

Korea

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. Korea'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. Korea has legislation in place that imposes and enforces CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Korea. The filing obligation for a CbC report in Korea commences in respect of fiscal years commencing on or after 1 January 2016. Korea meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework

3. Korea 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 force for 2016, and is also a signatory of the 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, Korea has 50 bilateral relationships activated under the CbC MCAA. Korea 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). It is also noted that Korea has signed a bilateral CAA with the United States. Against the backdrop of the still evolving exchange of information framework, at this point in time Korea 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 Korea. Korea 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 Korea 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.

6. Korea has primary and secondary legislation in place⁵ which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning on or after 1 January 2016. No additional guidance has been issued.

(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. Korea has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have consolidated group revenues equal to or above a certain threshold,⁷ 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. 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).

9. The first filing obligation for a CbC report in Korea applies in respect of reporting fiscal years commencing on or after 1 January 2016.

10. A CbC Report is to be filed no later than one year after the end of the reporting fiscal year, except where a taxpayer is unable to submit a CbC Report due to exceptional circumstances and it files an application for an extension, which may be granted by the tax office. No recommendation is made with respect to the filing deadline, but the operation of this exception should be monitored to determine the number of times and the circumstances in which it is used.

11. No other 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. Korea has introduced local filing requirements which apply to reporting fiscal years commencing on or after 1 January 2016.

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)), under Korea's legislation,⁸ local filing applies where an MNE group has a Constituent Entity which is a taxpayer in Korea, and the jurisdiction in which the Ultimate Parent Entity of the MNE group is resident does not have a qualifying competent authority agreement in effect with Korea by the due filing date for the CbC report. 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 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 Korea's legislation. Under Korea's legislation, local filing may be required in circumstances where there is no current international agreement between Korea and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. Korea however indicates that this condition will be interpreted to apply when: "*1) International Agreement such as a Double Tax Convention or a Tax Information Exchange Agreement or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD/Council of Europe, 2011) for Exchange of Country-by-Country Reports is in effect with the jurisdiction in which foreign controlling shareholders are located for tax purposes, however, does not have a Qualifying Competent Authority Agreement in effect with such jurisdiction by the time for filing the CbC report, or 2) There has been a Systemic Failure on the Exchange of Country-by-Country Reports of a country in which foreign controlling shareholders are located that has been notified to the Constituent Entity by its tax administration*". A Frequently Asked Question containing providing for this language has been published on the National Tax Service website on 10 November 2017.⁹ As such, no recommendation is made.

14. No other inconsistencies were identified with respect to the limitation on local filing obligations.¹⁰

(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).

15. Korea's local filing requirements will not apply if there is surrogate filing in another jurisdiction. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing in a third country.¹¹

16. No inconsistencies were identified with respect to the limitation on local filing obligations 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).

17. Korea has legal mechanisms in place to identify MNE Groups whose Ultimate Parent Entity is resident in Korea and to enforce compliance with the minimum standard. There are notification mechanisms in place that apply to taxpayers in Korea:¹² every Korean taxpayer which is part of an MNE Group within the scope of CbC Reporting must provide a notification within six month of the end of its business year if it is the Ultimate Parent Entity of the MNE group, or to provide details of the foreign reporting entity. There are also penalties in cases of (i) non-filing, (ii) late filing or (iii) inaccurate filing of a CbC Report.¹³

18. There are no specific processes to take appropriate measures in case Korea is notified by another jurisdiction that it has reason to believe with respect to a Reporting Entity that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

19. No inconsistencies were identified with respect to the effective implementation.

Conclusion

20. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Korea has a domestic framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Korea. Korea meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

21. 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.

Summary of terms of reference: having QCAAs in effect with jurisdictions of the Inclusive Framework, within the context of the current exchange of information network of the reviewed jurisdiction (paragraph 9 (a) of the terms of reference).

22. Korea has domestic legislation 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 27 May 2010, in force on 1 July 2012 and in effect for 2016).¹⁴

23. Korea signed the CbC MCAA on 30 June 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 16 June 2017. 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 Korea has signed a bilateral CAA with the United States. As of 12 January 2018, Korea has 50 bilateral relationships activated under the CbC MCAA and exchanges under the bilateral CAA.¹⁵ Korea 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 Korea meets the terms of reference.

Conclusion

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

Part C: Appropriate use

25. 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).

26. 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), Korea 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. It has also provided a copy of its internal guidance on appropriate use.

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

Conclusion

28. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Korea. Korea 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 the Act on the Adjustment of International Taxes, the Enforcement Decrees (i.e. Presidential Decrees) and the Enforcement Rules (i.e. Ministry Ordinances): <http://law.go.kr> (accessed 20 April 2018) and <http://law.go.kr> (accessed 20 April 2018). Secondary law consists of a Notice on Parties Required to File Country-by-Country Reports and the Scope of Preparation (Notice of the Minister of Strategy and Finance), a copy of which has been provided for in the questionnaire for reviewed jurisdiction.

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, 2017b).

⁷ KRW 1 trillion in respect of a “domestic” Ultimate Parent Entity.

⁸ See Article 21-2 2. (b) 2) of the Enforcement Decree of the Act on the Adjustment of International Taxes.

⁹ See as follows: “Question 19> What is the specific meaning of Article 21-2 2. 2) of the Enforcement Decree of the Act on the Adjustment of International Taxes?

“2) The jurisdiction in which the ultimate parent entity of that MNE Group is resident for tax purposes does not have a tax treaty in effect with Korea (by the due date for filing the CbC Report) that provides for the exchange of CbC Reports”.

Answer> 1) International Agreement such as a Double Tax Convention or a Tax Information Exchange Agreement or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters for Exchange of Country-by-Country Reports is in effect with the jurisdiction in which foreign controlling shareholders are located for tax purposes, however, does not have a Qualifying Competent Authority Agreement in effect with such jurisdiction by the time for filing the CbC report, or

2) There has been a Systemic Failure on the Exchange of Country-by-Country Reports of a country in which foreign controlling shareholders are located that has been notified to the Constituent Entity by its tax administration”.

¹⁰ According to Korea's legislation, local filing may apply to a foreign resident who operates an Korean permanent establishment (see Article 3 of the Notice on Parties Required to File Country-by-Country Reports and the Scope of Preparation (Notice of the Minister of Strategy and Finance)): it is however unclear whether permanent establishments in Korea are considered "resident for tax purposes", with respect to paragraph 8 (c) i. of the terms of reference (OECD, 2017b).

¹¹ Korea applies an exemption from local filing where a CbC report is filed by a surrogate entity which operates where the filed CbC report is exchanged without any problems.

¹² See Form 8-4 with respect to the "Information on Parties Required to Submit a CbC Report".

¹³ Under Article 51(1)1-2 of the Enforcement Decree of the Act on the Adjustment of International Taxes, where a person fails to submit or falsely submits all or some of specifications of CbC reports, an administrative fine of KRW 10 million (Korean won) is imposed.

¹⁴ Korea also reported double tax treaties and tax information exchange agreements but did not provide a list of these agreements.

¹⁵ 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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