

Nigeria

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. Based on final primary law not yet published, Nigeria's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that it raises one issue in relation to the exchange of information framework and one issue in relation to the appropriate use of CbC Reports. The report contains, therefore two recommendations to Nigeria to continue to take steps to address these issues.

Part A: Domestic legal and administrative framework

2. Nigeria has rules (primary law) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Nigeria. The first filing obligation for a CbC report in Nigeria commences in respect of fiscal years commencing on or after 1 January 2018. Based on final primary law not yet published, Nigeria meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework

3. Nigeria 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 came into force on 1 September 2015. Nigeria is also a signatory to the CbC MCAA and it intends to submit its notifications under section 8 of the CbC MCAA soon. It is recommended that Nigeria continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Nigeria will not be exchanging reports in 2018.²

Part C: Appropriate use

4. Nigeria is recommended to continue to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.³ It is however noted that Nigeria will not be exchanging CbC reports in 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. Nigeria has primary law in place for implementing the BEPS Action 13 minimum standard which consists on a legal basis for the establishment of any new filing obligations and establishes the necessary requirements, including the filing and reporting obligations.⁴ The legal basis was already approved by the Federal Government and is scheduled for publication in the government gazette.

(a) Parent entity filing obligation

Summary of terms of reference:⁵ 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. Nigeria 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).⁶

8. The definition of “Excluded MNE group” reads “*with respect to any Accounting Year of the Group, a Group having total consolidated group revenue of less than one Hundred and sixty Billion Naira (NGN 160 billion) during the Accounting Year immediately preceding the Reporting Accounting Year as reflected in its Consolidated Financial Statements for such preceding Accounting Year*”.⁷ While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Nigeria, it 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 Nigerian 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.⁸ Nigeria confirms that this paragraph of the guidance is only a reminder of the Action 13 provisions and no departure from the OECD guidance on currency fluctuations is intended and that Nigeria intends to clarify this point through issuing guidelines or a FAQ. As such, no recommendation is made but this aspect will be further monitored.

9. No inconsistencies were identified with respect to Nigeria’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 Nigeria commences in respect of periods commencing on or after 1 January 2018.⁹ 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.¹⁰

11. 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).

12. Nigeria has introduced local filing requirements¹¹ as from the reporting period starting on or after 1 January 2018.¹² No inconsistencies were identified with respect to the limitation on local filing obligation.

(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).

13. Nigeria's local filing requirements will not apply if there is surrogate filing in another jurisdiction.¹³ 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: 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).

14. Nigeria has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Constituent Entities in Nigeria.¹⁴ There are also penalties in place in relation to

the filing of a CbC report for failure:^{15 16} (i) to file a CbC report, (ii) to correctly file a CbC report and (iii) to submit it on time.¹⁷

15. There are no specific processes in place that would allow to take appropriate measures in case Nigeria 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

16. In respect of paragraph 8 of the terms of reference (OECD, 2017), based on primary law approved but not yet published in the official gazette, Nigeria 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

17. 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, 2017).

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).

18. Nigeria has a domestic legal basis for the exchange of information in place. Section 8(i) of the FIRSEA¹⁸ and Section 45 of the Companies Income Tax Act empowers the Federal Inland Revenue Service to exchange information and documents with other jurisdictions for tax purpose, which will be possible once the CbC MCAA is ratified.¹⁹ Nigeria notes that the FIRS has a functional Exchange of Information Unit which undertakes the exchange of information function on behalf of the Competent Authority of Nigeria.²⁰

19. Nigeria is party to 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 September 2015 and in effect for 2016). Nigeria also has a number of Double Taxation Agreements which allow Automatic Exchange of Information.²¹

20. Nigeria has signed the CbC MCAA, and it intends to submit its notifications under section 8 of the CbC MCAA soon. It is recommended that Nigeria continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Nigeria will not be exchanging reports in 2018.

Conclusion

21. It is recommended that Nigeria continue to take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. It is however noted that Nigeria will not be exchanging reports in 2018.

Part C: Appropriate use

22. 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).

23. Nigeria does not yet have measures in place relating to appropriate use. It is recommended that Nigeria take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Nigeria will not be exchanging CbC reports in 2018.

Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), Nigeria is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Nigeria will not be exchanging CbC reports in 2018.

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

Notes

¹ Paragraph 8 of the terms of reference (OECD, 2017).

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

³ Paragraph 12 (a) of the terms of reference (OECD, 2017).

