

Romania

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. Romania's implementation of the Action 13 minimum standards meets all the applicable terms of reference in relation to its domestic legal and administrative framework. In addition, it is recommended that Romania finalise its exchange of information framework as well as have measures to ensure appropriate use ahead of the first exchanges of information.

Part A: Domestic legal and administrative framework

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

Part B: Exchange of information framework

3. Romania 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 15 October 2012, in force on 1 November 2014 and in effect for 2016). As of 12 January 2018, Romania does not yet have bilateral relationships activated under the CbC MCAA. With respect to the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process,² it is recommended that Romania finalise the signing process of the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. Romania has recently sent the declaration to sign the CbC MCAA to the OECD. Romania expects to have a number of QCAAs in effect before the date of the first exchanges of CbC reports and indicates that it intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of this same agreement. It is also noted that Romania will exchange CbC reports with 28 jurisdictions under the EU directive on exchange of information (EU Directive 2016/881/EU).

Part C: Appropriate use

4. Because Romania does not have measures in place in all six areas for appropriate use, it is recommended that Romania take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.³

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. Romania has primary law⁴ and secondary law⁵ in place for implementing the BEPS Action 13 minimum standard. No guidance has been issued so far.

(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. Romania has 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 permitted by the Action 13 report (OECD, 2015).

8. With respect to the definition of an “Excluded MNE Group”, the provisions of the primary law, refer to a group having total consolidated group revenue of less than EUR 750 000 000 “or an amount in local currency approximately equivalent to EUR 750 000 000, as reflected in its consolidated financial statements for such preceding fiscal year”.⁷ While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Romania, 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 Romanian 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. However, Romania confirms that it will apply this rule 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 Romania. As such, no recommendation is made but this issue will be further monitored.

9. No other inconsistencies were identified with respect to Romania’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 of a CbC report in Romania commences in respect of periods commencing on or after 1 January 2016.⁸ 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.⁹

11. Romania's secondary legislation includes a description of the items to be included in a CbC Report. This explains that under the "Aggregated revenue value" part of table 1, the reporting entity shall disclose the following information: *(a) the amount of income of all entities of the multinational enterprise group in the relevant tax jurisdiction generated by transactions with affiliated persons, (b) the amount of revenue of all the entities of the multinational enterprise group in the relevant tax jurisdiction generated by transactions with independent person; (...)*. However, interpretative guidance issued by the OECD explains that: *"for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report."* It is expected that Romania issue an updated interpretation or clarification of the definition of "Aggregated revenue value" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

12. No inconsistencies were identified in respect of the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. Romania has introduced local filing requirements as from the reporting period starting on or after 1 January 2017 or thereafter.¹⁰

14. No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Romania's local filing requirements will not apply if there is surrogate filing in another jurisdiction.¹¹

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. Romania 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 in Romania.¹² 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 file a complete CbC report and (iii) to submit it on time.¹³

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

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

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, 2017a).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAs 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. Romania does not have a domestic, legal basis for the exchange of information in place. Romania 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 15 October 2012, in force on 1 November 2014 and in effect for 2016).

22. Romania has three exchange of information agreements in force.¹⁴ These do not provide Automatic Exchange of Information, but do permit exchange of information on request.

23. As of 12 January 2018, Romania does not yet have bilateral relationships activated under the CbC MCAA. It is recommended that Romania finalise the signing process of the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. Romania has recently sent the declaration to sign the CbC MCAA to the OECD. Romania expects to have a number of QCAAs in effect before the date of the first exchanges of CbC reports and indicates that it intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of this same agreement.

24. It is also noted that Romania will exchange CbC reports with 28 jurisdictions¹⁵ under the EU directive on exchange of information (EU Directive 2016/881/EU).

Conclusion

25. It is recommended that Romania finalise the signing process of the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.

Part C: Appropriate use

26. 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).

27. 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), Romania indicates that measures are in place to ensure the appropriate use of information, but not in all six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017b). Because Romania does not have measures in place in all six areas for appropriate use, it is recommended that Romania take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Conclusion

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

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	It is recommended that Romania finalise the signing process of the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Romania 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, 2017a).

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

³ Paragraph 12 (a) of the terms of reference (OECD, 2017a).

⁴ Law no. 207/2015 on Code of Fiscal Procedure (as amended and supplemented by the Government Emergency Ordinance no. 42/2017).

⁵ Order No. 3049 from 24 October 2017 regarding the approval of the model and content of “country-by-country report” form.

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, 2017a).

⁷ Art. 291-3 and Annex 3 section 1 point 4 of Law no. 207/2015.

⁸ Art.291-3 (4) and Annex III section 2 point 2 of Law no. 207/2015 and Article 3(1) of Order No. 3049.

⁹ Art.291-3 (1) of Law no. 207/2015 and Article 3(2) of Order No. 3049.

¹⁰ Annex III section 2 point 2 of Law no. 207/2015.

¹¹ Annex III section 2 point 6 of Law no. 207/2015.

¹² Annex III section 2 point (8) of Law no. 207/2015 and Article 4(1) of Order No. 3049.

¹³ Art. 336(2) lit.l) – m of Law no. 207/2015.

¹⁴ With Guernsey, Jersey and Isle of Man.

¹⁵ Including Gibraltar.

References

- OECD (2017a), “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 (2017b), *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 (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>.



From:

Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)

Inclusive Framework on BEPS: Action 13

Access the complete publication at:

<https://doi.org/10.1787/9789264300057-en>

Please cite this chapter as:

OECD (2018), “Romania”, in *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1): Inclusive Framework on BEPS: Action 13*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264300057-80-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.