

Hong Kong (China)

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. It is recommended that Hong Kong finalise its domestic legal and administrative framework to impose and enforce CbC requirements, as well as its exchange of information framework, as soon as possible.

Part A: Domestic legal and administrative framework

2. Hong Kong is in the process of putting in place a complete 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 Hong Kong. It intends to implement CbC requirements for fiscal years as from 1 January 2018, with a “parent surrogate filing” arrangement which allows the Ultimate Parent Entities of MNE Groups resident in Hong Kong to voluntarily file CbC reports for fiscal years from 1 January 2016 to 31 December 2017 in Hong Kong for exchange with other jurisdictions. Hong Kong indicates that the amendment bill seeking to introduce the legal framework of CbC Reporting was published in the Gazette on 29 December 2017 and is being scrutinized by the Legislative Council. It is recommended that Hong Kong finalise its domestic legal and administrative framework¹ to impose and enforce CbC requirements as soon as possible.

Part B: Exchange of information framework

3. Hong Kong has a domestic legal basis for the exchange of information in place. Hong Kong has a number of Double Taxation Agreements (“DTAs”) and TIEAs that allow Automatic Exchange of Information. In order to conduct Automatic Exchange of Information with more jurisdictions on a multilateral basis, Hong Kong has obtained an in-principle approval from China to extend the application of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the “Convention”) to Hong Kong. The amendment bill seeking to introduce the legal framework for such extension was passed by the Legislative Council on 24 January 2018. The Convention and the CbC MCAA will come into force in Hong Kong after the enactment of relevant subsidiary legislation and the completion of relevant procedures with the Depositary of the Convention, tentatively in the second half of 2018. Since the Convention is at present not applicable in Hong Kong, bilateral Competent Authority Agreements (CAAs) need to be concluded for exchange of CbC reports received under the voluntary parent surrogate filing arrangement. As of 12 January 2018, Hong Kong has four bilateral CAAs in place for exchanges under DTAs and will continue discussions with other jurisdictions seeking to conclude as many such CAAs as practicable. With respect to the terms of reference relating to the exchange of

information framework aspects under review for this first annual peer review process,² Hong Kong is in the process of developing a complete exchange of information framework that allows Automatic Exchange of Information. It is recommended that Hong Kong take steps to complete such a framework and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. In 2018, Hong Kong will be exchanging CbC reports received under voluntary parent surrogate filing under the bilateral CAAs mentioned above.

Part C: Appropriate use

4. There are no concerns to be reported for Hong Kong. Hong Kong 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 Hong Kong 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. Hong Kong is in the process of finalising its legislation in order to implement the BEPS Action 13 minimum standard. Hong Kong indicates that the amendment bill seeking to introduce the legal framework of CbC Reporting was published in the Gazette on 29 December 2017 and is being scrutinized by the Legislative Council.

(a) Parent entity filing obligation

Summary of terms of reference:⁵ 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. Hong Kong is in the process of finalising its legal and administrative framework to implement CbC Reporting. Hong Kong indicates that it intends to introduce CbC filing requirements for MNE Groups for accounting periods commencing from 1 January 2018, with a “parent surrogate filing” arrangement which allows the Ultimate Parent Entities of MNE Groups resident in Hong Kong to voluntarily file CbC reports for fiscal years from 1 January 2016 to 31 December 2017 in Hong Kong for exchange with other jurisdictions.

Conclusion

8. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Hong Kong is in the process of putting in place a complete 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 Hong Kong. It is recommended that Hong Kong finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.

Part B: The exchange of information framework

9. 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).

10. Hong Kong has a legal basis to automatically exchange information. Hong Kong has multiple DTAs and TIEAs in place with a number of jurisdictions, which allow Automatic Exchange of Information.⁶ In order to conduct Automatic Exchange of Information with more jurisdictions on a multilateral basis, Hong Kong has obtained an in-principle approval from China to extend the application of the Convention to Hong Kong. The amendment bill seeking to introduce the legal framework for such extension was passed by the Legislative Council on 24 January 2018. The Convention and the CbC MCAA will come into force in Hong Kong after the enactment of relevant subsidiary legislation and the completion of relevant procedures with the Depository of the Convention, tentatively in the second half of 2018.

11. Since the Convention is at present not applicable in Hong Kong, bilateral CAAs need to be concluded for exchange of CbC reports received under the voluntary parent surrogate filing arrangement. As of 12 January 2018, Hong Kong has four bilateral CAAs in place for exchanges under DTAs and will continue discussions with other jurisdictions seeking to conclude as many such CAAs as practicable. In 2018, Hong Kong will be exchanging CbC reports received under voluntary parent surrogate filing under the bilateral CAAs mentioned above.

Conclusion

12. In respect of paragraph 9 (a) of the terms of reference (OECD, 2017b), Hong Kong is in the process of developing a complete exchange of information framework that allows Automatic Exchange of Information. It is recommended that Hong Kong take steps to complete such a framework and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. In 2018, Hong Kong will be exchanging CbC reports received under voluntary parent surrogate filing under the bilateral CAAs mentioned above.

Part C: Appropriate use

13. 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).

14. 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), Hong Kong 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.

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

Conclusion

16. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Hong Kong. Hong Kong 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	It is recommended that Hong Kong finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.
Part B	Exchange of information framework	It is recommended that Hong Kong complete its 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	-

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 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).

⁶ Hong Kong indicates that currently, Automatic Exchange of Information can be undertaken under the DTAs between Hong Kong and Austria, Belgium, Canada, China (People's Republic of), France, Guernsey, Hungary, Indonesia, Ireland, Italy, Japan, Jersey, Korea, Mexico, Netherlands, New Zealand, Portugal, Qatar, Romania, Russia, South Africa and United Kingdom. Hong Kong has committed to AEOI, and is negotiating with other jurisdictions to refine the relevant DTAs and TIEAs to pave the way for the purposes of AEOI. It is expected that Hong Kong will be able to conduct AEOI and automatic exchange of CbC reports with more jurisdictions in the near future.

References

- 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.
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