

Spain

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. Spain's implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises three definitional, interpretational and substantive issues in relation to its domestic legal and administrative framework. The report therefore contains three recommendations to address these issues.

Part A: Domestic legal and administrative framework

2. Spain has legislation in place that imposes and enforces CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Spain. The filing obligation for a CbC report in Spain commences in respect of fiscal years commencing on or after 1 January 2016. Spain 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 Spain² 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,
- the definition of the Constituent Entities to be included in a CbC report which appears to be incomplete,³ and
- the scenarios in which local filing may be required that are wider than those set out in the minimum standard.⁴

Part B: Exchange of information framework

3. Spain 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 CbC MCAA. It has provided its notifications under Section 8 (e) (i) of this agreement and intends to exchange information under the Multilateral Convention with a large number of non-EU signatories. In addition, Spain will exchange CbC reports within the EU in accordance with EU Council Directive (2016/881/EU). As of 12 January 2018, Spain has 52 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under a bilateral CAA. Spain 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). Spain meets the terms of reference

relating to the exchange of information framework aspects under review for this first annual peer review.⁵

Part C: Appropriate use

4. There are no concerns to be reported for Spain. Spain 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.⁶ Spain meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.⁷

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. Spain has primary and secondary legislation⁸ in place 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:⁹ 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. Spain has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups, 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. There are however a number of areas where the parent entity filing obligation appears to be inconsistent with the terms of reference:

- Under Spain’s legislation (Article 13(1) of the regulation), any company resident in Spain having the status of a “dominant company” is required to file a CbC Report. However the definition does not include an entity that would be required to prepare consolidated financial statements if its equity interests were traded on a public securities exchange in Spain (“deemed listing provision”), as required under paragraph 18 i. of the terms of reference (OECD, 2017b). Spain explains that the Spanish Commercial Code imposes a requirement to prepare Consolidated Financial Statements on commercial companies which are non-listed, if certain conditions are met (e.g. control).¹⁰ It is however noted that certain types of entities, in particular “civil companies” (“*sociedades civiles*”) are not

subject to this requirement to prepare Consolidated Financial statements, which could include the holding company of a group engaged in commercial activity. Spain indicates that it is not aware of such existing structures where a civil company would be an Ultimate Parent Entity of an MNE group, and that this would be a very rare occurrence. However, Spain also indicates that in the event where such a structure was identified, it would be likely that the civil company, as the dominant company, would be considered as being required to prepare Consolidated Financial Statements and thus required to file a CbC report as the Ultimate Parent Entity of the MNE Group, in accordance with the terms of reference. Spain further indicates that it would issue guidance or rulings to clarify this if such cases were to arise. As such, no recommendation is issued but this will be monitored.

- Under the terms of reference, Constituent Entities include any business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size and materiality grounds. This requirement does not appear to be included in the Spanish legislation. Under the terms of reference, a permanent establishment should only be separately disclosed as a Constituent Entity in a CbC Report if a separate financial statement for the permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes is prepared. However, Article 14 of the regulation appears to require all permanent establishments to be separately disclosed as Constituent Entities.

9. It is recommended that Spain clarify or introduce changes to ensure that the definition of a Constituent Entity is consistent with the terms of reference.

10. In respect of the entities required to file a CbC report, Spain's legislation states that "Entities referred to in paragraph 1 of Article 13 of this Regulation are required to submit the CbC report herein specified only if the aggregate turnover of all persons or entities of the group is at least EUR 750 million in the 12 months prior to the first day of the fiscal year concerned". While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Spain, 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 Spanish 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.¹¹ It is thus recommended that Spain amend this rule so that it 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 Spain, when local filing requirements are applicable.

11. 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).

12. The first filing obligation for a CbC report in Spain applies in respect of reporting fiscal years commencing on or after 1 January 2016. The CbC report must be filed no later than 12 months after the last day of the reporting fiscal year.

13. No inconsistencies were identified with respect to the scope and timing of parent entity filing.¹²

(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).

14. Spain has introduced local filing requirements which apply to reporting fiscal years commencing on or after 1 January 2016.¹³

15. 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 may be required under Spain's legislation where no agreement exists between Spain and the jurisdiction of the Ultimate Parent Entity of the MNE group for the automatic exchange of CbC reports. It is not clear that this requires there to be an international agreement (i.e. a tax convention or tax information exchange agreement) for Automatic Exchange of Information in place. 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 Spain's legislation. Under Spain's legislation, local filing may be required in circumstances where there is no current international agreement between Spain and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. It is recommended that Spain amend the above condition or otherwise take steps to ensure that local filing can only be required in the circumstances contained in the terms of reference.

