

Australia

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 Country-by-Country (CbC) reports. Australia's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one substantive issue. The report, therefore, contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. Australia has rules (primary law, as well as guidance) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in Australia. The first filing obligation for a CbC report in Australia commences in respect of income tax years commencing on or after 1 January 2016. Australia 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 standard.²

Part B: Exchange of information framework

3. Australia 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 is also a signatory of the Multilateral Competent Authority Agreements for exchanges of CbC reports (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. Australia also signed a bilateral competent authority agreement with the United States on 1 August 2017. As of 12 January 2018, Australia has 51 bilateral relationships activated under the CbC MCAA. Australia 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 Australia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.³

Part C: Appropriate use

4. There are no concerns to be reported for Australia. Australia 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 Australia 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. Australia has primary law in place which implements the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.⁶ Guidance has also been published and updated.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. Australia 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. Australia’s legislation refers to the concepts of a “Significant Global Entity” (SGE) and of a “Global Parent Entity”.⁹ These concepts do not mirror the definition of an “Ultimate Parent Entity” as reflected in paragraph 18 i. of the terms of reference (OECD, 2017b) as they do not include the situation of an Ultimate Parent Entity that does not prepare Consolidated Financial Statements, but would be required to do so if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence (“deemed listing provision”). However, the legislation includes a provision which confers on the Commissioner the authority to make a determination with respect to a “global parent entity” if the Commissioner reasonably believes that, if such statements had been prepared for the period, the entity’s annual global income for the period would have been above the threshold for the filing obligation.¹⁰ As the effectiveness of the framework relies on the Commissioner being able to identify such situations, this will be monitored.

9. With respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference, OECD, 2017b), the legislation makes reference to an annual global income threshold of AUD 1 billion (Australian dollars)¹¹ which may apply to a SGE member of an MNE Group whose Ultimate Parent Entity is resident in jurisdiction other than Australia.¹² While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Australia, 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 an Australia 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.¹³ However, in the guidance which has been published,¹⁴ this situation is considered in the sections relating to “exemptions” and an example is included for “differing currency thresholds”: where the annual income of a global group would exceed Australia’s threshold of AUD 1 billion, but however the currency exchange rates are such that the foreign global parent entity falls slightly below its local CbC Reporting threshold, an exemption from lodging the CbC report and master file would be considered. As such, no recommendation is made, but this aspect will be monitored to ensure that this proposed guidance is published.

10. The concepts of a “Significant Global Entity” (SGE) and of a “Global Parent Entity” also do not automatically capture entities that are included in the Consolidated Financial Statements of the MNE group or would be so included if equity interests in the entity were traded on a public securities exchange, as well as entities that are excluded from the MNE Group’s Consolidated Financial Statements solely on size or materiality grounds, as well as any permanent establishment of any entity mentioned previously provided it prepares separate financial separate financial statement for such permanent establishment for financial, regulatory, tax reporting, or internal management control purposes. However, Australia notes that it is expected that these circumstances would be exceptional for an Australian headquartered MNE Group and that the Commissioner may exercise his powers to determine that an entity is to be considered as an SGE for CbC purposes in such circumstances.¹⁵ As the effectiveness of the framework relies on the Commissioner being able to identify such situations, this will be monitored.

11. With respect to paragraph 8 a) iv. of the terms of reference (OECD, 2017b),¹⁶ it is noted that according to Australia’s legislation,¹⁷ the Commissioner has the discretion to grant individual or class exemptions from filing a CbC report. There have been no class exemptions provided for to date in Australia. As regards individual exemptions, it is found that these would largely be used to relieve an Australian Constituent Entity from local filing requirements, being noted that local filing applies in Australia as a default rule.¹⁸ In its guidance relating to exemptions,¹⁹ Australia states that it will generally not grant an exemption to an SGE that is an Australian resident and a GPE. Australia confirms that it is its policy not to provide an exemption to an Australian headquartered MNE from filing a CbC report in any case where the CbC report would be subject to exchange with another jurisdiction.²⁰ As the main purpose of providing exemptions from filing a CbC report appears to be to deactivate local filing or to exempt “purely domestic” Australian groups or stand-alone companies, no recommendation is made but this aspect will be monitored (in particular since the effectiveness of the framework relies on the Australian tax administration to provide exemptions consistently with the terms of reference, and because Australia’s primary law gives the Commissioner the discretion to grant class exemptions from filing a CbC report).

