

Estonia

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. Estonia's implementation of the Action 13 minimum standard meets all applicable terms of reference. This report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Estonia 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 Estonia. The first filing obligation for a CbC report in Estonia commences in respect of financial years beginning on 1 January 2016 or later. Estonia meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework

3. Estonia 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 exchange information with all other competent authorities which provide notifications under the same agreement. As of 12 January 2018, Estonia has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Estonia 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 Estonia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.²

Part C: Appropriate use

4. There are no concerns to be reported for Estonia. Estonia 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 Estonia 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 of CbC Reporting.

6. Estonia has primary law (hereafter the “Act”) and secondary law (hereafter the “regulations”) in place which implements the BEPS Action 13 minimum standard and the Council Directive (EU) 2016/881 of 25 May 2016 (hereafter the “DAC 4”), 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. Estonia 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). It is noted that the Act generally cross-references the DAC 4; in particular, certain definitions (“Ultimate Parent Entity”, “Surrogate Parent Entity”, “Reporting Entity” and “Multinational Enterprise Group”) refer to the definitions of the DAC4, while some definitions are indirectly cross-referenced through these terms, (such as “Group” and “Excluded MNE Group”). Estonia indicates that certain translated terms used in the Estonian legislation should be read in light with the definitions of the DAC4 as the CbC legislation has been cross-referenced to the EU law through Article 4.1 of the Act.⁸

8. By cross-referencing to the definition of an “MNE Group” which itself refers to the definition of an “Excluded MNE Group” in the DAC4,⁹ an Excluded Group in the Estonian framework is defined as a “*Group having total consolidated group revenue of less than EUR 750 000 000 or an amount in local currency approximately equivalent to EUR 750 000 000 as of January 2015 during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year*”. While these provisions would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Estonia, they 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 an Estonian tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.¹⁰ Estonia has indicated that the threshold calculation rule 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 Estonia. As such, no recommendation is made but this issue will be further monitored.

9. No other inconsistencies were identified with respect to Estonia'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).

10. The first filing obligation for a CbC report in Estonia applies in respect of financial years beginning on or after 1 January 2016.¹¹

11. Under Article 1 of Section 20⁵ of the Tax Act, the Estonian reporting entity is required to submit the CbC report to the tax authority in Estonia by 31 December of the calendar year following the reporting year. Estonia indicates that Estonian MNE Groups have calendar year-ends which means that the CbC report being submitted by 31 December of the year following the reporting fiscal year would be filed within the 12-month filing deadline.¹²

12. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.¹³

(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. Estonia has introduced local filing requirements in respect of fiscal years beginning on 1 January 2017 or at a later date.¹⁴ No inconsistencies were identified with respect to the limitation on local filing obligation.¹⁵

(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).

14. Estonia's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE Group.¹⁶ 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).

15. Estonia has legal mechanisms in place to enforce compliance with the minimum standard. There are notification mechanisms in place that apply to each Constituent Entity.¹⁷ There are also penalties in place in relation to the filing of a CbC report in cases of non-filing, incorrect or incomplete filing.¹⁸ Estonia indicates that the enforcement measure has a wide application that covers the obligations of the reporting entity under the CbC rules as well as other obligations under the Tax Information Exchange Act.

16. There are no specific processes in place that would allow to take appropriate measures in case Estonia 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

17. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Estonia has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Estonia. Estonia meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

18. 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 QCAs 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).

19. Estonia has domestic legislation that permits the automatic exchange of CbC reports.¹⁹ 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 29 May 2013, in force on 1 November 2014 and in effect for 2016) and it has implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards to mandatory Automatic Exchange of Information in the field of taxation.

20. Estonia has signed the CbC MCAA on 27 January 2016 and it has submitted a full set of notifications under section 8 of the CbC MCAA on 31 March 2017. 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. As of 12 January 2018, Estonia has 53 bilateral relationships activated under the CbC MCAA²⁰ or exchanges under the EU Council Directive (2016/881/EU). Estonia 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, Estonia meets the terms of reference.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time Estonia meets the terms of reference under review for this first annual peer review regarding the exchange of information framework.

Part C: Appropriate use

22. 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).

23. 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), Estonia 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.

