it is also a signatory to the CbC MCAA; it has not provided its notifications under Section 8 of this agreement. As of 12 January 2018, Curacao does not yet 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 review³ process, it is recommended that Curacao 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.

Part C: Appropriate use

4. In respect of the terms of reference under review,⁴ Curacao has not yet provided information on measures relating to appropriate use. It is recommended that Curacao take

steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Curacao will not be exchanging CbC reports in 2018.⁵

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. Curacao 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:⁶ 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. Curacao does not yet have a legal and administrative framework in place to implement CbC Reporting and it intends to implement CbC Reporting requirements for the 2017 fiscal year. Curacao indicates that its legislation will also make it possible for tax payers to file a country by country report for the tax year 2016 on a voluntary basis.

8. Curacao indicates that its primary legislation is going through the legislative process and that secondary legislation will follow soon. It is expected that the primary legislation will be in force in the first half of 2018. With the introduction of this CbC legislation in 2018, the element of voluntary filing of Country-by-Country reports is taken up in said legislation. Hence, the filing of Country-by-Country reports on a voluntary basis by taxpayers will be available for fiscal years 2016 and 2017.

9. It is recommended that Curacao finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Conclusion

10. In respect of paragraph 8 of the terms of reference (OECD, 2017), Curacao has not yet implemented 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 Curacao. It is recommended that Curacao take steps to finalise the 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, 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).

12. Curacao 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)⁷ (in force on 1 September 2013 and in effect for 2016).

13. Curacao signed the CbC MCAA on 30 June 2016 but it has not yet submitted its notifications under Section 8 of the CbC MCAA. As of 12 January 2018, Curacao does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Curacao 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.

Conclusion

14. In respect of the terms of reference, it is recommended that Curacao 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 Curacao will not be exchanging CbC reports in 2018.⁸

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. Curacao has not yet provided information on measures relating to appropriate use. It is recommended that Curacao take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Curacao will not be exchanging CbC reports in 2018.⁹

Conclusion

17. In respect of paragraph 12 (a), it is recommended that Curacao 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	It is recommended that Curaçao finalise its 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 Curaçao 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.
Part C	Appropriate use	It is recommended that Curaçao take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

¹ Curacao indicates that with the passing of the CbC legislation in 2018, voluntary filing will be available for taxpayers for both fiscal years 2016 and 2017.

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

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

⁴ Paragraph 12 (a) of the terms of reference (OECD, 2017).

⁵ Except for the CbC reports filed in Curacao under the voluntary parent surrogate mechanism.

⁶ 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).

⁷ Curacao is party to the Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol by way of the Netherlands's territorial extension, as a former constituent of the "Netherlands Antilles", to which the original Convention applied as from 1 February 1997.

⁸ Except for the CbC reports filed in Curacao under the voluntary parent surrogate mechanism.

⁹ Except for the CbC reports filed in Curacao under the voluntary parent surrogate mechanism.

References

- OECD (2017), "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.
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