

## Peru

### 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. Peru's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that Peru should take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Peru will not be exchanging CbC reports in 2018.

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

2. Peru has rules (primary and secondary laws) to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Peru. The first filing obligation for a CbC report in Peru commences in respect of fiscal years commencing on or after 1 January 2017. Peru meets all the terms of reference relating to the domestic legal and administrative framework.<sup>1</sup>

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

3. Peru 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 25 October 2017 and not in force for 2017). Peru is not a signatory of the CbC MCAA yet. Peru does not have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. Against the backdrop of the still evolving exchange of information framework, at this point in time, it is recommended that Peru take steps to enable exchanges of CbC reports relating to the fiscal year 2017 and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Peru will not be exchanging reports in 2018.<sup>2</sup>

#### ***Part C: Appropriate use***

4. In respect of the terms of reference under review,<sup>3</sup> Peru indicates that it is taking steps to have measures 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 is recommended that Peru ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Peru 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. Peru has primary<sup>4</sup> and secondary<sup>5</sup> law in place to implement the BEPS Action 13 minimum standard.

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

Summary of terms of reference:<sup>6</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. Peru 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. No inconsistencies were identified with respect to Peru'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 Peru commences in respect of periods commencing on or after 1 January 2017.<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. Peru indicates that it has introduced local filing requirements as from the reporting period starting on or after 1 January 2017.<sup>9</sup> No inconsistencies were identified with respect to the 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).

12. Peru's local filing requirements will not apply if there is surrogate filing in another jurisdiction.<sup>10</sup> 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).

13. Peru has legal mechanisms in place to enforce compliance with the minimum standard: Peru has penalties in place in relation to the filing of a CbC report for failure:<sup>11</sup> (i) to file a CbC report, (ii) to correctly file a CbC report and (iii) to submit it on time.

14. There are no specific processes in place that would allow Peru 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 (OECD, 2017b), Peru 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 Peru. Peru meets all the terms of reference relating to the domestic legal and administrative framework.

## 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 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).

17. Peru signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (“the Convention”) (signed on 25 October 2017). Peru indicates that the Convention will enter into force in the near future. The Convention will therefore not be in effect at the start of commencement of CbC Reporting in Peru on 1 January 2017. This means that Peru will not be able to exchange (either send or receive) CbC reports with respect to the 2017 fiscal year and will not send or receive CbC reports under the Convention and CbC MCAA on the exchange date in 2019. It is recommended that Peru take steps to enable exchanges of CbC reports relating to the fiscal year 2017, 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, or relying on Double Tax Agreements or Tax Information and Exchange Agreements.

18. Peru also has a treaty network for exchange of information that include Tax Information Exchange Agreements with the United States and Ecuador, as well as Double Tax Agreements with Brazil, Canada, Chile, Korea, Mexico, Portugal and Switzerland which allow Automatic Exchange of Information. Also Peru has a Decision 578 of the Andean Community Commission (it includes to Ecuador, Colombia and Bolivia).

19. Peru does not have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. Peru indicates that it is currently evaluating steps to have QCAAs in effect with these jurisdictions.

20. Against the backdrop of the still evolving exchange of information framework, at this point in time, it is recommended that Peru take steps to enable exchanges of CbC reports relating to the fiscal year 2017 and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Peru will not be exchanging reports in 2018.

### Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time, in respect of paragraph 9 (a) of the terms of reference (OECD, 2017b), it is recommended that Peru take steps to enable exchanges of CbC reports relating to the fiscal year 2017 and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Peru 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. 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), Peru indicates that is currently preparing guidance 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 is recommended that Peru take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Peru will not be exchanging CbC reports in 2018.

### Conclusion

24. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), Peru 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 Peru 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 – EOI framework and QCAAs in effect	Against the backdrop of the still evolving exchange of information framework, at this point in time, it is recommended that Peru take steps to enable exchanges of CbC reports relating to the fiscal year 2017 and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	Peru 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 Peru will not be exchanging CbC reports in 2018.

## Notes

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

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

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

<sup>4</sup> Peru's Primary law consists of article 32-A of the Income Tax Law (modified by Legislative Decree No. 1,312/2016).

<sup>5</sup> Secondary law consists of articles 116, 117 and 118, as well its related complementary provisions of the regulation of the Income Tax Law, through No. 333-2017-EF supreme decree.

<sup>6</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, 2017b).

<sup>7</sup> See first complementary transitory provision of the secondary law. Peru indicates that has a taxable exercise defined in article 57 of the Peruvian Income Tax Law, in the following terms: "For the purposes of this Law, the taxable exercise begins on January 1 of each year and ends on December 31, in all cases the commercial exercise must coincide with the taxable exercise, without exception." Therefore, Peruvian MNE groups only follow calendar years.

<sup>8</sup> See article 32-A of the Income Tax Law. Peru indicates that according to subsection g, the term "annually" implies that CbC must submitted by taxpayers the following year the fiscal year to which the CbC Reporting corresponds. Likewise, the aforementioned subsection states that the deadline for submitting CbC will be established by SUNAT through a superintendence resolution. Although the Resolution of the Superintendancy that regulates the form, the deadline and the conditions for the presentation of the informative CbC affidavit has not yet been published, to this date it would be projected the submitting of the aforementioned affidavit for the third week of the month of October, according to the maturity schedule that would correspond to the period of September 2018. In this way, CbC reports will be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates. Furthermore, Peru indicates that has a taxable exercise defined in article 57 of the Peruvian Income Tax Law, in the following terms: "For the purposes of this Law, the taxable exercise begins on January 1 of each year and ends on December 31, in all cases the commercial exercise must coincide with the taxable exercise, without exception." Therefore, Peruvian MNE groups only follow calendar years.

<sup>9</sup> See first transitory provision of the secondary law.

<sup>10</sup> See article 116 of the secondary law.

<sup>11</sup> See subsection 2, 4 and 8 of article 176 of the Tax Code. According to these subsections, it is a punishable offense:

(2) Not to submit affidavit within the established deadlines. The penalty is a fine equivalent to 0.6% of net income, which cannot be less than 10% of a UIT (Unidad Impositiva Tributaria) or more than 25 UIT.

(4) Submit statements incompletely or not in conformity with reality. The penalty is a fine equivalent to 30% of UIT.

(8) Failure to file the affidavit without taking under consideration the guidelines and conditions established by SUNAT. It is punishable with a fine equivalent to 30% of a UIT.

Furthermore, new penalties have been approved by virtue of Legislative Decree N° 1311, published on December 31, 2016 that modified subsection 27 of article 177 of the Tax Code. Failure to show or to file the documentation and information referred to in subparagraph g) of article 32-A of the Income Tax Law; which, among others, support the informative affidavits Local Report, Master Report and / or Country-by-Country Report, is a punishable offense with a fine equivalent to 0.6% of net income, which cannot be less than 10% of a UIT or more than 25 UIT.

## References

- OECD (2017a), *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](http://www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf).
- OECD (2017b), “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>.
- 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>.





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