

Portugal

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. Portugal's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review and no recommendation is made.

Part A: Domestic legal and administrative framework

2. Portugal has rules (primary law) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in Portugal. The first filing obligation for a CbC report in Portugal commences in respect of periods commencing on or after 1 January 2016. Portugal meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework

3. Portugal is a signatory of 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 exchange information with all other signatories of this agreement which provide notifications. It is noted that Portugal has signed a bilateral QCAA with the United States. As of 12 January 2018, Portugal has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Portugal 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 Portugal meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.²

Part C: Appropriate use

4. There are no concerns to be reported for Portugal. Portugal 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.³ Portugal meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.⁴

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. Portugal has legislation in place (Primary law⁵ - no secondary legislation was required) which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning on or after 1 January 2016.

(a) Parent entity filing obligation

Summary of terms of reference:⁶ 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. Portugal 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 Portugal's domestic legal framework in relation with the parent entity filing obligation.^{7 8 9}

(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 Portugal commences in respect of periods commencing on or after 1 January 2016.¹⁰ 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.¹¹

10. No inconsistencies were identified with respect to Portugal's domestic legal framework in relation with 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. Portugal has introduced local filing requirements as from the reporting period starting on or after 1 January 2017.¹²

12. Local filing requirements may apply in Portugal in three situations.¹³ Portugal affirms that a Portuguese Constituent Entity would only be subject to local filing if the Ultimate Parent Entity of the MNE Group to which it belongs exceeds the threshold for filing a CbC report in its own jurisdiction of residence. This will be monitored.¹⁴

13. No other inconsistencies were identified with respect to the limitation on local filing obligation.¹⁵

(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).

14. Portugal's local filing requirements will not apply if there is surrogate filing in another jurisdiction.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).

15. Portugal has legal mechanisms in place to enforce compliance with the minimum standard: there are penalties for (i) failure to file and (ii) for late filing or (iii) inaccurate filing of a CbC report.¹⁷ There are also notification mechanisms in place that apply to Constituent Entities in Portugal.¹⁸

16. Portugal affirms that 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, a penalty is applicable. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

17. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Portugal 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 Portugal. Portugal meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

18. 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).

19. Portugal has domestic legislation that permits the automatic exchange of CbC reports.¹⁹ It 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 27 May 2010, in force on 1 March 2015 and in effect for 2016). Portugal has not provided a list of bilateral Double Tax Agreements and a Tax Information and Exchange Agreement which allow Automatic Exchange of Information. Portugal is also committed to the exchange of CbC reports within the European Union under EU Council Directive (2016/881/EU).

20. Portugal signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 16 June 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement.²⁰ It is noted that Portugal has signed a bilateral QCAA with the United States on 2 October 2017. As of 12 January 2018, Portugal has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Portugal 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).²¹ Against the backdrop of the still evolving exchange of information framework, at this point in time Portugal meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

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

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: (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).

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), Portugal 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.

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

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Portugal. Portugal 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	-	
Part B	Exchange of information framework	-	
Part C	Appropriate use	-	

Notes

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

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

³ 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.

⁴ Paragraph 12 (a) of the terms of reference (OECD, 2017b).

⁵ Portugal's primary law consists of Article 121-A of the Portuguese Tax Code (as amended by Law No. 7-A/2016 and by Law No. 98/2017).

⁶ 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).

⁷ Portugal states that the definition of Reporting Entity is provided in paragraphs 1 and 2 of article 121-A, which state that a CbC report must be filed by an Ultimate Parent Entity, a Surrogate Parent Entity or a Constituent Entity if the conditions of paragraph 2 of article 2 of the Model Legislation occur. Portugal is preparing guidance on the filing of the CbC report and on the filing of the communication of the identity of the reporting entity. This guidance identifies which entities are obliged to file a CbC report and expressly refers that any Constituent Entity belonging to an MNE group shall file a CbC report if: (i) it is the UPE of the Group; (ii) it is the SPE of the group; (iii) it has been appointed by the group to file CbC; (iv) any of the entities described on article 2 paragraph 2 of the Model Legislation.

