

## Hungary

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

#### ***Part A: Domestic legal and administrative framework***

2. Hungary has rules (primary law) 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 Hungary. The first filing obligation for a CbC report in Hungary commences in respect of reporting fiscal years beginning on or after 1 January 2016. Hungary meets all the terms of reference relating to the domestic legal and administrative framework,<sup>1</sup> with the exception of:

- the annual consolidated revenue threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than Hungary<sup>2</sup> 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 standard.

#### ***Part B: Exchange of information framework***

3. Hungary 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. Hungary 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. It is noted that Hungary is awaiting authorisation from its prime minister to enter into negotiation for a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Hungary has 51 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Hungary 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, Hungary meets the

terms of reference relating to the exchange of information framework aspects under review for this first annual peer review<sup>3</sup> process.

### ***Part C: Appropriate use***

4. Hungary does not yet have measures 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).<sup>4</sup> It is noted however that Hungary has legal measures to ensure the appropriate use of CbC information. It is recommended that Hungary take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

## **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. Hungary has primary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.<sup>5</sup> No guidance has been published.

### ***(a) Parent entity filing obligation***

Summary of terms of reference:<sup>6</sup> 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. Hungary 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).<sup>7</sup>

8. With respect to the CbC filing requirements, Hungarian legislation states in its definition of “Excluded MNE Group” that the CbC filing requirement is not applicable if the consolidated group revenue is less than EUR 750 000 000 or the HUF (Hungarian forint) equivalent thereof calculated based on the average currency exchange rate published by the Hungarian National Bank for January 2015.<sup>8</sup> While these provisions would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Hungary, 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 a Hungary 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.<sup>9</sup> It is thus recommended that Hungary clarify that this 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 Hungary.

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 Hungary commences in respect of reporting fiscal years beginning on or after 1 January 2016.<sup>10</sup> The CbC report must be filed within 12 months of the last day of the reporting fiscal year of the MNE Group.<sup>11</sup>

11. 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).

12. Hungary has introduced local filing requirements in respect of income years beginning on or after 1 January 2017.<sup>12</sup> No inconsistencies were identified with respect to the limitation on local filing obligation.<sup>13</sup>

***(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. Hungary's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.<sup>14</sup> 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).

14. Hungary 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 Constituent Entities of the MNE Group resident in Hungary.<sup>15</sup> There are also penalties in relation to the CbC Reporting obligation and notification: (i) penalties for failure to file, (ii) penalties for defective filing and (iii) penalties for deficient or inaccurate filing.<sup>16</sup> Hungary also indicates that the Hungarian Tax Authority will apply risk assessment, audit process and, if need be, default payment penalties in order to enforce compliance with filing obligations.

15. There are no specific process in place to take appropriate measures in case Hungary 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. However, Hungary indicates that the Tax Authority has the right and necessary powers to examine, through an audit, whether the Reporting Entity's obligation under CBC reporting has been fulfilled and that the suspicion that the obligations might be breached could also be based on the information received from another jurisdiction. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

*Conclusion*

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Hungary has 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 Hungary. Hungary meets all the terms of reference relating to the domestic legal and administrative framework with the exception of the annual consolidated group revenue threshold (paragraph 8 (a) ii. of the terms of reference (OECD, 2017b)).

**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. Hungary has sufficient legal basis that permits the automatic exchange of CbC reports. 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 12 November 2013, in force on 1 March 2015 and in effect for 2016) which allows Automatic Exchange of Information in the field of taxation. Hungary has also implemented EU Council Directive 2016/881/2016 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

19. Hungary signed the CbC MCAA on 1 December 2016 and has submitted its notifications under section 8 of the CbC MCAA on 20 July 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 Hungary is currently awaiting authorisation from its prime minister to enter into negotiation for a bilateral CAA with the United States. As of 12 January 2018, Hungary has 51 bilateral relationships activated under the CbC MCAA<sup>17</sup> or exchanges under the EU Council Directive (2016/881/EU). Hungary 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, Hungary 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, Hungary 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: (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).

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), Hungary 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 also noted that Hungary has legal measures to ensure the appropriate use of CbC information. It is recommended that Hungary take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

### ***Conclusion***

23. In respect of paragraph 12 (a), it is recommended that Hungary 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 Hungary 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 Hungary.
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that Hungary take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

### Notes

<sup>1</sup> Paragraph 8 of the terms of reference (OECD, 2017b).

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

<sup>3</sup> Paragraph 9 (a) of the terms of reference (OECD, 2017b).

<sup>4</sup> Paragraph 12 (a) of the terms of reference (OECD, 2017b).

<sup>5</sup> Primary law consists of Chapter V/D for the Reporting and Automatic Exchange of Information Relating to Country-by-Country Reports established by Act XL of 2017 amending Act XXXVII of 2013 on the rules of International Administrative Cooperation Related to Taxes and other Public Duties, implemented in May 2017 (hereafter referred to as the “Act”).

<sup>6</sup> 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).

<sup>7</sup> See Section 43/N of the Act.

<sup>8</sup> See Article 7 of Section 4(1) of the Act.

<sup>9</sup> See question IV. 1. “Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of *“Guidance on the Implementation of Country-by-Country Reporting”* (OECD, 2018).

<sup>10</sup> See Section 45/F (1) of the Act.

<sup>11</sup> See Section 45/F (1) of the Act.

<sup>12</sup> See Section 45/F (2) of the Act.

<sup>13</sup> See Section 43/N (4) of the Act: If multiple constituent entities of an MNE Group have tax residence in the European Union and one or more of the conditions specified in Subsection (2)(b) are fulfilled, and the MNE Group appointed one of its constituent entities with tax residence in Hungary to fulfill the country-by-country reporting obligation for the reporting fiscal year for all constituent entities of the MNE Group with tax residence in the European Union, then the appointed constituent entity shall submit a country-by-country report to the state tax authority with the content specified in Subsection (9) and Annex 3 of the Act.

<sup>14</sup> See Section 43/N (6) of the Act.

<sup>15</sup> See Section 43/O of the Act.



<sup>16</sup> See Section 43/S (1) of the Act. Hungary indicates the state tax authority in Hungary may impose a default penalty of up to HUF 20 million (approximately EUR 64 500) on the person subject to the notification or reporting obligation. However, no penalty should be applied if the taxpayer can prove that the taxpayer exercised its rights according to general legal expectations.

<sup>17</sup> 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), “Hungary”, 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/10.1787/9789264300057-43-en>

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