

Denmark

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. Denmark's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, does not contain any recommendation.

Part A: Domestic legal and administrative framework

2. Denmark has rules (primary and secondary law, as well as guidance) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity (UPE) of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Denmark. The first filing obligation for a CbC report in Denmark commences in respect of income years beginning on 1 January 2016 or later. Denmark meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework

3. Denmark 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 it is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. Denmark has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Denmark has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Denmark 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, Denmark meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.²

Part C: Appropriate use

4. Denmark indicates that measures are in place 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, 2017a). It has provided details in relation to these measures, enabling it to answer "yes" to the additional

questions on appropriate use.³ Denmark meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.⁴

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. Denmark has primary law and secondary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.⁵ Guidance has also been published.⁶

(a) Parent entity filing obligation

Summary of terms of reference:⁷ 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. Denmark has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on UPEs 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).

8. No inconsistencies were identified with respect to Denmark'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).

9. The first filing obligation for a CbC report in Denmark commences in respect of income years beginning on 1 January 2016 or later.⁸ The CbC report must be filed within 12 months of the last day of the income year⁹ of the MNE Group.

10. 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).

11. Denmark has introduced local filing requirements in respect of income years beginning on 1 January 2017¹⁰ or thereafter.

12. No inconsistencies were identified with respect to the limitation on local filing obligation.¹¹

(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. Denmark's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.¹² 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: 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).

14. Denmark 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 group company resident in Denmark.¹³ There are also penalties in relation to the filing of a CbC report which includes a penalty for intentional or grossly negligent failure to file.¹⁴

15. There are no specific processes in place that would allow to take appropriate measures in case Denmark 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 further monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Denmark 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 Denmark. Denmark 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. Denmark has domestic legislation that permits the automatic exchange of CbC reports.¹⁵ 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 27 May 2010, in force on 1 June 2011 and in effect for 2016) (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements¹⁶ and (iii) the Nordic Convention on Administrative Assistance,¹⁷ which allow Automatic Exchange of Information in the field of taxation.

19. Denmark signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 10 March 2017. It intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. It is noted that Denmark has signed a bilateral QCAA with the United States. As of 12 January 2018, Denmark has 55 bilateral relationships activated under the CbC MCAA¹⁸ or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Denmark 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, Denmark meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

20. Against the backdrop of the still evolving exchange of information framework, at this point in time, Denmark 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: 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).

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), Denmark indicates that measures are in place 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, 2017a). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use.

23. There are no concerns to be reported for Denmark in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Denmark. Denmark thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved			Recommendation for improvement
Part A	Parent entity filing obligation	-	
Part B	Exchange of information	-	
Part C	Appropriate use	-	

Notes

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

² Paragraph 9 (a) of the terms of reference (OECD, 2017b).

³ These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

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

⁵ Primary law consists of CbC Reporting introduced in Denmark by Law of 29 December 2015 no.1884 Section 1(2); See paragraphs 10 – 16 of Section 3B of the Danish Tax Control Act regarding the obligation to provide CbC information: www.retsinformation.dk/forms/r0710.aspx?id=176725 (available in Danish text, accessed 20 April 2018). Secondary law consists of Danish statutory order on country-by-country reporting no. 1133 published on 27 August 2016: www.retsinformation.dk/Forms/R0710.aspx?id=182132 (available in Danish text, accessed 20 April 2018).

⁶ Guidance is provided in SKAT's Legal Guidance section C.D.11.13.2 on CbC Reporting for multinational corporations www.skat.dk/display.aspx?oid=2232525&vid=214580 (available in Danish text, accessed 20 April 2018).

⁷ 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).

⁸ See Law of 29 December 2015 no. 1884, Section 6.

⁹ See Section 3B (10) of the Danish Tax Control Act.

¹⁰ See Law of 29 December 2015 no. 1884, Section 6.

¹¹ See Section 3B (11) and (12) of the Danish Tax Control Act. It is noted that where there are more than one Constituent Entities resident in Denmark that are subject to local filing, it is mandatory for the MNE group to assign the responsibility for filing to one of the Constituent Entities under Danish legislation, whereas Article 2 of the Model Legislation in the Action 13 Report (OECD, 2015) states that the MNE Group may designate one such Constituent Entities to file the CbC report. However, this does not seem to create a substantive issue.

¹² See Section 3B (13) of the Danish Tax Control Act.

¹³ See Section 3B (14) of the Danish Tax Control Act.

¹⁴ See Section 17 (3) and (4) of the Danish Tax Control Act. It is noted that the penalty amount will be based on the economic consequences of the violation. Denmark indicates that it has extended its existing transfer pricing documentation penalty regime to the requirements to file the CbC Report. The Danish existing transfer pricing documentation penalty regime stipulates as a

main rule, that a minimum fine should be paid equivalent to twice the saved costs by not having completed the transfer pricing documentation or the transfer pricing documentation in full in first place. The documentation cost is set at a basic amount of DKK 250 000 (Danish kroner) (twice a basic amount of DKK 125 000 in saved costs). However, the explanatory notes to the legislation implementing the CbC Reporting obligations do not contain any specific guidance as to the quantum of the penalties in case of filing shortcomings as regards the CbC Report.

¹⁵ In Section 3B (10) to (16) of the Danish Tax Control Act.

¹⁶ Denmark reports tax treaties with Andorra, Anguilla, Antigua & Barbuda, Argentina, Aruba, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Bermuda, Botswana, Brazil, British Virgin Islands, Brunei Darussalam, Bulgaria, Canada, Cayman Islands, Chile, China (People's Republic of), Cook Islands, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Dominica, Egypt, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Germany, Ghana, Gibraltar, Greece, Grenada, Guatemala, Guernsey, Hong Kong (China), Hungary, India, Indonesia, Ireland, Isle Of Man, Israel, Italy, Jamaica, Japan, Jersey, Kenya, Korea, Kuwait, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Macao (China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Monaco, Montenegro, Montserrat, Morocco, Netherlands, New Zealand, Niue, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Serbia, Seychelles, Singapore, Sint Maarten, Slovak Republic, Slovenia, South Africa, Sri Lanka, Switzerland, Chinese Taipei, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turks and Caicos Islands, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Vanuatu, Venezuela, Viet Nam and Zambia.

Note by Turkey

The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

¹⁷ The Nordic Convention includes Denmark, Faroe Islands, Iceland, Norway and Sweden.

¹⁸ 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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From:

Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)

Inclusive Framework on BEPS: Action 13

Access the complete publication at:

<https://doi.org/10.1787/9789264300057-en>

Please cite this chapter as:

OECD (2018), “Denmark”, in *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1): Inclusive Framework on BEPS: Action 13*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264300057-31-en>

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