

Ireland

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 Country-by-Country (CbC) reports. Ireland's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Ireland has rules (primary and secondary laws, as well as guidance) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in Ireland. The first filing obligation for a CbC report in Ireland commences in respect of fiscal years commencing on or after 1 January 2016. Ireland meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework

3. Ireland is a signatory of 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 is also a signatory of the Multilateral Competent Authority Agreement for exchanges of CbC reports (CbC MCAA); it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Ireland has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under bilateral competent authority agreements (CAA). Ireland 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 Ireland 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. There are no concerns to be reported for Ireland. Ireland 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 Ireland 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. Ireland has primary law in place⁵ to implement the BEPS Action 13 minimum standard which enables the Irish Revenue to make regulations on country-by-country reporting (CbC Reporting). Ireland has issued such regulations⁶ (secondary law) including the filing and reporting obligations. Guidance has also been published in the form of answers to frequently asked questions (FAQs).⁷

(a) Parent entity filing obligation

Summary of terms of reference:⁸ 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. Ireland 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).⁹

8. With respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017b)), it is noted that the definition of an “MNE Group” has the same meaning as given by Article 1 of the OECD Model Legislation.¹⁰ This incorporates by way of cross-reference the definition of an “Excluded MNE Group”. It is noted that the provision relating to the total consolidated group revenue threshold is bracketed in the Model Legislation. Ireland clarifies that the total consolidated group revenue threshold that applies in Ireland for the definition of an “Excluded MNE Group” is EUR 750 million, or an equivalent amount in another currency, depending on the situation: it should be noted that not all Irish parented MNE Groups have euro as their functional currency. Furthermore, the applicable threshold amount is made clear in Q2 of the FAQs published in Ireland.

9. No 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 Ireland commences in respect of periods commencing on or after 1 January 2016.^{11 12} The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.¹³

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. Ireland has introduced local filing requirements as from the reporting period starting on or after 1 January 2016.¹⁴

13. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), local filing requirements can be required from a “domestic Constituent Entity” pursuant to the regulations,¹⁵ if the jurisdiction in which the Ultimate Parent Entity of the MNE Group is resident for tax purposes does not have in effect, by the latest date to provide a CbC report, a QCAA with the State that provides for the exchange of CbC reports.

14. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if “the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement (QCAA) in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report”. This is narrower than the above condition in Ireland’s legislation. Under Ireland’s legislation, local filing may be required in circumstances where there is no current international agreement between Ireland and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. Ireland however confirms that it will apply local filing requirements only as per the circumstances contained in the terms of reference, i.e. when there is no QCAA but

there is an international agreement. This is reflected in the published guidance.¹⁶ As such, no recommendation is made but this aspect will be further monitored.

15. No other inconsistencies were identified with respect to the limitation on local filing obligations.¹⁷

(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).

16. Ireland’s local filing requirements will not apply if there is surrogate filing in another jurisdiction.¹⁸ No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.¹⁹

(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).

17. Ireland has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Surrogate Parent Entities in Ireland.²⁰ In addition, Ireland indicates that the Irish Revenue is in the process of building its “CbC Reporting compliance framework”, which would include a process designed to address any of the scenarios of ineffective implementation contained in the terms of reference. There are also penalties in place in relation to the filing of a CbC report:²¹ (i) penalties for failure to file a CbC report, (ii) daily default penalty and (iii) penalties for incomplete or inaccurate information. Ireland’s primary legislation also includes a power to audit a CbC report.²²

18. There are no specific processes in place that would allow Irish Revenue to take appropriate measures in case Ireland 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. Ireland indicates that the Irish Revenue is in the process of building its CbC Reporting compliance framework. It is anticipated that this framework will include appropriate measures to be taken in this scenario; however, as the framework is not yet complete, it is not possible to provide a more detailed response at this time. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Ireland 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 Ireland. Ireland meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

20. 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).

21. Ireland has sufficient legal basis in its domestic legislation to automatically exchange information on CbC reports. 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 30 June 2011, in force on 1 September 2013 and in effect for 2016)²³ and (ii) multiple bilateral Double Tax Agreements which allow Automatic Exchange of Information.^{24 25} It also implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

22. Ireland signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 1 December 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. It is noted that Ireland has signed a bilateral QCAA with the United States and Hong Kong (China). As of 12 January 2018, Ireland has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under bilateral CAAs.^{26 27} Ireland 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 Ireland meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time Ireland meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

24. 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).

25. 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), Ireland 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 report* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use.

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

Conclusion

27. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Ireland. Ireland 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 law consists of Section 891H of the Taxes Consolidation Act 1997 (No. 39 of 1997).

⁶ Secondary law consists of regulations introduced by a Statutory Instrument No. 653 of 2016: the *Taxes (Country-By-Country Reporting) Regulations 2016*.

