

Luxembourg

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

Part B: Exchange of information framework

3. Luxembourg 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 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Luxembourg has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under a bilateral CAA. Luxembourg 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 Luxembourg 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 Luxembourg. Luxembourg 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

Luxembourg 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. Luxembourg has primary law in place for implementing the BEPS Action 13 minimum standard⁵ (the “CbC Act”) establishing the necessary requirements, including the filing and reporting obligations. Guidance has also been published.⁶

(a) Parent entity filing obligation

Summary of terms of reference:⁷ 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. Luxembourg has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have a consolidated group revenue above a certain threshold, 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 Luxembourg’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).

9. The first filing obligation for a CbC report in Luxembourg commences in respect of fiscal years beginning on 1 January 2016 or later.⁸ The CbC report must be filed within 12 months of the last day of the fiscal year of the MNE Group.⁹

10. 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).

11. Luxembourg has introduced local filing requirements in respect of fiscal years beginning on 1 January 2016.¹⁰ No inconsistencies were identified with respect to the limitation on local filing obligation.¹¹

(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. Luxembourg's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.¹² 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).

13. Luxembourg 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 and the Surrogate Parent Entity.¹³ There are also penalties in place in relation to the filing of a CbC report: (i) penalties for failure to file a CbC report and late filing and (ii) penalties for inaccurate information.¹⁴ Luxembourg's legislation also includes a power to audit a CbC report.¹⁵

14. There are no specific processes in place that would allow to take appropriate measures in case Luxembourg 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. Luxembourg notes that the provisions of Article 8.2 and Article 9 of the CbC Act would apply.¹⁶ It also indicates that it intends to set up a compliance program and is currently initiating this process. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Luxembourg has a 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 Luxembourg. Luxembourg meets all the terms of reference relating to the domestic legal and administrative framework.

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, 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).

17. Luxembourg has domestic legislation that permits the automatic exchange of CbC reports.¹⁷ 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 29 May 2013, in force on 1 November 2014 and in effect for 2016) and to (ii) multiple bilateral Double Tax Agreements.¹⁸

18. Luxembourg signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 15 May 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. Luxembourg also signed a bilateral Competent Authority agreement (CAA) with the United States. As of 12 January 2018, Luxembourg has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Luxembourg 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).¹⁹ Against the backdrop of the still evolving exchange of information framework, at this point in time Luxembourg meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

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

Part C: Appropriate use

20. 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).

21. 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), Luxembourg 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.

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

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Luxembourg. Luxembourg 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 Law of 23 December 2016 (the “CbC Act”) which transposed the European Union (EU) Council Directive 2016/881/EU of 25 May 2016 relating to the automatic and mandatory exchange of information in the tax field concerning country-by-country reporting for multinational enterprise groups. Luxembourg also indicates that the list of jurisdictions subject to CbC Reporting will be drawn up by the Grand-Ducal Regulation (Article 4 (2) of the CbC Act). The Grand-Ducal Regulation has not yet been published.

⁶ Guidance was issued in the form of FAQs:
www.impotsdirects.public.lu/fr/echanges_electroniques/CbCR/FAQ.html (accessed 20 April 2018).

⁷ 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).

⁸ See Article 10 of the CbC Act.

⁹ See Article 2 of the CbC Act.

¹⁰ See point (1) of Section II of the Annex of the CbC Act.

¹¹ It is noted that Luxembourg’s rules provide, in accordance with the provisions of European Union (EU) Council Directive 2016/881/EU (Annex III, Section II), that the Constituent Entity resident in Luxembourg shall request its Ultimate Parent Entity to provide it with all information required to enable it to meet its obligations to file a country-by-country report. If despite that, that Constituent Entity has not obtained or acquired all the required information to report for the MNE Group, this Constituent Entity shall file a country-by-country report containing all information in its possession, obtained or acquired, and notify the tax administration that the Ultimate Parent Entity has refused to make the necessary information available. This shall be without prejudice to the right of the tax administration to apply penalties provided for in national legislation and the competent authority of Luxembourg shall inform all EU Member States of this refusal. It is also provided that where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the EU, the MNE Group may designate one of such Constituent Entities to file the country-by-country report conforming to the requirements that would satisfy the

filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the EU. Where a Constituent Entity cannot obtain or acquire all the information required to file a country-by-country report, then such Constituent Entity shall not be eligible to be designated to be the Reporting Entity for the MNE Group.

¹² See point (2) of Section II of the Annex of the CbC Act.

¹³ See point (3) of Section II of the Annex of the CbC Act. This also applies to any other Constituent Entity resident in Luxembourg.

¹⁴ See Article 3. (1) of the CbC Act : in case of non-filing or late filing or providing incomplete or inaccurate data, the Reporting Entity may be subject to a penalty up to EUR 250 000.

¹⁵ Luxembourg mentions that as per Article 8 of the CbC Act, the tax administration enjoys the same investigation powers that those applicable for tax assessment procedures for setting or controlling taxes, including all the guarantees provided for this.

¹⁶ As per Article 8 (2) of the CbC Act, the tax administration enjoys the same investigation powers that those applicable for tax assessment procedures for setting or controlling taxes, including all the guarantees provided for this. As per Article 9 of the CbC Act, the provisions of the amended law of tax adaptation measures of 16 October 1934 and of the amended general taxes law of 22 May 1931 apply to Automatic Exchange of Information.

¹⁷ See Article 4 of the CbC Act.

¹⁸ Luxembourg reports the following double tax agreements which are in force: www.impotsdirects.public.lu/fr/conventions/conv_vig.html (accessed 20 April 2018).

The list of double tax agreements under negotiation is the following: www.impotsdirects.public.lu/fr/conventions/conv_neg.html (accessed 20 April 2018).

¹⁹ 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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