

Norway

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. Norway's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one substantive issue in relation to its domestic legal and administrative framework. The report, therefore, contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. Norway has rules (primary and secondary laws, as well as guidance) 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 Norway. The first filing obligation for a CbC report in Norway commences in respect of accounting years beginning on or after 1 January 2016. Norway meets all the terms of reference relating to the domestic legal and administrative framework,¹ with the exception of:

- the local filing mechanism which may be triggered in circumstances that are wider than those set out in the minimum standard²

Part B: Exchange of information framework

3. Norway 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 have the CbC MCAA in effect with all other Competent Authorities that provide notifications under the same agreement. It is also noted that Norway has signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Norway has 52 bilateral relationships activated under the CbC MCAA or exchanges under the bilateral CAA. Norway 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, Norway meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.³

Part C: Appropriate use

4. There are no concerns to be reported for Norway. Norway 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.⁴ Norway meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.⁵

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. Norway has primary law and secondary law (hereafter referred to as the “Regulations”) in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.⁶ Guidance has also been published.⁷

(a) Parent entity filing obligation

Summary of terms of reference:⁸ 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. Norway 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,⁹ 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 parent entity filing obligation, the definition of a “parent company”¹⁰ in the Regulations does not contain the same level of detail as in paragraph 18. ii. of the terms of reference (OECD, 2017b): there is no provision specifying that no other “enterprise” of the group owns directly or indirectly a sufficient interest such that it is required to prepare Consolidated Financial Statements, which could lead to a situation where there are two parent companies in an MNE Group headquartered in Norway, both having to file a CbC report. However, Norway indicates that under Norwegian legislation (Accounting Act Section 1 – 3), a person is considered to be a parent company only if that person has decisive influence over an enterprise through a majority of votes by way of agreement of shares or other ownership interests, which means that it is only in very limited circumstances that two enterprises in Norway would both qualify at the same time as a parent company having CbC Reporting obligations. In addition, in the event that more than one enterprise in the Group is obliged to file a report, the Group may appoint one of the enterprises to comply with the reporting obligation,¹¹ which would impose filing requirements only on one parent company in the Group.

9. The definition of a parent company in Norway’s legislation can apply to impose a CbC filing requirement on one or several entities in Norway that are themselves included in the Consolidated Financial Statement of another entity, considered as an “Ultimate

Parent Entity” in another jurisdiction as per the terms of reference. This definition is completed by a specific provision¹² which provides that a parent company in Norway would be exempted to file a CbC report where another company in the capacity of being a parent company shall file an equivalent report according to the domestic legislation in its jurisdiction of residence. However, these provisions may still in isolation (formally) trigger an instance of local filing requirement on the Norwegian enterprises when there are no CbC requirements on the Ultimate Parent Entity in the other jurisdiction¹³ (which may technically give rise to a duplication of the CbC reports filed under both the primary and secondary filing requirements by the parent company in Norway). However, Norway confirms that where the primary filing requirement would operate as a local filing requirement, the Regulations (i) allow that only one entity would be required to file one CbC report which would satisfy the obligation of all entities¹⁴ and (ii) this filing obligation would not operate if the CbC report is filed by a Surrogate Parent Entity.^{15 16} Finally, Norway also confirms that the provisions relating to the primary filing obligation could not apply to cover other instances of local filing which would not be admitted under the terms of reference.¹⁷ As such, no recommendation is issued but this aspect will be monitored.

10. No other inconsistencies were identified with respect to 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).

11. The first filing obligation for a CbC report in Norway commences in respect of accounting years beginning on or after 1 January 2016.¹⁸ 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.¹⁹

12. 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).

