

Kazakhstan

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. Kazakhstan indicates that it has legislation in place to implement the BEPS Action 13 minimum standard. However, because the law was enacted on 25 December 2017, Kazakhstan was unable to provide a translation of the legislation in due course. Therefore, it was only possible to carry out a very preliminary review for this first annual peer review process based on some initial information. Based on this initial information, Kazakhstan's domestic and legal administrative framework may potentially raise one substantive issue. The domestic legal and administrative framework will however be assessed in the next annual peer review process (and the preliminary recommendation contained in this report may therefore be later amended based on further information). In addition, it is recommended that Kazakhstan put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Kazakhstan indicates that it has legislation in place to implement the BEPS Action 13 minimum standard.¹ However, because the law was enacted on 25 December 2017, Kazakhstan was unable to provide a translation of the legislation in due course. Therefore, it was only possible to carry out a very preliminary review for this first annual peer review process based on some initial information. Based on this initial information, it is recommended that Kazakhstan amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference. The domestic legal and administrative framework will however be assessed in the next annual peer review process. The preliminary recommendation contained in this report may therefore be later amended based on further information.

Part B: Exchange of information framework

3. Kazakhstan is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 3 November 2010, in force on 1 June 2011 and in effect for 2016). It is not a signatory to the CbC MCAA. As of 12 January 2018, Kazakhstan does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,² it is recommended that Kazakhstan take steps to sign the CbC MCAA and have QCAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

4. In respect of the terms of reference under review,³ Kazakhstan does not yet have measures in place relating to appropriate use. It is recommended that Kazakhstan 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 of CbC Reporting.

6. Kazakhstan has primary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.^{4 5} However, because the law was enacted on 25 December 2017, Kazakhstan was unable to provide a translation of the legislation in due course. Therefore, it was only possible to carry out a preliminary review for this first annual peer review process.

(a) Parent entity filing obligation

Summary of terms of reference:⁶ 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. Based on initial information, Kazakhstan has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on UPEs of MNE Groups above a certain threshold of revenue. The domestic legal and administrative framework will be assessed in the next annual peer review process.

(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).

8. Based on initial information, the first filing obligation for a CbC report in Kazakhstan commences in respect of financial years beginning on 1 January 2016 or thereafter. The CbC report must be filed within 12 months of the last day of the reporting fiscal year of the MNE Group. The domestic legal and administrative framework will be assessed in the next annual peer review process.

(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).

9. Based on initial information, Kazakhstan has introduced local filing requirements in respect of financial years beginning on 1 January 2016 or thereafter.

10. Based on a preliminary assessment of the legislation, it seems that the circumstances under which local filing may occur under Kazakhstan's legislation appear to be wider than permitted under the terms of reference. Examples of cases where local filing may be required under Kazakhstan's legislation, but would not be permitted under the minimum standard, include:

- where the Ultimate Parent Entity of an MNE group has is required to file a CbC report in the jurisdiction of residence, but has not complied with this obligation.⁷ This is normally a situation for which it is up to the jurisdiction of residence of the Ultimate Parent Entity to deal with, through its enforcement measures.
- where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but there is no international agreement between Kazakhstan and this jurisdiction.⁸

11. Based on a preliminary assessment of the legislation, it is recommended that Kazakhstan amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference. The domestic legal and administrative framework will however be assessed in the next annual peer review process and this preliminary recommendation may therefore be later amended based on further information.

(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).

12. The domestic legal and administrative framework will be assessed in the next annual peer review process.

(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).

13. The domestic legal and administrative framework will be assessed in the next annual peer review process.

Conclusion

14. In respect of paragraph 8 of the terms of reference (OECD, 2017), Kazakhstan indicates that it has legislation in place to implement the BEPS Action 13 minimum standard. However, because the law was enacted on 25 December 2017, Kazakhstan was unable to provide a translation of the legislation in due course. Therefore, it was only possible to carry out a preliminary review for this first annual peer review process. Based on this assessment, it is recommended that Kazakhstan amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference. The domestic legal and administrative framework will however be assessed in the next annual peer review process (and the preliminary recommendation in this report may therefore be later amended based on further information).

Part B: The exchange of information framework

15. 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).

16. Kazakhstan does not have a domestic, legal basis for the exchange of information in place. Kazakhstan 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 23 December 2013, in force on 1 August 2015 and in effect for 2016). It is not a signatory to the CbC MCAA. Kazakhstan does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.

17. As of 12 January 2018, Kazakhstan does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Kazakhstan take steps to sign the CbC MCAA and have QCAAs in effect with jurisdictions of then Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Conclusion

18. In respect of the terms of reference under review, it is recommended that Kazakhstan 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.

Part C: Appropriate use

19. 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).

20. Kazakhstan does not yet have measures in place relating to appropriate use. It is recommended that Kazakhstan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

21. It is recommended that Kazakhstan 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	Kazakhstan indicates that it has legislation in place to implement the BEPS Action 13 minimum standard. However, because the law was enacted on 25 December 2017, Kazakhstan was unable to provide a translation of the legislation in due course. Therefore, it was only possible to carry out a preliminary review for this first annual peer review process. The domestic legal and administrative framework will be assessed in the next annual peer review process.
Part A	Domestic legal and administrative framework – Limitation on local filing obligation	Based on a preliminary assessment of the legislation, it is recommended that Kazakhstan amend its legislation or otherwise takes steps to ensure that local filing is only required in the circumstances contained in the terms of reference. The domestic legal and administrative framework will however be assessed in the next annual peer review process.
Part B	Exchange of information	It is recommended that Kazakhstan 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.
Part C	Appropriate use	It is recommended that Kazakhstan 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 Under "Статья 5-1. Заявление об участии в международной группе" Article 5-1 relates to declaration of participation in an MNE.

See https://online.zakon.kz/Document/?doc_id=30194061#pos=203;-107 (accessed 20 April 2018).

Under "Статья 7-3. Межстрановая отчетность" Article 7-3 relates to CbC Reporting.

See: https://online.zakon.kz/Document/?doc_id=30194061#pos=261;-86 (accessed 20 April 2018).

⁵ The domestic legislation was introduced in The Transfer Pricing Law of 25 December 2017. This law provides for the regulation of CbC Reporting, this provision was put into effect retrospectively from 1 January 2016.

⁶ 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).

⁷ Статья 7-3. Межстрановая отчетность, article 7-3(3)(1).

⁸ Статья 7-3. Межстрановая отчетность, article 7-3(3)(1).

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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<http://dx.doi.org/10.1787/9789264115606-en>.



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