

Israel

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. Israel does not yet have a legal and administrative framework in place to implement CbC Reporting and indicates that it is likely that CbC Reporting requirements will apply for fiscal years commencing on or after 1 January 2017. It is recommended that Israel take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible and put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Israel does not yet have legislation in place for implementing the BEPS Action 13 minimum standard. Israel indicates that primary law for CbC Reporting has been submitted to the Israeli Knesset for approval and that the secondary law is currently at draft stage. At this time, Israel estimates that the legislation will come into effect by the end of year 2018. Israel indicates that it is likely that CbC Reporting requirements will apply for fiscal years commencing on or after 1 January 2017. It is noted that Israel allows voluntary parent surrogate filing for fiscal years commencing on or after 1 January 2016, that will be exchanged after legislation will be in place. It is recommended that Israel take steps to implement a domestic legal and administrative framework¹ to impose and enforce CbC requirements as soon as possible.

Part B: Exchange of information framework

3. Israel 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 not in force for fiscal year 2016 (entry into force 1 December 2016). This means that Israel will not be able to exchange CbC reports filed under the voluntary parent surrogate filing mechanism with respect to the 2016 fiscal year under the Convention and CbC MCAA on the first exchange date in mid-2018. Israel has however submitted a Unilateral Declaration in order to align the effective date of the Convention with the first intended exchanges of CbC reports under the CbC MCAA for the fiscal year 2016. Israel is also a signatory to the CbC MCAA. It has submitted part of the notifications under Section 8 of the same agreement and intends to have the CbC MCAA in effect with a large number of jurisdictions that provide notifications under Section 8(1)(e) of the same agreement. As of 12 January 2018, Israel does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review² process, it is recommended that Israel take steps to have Qualifying

Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions.

Part C: Appropriate use

4. Due to the fact that the legislation is not in place, Israel does not yet have measures in place relating to appropriate use.³ It is recommended that Israel 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. Israel does not yet have legislation in place to implement the BEPS Action 13 minimum standard.

(a) Parent entity filing obligation

Summary of terms of reference:⁴ 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. Israel does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2016 fiscal year. Israel indicates that it is likely that CbC Reporting requirements will apply for fiscal years commencing on or after 1 January 2017. Israel allows voluntary parent surrogate filing for fiscal years commencing on or after 1 January 2016, and the CbC reports filed under this mechanism will be exchanged after legislation will be in place.

8. Israel indicates that primary law (bill) for CbC Reporting has been submitted to the Israeli Knesset for approval and that the secondary law (regulations) is currently at draft stage. The primary law will contain general provisions relating to CbC Reporting requirement pursuant to International Agreement in the Income Tax Ordinance. The drafted regulation would elaborate the requirement under the CbC report Israel also indicates that it intends to publish guidance for CbC Reporting once the legislation is finalised. At this time, Israel estimates that the primary and secondary legislation will come into effect by the end of year 2018.

Conclusion

9. In respect of paragraph 8 of the terms of reference (OECD, 2017), Israel does not have a domestic legal and administrative framework to impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Israel. It is recommended that Israel take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.

Part B: The exchange of information framework

10. 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 network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

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).

11. Israel has sufficient legal basis that permits the Automatic Exchange of Information.⁵ That legal basis will cover the CbC Reporting exchange after the primary and secondary law will come into effect. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (the “Convention”, OECD/Council of Europe, 2011) (in force on 1 December 2016 and in effect for 2017). Since the Convention (OECD/Council of Europe, 2011) will be in effect for the year 2017, Israel will be able to exchange (either send or receive) CbC reports as of 1 January 2017. However, the Convention (OECD/Council of Europe, 2011) is not in effect with respect to the fiscal year starting on 1 January 2016. This means that Israel will not be able to exchange CbC reports filed under the voluntary parent surrogate filing mechanism with respect to the 2016 fiscal year under the Convention and CbC MCAA, on the first exchange date in mid-2018. Israel has however lodged a Unilateral Declaration which enables exchanges of CbC reports relating to the fiscal year 2016 (by aligning the effective date of the Convention (OECD/Council of Europe, 2011) with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention⁶) with other jurisdictions that have provided the same Unilateral Declarations.

12. Israel signed the CbC MCAA on 12 May 2016 and submitted part of the notifications under Section 8 of the same agreement. Israel intends to have the CbC MCAA in effect with a large number of jurisdictions that provide notifications under Section 8(1)(e) of the same agreement. As of 12 January 2018, Israel does not have bilateral relationships activated under the CbC MCAA. It is recommended that Israel take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions.

Conclusion

13. In respect of the terms of reference under review, it is recommended that Israel take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

14. 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).

15. Israel does not yet have measures in place relating to appropriate use. Due to the fact that the legislation is not in place, it is recommended that Israel take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

16. In respect of paragraph 12 (a), it is recommended that Israel 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	It is recommended that Israel take steps to implement a 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 Israel take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Israel take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

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

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

³ Paragraph 12 (a) of the terms of reference (OECD, 2017).

⁴ 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, 2017).

⁵ It is noted that under the Article 214B.(b) of the Income Tax Ordinance, “*Despite the provisions of sub-section (a), no information will be transferred to the tax authorities of the foreign country pursuant to an International Agreement if the transfer of the information is likely to do harm to the security of the State of Israel, the public peace or public security, or to open investigations, to public policy or to any other essential concern of the State of Israel, and the Director or any party whom he has authorized for the purpose of this chapter may refuse another country's request for the transfer of information to the tax authority of the foreign country pursuant to the International Agreement if the tax authority of foreign state does not, without justification, transfer information pursuant to the agreement of the Director or any party whom he has authorized for the purpose of this chapter, or if any other condition set out in the agreement is not met*”.

⁶ Paragraph 6 of Article 28 of the Convention reads as follows: “[...] Any two or more Parties may mutually agree that the Convention [...] shall have effect for administrative assistance related to earlier taxable periods or charges to tax.”

References

- OECD (2017), “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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