

Andorra

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. Andorra does not yet have a complete legal and administrative framework in place to implement CbC Reporting and indicates that it will not apply CbC requirements for the 2016 fiscal year. CbC requirements should first apply for taxable years commencing on or after 1 January 2018.

Part A: Domestic legal and administrative framework

2. Andorra has not yet implemented its 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 Andorra. The first filing obligation for a CbC report in Andorra is expected to commence in respect of reporting fiscal years beginning on 1 January 2018 or later. Based on the draft legislation, it is recommended that Andorra continues the process of implementing its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, in particular in relation to the annual consolidated revenue threshold calculation rule.¹ For the moment, Andorra's draft legislation meets all the terms of reference relating to the domestic legal administrative framework.²

Part B: Exchange of information framework

3. Andorra 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 5 November 2013, in force on 1 December 2016). The Convention is in effect from 1 January 2017. Andorra is not a signatory to the CbC MCAA. As of 12 January 2018, Andorra does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,³ it is recommended that Andorra sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Andorra will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,⁴ Andorra does not yet have measures in place relating to appropriate use. It is recommended that Andorra take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Andorra will not be exchanging CbC reports in 2018.

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. Andorra has draft legislation in place in order to implement CbC Reporting. The draft legislation was approved by the Government on 28 June 2017 and was entered into parliamentary procedure on 30 June 2017. At this stage, the draft of the law is in parliamentary discussion with the possibility of political parties to introduce amendments. Andorra indicates that it expects the law to be approved during the first quarter of 2018.

(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).

7. Andorra notes that it has draft legislation in place that 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).

8. With respect to the definition of an “Excluded MNE Group”, the draft legislation define this as “a group having total consolidated group revenue of less than EUR 750 million, or an amount in local currency equivalent to EUR 750 million 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.”⁶ While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Andorra, it 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 tax resident in Andorra) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.⁷ However, Andorra indicates that it will apply this rule 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 Andorra. As such, no recommendation is made but this issue will be further monitored. Andorra indicates that it will address this issue in its future guidance and it confirms that it will follow the OECD guidance.

9. No other inconsistencies were identified with respect to Andorra’s draft legislation 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. Andorra indicates that it expects the draft legislation to be approved and to come into force during the first quarter of 2018. The CbC Reporting requirements would be applied from the 2018 fiscal year. The CbC report must be filed within 12 months after the end of the reporting fiscal year of the MNE Group.⁸

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. Andorra has introduced local filing requirements in its draft legislation.⁹ No inconsistencies were identified with respect to the limitation on local filing obligation.

(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. Andorra's local filing requirements in its draft legislation will not apply if there is surrogate filing in another jurisdiction.¹⁰ 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. Andorra 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 Constituent Entities in Andorra.¹¹ There are also penalties in place in relation to the filing of a CbC report for failure: (i) to file a CbC report, (ii) to file a complete CbC report and (iii) to submit it on time.¹²

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017), Andorra does not yet have 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 Andorra. Based on the current draft legislation, it is recommended that Andorra take steps to finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.

Part B: The exchange of information framework

16. 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, 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).

17. On 30 November 2016, Andorra approved the Law of Automatic Exchange of Information. This law entered into force on 1 January 2017.^{13 14}

18. Andorra 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 5 November 2013, in force on 1 December 2016, not in effect for 2016). The Convention will be in effect for 2017.¹⁵

19. Andorra has not signed the CbC MCAA and does not have Qualifying Competent Authority Agreements (QCAAs) in effect. Andorra indicates that it expects to sign the CbC MCAA during the first semester of 2018, in line with the approval of domestic legislation about CbC Reporting. As of 12 January 2018, Andorra does not have bilateral relationships activated under the CbC MCAA. It is recommended that Andorra take steps

to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Andorra will not be exchanging CbC reports in 2018.

Conclusion

20. In respect of the terms of reference under review, it is recommended that Andorra sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Andorra will not be exchanging CbC reports in 2018.

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: 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).

22. Andorra does not yet have measures in place relating to appropriate use. It is recommended that Andorra take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Andorra will not be exchanging CbC reports in 2018.

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), it is recommended that Andorra 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 – Legislation for CbC filing requirements is not yet implemented.	It is recommended that Andorra implement its legislation for CbC filing requirements as soon as possible.
Part B	Exchange of information	It is recommended that Andorra sign the CbC MCAA and 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 Andorra take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

¹ Andorra has draft legislation in place in order to implement CbC Reporting. The draft legislation was approved by the Government on 28 June 2017 and was entered into parliamentary procedure on 30 June 2017. At this stage, the draft of the law is in parliamentary discussion with the possibility of political parties to introduce amendments. Andorra indicates that it expects the law to be approved during the first quarter of 2018.

² Paragraph 8 of the terms of reference (OECD, 2017).

³ Paragraph 9 (a) of the terms of reference (OECD, 2017).

⁴ Paragraph 12 (a) of the terms of reference (OECD, 2017).

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, 2017).

⁶ Art. 16. quarter (c) of Law 95/2010 (draft).

⁷ See question IV. 1. “Impact of currency fluctuations on the agreed EUR 750 million threshold of the *Guidance on the Implementation of Country-by-Country Reporting*” (OECD, 2018).

⁸ Article 16.bis (7) of Law 95/2010 (draft).

⁹ Article 16.bis (2) of Law 95/2010 (draft).

¹⁰ Article 16.bis (3) of Law 95/2010 (draft).

¹¹ Article 16.bis(4) of Law 95/2010 (draft).

¹² Article 16.bis(8) of Law 95/2010 (draft) in conjunction with the provisions of article 127 and article 128 of Law 21/2014, of 16 October.

¹³ Andorra notes that the Andorran Fast-Track report was approved by the Peer Review Group (at its meeting in Panama City from 12-14 June 2017), concluding that the overall rating for Andorra was provisionally upgraded to Largely Compliant. This report provides the Peer Review Group’s views on the ratings that would likely be assigned to Andorra as evaluated against the 2010 Terms of Reference at the present stage

¹⁴ On 25 May 2017, Andorra introduced the international spontaneous exchange of information in tax matters into the domestic legislation by way of a revision of the Law 3/2009 for the Exchange of tax information on request, which came into force on 10 June 2017.

¹⁵ On 12 February 2016, the EU and Andorra signed an “Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance”. The agreement was approved on 20 September 2016 by the Council of the European Union and on 20 October 2016 by the Andorran General Council.

References

- OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris.
www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.
- 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.
- OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris,
<http://dx.doi.org/10.1787/9789264241480-en>.
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011): *Amended by the 2010 Protocol*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264115606-en>.



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), “Andorra”, 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/10.1787/9789264300057-5-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.