

Czech Republic

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. The Czech Republic's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one interpretational issue and one substantive issue in relation to its domestic legal and administrative framework. It is also recommended that the Czech Republic take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. The report, therefore, contains three recommendations to address these issues.

Part A: Domestic legal and administrative framework

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

- the annual consolidated revenue threshold calculation rule² which may deviate from the guidance issued by the OECD. Although such deviation may be unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 minimum standard, and
- the local filing mechanism which may be triggered in circumstances that are wider than those set out in the minimum standard.³

Part B: Exchange of information framework

3. The Czech Republic 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 and is also a signatory to the CbC MCAA; it has submitted a full set of notifications under Section 8 of this agreement. The Czech Republic 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. The Czech Republic has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, the Czech Republic has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. The Czech Republic 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, the Czech Republic meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.⁴

Part C: Appropriate use

4. The Czech Republic does not yet have measures in place to ensure the appropriate use of information⁵ in the six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It is recommended that the Czech Republic take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.⁶

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. The Czech Republic has primary and secondary laws (hereafter the “regulations”) in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements including the filing and reporting obligations.⁷ Guidance has been published.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. The Czech Republic has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups that are resident for tax purposes in the Czech Republic, 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).¹⁰

8. According to the Czech Republic’s regulations, the filing of a CbC report may be requested from a Constituent Entity in the Czech Republic in certain circumstances (local filing). The regulations provide for an annual consolidated revenue threshold of EUR 750 million or an amount equivalent to EUR 750 million converted with an average value of the exchange rates as published by the ECB for January 2015.¹¹ While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in the Czech Republic, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is tax resident in the Czech Republic) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.¹² It is thus recommended that the Czech Republic amend or otherwise clarify this rule so

that it would apply in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than the Czech Republic, when local filing requirements are applicable.

9. 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).

10. The first filing obligation for a CbC report in the Czech Republic commences in respect of reporting fiscal years beginning on or after 1 January 2016.¹³ The CbC report must be filed within 12 months after the end of the reporting fiscal year of the MNE Group.¹⁴

11. The Czech Republic indicates that practical CbCR guidance has been published on the website of the Czech Tax Administration and is in the process of being amended to take into account the updated OECD guidance published (*Guidance on the implementation of Country-by-Country Reporting*, OECD, 2018). This will be monitored.

12. 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).

13. The Czech Republic has introduced local filing requirements in respect of reporting fiscal years beginning on or after 1 January 2017.¹⁵

14. Under Section 13zl of the primary legislation, local filing requirements are such that a Czech Constituent Entity other than the Ultimate Parent Entity will have to file a CbC report for the Group if the “*state of jurisdiction of the Ultimate Parent Entity of the Group is not a state exchanging country-by-country reports for the reported fiscal year (...)*”.¹⁶ 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 the Czech Republic's legislation. Under the Czech Republic's legislation, local filing may be required in circumstances where there is no current international agreement between the Czech Republic and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. It is recommended that the Czech Republic amend its legislation or otherwise take steps to ensure that local filing is only required in the circumstances contained in the terms of reference.¹⁷

15. No other 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).

16. The Czech Republic's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.¹⁸ 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).

17. The Czech Republic 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 (UPE), the Surrogate Parent Entity or any other Constituent Entity resident in the Czech Republic.¹⁹ There are also penalties in place in relation to CbC Reporting obligations of the resident Constituent Entity: (i) penalties for failure to comply with the obligation in kind and (ii) penalties for failure to comply with the obligation to retain documents or request the UPE for assistance.²⁰

18. There are no specific process to take appropriate measures in case the Czech Republic is notified by another jurisdiction that it has reason to believe with respect to a Reporting Entity that an error may have led to incorrect or incomplete information reporting 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 issued in this respect. No inconsistencies were identified with respect to the effective implementation.

Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), the Czech Republic has a domestic legal and administrative framework to impose and enforce CbC requirements on the UPE of an MNE Group that is resident for tax purposes in the Czech Republic. The Czech Republic meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the annual consolidated group revenue threshold (paragraphs 8 (a) ii. of the terms of reference (OECD, 2017b)) and (ii) the local filing conditions (paragraphs 8 (c) iv. b) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

20. 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).