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

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for the Estonia. Estonia 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	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
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 legislation for Country-by-Country (CbC) Reporting consists of the Tax Information Exchange Act (hereafter the “Act”), more specifically under Chapter 1 General Provisions, Chapter 2², Chapter 3 and section 23⁴ of Chapter 4 and Article 155.3 of the Taxation Act. See www.riigiteataja.ee/en/eli/504072017001/consolide (accessed 20 April 2018). The Act implements the BEPS Action 13 minimum standard and the Council Directive (EU) 2016/881 of 25 May 2016 (the “DAC4”): see subsection 1¹ of Chapter 1 of the Act which refers to the “rights and obligations relating to international Automatic Exchange of Information”, as well as subsection 4¹(1¹) which refers to the automatic exchange of country-by-country report information on the basis of Article 6 of the Convention. See also the definition of “the exchange of information” which is “the automatic communication of information, needed to determine the amount of tax liability concerning direct taxes, on the basis of a treaty or under the relevant legislation of the European Union, from the tax authority to a competent authority of a foreign state and vice versa” (subsection 2 point 7 of Chapter 1 of the Act).

Secondary legislation was published on 18 December 2017. See www.riigiteataja.ee/en/eli/523012018002/consolide (accessed 20 April 2018).

⁶ Guidance was published as Annex 15 of the secondary legislation on 18 December 2017. Guidance includes the instructions relating to the format of a country-by country report and the procedure for submission. See www.riigiteataja.ee/tolkelisa/5230/1201/8002/Annex15.pdf (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 for example: “Accounting Entity” which refers to a “Reporting Entity”; “Financial Year” which refers to “Fiscal Year”; and “Reporting Year” which refers to “Reporting Fiscal Year” (see paragraphs § 20⁴ and § 20⁵ of Chapter 2² of the Act). Estonia further explains that some of the terms used in Estonian legislation are sometimes translated differently so in order to avoid any conflict, the terms are explained by communication vis-a-vis the companies and the guidance to the forms will include explanations.

⁹ See Article 2 of Section 20³ of the Chapter 2² of the Act.

¹⁰ See question IV. 1. “Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) 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).

¹¹ See Article 1 section 23⁴ of Chapter 2¹ of the Act.

¹² Paragraph 8 (b) iii. of the terms of reference (OECD, 2017b).

¹³ The instructions relating to the format of a country-by country report and the procedure for submission have been published by the tax authority in Estonia as part of Annex 15 of the secondary legislation on 18 December 2017.

¹⁴ See Article 2 section 23⁴ and section 20⁴ of Chapter 2¹ of the Act.

¹⁵ It is noted that the Act directly cross-references to the provisions of the DAC4 as regards the instances of local filing (see Article 3 section 20⁴ of Chapter 2¹ of the Act which refers to point (1) of Section II of Annex III of the DAC4 that provides for the conditions under which local filing may occur). Estonia’s rules provide that a “*Reporting Entity that is a tax resident of Estonia, who is not the parent entity of the group: 1) shall request the ultimate parent entity of the group communication of all information required for the performance of the reporting obligation provided for in subsection (1) of this section; 2) shall submit the country-by country report also in the case of a failure to obtain all the information required to perform the reporting obligation; 3) shall notify the tax authority of the refusal of the ultimate parent entity of the group to communicate any information required for the performance of the reporting obligation*”.

¹⁶ See Article 3 of Section 20⁵ of Chapter 2¹ of the Act which refers to point (2) of Section 2 of Annex III of the DAC4.

¹⁷ See Section 20⁶ of Chapter 2¹ of the Act. In addition, Estonia states that the tax authority in Estonia will notify all EU Member States of the refusal of the Ultimate Parent Entity of the MNE Group to communicate the required information to the Reporting Entity in Estonia to prepare the CbC report (See Section 20⁷ of Chapter 2¹ of the Act). Estonia indicates that an administrative penalty is provided for obstruction of the exchange of information: § 155.3 of Taxation Act www.riigiteataja.ee/en/eli/502012017008/consolide (accessed 20 April 2018). Estonia also has enforcement powers to compel the production of a CbC report: § 10/2/6 of Taxation Act.

¹⁸ See Section 22 of Chapter 3 of the Act: (1) if the reporting entity fails to perform the filing obligations, the tax authority may designate additional term for the performance of obligations and issue a warning of imposing penalty payment pursuant to § 136 of the Taxation Act. (2) If the reporting entity has failed to perform the obligations by the due date specified in the warning, the penalty payment specified in the warning is required to be paid thereby. The tax authority shall submit a claim for payment of penalty to the obligated person by an order, determine the term of payment and issue a warning that in case of a failure to pay the penalty within the time limit, the claim shall be subject to compulsory execution pursuant to §§ 128-132 of the Taxation Act. (3) In order to enforce the performance of the obligations the amount of penalty payment may not exceed EUR 3 300, whereas it may not exceed EUR 1 300 for the first event and EUR 2 000 in the second event. (4) The provisions of this section shall be applied also to a member of the group that is a tax resident of Estonia upon a failure to perform the notification obligation provided.

¹⁹ See section 23⁴ of Chapter 2¹ of the Act.

²⁰ 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.

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