12. With respect to paragraph 8 a) iv. of the terms of reference (OECD, 2017b),²¹ it is noted that according to Australia’s draft guidance,²² superannuation funds which could potentially exceed the annual global income threshold in the income year which ended on 30 June 2016 - when they would not have met that threshold if the accounting standard AASB 1056, applicable from 1 July 2016, had applied to that income year - are allowed to calculate the annual global income in a manner consistent with AASB 1056 for the income year prior to the first income year commencing on or after 1 January 2016. Given

that AASB 1056 (which excludes member contributions from the calculation of income for superannuation entities) may be applied on a retrospective basis and that it is applicable as from 1 July 2016, no recommendation is made in relation to the potential exemptions granted in respect of this transitional situation.

13. 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).

14. The first filing obligation for a CbC report in Australia commences in respect of income tax years commencing on or after 1 January 2016.²³ The CbC report must be filed within 12 months after the end of the income year or the replacement reporting period²⁴ to which the CbC report of the MNE Group relates.²⁵

15. 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).

16. Australia has introduced local filing requirements in respect of income tax years commencing on or after 1 January 2016. Local filing applies in Australia as a default rule and exemptions may be granted (e.g. an exemption would be granted when a CbC report is filed by the Ultimate Parent Entity in its country of residence and the CbC report is exchanged with Australia).²⁶

17. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. a) of the terms of reference, OECD, 2017b), local filing is required without relief in the situation where the Ultimate Parent Entity has not filed its CbC report in its jurisdiction of residence.²⁷ Paragraph 8 (c) iv. a) of the terms of reference (OECD, 2017b) provides that a jurisdiction may require local filing if the Ultimate Parent Entity of the MNE Group is not obligated to file a CbC report in its jurisdiction of tax residence. This is narrower than the above condition in Australia's legislation. Under Australia's legislation, local filing may be required in circumstances where an Ultimate

Parent Entity is obligated to file a CbC report in its jurisdiction of tax residence but fails to do so. Australia indicates that while local filing could be required in circumstances where an Ultimate Parent Entity is obligated to file a CbC report in its jurisdiction of residence and fails to do so, Australia's administrative practice would be that local filing would not be pursued immediately and would not occur until the tax authority of the foreign jurisdiction has had the opportunity to enforce filing by the Ultimate Parent Entity. Australia expects local filing to be required only in exceptional circumstances, such as where the filing obligation in the foreign jurisdiction is not enforced or is substantially not enforced. In this context, it is recommended that Australia amend its rules or otherwise ensures that its administrative practice operates in a way whereby local filing is only required in the circumstances contained in the terms of reference.

18. 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 also required without relief (except where surrogate parent filing occurs) in the situation where Australia does not have an International Agreement in effect to exchange information with the jurisdiction of tax residence of the Ultimate Parent Entity.²⁸ 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 Australia's legislation. Under Australia's legislation, local filing may be required in circumstances where there is no current international agreement between Australia and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. However, Australia confirms that it will administer the law in a way that provides an outcome that is consistent with the terms of reference. As such, no recommendation is made but this aspect will be monitored.

19. 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 is required without relief in the situation where a CbC report is not available to be exchanged for whatever reason, or has not been received by Australia within a reasonable time via automatic exchange.²⁹ This condition does not mirror the concept of "Systemic Failure" as reflected in paragraph 21 of the terms of reference (OECD, 2017b). In particular, the fact that one single CbC report cannot be obtained through exchange of information or is obtained late is unlikely to constitute a "Systemic Failure".³⁰ However, Australia confirms that it will administer the law in a way that provides an outcome that is consistent with the terms of reference. As such, no recommendation is made but this aspect will be monitored.