13. Norway has introduced local filing requirements in respect of income years beginning on or after 1 January 2017.²⁰

14. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)), local filing is required where “*the jurisdiction where the parent company is a resident does not have a qualifying agreement on automatic exchange of reports in effect by the expiration of the year in which a report shall be filed (...)*”. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if “the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report”. This is narrower than the above condition in Norway’s legislation. Under Norway’s legislation, local filing may be required in circumstances where there is no current international agreement between Norway and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. It is recommended that Norway take steps to ensure that local filing can only be required in circumstances permitted under the minimum standard and set out in the terms of reference, in particular to prevent local filing in the absence of an international agreement. It is noted that in practice this issue should only arise where local filing is imposed on a Constituent Entity in an MNE group where the Ultimate Parent Entity is resident in a country with which Norway does not have an international agreement and the other conditions where local filing is permitted, set out in the terms of reference, are not met. In this context, Norway indicates that it has a wide Tax Treaty network and is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011) and the CbC MCAA, and that Norway is currently in the process of updating their Tax Information Exchange agreements to include Automatic Exchange of Information. Norway further indicates that local filing is only required from 2019 in respect of the accounting year 2017, and as such, Norway will have sufficient time to propose the necessary amendments to its Parliament before local filing becomes effective. It is thus likely that no Constituent Entities will be affected by this wider obligation.

15. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017b)), local filing requirements can be required if the tax authorities have notified the enterprise in Norway that the jurisdiction where the parent company is a resident does not comply with an agreement (...) or for other reasons do not exchange reports with Norway. However, this condition does not reflect the details of paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017b) in particular in regard of the concept of “Systemic Failure”, and may be interpreted in a broader meaning than the situation of a “Systemic Failure”. Norway however confirms that this provision was adapted to fit into Norway’s Tax Assessment Act and that it will be interpreted in a manner consistent with the terms of reference. As such, no recommendation is made but this aspect will be further monitored.

16. No other 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).

17. Norway's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE Group.²¹ 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).

18. Norway has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the enterprises that are part of a group resident in Norway.²² There are also penalties in relation to the filing of a CbC report: (i) penalties for failure to file, (ii) penalties for failure to file on time and (iii) penalties for filing CbC report with obvious errors.²³

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

20. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Norway 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 Norway. Norway meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the local filing conditions (paragraphs 8 (c) iv. b) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

21. 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).

22. Norway has sufficient legal basis that permits the automatic exchange of CbC reports. 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 27 May 2010, in force on 1 June 2011 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements²⁴ which allow Automatic Exchange of Information in the field of taxation.

23. Norway signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 19 December 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide notifications under Section 8(1)(e) of the same agreement. It is noted that Norway has signed a bilateral CAA with the United States and is also exploring possibilities for negotiating bilateral CAAs with other treaty partners, which have not signed the CbC MCAA. As of 12 January 2018, Norway has 52 bilateral relationships activated under the CbC MCAA²⁵ or exchanges under the bilateral CAA. Norway 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 Norway meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

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

Part C: Appropriate use

25. 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).

26. 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), Norway 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.

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

Conclusion

28. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Norway. Norway 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 - Limitation on local filing	It is recommended that Norway take steps to ensure that local filing can only be required in circumstances permitted in the terms of reference.
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

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

² Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b).

³ Paragraph 9 (a) of the terms of reference (OECD, 2017b).

⁴ 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.

⁵ Paragraph 12 (a) of the terms of reference (OECD, 2017b).

⁶ Primary law consists of the Tax Administration Act Sections 8-12: https://lovdata.no/dokument/NL/lov/2016-05-27-14/KAPITTEL_8#KAPITTEL_8 (available in Norwegian text, accessed 20 April 2018); Secondary law consist of the regulations to the Tax Administration Act (Regulations): https://lovdata.no/dokument/SF/forskrift/2016-11-23-1360/KAPITTEL_6#KAPITTEL_6 (available in Norwegian text, accessed 20 April 2018).

⁷ Guidance consists of Country-by-Country reporting information published on the website of The Norwegian tax Administration: www.skatteetaten.no/en/business-and-organisation/reporting-and-industries/bransjer-med-egne-regler/internprising/country-by-country-reporting/ (accessed 26 April 2018).

⁸ 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).

⁹ It is noted that the reporting obligation of an enterprise other than a « parent company » (local filing) does not apply if the reason that the parent company abroad does not file an equivalent report is that the Group's revenue does not exceed the threshold amount set in the legislation in the residence jurisdiction of the parent company determined according to the Model legislation.

