

Mexico

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. Mexico's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review. The report therefore contains no recommendation.

Part A: Domestic legal and administrative framework

2. Mexico has rules (primary and secondary laws) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Mexico.¹ The first filing obligation for a CbC report in Mexico commences in respect of fiscal years commencing on or after 1 January 2016. Mexico meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: Exchange of information framework

3. Mexico 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 effect 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. Mexico has also signed a bilateral competent authority agreement (CAA) with the United States. As of 12 January 2018, Mexico has 51 bilateral relationships activated under the CbC MCAA or under a bilateral CAA with the United States. Mexico 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, Mexico 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 Mexico. It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use.³ Mexico 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. Mexico has primary law in place for implementing the BEPS Action 13 minimum standard which consists on amendments to the Mexican Income Tax Law to establish the obligation for required taxpayers to submit CbC, as well as secondary law (hereafter referred to as the “regulations”)⁵ establishing the necessary requirements, including the filing and reporting obligations. Further guidance has also been added to the secondary law.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. Mexico 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

8. In addition, with respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017a)), Mexico’s primary law states that the amount of MXN 12 billion (Mexican pesos) may be amended by the Congress of the Union for the year in question in the Revenue Act of the Federation. This provision may be inconsistent with paragraph 8 a) ii. of the terms of reference (OECD, 2017a), as it may generate fluctuations from year to year on the threshold to require the filing of CbC reports. However, Mexico indicates that the sole purpose of this provision is to have a legal vehicle in order change the threshold if such change arises from the 2020 revision. As such, no recommendation is made, but this aspect will be monitored to ensure that there are no yearly fluctuations in the meantime.

9. No other inconsistencies were identified with respect to Mexico’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 Mexico commences in respect of periods commencing on or after 1 January 2016. The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.^{9 10}

11. Under paragraph 8 (b) ii. of the terms of reference (OECD, 2017a), a CbC report should include all of, and only, the information as contained in the CbC report template, but there is a difference between one item described in the CbC report template and the Mexican secondary legislation:¹¹

- in the definition of “number of employees”, it is stated that independent contractors shall be reported if they participate in the ordinary activities. However, in the instructions for the CbC report template, MNE Groups “may” include independent contractors but this is not a requirement.¹² Mexico indicates that the requirement for taxpayers to mandatorily report independent contractors as employees is intended to address specific issues related to certain tax planning set-ups in the Mexican context. This aims to provide a more accurate picture in the CbC report for risk assessment purposes.¹³ Mexico believes that providing flexibility to taxpayers in the Mexican context in relation to this data would negatively impact the accuracy and usefulness of the CbC information. Although the definition in Mexico’s legislation does not mirror the specific instructions in the Action 13 Report (OECD, 2015) by not providing flexibility to taxpayers to report or not independent contractors as employees, this does not seem to raise any significant concern, taking into account the particular domestic context as described by Mexico. This will be monitored.

12. Mexico affirms that in case of interpretation issues regarding definitions, the contents of the TP Guidelines will be applicable - in this case the new chapter V of the Transfer Pricing Documentation Guidelines.¹⁴

13. 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).

14. Mexico has introduced local filing requirements as from the reporting period starting on or after 1 January 2016. According to Mexico’s primary law, the tax authority may require resident legal entities in Mexico that are subsidiaries of a company resident abroad, or foreign residents having a permanent establishment in Mexico, to file the CbC report “in cases where the tax authorities cannot get the information for that statement through the information exchange mechanisms established in the international treaties

that Mexico has in force; for such effects taxpayers will have a maximum of 120 working days from the date on which the request is notified to provide the information return that this paragraph refers to”.

15. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a)), local filing requirements can be required if the CbC report cannot be obtained through the information exchange mechanisms established in the international treaties that Mexico has in force. Although Mexico states that the local filing requirements are in line with the Action 13 minimum standard, this condition does not reflect the details of paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a) to refer to a “Qualifying Competent Authority in effect” to which Mexico is a Party “by the time for filing the Country-by-Country Report” (as the date when the condition relating to a QCAA may be tested).

16. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017a)), local filing requirements can be required if the CbC report cannot be obtained through the information exchange mechanisms established in the international treaties that Mexico has in force. Although Mexico states that the local filing requirements are in line with the Action 13 minimum standard, this condition does not reflect precisely the concept of “Systemic Failure” as defined in paragraph 21 of the terms of reference (OECD, 2017a), and may be interpreted in a broader meaning than a “Systemic Failure”. Mexico affirms that the concept of “Systemic Failure” is interpreted as defined in the terms of reference.

17. Where the tax authorities require a CbC report under local filing requirements apply, “taxpayers will have a maximum of 120 working days from the date on which the request is notified to provide the information return that this paragraph refers to. It is unclear when this timeframe would start”. Mexico confirms that CbC reports will not be requested under local filing requirements before a reasonable timeframe. Mexico indicates that the identification of any MNE Group to which a request may be sent in respect of a CbC report relating to 2016 would not be made before the first exchange of CbC reports deadline in June 2018. This will be monitored.

18. Mexico affirms that in case of interpretation issues regarding local filing, the contents of the TP Guidelines will be applicable - in this case the new chapter V of the Transfer Pricing Documentation Guidelines.¹⁵ Mexico confirms that local filing will be applied in line with paragraph 60 of the Action 13 Report (OECD, 2015): this will be clarified in an internal manual for tax inspectors in order to ensure that local filing can only be required in the circumstances defined by the minimum standard and terms of reference. As such, no recommendation is made but this will be monitored.

19. No other inconsistencies were identified with respect to the limitation on local filing.

(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).

20. With respect to paragraph 8 (d) of the terms of reference (OECD, 2017a), there are no provisions in Mexico’s legislation to deactivate local filing in any circumstance.

Mexico's local filing requirements may apply even if there is surrogate filing in another jurisdiction. However, Mexico indicates that if the conditions in the terms of reference are met,¹⁶ the deactivation of local filing will apply. Mexico affirms that in case of interpretation issues regarding local filing, the contents of the TP Guidelines will be applicable - in this case the new chapter V of the Transfer Pricing Documentation Guidelines.¹⁷ In addition, Mexico confirms that the limitation on local filing in case of surrogate filing will be clarified in an internal manual for tax inspectors in order to ensure that local filing will be deactivated in the circumstances defined in terms of reference. As such, no recommendation is made but this will be monitored.

21. No other 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).

22. Mexico has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Surrogate Parent Entities. In case of Ultimate Parent Entities, cross-checks or risk assessment using other internal databases apply. There are also penalties in place in relation to the filing of a CbC report for failure:¹⁸ (i) to file a CbC report, (ii) to completely file a CbC report and (iii) to submit it on time. Enforcement powers to compel the production of a CbC report include that government institutions will not contract any goods or services with taxpayers that do not comply with CbC Report.¹⁹ In addition, audit procedures may take place to enforce compliance of CbC Reporting.

23. Mexico indicates that they will make use of internal cross-checks regarding information reflected in CbC, summon the taxpayer for clarifications, asking for complementary CbC submitting and exchange of amended CbC as appropriate measures in case Mexico is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reported by a Reporting Entity or that a Reporting Entity is failing to comply with respect to CbC Reporting obligations. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

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

Part B: The exchange of information framework

25. 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, 2017a).

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).

26. Mexico has domestic legislation that permits the automatic exchange information on CbC reports.²⁰ It is part to (i) 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 September 2012 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements.²¹

27. Mexico signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 14 December 2016. 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 Mexico has signed a bilateral QCAA with the United States. As of 12 January 2018, Mexico has 51 bilateral relationships activated under the CbC MCAA and exchanges with the United States under a bilateral agreement. Mexico 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).²² Against the backdrop of the still evolving exchange of information framework, at this point in time, Mexico meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

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

Part C: Appropriate use

29. 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).

30. 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), Mexico 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, 2017b). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use.

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

Conclusion

32. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Mexico. Mexico 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, 2017a).

² Paragraph 9 (a) of the terms of reference (OECD, 2017a).