⁴ Nigeria's primary law consists of the Income Tax (Country-by-Country Reporting) Regulations 2018, which was approved and it is scheduled for publication in the government gazette.

⁵ 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).

⁶ Part II, article 3 of the primary law.

⁷ Part V, article 15 of the primary law.

⁸ See question IV. 1. "Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the *"Guidance on the Implementation of Country-by-Country Reporting"* (OECD, 2018).

⁹ Part V, article 16 of the primary law.

¹⁰ Part III, article 9 of the primary law.

¹¹ Part II, article 4 of the primary law.

¹² Part V, article 16 of the primary law.

¹³ Part II, article 5 of the primary law.

¹⁴ Nigeria notes that a validation mechanism for the filing of CbC reports by ultimate Parent Entities and Surrogate Parent Entities shall be launched upon the enactment of the local legislation. Meanwhile, all MNEs are mandated (by law) to file income tax returns (including transfer pricing returns) annually. Filing compliance is currently being validated through a combination of a Compliance Program, risk assessment and tax audit. In the case of CbC reports, the existing mechanism for validating income tax returns may be adopted and, if need be, supplemented with additional measures.

¹⁵ See Part II, articles 11 and 12 of the primary law: article 11 - Late filing of Country-by-Country Report: *Where a Reporting Entity fails to file the Country-by-Country Report to the Service on or before the date specified in regulation 9 of these Regulations, the Service shall impose an administrative penalty of Ten Million Naira Only (NGN 10 000 000) in the first instance and One*

Million Naira only (NGN 1 000 000) for every month in which the failure continues. Article 12 - Filing an incorrect or false Country-by-Country Report: Where a Reporting Entity files an incorrect or false Country-by-Country Report, the Service shall impose an administrative penalty of Ten Million Naira only (NGN 10 000 000).

¹⁶ As regards enforcement measures, Nigeria also notes that the Federal Inland Revenue Service (FIRS), which is the Federal Tax Authority in Nigeria has wide powers under Nigeria laws to address non-compliance, they are: (i) It may request the company to produce the report (Sections 26 and 27 of the Federal Inland Revenue Service Establishment Act (FIRSEA), Section 60 of the Companies Income Tax Act and Section 32 of the Petroleum Profits Tax Act). (ii) It may conduct search and seizure or seal-off the premises where information that may lead to the production of the report is suspected to have been kept (Sections 29, 30 and 36 of FIRSEA 2007 and Section 64 of the Companies Income Tax Act). (iii) It may approach the statutory agency that regulates the operations of the company, where applicable, (e.g. Central Bank of Nigeria if the company is a financial institution) under Section 8(i) of FIRSEA 2007 to obtain information that may lead to the production of the report. (iv) Where a third party (such as the Stock Exchange etc.) is in possession of the report, the FIRS under Section 27 (1) of FIRSEA 2007 is empowered to request ‘any person it considers necessary’ - whether in possession or suspected to be in possession of such report to furnish the FIRS within a specified time frame, irrespective of the legal obligation to keep such report. In addition, The FIRS may institute legal action at the Tax Appeal Tribunal or Federal High Court, which may be escalated up to the Supreme Court to compel the company to make the report available (Section 1 (2)(b), 49 and 59 FIRSEA, 2007). Finally, Section 42 FIRSEA provides for offence and punishment in respect of incorrect information and records, while the explanations above deals with non-compliance.

¹⁷ In addition, Nigeria included a general anti-avoidance provision in their regulation. In case of arrangements to which the main purpose is to avoid any obligation under these regulations, the regulation shall have effect as if the arrangements had not been entered into.

¹⁸ The Federal Inland Revenue Service Establishment Act.

¹⁹ The CbC MCAA has been ratified by the Federal Executive Council (Council of Ministers) but the instrument of ratification has not yet been deposited with the OECD Secretariat because the primary legislation on CbC report has not been enacted.

²⁰ Nigeria indicates that the processes of this unit have been reviewed by the Global Forum during the Nigerian Phase 2 Peer Review for the EOI upon request. The unit has an effective EOI manual with which it carries on its functions. Nigeria notes that it will strengthen the unit and expand the scope of its manual to also undertake the exchange of CbC reports.

²¹ With the following countries: Belgium, Canada, China (People’s Republic of), Czech Republic, France, Netherlands, Pakistan, Philippines, Romania, Slovak Republic, South Africa and United Kingdom.

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