¹⁰ See Section 8-12-1(1) a. Under Section 8-12-1(1) a. of the Regulations, Norway indicates that it defines the terms “parent company” to have the same effect as “Ultimate Parent Entity”.

¹¹ See Section 8-12-4 of the Regulations.

¹² Section 8-12-5 “Exemption from the obligation to file a report for a parent company”: A parent company's obligation to file a report according to the Tax Administration Act Section 8-12 paragraph 1 does not apply where another company in the capacity of being a parent company shall file an equivalent report according to the domestic legislation in its residence jurisdiction.

¹³ This would correspond to the first condition for local filing described under paragraph 8.(c).iv.a) of the terms of reference (OECD, 2017b).

¹⁴ As per Section 8-12-4 of the Regulations. See paragraph 8.(c). v of the terms of reference (OECD, 2017b).

¹⁵ Section 8-12-4 of the Regulations would also apply in this situation. See paragraph 8.(d) of the terms of reference (OECD, 2017b).

¹⁶ Norway also indicates that where the CbC report filed by the parent company in Norway is filed under the primary filing obligation in such circumstances (as a form of local filing), the CbC report will be exchanged with other jurisdictions.

¹⁷ In particular, Norway indicates that the primary filing obligation could not operate as a form of local filing where (i) the Ultimate Parent Entity is required to file a CbC report in its jurisdiction of residence but has failed to do so; (ii) the Ultimate Parent Entity is required to file a CbC report in its jurisdiction of residence but there is no international agreement between this jurisdiction and Norway; (iii) the Ultimate Parent Entity is required to file a CbC report in its jurisdiction of residence but there has been failure under the QCAA other than a systemic failure between this jurisdiction and Norway.

¹⁸ See the “Provision on entry into force and effect” in Section 8-12 of The Tax Administration Act.

¹⁹ Previously, Norway’s Regulations provided that CbC report needed to be filed by 31 December of the year after the accounting year of the MNE Group. In certain instances, the accounting period may not correspond to the calendar year (e.g. an accounting period 31 January 2016 – 1 February 2017) and the CbC report would have been filed more than 12 months after the end of the accounting period (e.g. by 31 December 2018 in this example). This would have resulted in a CbC report being filed later than the date stated in the terms of reference and in the CbC report being subsequently exchanged with a partner jurisdiction later than the timeline envisaged in the Action 13 Report (OECD, 2015). Norway has however amended Section 8-12-7 of the Regulations on 23 November 2017 to state that CbC reports must be filed within 12 months of the expiration of the accounting year. This applies for CbC reports as required under section 8-12 [entry in force provision] filed in respect of the 2016 fiscal year.

²⁰ See Section 8-12 (2) of the Tax Administration Act.

²¹ See Section 8-12-6 of the Regulations.

²² See Section 8-12 (3) of the Tax Administration Act. Norway also indicates that the Tax Administration has a register of taxpayers, and are able to identify Ultimate Parent Entities that are obliged to file CbC Reports to the Norwegian Tax Authorities

²³ Norway indicates that the general sanction system in the Tax Administration Act applies to CbC Reporting and that in their experience, these sanctions are sufficient and effective. The Tax Administration Act includes two kinds of penalties for failure to file a CbC Report: coercive fine and additional tax. If the CbC Report is filed late or where there are obvious errors in the filed information, a daily coercive fine may be imposed under the Tax Administration Act Section 14-1. The coercive fine is NOK 500 per day, limited to NOK 52 500 until the correct information is submitted. Additional tax may also be imposed if information in the CbC report is incorrect or incomplete or the failure to submit mandatory information when the failure to provide information can lead to tax benefits under the Tax Administration Act section 14-3.

²⁴ See list of Norway’s bilateral agreements: www.regjeringen.no/en/topics/the-economy/taxes-and-duties/tax-treaties-between-norway-and-other-st/id417330/ (accessed 20 April 2018).

²⁵ 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.

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