⁷ The Irish Revenue Commissioners have produced some technical guidelines on CbC Reporting, which are in the form of frequently asked questions (FAQs). Ireland indicates that these are designed to provide guidance on the legislation and to provide practical assistance to taxpayers in relation to their CbC Reporting obligations. The FAQs is a ‘living document’ and it is being updated on a continuing basis to reflect ongoing developments and guidance from the OECD and the EU, as well as practical issues experienced by taxpayers, in relation to CbC Reporting. The purpose of this document is to provide the taxpayer with guidance on CbC Reporting but the document cannot create obligations on a taxpayer that go beyond the legislation. The FAQs are available on the Irish Revenue website: www.revenue.ie/en/companies-and-charities/documents/country-by-country-reporting.pdf (accessed 20 April 2018). It contains FAQs as well as three appendices.

⁸ 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).

⁹ It is noted that Ireland included into its primary legislation some specific definitions such as “domestic constituent entity”, which means a Constituent Entity that is resident in Ireland for the purposes of tax without being a UPE, nor a surrogate parent entity, nor an EU designated entity; “equivalent country-by-country report”, which means a CbC report only to the extent the information required to be included therein is within the possession of, or is obtained or acquired by a domestic Constituent Entity; “EU designated entity”, which means a Constituent Entity that is resident in an EU member state for tax purposes and has been designated by the MNE group to which it belongs to provide a CbC report on behalf of all Constituent Entities residing in the EU.

¹⁰ See paragraph (1) of Sect. 891H.

¹¹ See paragraph (2) of Sect. 891H.

¹² The guidance provides explanations on the content of a CbC report and makes reference to the OECD XML schema (see FAQs number 11 and 22). Q22 mentions that further guidance will be provided on filing CbC Reports. Ireland indicates that prior to the go-live date for the filing system, it is anticipated that the FAQs will be updated to include a Step-by-Step Guide to filing CbC Reports similar to the guide for making CbC Reporting notifications in appendix III of the FAQs.

¹³ See paragraph (2) of Sect. 891H.

¹⁴ See Regulation 8 of the Statutory Instrument No. 653.

¹⁵ See Regulation 3 of the Statutory Instrument No. 653.

¹⁶ See Q13 of the guidance.

¹⁷ In accordance with the provisions of European Union (EU) Council Directive 2016/881/EU (Annex III, Section II), a “domestic Constituent Entity” shall request its Ultimate Parent Entity to provide it with all information required to enable it to prepare a country-by-country report with respect to a fiscal year. If despite that, that Constituent Entity has not been provided the required information, this Constituent Entity shall file an “equivalent country-by-country report” containing all information in its possession, obtained or acquired, and shall notify the Commissioner of the Ultimate Parent Entity’s refusal.

¹⁸ Ireland indicates that the Irish Revenue also accepts voluntary parent surrogate filing, i.e. Constituent Entities resident in Ireland will not be required to file an Equivalent CbC Report under the secondary reporting mechanism for that year where an ultimate parent entity of an MNE Group files a CbC Report for its 2016 fiscal year on a voluntary basis in its country of residence, under the conditions that are in line with the OECD terms of reference. See Q16 of the guidance.

¹⁹ It is noted that the Irish rules provide for the definition of an “EU designated entity” which means a Constituent Entity of an MNE Group, not being an Ultimate Parent Entity of Surrogate Parent Entity that (a) is resident in a Member State for tax purposes, and (b) has been designated as an entity by that MNE Group to provide a CbC report on behalf of all Constituent Entities of the MNE Group resident for tax purposes in a Member State.

²⁰ See Regulation 6 of the Statutory Instrument No. 653 of 2016. This also applies to an “EU designated entity”.

²¹ See Section 891H (7) of the Taxes Consolidation Act 1997, referring to Sect. 898O of the same Act. Ireland indicates that the penalty for failure to file a CbC Report / equivalent CbC Report is EUR 19 045 plus EUR 2 535 for each day the failure continues. The penalty for filing an incomplete or incorrect CbC Report / Equivalent CbC Report is EUR 19 045.

²² See Section 891H (8) of the Taxes Consolidation Act 1997.

²³ Ireland indicates that currently it will mainly exchange CbC reports under the Multilateral Convention on Mutual Assistance in Tax Matters and there are no restrictions on the exchange of information for fiscal periods later than 2016 due to the effective date of the Convention. On 22 December 2017, Ireland also deposited a Unilateral Declaration on “the effective date for exchanges of information under the Multilateral Competent Authority Agreement on the exchange of Country-by-Country Reports” with the Depository of the Convention on Mutual Administrative Assistance in Tax Matters to allow for an earlier date of entry into effect of the Convention for jurisdictions that will sign the Convention at a later date.

²⁴ The list of these instruments can be accessed here: www.revenue.ie/en/practitioner/law/tax-treaties.html (accessed 20 April 2018).

²⁵ Ireland also has Tax Information and Exchange Agreements (TIEAs) which do not allow for the Automatic Exchange of Information. However, Ireland indicates that, should an interested partner wish to exchange CbC reports on the basis of a TIEA, it would be willing to conclude a Protocol to the TIEA to allow for automatic exchange.

²⁶ This includes exchanges with Cyprus and Gibraltar.

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.

²⁷ 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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