

Democratic Republic of the Congo

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 Democratic Republic of the Congo does not have a legal and administrative framework in place to implement CbC Reporting. CbC requirements may first apply for taxable years commencing on or after 1 January 2018 if they are included in the Finance Bill for 2018. It is recommended that the Democratic Republic of the Congo implement a domestic legal and administrative framework in relation to 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. The Democratic Republic of the Congo indicates that draft legislation is for the time being subject to internal review. It is expected to be presented during the examination of the Finance Bill for 2018. To date, no headquarters of MNE Groups have been identified in the DRC. Most MNE Groups present operate through subsidiaries or representative offices. The administration's management services are currently working with the Democratic Republic of the Congo's delegate to the Inclusive Framework in regard of the identification of the subsidiaries of certain groups present in the Democratic Republic of the Congo. The Democratic Republic of the Congo indicates that CbC requirements may apply for taxable years commencing on or after 1 January 2018, if they are included in the Finance Bill for 2018. It is recommended that the Democratic Republic of the Congo implement a domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.¹

Part B: Exchange of information framework

3. The Democratic Republic of the Congo is not a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), and is also not a signatory to the CbC MCAA. As of 12 January 2018, the Democratic Republic of the Congo does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,² it is recommended that the Democratic Republic of the Congo take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

4. In respect of the terms of reference under review,³ the Democratic Republic of the Congo does not yet have measures in place relating to appropriate use. It is recommended that the Democratic Republic of the Congo take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that the Democratic Republic of the Congo 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.

6. The Democratic Republic of the Congo does not have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:⁴ 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. The Democratic Republic of the Congo indicates that draft legislation is for the time being subject to internal review. It is expected to be presented during the examination of the Finance Bill for 2018. To date, no headquarters of MNE Groups have been identified in the DRC. Most MNE Groups present operate through subsidiaries or representative offices. The administration's management services are currently working with the Democratic Republic of the Congo's delegate to the Inclusive Framework in regard of the identification of the subsidiaries of certain groups present in the Democratic Republic of the Congo. The Democratic Republic of the Congo indicates that CbC requirements may apply for taxable years commencing on or after 1 January 2018, if they are included in the Finance Bill for 2018.

8. It is recommended that the Democratic Republic of the Congo implement a domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), the Democratic Republic of the Congo does not have 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 the Democratic Republic of the Congo. It is recommended that the Democratic Republic of the Congo implement a domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.

Part B: The exchange of information framework

10. 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).

11. The Democratic Republic of the Congo is not a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (“the Convention”) and is also not a signatory to the CbC MCAA. The Democratic Republic of the Congo does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.

12. As of 12 January 2018, the Democratic Republic of the Congo does not have bilateral relationships activated under the CbC MCAA. It is recommended that the Democratic Republic of the Congo take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that the Democratic Republic of the Congo will not be exchanging CbC reports in 2018.

Conclusion

13. In respect of the terms of reference under review, it is recommended that the Democratic Republic of the Congo take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that the Democratic Republic of the Congo will not be exchanging CbC reports in 2018.

Part C: Appropriate use

14. 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).

15. The Democratic Republic of the Congo does not yet have measures in place relating to appropriate use. It is recommended that the Democratic Republic of the Congo

take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that the Democratic Republic of the Congo will not be exchanging CbC reports in 2018.

Conclusion

16. It is recommended that the Democratic Republic of the Congo take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that the Democratic Republic of the Congo 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	It is recommended that the Democratic Republic of the Congo implement a domestic legal and administrative framework in relation to CbC requirements as soon as possible, taking into account its particular domestic legislative process.
Part B	Exchange of information framework	It is recommended that the Democratic Republic of the Congo take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that the Democratic Republic of the Congo 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 Paragraph 9 (a) of the terms of reference (OECD, 2017).

³ Paragraph 12 (a) of the terms of reference (OECD, 2017).

⁴ 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).

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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<http://dx.doi.org/10.1787/9789264115606-en>.



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