20. No other inconsistencies were identified with respect to the limitation on local filing obligation.³¹

(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).

21. Australia's local filing requirements will not apply if there is surrogate filing in another jurisdiction.³²

(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).

22. Australia has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to taxpayers in Australia.³³ There are also penalties in place in relation to the filing of a CbC report:³⁴ (i) penalties for failure to file a CbC report, (ii) penalty for late filing and (iii) penalties for filing inaccurate information. In addition to these penalties, Australia indicates that there are general offence provisions in Australian tax law covering a failure to provide information or failure to give information in the manner it is required under taxation law.³⁵ There are also a range of other tax offences that may be relevant to enforcing the obligations of Ultimate Parent Entities or other Constituent Entities with filing obligations.³⁶

23. There are no specific processes to take appropriate measures in case Australia is notified by another jurisdiction that it has reason to believe with respect to a Reporting Entity that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. Australia notes that notifications may be provided under relevant Competent Authority Agreements and identified errors, incorrect information or other non-compliance would be subject to action using the enforcement powers mentioned above. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

Conclusion

24. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Australia 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 Australia. Australia 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. a) of the terms of reference, OECD 2017b).

Part B: The exchange of information framework

25. 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).

26. Australia has sufficient legal basis in its domestic legislation to automatically exchange information on CbC reports: it is part of (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), (signed on 3 November 2011, in force on 2 December 2012 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements (TIEAs).³⁷ Australia indicates that negotiations will occur to update TIEAs where necessary to facilitate automatic exchanges.

27. Australia signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 30 November 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under paragraph (1) (e) of Section 8 of the same agreement. Australia also signed a bilateral competent authority agreement (CAA) with the United States on 1 August 2017. As of 12 January 2018, Australia has 51 bilateral relationships activated under the CbC MCAA³⁸ or exchanges under a bilateral CAA. Australia 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 Australia meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

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

Part C: Appropriate use

29. 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).

30. 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), Australia 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. It has also provided a copy of its internal guidance on appropriate use.

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

Conclusion

32. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Australia. Australia 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 obligation, conditions to require local filing	It is recommended that Australia amend its rules or otherwise ensures that its administrative practice operates in a way whereby local filing is only required in the circumstances contained 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. a) 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 Country-by-Country reporting obligations imposed by Subdivision 815-E of the Income Tax Assessment Act 1997. The CbC Reporting obligations are dependent on the concept of being a “significant global entity” (SGE) as provided by Subdivision 960-U of the Income Tax Assessment Act 1997.

⁷ Guidance consists of the following guidance released by the Australian Taxation Office (ATO):

(i) the Law Companion Guideline (LCG) 2015/3, Subdivision 815-E of the Income Tax Assessment Act 1997: Country-by-Country reporting (17 Dec 2015); (ii) Country-by-Country Reporting: Exemption Guidance (26 Sept 2016); (iii) Country-by-Country reporting: Questions and Answers (30 Nov 2016) and (iv) “Country-by Country reporting” guidance (which was released for consultation purposes to a range of taxpayers and tax adviser firms on 7 July 2017, and was shared with the OECD Secretariat. The finalised guidance was released on 19 December 2017 and is now therefore considered a publicly available document). Australian indicates that the guidance relating to exemptions and the draft guidance supersede the guidance provided in the Law Companion Guideline.

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 See sections 960-555 and 960-560 of Subdivision 960-U of the Income Tax Assessment Act 1997.

¹⁰ See section 960-555 (3) of the Income Tax Assessment Act 1997.

¹¹ See section 960-555 (1) and (2) of the Income Tax Assessment Act 1997.

¹² See section 815-355 (1) (a) of the Income Tax Assessment Act 1997.

¹³ See question IV. 1. “Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the *“Guidance on the Implementation of Country-by-Country Reporting”* (OECD, 2018).

