

Poland

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. Poland's implementation of the Action 13 minimum standards meets all applicable terms of reference, except that it raises one interpretative and one substantial issue in relation to its domestic legal and administrative framework. The report, therefore, contains two recommendations to address these issues. In addition, it is recommended that Poland have in place measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Poland has rules (primary law and secondary legislation) that impose and enforce CbC Reporting requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Poland. The first filing obligation for a CbC report in Poland commences in respect of fiscal years commencing on or after 1 January 2016. Poland meets all the terms of reference relating to the domestic legal and administrative framework,¹ with the exception of:

- the annual consolidated revenue threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than Poland which may deviate from the guidance issued by the OECD. Although such deviation may be unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 standard,²
- the definition of “accumulated earnings”, which lacks detail as to the treatment of permanent establishments,³

Part B: Exchange of information framework

3. Poland is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 9 July 2010, in force on 1 October 2011 and in effect for 2016). Poland has signed the CbC MCAA and submitted a full set of notifications under section 8 of the CbC MCAA. It has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. Poland has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Poland has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Against the backdrop of the still evolving exchange of information framework, at this point in time Poland meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.⁴

Part C: Appropriate use

4. In respect of the terms of reference under review,⁵ Poland does not yet have measures in place relating to appropriate use. It is recommended that Poland 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.

6. Poland has primary law⁶ in place to implement the BEPS Action 13 minimum standard. In addition to this, Poland has an additional regulation⁷ (secondary law) in place regarding the detailed scope of information provided on the MNE Group and the specific rules of its preparation. No guidance has been published.

(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. Poland 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).⁹

8. The definition of “MNE group” refers to “a group that recorded a consolidated group revenue for the previous financial year exceeding the threshold value of EUR 750 000 000; where the consolidated financial statements of the capital group are prepared in a currency other than EUR, the translation of the value of consolidated revenue into EUR for the purpose of its benchmarking against the threshold value shall take place according to the last exchange rate published by the European Central Bank as at the last day of the financial year preceding the reporting financial year; in such a case, currencies other than EUR shall be translated applying the exchange rate of each of them against EUR.” While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Poland, 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 Polish 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. It is thus recommended that Poland amend or otherwise clarify that this rule would apply in a manner consistent with the OECD guidance on currency fluctuations in

respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Poland.

9. No other inconsistencies were identified with respect to Poland'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 Poland commences in respect of periods commencing on or after 1 January 2016. 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. With respect to paragraph 8 (b) iv. of the terms of reference (OECD, 2017), it is noted that in the definition of “accumulated earnings”, there is no specific rule relating to the treatment of permanent establishments. However, in the specific instructions for the CbC report template in the Action 13 Report (OECD, 2015), accumulated earnings related to permanent establishments should be reported by the legal entity of which it is a permanent establishment. It is recommended that Poland include the specific rule relating to permanent establishments in the definition of “accumulated earnings”.

12. No other 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).

13. Poland has introduced local filing requirements as from the reporting period starting on or after 1 January 2017 or thereafter.¹¹

14. No inconsistencies were identified with respect to the limitation on local filing obligation.^{12 13 14}

(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).

15. Poland's local filing requirements will not apply if there is surrogate filing in another jurisdiction.¹⁵

16. 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).

17. Poland 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 which have a filing requirement under local filing rules.¹⁶ There are also 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, (iii) to submit it on time and (iv) of notification of the CbC Reporting requirement.¹⁷

18. There are no specific processes in place that would allow to take appropriate measures in case Poland 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 monitored.

Conclusion

19. In respect of paragraph 8 of the terms of reference, Poland meets the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the annual consolidated revenue threshold calculation rule (paragraph 8 (a) ii. of the terms of reference (OECD, 2017)) and (ii) the content of a CbC report (paragraph 8 (b) iv. of the terms of reference (OECD, 2017)).

Part B: The exchange of information framework

20. 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).

21. Poland has domestic legislation that permits the automatic exchange of CbC reports.¹⁸ Poland is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 9 July 2010, in force on 1 October 2011 and in effect for 2016).

22. Poland has signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 12 July 2017. It has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. Poland has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Poland has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Poland 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).¹⁹ Against the backdrop of the still evolving exchange of information framework, at this point in time Poland meets the terms of reference.

Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time Poland meets the terms of reference.

Part C: Appropriate use

24. 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).

25. Poland does not yet have measures in place relating to appropriate use. It is recommended that Poland take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

26. In respect of paragraph 12 (a) it is recommended that Poland 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 - Parent entity filing obligation – annual consolidated group revenue threshold	It is recommended that Poland clarify that the annual consolidated group revenue threshold calculation rule applies without prejudice of the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Poland.
Part A	Domestic legal and administrative framework – Definition of “accumulated earnings”	It is recommended that Poland clarify the treatment of permanent establishments in the definition of “accumulated earnings”.
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that Poland take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Notes

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

² Paragraph 8 (a) ii. of the terms of reference (OECD, 2017).

³ Paragraph 8.b.iv. of the terms of reference (OECD, 2017).

⁴ Paragraph 9 (a) of the terms of reference (OECD, 2017).

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

⁶ Poland’s primary law consists of art. 82 – 88 (section V) of the Act of 9 March 2017 on the exchange of tax information with other countries (Official Journal of 27 March 2017).

⁷ Regulation of the minister of economic development and finance of 13 June 2017 (Official Journal of 21 June 2017).

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, 2017).

⁹ Article 82(1)c, article 84 (in conjunction with article 82(1)c) and article 104(2+3) of the Act of 9 March 2017 on the exchange of tax information with other countries (Official Journal of 27 March 2017).

¹⁰ Article 83(1) of the Act of 9 March 2017 on the exchange of tax information with other countries.

¹¹ Article 84(2) of the Act of 9 March 2017 on the exchange of tax information with other countries.

¹² Local filing in Poland may apply to permanent establishments.

¹³ Where a Constituent Entity (referred to in Article 84) fails to receive the data required in the Information on the MNE Group from the Parent Entity of the MNE Group, it shall forward the data in its possession and notify thereof in the Information on the MNE Group (Article 85 of the Act of 9 March 2017 on the exchange of tax information with other countries).

¹⁴ It is noted that Article 6 of the EOI Act states that “The provisions restricting making legally protected data available, except for classified information, shall not apply to the disclosure of tax

information to the minister competent for public finance, a body of the National Revenue Administration authorised by it, the Head of the National Revenue Administration or its authorised representative, in accordance with the procedure and to the extent provided by the Act.” Poland indicates that this Article constitutes a general carve-out of the information provided under the EOI Act from data protection/state secrecy legislation, i.e. a taxpayer cannot invoke this legislation to refuse the provision of information. The only exception is information classified by the State as restricted/secret/ top secret. The classification of information is done by the State authority. Poland does not foresee any application of this provision to CBC Reporting due to the scope of information provided therein.

¹⁵ Article 84(2) of the Act of 9 March 2017 on the exchange of tax information with other countries.

¹⁶ Article 86 of the Act of 9 March 2017 on the exchange of tax information with other countries.

¹⁷ Article 90 and 91 of the Act of 9 March 2017 on the exchange of tax information with other countries.

¹⁸ Act of 9 March 2017 on the exchange of tax information with other countries (Official Journal of 27 March 2017).

¹⁹ 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.

References

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