

## Monaco

### 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. Monaco's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review with respect to the domestic legal and administrative framework. Monaco should complete its exchange of information framework and have measures in place to ensure the appropriate use of CbC Reports. It is however noted that Monaco will not be exchanging reports in 2018 (but will exchange in 2020 in respect of fiscal year 2018).

#### *Part A: Domestic legal and administrative framework*

2. Monaco has rules (primary law) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Monaco. The first filing obligation for a CbC report in Monaco commences in respect of fiscal years commencing on or after 1 January 2018. Monaco meets all the terms of reference relating to the domestic legal and administrative framework.<sup>1</sup>

#### *Part B: Exchange of information framework*

3. Monaco is a signatory to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) ("the Convention"), signed on 13 October 2014 and in force on 1 April 2017. The Convention should therefore be in effect at the start of the commencement of CbC Reporting in Monaco on 1 January 2018 (for actual exchanges in 2020). Monaco 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 a few signatories of this agreement. As of 12 January 2018, Monaco has eight bilateral relationships activated under the CbC MCAA. It is recommended take further steps to have more Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions. It is however noted that Monaco will not be exchanging CbC reports in 2018 (but will exchange in 2020 in respect of fiscal year 2018).<sup>2</sup>

#### *Part C: Appropriate use*

4. Monaco does not yet have measures in place relating to appropriate use.<sup>3</sup> It is recommended that Monaco take steps to ensure that the appropriate use conditions is met ahead of the first exchanges of CbC reports. It is noted that Monaco will not be exchanging CbC reports in 2018 (but will exchange in 2020 in respect of fiscal year 2018).

## 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. Monaco has primary law in place for implementing the BEPS Action 13 minimum standard which consists two Sovereign Ordonnances which set the legal basis for the necessary requirements, including the filing and reporting obligations.<sup>4</sup>

### *(a) Parent entity filing obligation*

Summary of terms of reference:<sup>5</sup> 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. Monaco has introduced a domestic legal and administrative framework which imposes 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).<sup>6</sup>

8. No inconsistencies were identified with respect to Monaco'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 Monaco commences in respect of periods commencing on or after 1 January 2018.<sup>7</sup> 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.<sup>8</sup>

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. To date, Monaco does not apply or plan to introduce 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).

12. To date, Monaco does not apply or plan to introduce local filing. Monaco's legislation requires a surrogate parent entity to file in Monaco when such surrogate parent has been appointed by the MNE Group to do so. Surrogate filing shall occur only when certain conditions are met.<sup>9</sup>

***(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. Monaco's rules provide for mechanisms to enforce compliance by all Ultimate Parent Entities with their filing obligations. There are penalties in place for:<sup>10</sup> (i) failure to file a CbC report, (ii) incomplete or inaccurate filing of a CbC report and (iii) failure to submit it on time.

14. There are no specific processes in place that would allow Monaco to take appropriate measures in case it 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. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

### Conclusion

15. In respect of paragraph 8 of the terms of reference, Monaco 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 Monaco. Monaco meets all the terms of reference relating to the domestic legal and administrative framework for the year in review.

## 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 network as specified in paragraph 9 (a) of the terms of reference.

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. Monaco has domestic legal basis 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) (“the Convention”), signed on 13 October 2014, in force on 1 April 2017. The Convention should therefore be in effect at the commencement of CbC Reporting in Monaco on 1 January 2018 (for actual exchanges in 2020).

18. Monaco signed the CbC MCAA on 2 November 2017. It has submitted notifications under section 8 of the CbC MCAA on 1 January 2018. It intends to have the CbC MCAA in effect with a few jurisdictions.<sup>11</sup> As of 12 January 2018, Monaco has 8 bilateral relationships activated under the CbC MCAA. It is recommended that Monaco take further steps to have more Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions.

### Conclusion

19. It is recommended that Monaco take further steps to have more Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions. It is however noted that Monaco will not be exchanging CbC reports in 2018 (but will exchange in 2020).