¹⁴ “Country-by Country reporting” guidance which was released to a range of identified taxpayers and tax advisers in Australia on 19 December 2017 and is therefore considered a publicly available document.

¹⁵ In addition, Australia’s update guidance published on 19 December 2017 includes instructions to file a CbC report. It provides that the structure and content of the CbC report can be found in Annex III of the Action 13 Report (OECD, 2015, paragraph 94 of the guidance). The guidance summarises the main points that need to be considered and provides some Australian context. It also provides for definitions and instructions for CbC Reporting in the Australian context. The guidance notably includes the definition of a “Constituent Entity” is reflected in this draft guidance and includes the reference to (1) *“any separate business unit of the group that is included in the Consolidated Financial Statements of the group for financial reporting purposes, or would be so included if equity interests in such business unit of the group were traded on a public securities exchange; (2) any such business unit that is excluded from the group’s Consolidated Financial Statements solely on size or materiality grounds; and any permanent establishment of any separate business unit of the group included in (1) or (2) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes”*.

¹⁶ It is noted that the minimum standard does not envisage any exemptions from filing the CbC report (paragraph 55 of the Action 13 Report, OECD 2015).

¹⁷ See section 815-365 and 815-355 (1) (c) of the Income Tax Assessment Act 1997.

¹⁸ For example, an exemption would be granted when a CbC report is filed by a UPE in its country of residence and the CbC report is exchanged with Australia. Individual exemptions may also be granted where a parent company is not engaged in cross border dealings with other Constituent Entities resident in other jurisdictions and thus a CbC report would not be exchanged with any other jurisdiction (being noted that CbC requirements are also imposed on standalone companies in Australia).

¹⁹ Country-by-Country Reporting: Exemption Guidance (26 September 2016)

²⁰ It is also noted that dormant entities may be eligible for a filing exemption under certain conditions: this would apply to a dormant entity for a reporting period when the entity is the only Australian presence (entity or PE) of the global group and the entity has notified the tax authorities that no income tax return is required for the income year (section 3.10 of the Country-by-country reporting guidance). Australia indicates that section 3.10 of the guidance is directed solely at MNE Groups with a foreign (non-Australian) Ultimate Parent Entity (local filing). The criteria specified in the guidance would, in an Australian context, exclude Australian Ultimate Parent Entities. An MNE Group with an Australian Ultimate Parent Entity is very unlikely to be both a dormant and sole presence of the group in Australia, but in any case even if such a scenario could be imagined the entity would still be required to lodge an Australian income tax return and would therefore not qualify for the concession. It is therefore not possible that an Australian Ultimate Parent Entity group can qualify for this CbC lodgement concession. Australia indicates that should any confusion be detected in this area, the text of the guidance would be made more explicit in a future revision of the guidance. This will be monitored.

In addition, it is noted that a filing exemption can be requested by an entity, with a foreign global parent entity, which is an SGE in an income year and it is wound up during the year or, if the Australian presence was a PE, it ceased to be a PE during the year. Australia indicates that section 3.11 of the guidance is also solely directed at MNE Groups with a foreign (non-Australian)

ultimate parent entity (local filing). This is very explicit in the text by addressing it to “an entity with a foreign global parent entity”. This concession is also not available to an MNE group with an Australian Ultimate Parent Entity.

²¹ It is noted that the minimum standard does not envisage any exemptions from filing the CbC report (paragraph 55 of the Action 13 Report, OECD, 2015).

²² See paragraphs 41 and 42 of the “Country-by Country reporting” guidance which was released for consultation purposes to a range of taxpayers and tax adviser firms on 7 July 2017, and was shared with the OECD Secretariat.

²³ See Schedule 4 – CbC Reporting part 2 ‘Application’ of the “Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015.

²⁴ It is noted that the Commissioner may allow an Australian resident entity to use a 12 month period other than its income year (a “replacement reporting period”). If requested in writing, the Commissioner may approve the use of a 12 month period aligned with the foreign GPE’s income year.