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, 2017a).

⁵ Primary law consists of Article 76-A, section III of the Mexican Income Tax Law: www.sat.gob.mx/informacion_fiscal/normatividad/Paginas/2018/leyes_2018.aspx (accessed 25 April 2018). Secondary law consists of sections 3.9.13 to 3.9.17 of the first modifying resolution to the 2017 miscellaneous tax resolution: www.sat.gob.mx/informacion_fiscal/normatividad/Paginas/2017/resolucion_miscelanea_2017.aspx (accessed 25 April 2018).

⁶ Guidance consists on further information on (i) submitting procedures, (ii) submitting time periods, (iii) content clarifications and (iv) definitions of information to be reported, which is contained in the body of the secondary provisions.

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, 2017a).

⁸ Mexico has updated its regulation and issued a FAQ guidance which is available at the Mexican Government website to address the threshold calculation, to clarify certain definitions and to clarify the source of data, which are available at: www.sat.gob.mx (updated regulation, accessed 20 April 2018) and www.sat.gob.mx (FAQ, accessed 20 April 2018).

⁹ See article 29(c) paragraph 1 of the Corporate Income Tax Act 1969.

¹⁰ Mexico has provided for different deadlines to present the CbC report for Surrogate Parent Entities (locally designated Surrogate Parent Entities) in cases in which the end of the fiscal year of the Reporting MNE do not follow the calendar year. When the fiscal year ends either from June to December, the deadline for submission of the CbC Report is 31 December of the year immediately following the declared fiscal year. Mexico has also updated its regulation and issued a FAQ guidance which is available at the Mexican Government website to address the threshold calculation, to clarify certain definitions and to clarify the source of data, which are available at: www.sat.gob.mx (updated regulation, accessed 20 April 2018) and www.sat.gob.mx (FAQ, accessed 20 April 2018).

¹¹ See section 3.9.17 of the secondary law (first modifying resolution to the 2017 miscellaneous tax resolution).

¹¹ See definition of “Number of Employees” in Annex III to Chapter V of Action 13 Report (OECD, 2015).

¹³ Mexico indicates that there is a common tax planning set-up in the Mexican context which consists of having the work force placed in an ad hoc company of a group, the sole or the main purpose of which being to hold the work force in order to limit the group’s tax liability in respect of certain taxes which include the number of employees in their computation formula. Therefore, in-sourcing and out-sourcing of workforce are very common in Mexico, and as such, Mexico believes that requiring taxpayers to include independent contractors as employees would provide a more accurate picture of the employees of a group in the CbC report.

¹⁴ See article 179 of the MITL.

¹⁵ See article 179 of the MITL.

¹⁶ See paragraph 8 (d) of the terms of reference (OECD, 2017b).

¹⁷ See article 179 of the MITL.

¹⁸ Penalty arises to MXN 140 540.

¹⁹ See Article 32-D. Section IV of Mexican Federal Tax Code.

²⁰ Article 69 of Mexican Federal Tax Code.

²¹ Mexico lists tax agreements with Canada and United States, as well as bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions: Austria, Canada, Hong Kong (China), Russia, South Africa, Ukraine and United States. In addition, Mexico has Double Tax Conventions which according to their internal rules and paragraph 9 of the Commentary on Article 26 of the OECD Model Tax Convention, can be interpreted to allow information to be exchanged automatically (subject to confirmation of the treaty partner): Australia, Bahrain, Barbados, Belgium, Brazil, Chile, China (People’s Republic of), Colombia, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Iceland, Israel, Italy, Japan, Korea, Kuwait, Latvia, Lithuania, Malta, New Zealand, Netherlands, Norway, Peru, Poland, Portugal, Qatar, Romania, Singapore, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Arab Emirates, United Kingdom and Uruguay.

²² 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

- OECD (2017a), “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 (2017b), *BEPS Action 13 on Country-by-Country Reporting: Guidance on the appropriate use of information contained in Country-by-Country reports*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf.
- OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, 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: 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), “Mexico”, 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/10.1787/9789264300057-67-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.