

Lithuania

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. Lithuania's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review.

Part A: Domestic legal and administrative framework:

2. Lithuania has rules (primary and secondary law) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity (UPE) of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Lithuania. The first filing obligation for a CbC report in Lithuania commences in respect of income years beginning on 1 January 2016 or later. Lithuania meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework:

3. Lithuania 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 effect for 2016, and it is also a signatory to the CbC MCAA. It has provided its notifications under Section 8 (e) (ii) of this agreement and intends to exchange information with all signatories. As of 12 January 2018, Lithuania has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Lithuania 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 Lithuania 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 Lithuania. Lithuania 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 Lithuania 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. Lithuania has primary law and secondary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.⁵

(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. Lithuania 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).

8. With respect to the CbC filing requirements, the Lithuanian legislation refers to an “International Corporation Group” (ICG) which itself refer to an “ICG that does not exceed the income limit”, the definition of which refers to a consolidated group revenue of “less than EUR 750 000 000 or less than an amount expressed in the local currency which in January 2015 was approximately equal to EUR 750 000 000”. While these provisions would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Lithuania, they 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 a Lithuanian tax resident) 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, Lithuania indicates that it will apply this rule⁸ 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 Lithuania. As such, no recommendation is made but this issue will be further monitored.

9. No other inconsistencies were identified with respect to Lithuania’s domestic legal framework 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. The first filing obligation for a CbC report in Lithuania commences in respect of income years beginning on 1 January 2016 or later.⁹ The CbC report must be filed within 12 months of the last day of the income year of the MNE Group.¹⁰

11. The explanations for filling out a CbC report published by Lithuania mention that "Revenues – Related Party" should be read as referring to revenues arising from "transactions with associated enterprises".¹¹ However, interpretative guidance issued by the OECD in April 2017¹² explains that "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report*". It is expected that Lithuania issue an updated interpretation or clarification of the definitions of "Revenues – Related Party" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

12. 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).

13. Lithuania has introduced local filing requirements in respect of income years beginning on 1 January 2016¹³ or thereafter.

14. No inconsistencies were identified with respect to the limitation on local filing obligation.¹⁴

(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. Lithuania's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.¹⁵ 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: 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).

16. Lithuania has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other group company resident in Lithuania.¹⁶ In addition, the State Tax Administration can issue an order to the taxpayer, forcing the submission of the CbC report. If the taxpayer does not comply with the order, administrative penalties are issued.¹⁷ The procedure can be repeated several times. Bilateral consultations with taxpayers can also take place. Lithuania indicates that it is preparing internal procedures in order to validate the notifications received that will apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other group company resident in Lithuania. According to Lithuania, criminal prosecution might be initiated and the provisions of the Criminal Code applied in a case of a person acting maliciously and refusing to file the necessary information.

17. There are no specific processes in place that would allow to take appropriate measures in case Lithuania 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. Lithuania affirms that these procedures are under preparation. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Lithuania has a domestic legal and administrative framework to impose and enforce CbC requirements on the UPE of an MNE Group that is resident for tax purposes in Lithuania. Lithuania meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

19. 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).

20. Lithuania has domestic legislation that permits the automatic exchange of CbC reports¹⁸ 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 7 March 2013, in force on 1 June 2014 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements¹⁹ which allow Automatic Exchange of Information in the field of taxation. Lithuania is also committed to the exchange of CbC reports within the European Union under EU Council Directive (2016/881/EU).

21. Lithuania signed the CbC MCAA on 25 October 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 13 November 2017. It intends to exchange information with all signatories of the CbC MCAA. As of 12 January 2018, Lithuania has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU).

22. Lithuania 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)²⁰ and indicates that it is currently negotiating a bilateral Competent Authority Agreement with one jurisdiction. Against the backdrop of the still evolving exchange of information framework, at this point in time Lithuania 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 Lithuania 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), Lithuania 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.

26. There are no concerns to be reported for Lithuania 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 Lithuania. Lithuania 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 – QCAAs in effect	-	
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 CbC Reporting introduced in Lithuania by article 61 of the Republic of Lithuania Law on Tax Administration The Republic of Lithuania Law on Tax Administration “Submission of the Reports on Members of Multinational Enterprise Groups”: www.e-tar.lt/portal/lt/legalAct/TAR.3EB34933E485/rDLYSrNhXL (accessed 23 April 2018, available in Lithuanian text). Secondary law consists of the rules for the provision of information necessary for implementation of the international cooperation obligations concerning exchange of MNE Groups information approved by Order No VA-47 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 31 May 2017: www.e-tar.lt/portal/lt/legalAct/0c16071045ca11e7846ef01bffb9b64 (accessed 23 April 2018, available in Lithuanian text).

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 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 See Section I, Paragraph 2.10 of the secondary law.

⁹ See Section II, Paragraph 4 of the secondary law.

¹⁰ See Article 61, paragraph 3 of the primary law.

¹¹ See Annex 3 of the secondary law.

¹² See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

¹³ See Section II, Paragraph 4 and Section III, paragraph 8 of the secondary law.

¹⁴ Section III, paragraph 10 of the secondary law.

¹⁵ Section III, paragraph 10 of the secondary law.

¹⁶ See paragraphs 12 and 13 of Section III of the secondary law.

¹⁷ See paragraph 2 of Article 187 of Code of Administrative Offences of the Republic of Lithuania (Violation of the Procedure for Submission of Reports, Declarations or Other Documents and Data Required for the Implementation of the Tax Administrator Functions): (...) 2. Violation of the procedure for submission of reports, declarations or other documents and data required for the implementation of the tax administrator functions, delayed submission of or failure to submit reports, declarations or other documents and data required for the implementation of the tax administrator functions, entering incorrect data in reports, declarations or other documents and data required for the implementation of the tax administrator functions submitted to the tax administrator, provision of incorrect data shall impose a warning or a fine from one hundred and fifty to three hundred euros to the persons who are obligated to submit reports, declarations or other documents and data required for the implementation of the tax administrator functions.

¹⁸ See article 61 of the Republic of Lithuania Law on Tax Administration and the and rules for the provision of information necessary for implementation of the international cooperation obligations concerning exchange of MNE Groups information (approved by Order No VA-47 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 31 May 2017).

¹⁹ Lithuania reports tax treaties with Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

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.

²⁰ 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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