²⁵ See paragraph (2) of section 815-355 of Subdivision 815-E of the Income Tax Assessment Act 1997 and Law Companion Guideline 2015/3 paragraph 23.

²⁶ See paragraph (1) of section 815-355 of Subdivision 815-E of the Income Tax Assessment Act 1997; Law Companion Guideline 2015/3 paragraph 34; Country-by-Country reporting - Questions and Answers, question 2.1.; and Country-by-Country Reporting: Exemption Guidance.

²⁷ See Country-by-Country Reporting: Exemption Guidance, paragraph 20, first item.

²⁸ See Law Companion Guideline 2015/3 paragraph 34; Country-by-Country reporting - Questions and Answers, question 2.1.; and Country-by-Country Reporting: Exemption Guidance, paragraph 20, second item.

²⁹ See Country-by-Country Reporting: Exemption Guidance, paragraph 20, second item.

³⁰ “Systemic Failure” in paragraph 21 of the terms of reference (OECD, 2017) refers to a suspension of automatic exchange for reasons other than those in accordance with the terms of the agreement or persistent failure to automatically provide the CbC reports.

³¹ According to Australia’s legislation, local filing may apply to a foreign resident who operates an Australian permanent establishment (See paragraph (1) (iv) of section 815-355 of Subdivision 815-E of the Income Tax Assessment Act 1997): it is however unclear whether permanent establishments in Australia are considered “resident for tax purposes”, as per paragraph 8 (c) i. of the terms of reference (OECD, 2017).

³² See Country-by-Country reporting - Questions and Answers, question 2.4.: if a surrogate entity’s jurisdiction exchanges information with Australia automatically, and the surrogate entity has filed the CbC report in that jurisdiction, Australia will not seek the CbC report from the entity in Australia.

³³ See question 2.1. of the Guidance “Country-by-Country reporting - Questions and Answers” (17 December 2015 and updated on 30 November 2016). Australia also indicates that taxpayers must, from 2017, notify in their tax return whether they are an SGE. Those notifications will be used as an indication of an obligation to file a CbC report and this data will be periodically checked against CbC report lodgements (or receipt of CbC reports on exchange). In addition, data analysis has been done and will continue to be updated to identify the total population of SGEs including any that might not notify the ATO as such.

³⁴ Australia indicates that from 1 July 2017 the failure to lodge penalty for an SGE is AUD 105 000 for each period of 28 days or part of a period of 28 days delay, to a maximum of AUD 525 000. Also from 1 July 2017, the administrative penalty for a false or misleading statement starts from AUD 4 200 when no tax shortfall is caused by the statement or, if a tax shortfall arose as a result of the statement, a percentage of the tax shortfall at standard tiers ranging up to 75% of the tax as a penalty.

³⁵ See section 8C of the Taxation Administration Act 1953. Penalties apply on conviction and penalties escalate on multiple convictions to potential imprisonment for a period up to 12 months. Persons involved in the management of an offending corporation may be deemed liable for the offence. These general offences are regularly prosecuted for more egregious failures to comply with tax obligations. There is no experience in relation to CbC reports to date.

³⁶ For example, making false or misleading statements or recklessly making false or misleading statements. A court order may be obtained to order compliance, with penalties for not complying with court orders potentially including imprisonment.

³⁷ Australia reports Tax Treaties with: Argentina, Austria, Belgium, Canada, Chile, China (People's Republic of), Czech Republic, Denmark, Fiji, Finland, France, Germany, Hungary, India, Indonesia, Ireland, Italy, Japan, Kiribati, Korea, Malaysia, Malta, Mexico, Netherlands, New Zealand, Norway, Papua New Guinea, Philippines, Poland, Romania, Russia, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Thailand, Turkey, United Kingdom, United States and Viet Nam.

³⁸ 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 Australia in their notifications under Section 8 of the CbC MCAA.

References

- OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris.
www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm.
- 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.
- 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.
- OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, 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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