

## Pakistan

### 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. Pakistan's implementation of the Action 13 minimum standard meets all applicable terms of reference, in relation to its domestic legal and administrative framework. It is recommended that Pakistan put in place an exchange of information framework as well as measures to ensure appropriate use.

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

2. Pakistan has (primary) law that impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Pakistan. The first filing obligation for a CbC report in Pakistan commences in respect of accounting years beginning on or after 1 January 2016. Based on the (primary) law and amendments to this law,<sup>1</sup> Pakistan meets all the terms of reference relating to the domestic legal and administrative framework.<sup>2</sup>

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

3. Pakistan is part 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 14 September 2016, in force on 1 April 2017). The Convention is therefore not in effect with respect to the fiscal year starting on 1 July 2016. This means that Pakistan will not be able to exchange (either send or receive) CbC reports with respect to the fiscal starting on 1 July 2016 under the Convention and CbC MCAA on the first exchange date in mid-2018. It is recommended that Pakistan take steps to enable exchanges of CbC reports relating to the fiscal year starting on 1 July 2016, e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention,<sup>3</sup> or relying on Double Tax Agreements or Tax Information and Exchange Agreements. Pakistan is also a signatory of the CbC MCAA (signed on 21 June 2017). It has not yet provided notification under section 8 of this agreement. As of 12 January 2018, Pakistan does not have bilateral relationships activated under the CbC MCAA. It is recommended that Pakistan take steps to enable exchanges in respect of the first fiscal year and have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions.<sup>4</sup>

### *Part C: Appropriate use*

4. In respect of the terms of reference under review,<sup>5</sup> Pakistan does not yet have measures in place relating to appropriate use. It is recommended that Pakistan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

### **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. Based on the (primary) law and amendments to this law, Pakistan meets all the terms of reference relating to the domestic legal and administrative framework.

6. Pakistan has (primary) law in place to implement the BEPS Action 13 minimum standard.<sup>6</sup> In addition, it has issued amendments to Chapter – IVA of the Income Tax Act.<sup>7</sup>

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

Summary of terms of reference:<sup>8</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. Pakistan has primary legislation 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 the permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified in respect of 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 Pakistan commences in respect of periods commencing on or after 1 January 2016.<sup>9 10</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>11</sup> However, for tax year 2017, CbC reports shall be filed within “not later than fifteen months after the last day of the reporting fiscal year of the MNE group”.<sup>12</sup> This will be monitored to ensure that the filing deadline in the cases of Reporting Fiscal years

commencing as from 1 January and before 31 March 2016 will not impact the ability of Pakistan to meet its obligations relating to the exchange of information under the terms of reference.<sup>13</sup>

10. No inconsistencies were identified in respect of 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. Pakistan has introduced local filing requirements as from the reporting period starting on or after 1 January 2017 or thereafter.<sup>14</sup>

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. Pakistan's local filing requirements will not apply if there is surrogate filing in another jurisdiction.<sup>15</sup>

14. 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).

15. Pakistan has legal mechanisms in place to enforce compliance with the minimum standards: there are notification mechanisms in place that apply to Ultimate Parent Entities, Surrogate Parent Entities as well as Constituent Entities.<sup>16</sup> Pakistan has penalties

in place in relation to the filing of a CbC report for failure: (i) to file a CbC report, (ii) to incompletely file a CbC report and (iii) to submit it on time.<sup>17</sup>

### Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017), Pakistan meets the terms of reference relating to the domestic legal and administrative framework.

## 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. Pakistan does not have a domestic, legal basis for the exchange of information in place. Pakistan is part 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 14 September 2016, in force on 1 April 2017). The Convention is therefore not in effect with respect to the fiscal year starting on 1 July 2016. This means that Pakistan will not be able to exchange (either send or receive CbC reports with respect to the fiscal starting on 1 July 2016 under the Convention and CbC MCAA on the first exchange date in mid-2018. It is recommended that Pakistan take steps to enable exchanges of CbC reports relating to the fiscal year starting on 1 July 2016, e.g. lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention,<sup>18</sup> or relying on Double Tax Agreements or Tax Information and Exchange Agreements.

19. Pakistan signed the CbC MCAA on 21 June 2017, but did not submit a full set of notification under section 8 of the CbC MCAA. As of 12 January 2018, Pakistan does not have bilateral relationships activated under the CbC MCAA. It is recommended that Pakistan take steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, appropriate use and consistency conditions.

### Conclusion

20. In respect of the terms of reference under review, it is recommended that Pakistan take steps to enable exchanges in respect of the first fiscal year and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

## Part C: Appropriate use

21. 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).

22. Pakistan does not yet have measures in place relating to appropriate use.<sup>19</sup> It is recommended that Pakistan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

### *Conclusion*

23. It is recommended that Pakistan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

## 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	It is recommended that Pakistan take steps to enable exchanges in respect of the first fiscal year and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Pakistan take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

### Notes

<sup>1</sup> S.R.O. number 144(I)/2018, published on 9 February 2018. See [www.fbr.gov.pk/DisplaySRO/6321](http://www.fbr.gov.pk/DisplaySRO/6321) (accessed 20 April 2018).

<sup>2</sup> Paragraph 8 of the terms of reference (OECD, 2017).

<sup>3</sup> Paragraph 6 of Article 28 of the Convention reads as follows: “[...] Any two or more Parties may mutually agree that the Convention [...] shall have effect for administrative assistance related to earlier taxable periods or charges to tax.”

<sup>4</sup> Paragraph 9 (a) of the terms of reference (OECD, 2017).

<sup>5</sup> Paragraph 12 (a) of the terms of reference (OECD, 2017).

<sup>6</sup> Chapter – VIA of the Income Tax Act.

<sup>7</sup> S.R.O. number 144(I)/2018, published on 9 February 2018. See [www.fbr.gov.pk/DisplaySRO/6325](http://www.fbr.gov.pk/DisplaySRO/6325) (accessed 23 April 2018).

<sup>8</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>9</sup> Article 27G(3) of the Income Tax Act.

<sup>10</sup> The tax year in Pakistan is from 1 July – 30 June. However, a taxpayer can request for the Commissioner’s approval to adopt a different tax year (e.g. the calendar year). See Article 74 of the Income Tax Ordinance 2001.

The year 1 July 2016 – 30 June 2017 is the tax year 2017.

<sup>11</sup> See Article 27G of the Income Tax Act.

<sup>12</sup> Article 27G(1) of the Income Tax Act.

<sup>13</sup> Paragraph 9 (d) of the terms of reference (OECD, 2017).

<sup>14</sup> Article 27E of the Income Tax Act in conjunction with Article 27G(3) of the Income Tax Act (as implemented by S.R.O. 144(I)/2018).

<sup>15</sup> Article 27F of the Income Tax Act.

<sup>16</sup> Articles 27B and 27C of the Income Tax Act.

<sup>17</sup> Article 27O of the Income Tax Act and Section 182 of the Ordinance.

<sup>18</sup> Paragraph 6 of Article 28 of the Convention reads as follows: “[...] Any two or more Parties may mutually agree that the Convention [...] shall have effect for administrative assistance related to earlier taxable periods or charges to tax.”

<sup>19</sup> Pakistan included provisions on appropriate use in Article 27H of the Income Tax Act. Pakistan indicates that guidance on appropriate use is currently being developed and will be issued shortly.

## 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, [www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf).
- OECD (2015), *OECD/G20 Base Erosion and Profit Shifting Project - Transfer Pricing Documentation and Country-by Country Reporting – Action 13: 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241480-en>.
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