21. The Czech Republic has sufficient legal basis to automatically exchange 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 26 October 2012, in force on 1 February 2014 and in effect in 2016) and (ii) multiple bilateral Double Tax Agreements which allow the Automatic Exchange of Information in the field of taxation. The Czech Republic has also implemented EU Council Directive 2016/881/EU amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

22. The Czech Republic signed the CbC MCAA on 27 January 2016 and has submitted a full set of notifications under Section 8 of the same agreement on 5 October 2017. The Czech Republic 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. The Czech Republic has also signed a bilateral CAA with the United States. As of 12 January 2018, the Czech Republic has 55 bilateral relationships activated under the CbC MCAA²¹ or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. The Czech Republic 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, the Czech Republic meets the terms of reference relating to the exchange of information framework.

Conclusion

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

Part C: Appropriate use

24. 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).

25. 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), the Czech Republic 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 the Czech Republic take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is noted that the Czech Republic repeatedly confirmed that the risk of inappropriate use of information is minimal even under existing legal framework as no adjustment to the taxable income can be made without particular evidence obtained in the course of further control activities and investigation.

Conclusion

26. In respect of paragraph 12 (a), it is recommended that the Czech Republic 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 - Parent entity filing obligation annual consolidated group revenue threshold	It is recommended that the Czech Republic amend or otherwise clarify that the annual consolidated group revenue threshold calculation rule applies without prejudice of the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than the Czech Republic.
Part A	Domestic legal and administrative framework - Limitation on local filing	It is recommended that the Czech Republic amend its legislation or otherwise take steps to ensure that local filing is only required in the circumstances contained in the terms of reference.
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that the Czech Republic take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

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

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

³ Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b).

⁴ Paragraph 9 (a) of the terms of reference (OECD, 2017b).

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

⁶ It is noted that the Czech Republic repeatedly confirmed that the risk of inappropriate use of information is minimal even under existing legal framework as no adjustment to the taxable income can be made without particular evidence obtained in the course of further control activities and investigation.

⁷ The primary law with respect to Country-by-Country Reporting (CbCR) consists of Act no. 164/2013 Sb. on international tax cooperation, as amended by Act No 305/2017 as of 16 August 2017 by inserting Division 5 “Automatic Exchange of Information Reported by Multinational Enterprise Groups”. Division 5 consists of Sections 13za – 13zq (the “Act on International Cooperation”). Secondary law (hereafter the “regulations”) consists of a ministerial decree for a local version of Annex III To Chapter V - Transfer Pricing Documentation – Country-By-Country along with an explanatory statement. See: <http://aplikace.mvcr.cz> (accessed 11 April 2018).

⁸ The Czech Republic indicates that practical CbCR guidance (issued on website of the Czech tax administration in the form of Q&A) has been updated based on the updated OECD guidance of the implementation of CbCR issued in November 2017 which is currently being approved by the director of General Finance directorate.

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, 2017b).

¹⁰ See Sections 13za – 13zq of the Act on International Cooperation.

¹¹ See Section 13zd (2) of the Act on International Cooperation.

¹² See question IV. 1. “Impact of currency fluctuations on the agreed EUR 750 million threshold of the “Guidance on the Implementation of Country-by-Country Reporting”:

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

¹³ See Article II paragraph 1 of the amendment Act No. 305/2017 Coll.

¹⁴ See Section 13zm (1) of the Act on International Cooperation.

¹⁵ See Article II paragraph 2(b) of the amendment Act No. 305/2017 Coll.

¹⁶ See Section 13zl (2) (a.2) of the Act on International Cooperation.

¹⁷ The Czech Republic indicates that relevant amendment in accordance with the terms of reference has already been drafted into the relevant Act no. 164/2013 Coll. which is currently being approved on governmental level.

¹⁸ See Section 13zl (3) of the Act on International Cooperation.

¹⁹ See Section 13zn of the Act on International Cooperation.

²⁰ Under Sections 13zp (2) – (4) of the Act on International Cooperation: the disciplinary fine imposed is up to CZK 1 500 000 (Czech Koruna) for a UPE or a Surrogate Parent Entity and up to CZK 600 000 for any other Constituent Entity.

²¹ 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

OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris.

www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.

OECD (2017a), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.

OECD (2017b), “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.

OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241480-en>.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264115606-en>.



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