⁸ In the legislation, Qualifying Competent Authority Agreement (QCAA) is defined as “an agreement that is between a jurisdiction or a third country that requires the automatic exchange of country-by-country reports”. Portugal indicates that according to articles 161 (i) and 165 (i) of the Portuguese Constitution, International Agreements in the tax area must always be approved by the Portuguese parliament, and as such, a QCCA only can be signed if there is an International Agreement between the involved parties.

⁹ Portugal indicates that where local filing requirements apply in Portugal, a Portuguese Constituent Entity would only be subject to local filing if the Ultimate Parent Entity of the MNE Group to which it belongs exceeds the threshold for filing a CbC report in its own jurisdiction of residence. Portugal indicates that the application of this threshold results from the wording of article 121-A(1) and (2) of the Portuguese Tax Code, and will be clarified in future guidance on the filing of the CbC report and on the filing of the communication of the identity of the Reporting Entity. This will be monitored.

¹⁰ See Article 121-A of the Portuguese Tax Code.

¹¹ See Article 121-A (3) of the Portuguese Tax Code.

¹² See Article 14 of Law No. 98/2017 (transitory provision).

¹³ Article 121-A (2): A Constituent Entity resident in the Portuguese territory, which is not the Ultimate Parent Entity of a MNE Group, is also obliged to submit a country-by-country report regarding each Fiscal Year, in case one of the following conditions are met:

a) It is directly or indirectly owned or controlled by non-residents entities which are not obliged to file such report;

b) The jurisdiction where the Ultimate Parent Entity is resident for tax purposes has an current International Agreement with Portugal, but on the date foreseen in number (8) for filing of the country-by-country report, there is not a Qualifying Competent Authority Agreement in effect;

c) There has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Tax and Custom Authority to the Constituent Entity.

¹⁴ It is also noted that Article 121-A, paragraph 8 provides that “in case there is more than one Constituent Entity of the same MNE group that are resident for tax purposes in European Union, and one or more of the conditions foreseen in paragraph 2 are applicable, the MNE Group may designate one of those Constituent Entities to file the country by country report regarding any Reporting Fiscal Year within the deadline foreseen in paragraph 4, and it should communicate to Tax and Customs Authority that such report is intended to satisfy the filing requirement of all the Constituent Entities of such MNE group which are resident in European Union for fiscal purposes”. Portugal confirms that this provision applies in all situations where there is more than one Constituent Entity resident in Portugal, even if the MNE Group has no entities in another EU country and therefore would be in line with Terms of Reference 8(c) v.

¹⁵ It is noted that Portugal’s rules provide that the Constituent Entity resident in Portugal shall request its Ultimate Parent Entity to provide it with all information required to enable it to meet its obligations to file a country-by-country report, in accordance with article 121-A. If despite that, that Constituent Entity has not obtained or acquired all the required information to report for the MNE Group, this Constituent Entity shall file a country-by-country report containing all information in its possession, obtained or acquired, and notify the Tax and Customs Authority that the Ultimate Parent Entity has refused to make the necessary information available. This shall be without prejudice to the right to apply penalties provided for in national legislation.

¹⁶ See Article 121-A (9) of the Portuguese Tax Code.

¹⁷ See article 117 (6) of the General Regime of Tax Infractions (RGIT), available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/rgit/pages/regime-geral-das-infracoes-tributarias-indice.aspx (accessed 23 April 2018). Portugal indicates that this article covers both cases of non-filing or late filing, as it establishes a fine from EUR 500 to EUR 10 000 for non-filing by the time limit provided by law, as well as an extra of 5% fine per day in case of any additional delay in filing the report. In case of inaccuracies on the information included in the report, the general penalty defined for inaccuracies on relevant fiscal documentation will apply (article 119 (1) from RGIT). In these cases a fine between EUR 375 to EUR 22 000 is applicable.

¹⁸ See Article 121-A (4) of the Portuguese Tax Code.

¹⁹ See 121-A and 121-B of Corporate Income Tax Act, which covers automatic exchange CbC Reports to be effective for taxable periods starting on or after 1 January 2016.

²⁰ Portugal has a total of 48 exchange relationships activated under the CbC MCAA, of which 41 are effective for taxable periods starting on or after 1 January 2016.

²¹ 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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