## 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: (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).

21. Monaco does not yet have measures in place relating to appropriate use. It is recommended that Monaco take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Monaco's primary legislation provides that the tax administration makes use of the CbC reports for the purpose of assessing high-level transfer pricing risks and other risks of erosion of the tax base and of transfer of profits in Monaco, including the risk of non-compliance with transfer pricing rules by members of the MNE group and, where appropriate, for economic and statistical analysis purposes. The tax administration shall not use solely CbC reports to make transfer pricing adjustments.<sup>12</sup> The tax administration does not rely on CbC reports to make transfer pricing adjustments. Monaco indicates that it is planning to draft a policy governing the use of data exchanged, including a definition of the appropriate use of CbC reports as well as guidance on the use of the information contained therein. It adds that CbC reports will be handled under strict use conditions. It is also noted that Monaco will not be exchanging CbC reports in 2018 (but will exchange in 2020).

### ***Conclusion***

22. In respect of paragraph 12 (a) of the terms of reference, it is recommended that Monaco take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Monaco will not be exchanging CbC reports in 2018 (but will exchange in 2020).

## 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	It is recommended that Monaco take further steps to have more Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality and consistency conditions.
Part C	Appropriate use	It is recommended that Monaco take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

### Notes

<sup>1</sup> Paragraph 8 of the terms of reference (OECD, 2017).

<sup>2</sup> Paragraph 9 (a) of the terms of reference (OECD, 2017).

<sup>3</sup> Paragraph 12 (a) of the terms of reference (OECD, 2017).

<sup>4</sup> The Sovereign Ordinance No. 6.712 of 14 December 2017 introduced the Multilateral Agreement between Competent Authorities on the Exchange of Declarations Country by Country in Monaco's domestic framework. Monaco's primary law for CbC Reporting consists of the Sovereign Ordinance No. 6.713 of 14 December 2017 implementing the Multilateral Agreement between Competent Authorities on the exchange of Country-by-Country Report (hereafter the "Sovereign Ordinance").

<sup>5</sup> 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).

<sup>6</sup> See article 4. of the Sovereign Ordinance.

<sup>7</sup> See article 6 of the Sovereign Ordinance.

<sup>8</sup> See article 6. of the Sovereign Ordinance.

<sup>9</sup> See article 3 as well as article 2 (7) of the Sovereign Ordinance: the conditions under article 2 (7) reflect the conditions set in paragraphs 8 c) iv. a) b) and c) of the terms of reference (OECD, 2017) for local filing requirements.

<sup>10</sup> See articles 11, 12 and 13 of the Sovereign Ordinance:

article 11 - In the event of a breach of the obligation provided for in Article 4, the Constituent Entity concerned shall be liable to an administrative penalty of EUR 750;

article 12 - Where the Declaration referred to in Article 5 is not transmitted within the period referred to in Article 6, the Reporting Entity concerned shall be liable to an administrative penalty of EUR 10 000. When the Declaration referred to in Article 5 is sent within 30 days of the notification of a formal notice by registered letter with a request for an acknowledgment of receipt to have to regularize its situation, the Reporting Entity concerned is liable to an administrative penalty of EUR 50 000. In the absence of regularization within a period of thirty days following notification of a formal notice served in accordance with the forms provided for in the preceding paragraph, the Reporting Entity concerned shall be liable to an administrative penalty of EUR 100 000.

Article 13 - When the Declaration referred to in Article 5 is incomplete or inaccurate, the Reporting Entity concerned is liable to an administrative penalty of 150 per item containing one or more omissions or inaccuracies, notified by registered letter with acknowledgment of postal receipt. The amount of the administrative penalty is increased to EUR 250, when the reporting entity refrains from regularizing its situation within thirty days of the notification referred to in the previous paragraph. The cumulative amount of the administrative penalties provided for in the first and second paragraphs of this article may not exceed EUR 100 000 for the same ultimate Parent Entity or Substitute Parent Entity in respect of one same declaration.

<sup>11</sup> The Czech Republic, Denmark, France, Germany, Luxembourg, Netherlands, Norway and the United Kingdom.

<sup>12</sup> See article 9 of the Sovereign Ordinance.

## 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.  
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