16. No other inconsistencies were identified with respect to the limitation on local filing obligations.

(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).

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

18. Spain has legal mechanisms in place to enforce compliance with the minimum standard. There are notification mechanisms in place as the Spanish legislation requires that any company resident in Spain that is part of a group that falls within the scope of CbC Reporting must notify the tax authority of the tax jurisdiction of the Constituent Entity in the group that is required to submit a CbC report. In cases of non-compliance, Spain indicates it will apply general enforcement rules found in Spain's General Tax Law 58/2003 of 23rd December 2003 which comprises penalties and sanctions if a company resident in Spain fails to notify the tax authority in Spain. Spain indicates that the General Tax law of December 2003 also covers penalties in relation to the filing obligations of a CbC report including penalties for failure to file, and late, incorrect or incomplete filing.

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

20. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Spain has a domestic framework to impose CbC requirements on MNE Groups whose UPE is resident for tax purposes in Spain. Spain meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of apparent inconsistencies with the terms of reference with respect to (i) the annual consolidated group revenue threshold when local filing applies (paragraphs 8 (a) ii. of the terms of reference (OECD, 2017b)), (ii) the definition of Constituent Entity (paragraph 8 (a) iii. of the terms of reference (OECD, 2017b)); and (iii) the conditions for local filing (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

21. 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).

22. Spain has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 11 March 2011, in force on 1 January 2013 and in effect for 2016) and (ii) a number of double tax agreements and tax information and exchange agreements (TIEAs).¹⁵ Spain is also committed to the exchange of CbC reports within the European Union under EU Council Directive (2016/881/EU).

23. Spain signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 31 March 2017. It intends to have the CbC MCAA in effect with a large number of the non-EU Competent Authorities which are signatories to the CbC MCAA and provide a notification under Section 8(1)(e) of the same agreement. This is in addition to all EU Member States under the EU Directive.

24. As of 12 January 2018, Spain has 52 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under a bilateral CAA.¹⁶ Spain 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 Spain meets the terms of reference.

Conclusion

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

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), Spain 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.

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

Conclusion

29. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Spain. Spain 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 - Parent entity filing obligation – annual consolidated group revenue threshold	It is recommended that Spain amend the annual consolidated group revenue threshold calculation rule so that it applies in a manner consistent with the OECD guidance on currency fluctuations, when local filing requirements are applicable.
Part A	Domestic legal and administrative framework - Parent entity filing obligation – Definition of Constituent Entity	It is recommended that Spain amend or otherwise clarify the definition of a Constituent Entity in a manner consistent with the terms of reference.
Part A	Domestic legal and administrative framework - Limitation on local filing	It is recommended that Spain amend its legislation or otherwise take steps to ensure that 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 (a) ii. of the terms of reference (OECD, 2017b).

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

⁴ Paragraph 8 (c) iv. a) b) and c) of the terms of reference (OECD, 2017b).

⁵ Paragraph 9 (a) of the terms of reference (OECD, 2017b).

⁶ 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.

⁷ Paragraph 12 (a) of the terms of reference (OECD, 2017b).

⁸ Primary law consists of Corporate Tax Law, 27/2014, 27 November (Article 18). Secondary legislation consists of Regulation of the corporate tax law (the “regulation”), approved by Royal Decree 634/2015, 10 July (Articles: 13 and 14)). Secondary law consists of an Order of 28 December 2016 approving the Form to be used for filing a CbC report in Spain (Orden HFP/1978/2016, de 28 de diciembre, por la que se aprueba el modelo 231 de Declaración de información país por país: www.boe.es/buscar/doc.php?id=BOE-A-2016-12484, accessed 23 April 2018).

⁹ 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).

¹⁰ Spain indicates that under Article 18.2 of the Corporation Tax Law, the term “dominant company” is comparable to “parent company” under Article 42 of the Spanish Code of Commerce which is required to prepare consolidated annual accounts. Article 18.2 of the Corporation Tax Code also provides that “there is a group when an entity holds or can control another or other [companies] according to the criteria established in Article 42 of the Commercial Code, regardless of its residence and the obligation to prepare consolidated annual accounts”. This means that in certain specific cases, a dominant company may not be required to draw up Consolidated Financial

Statements, but it will be considered as the dominant company of a group and will be required, in most cases, to file the CbC report under the Corporation Tax Code.

¹¹ See question IV. 1. “Impact of currency fluctuations on the agreed EUR 750 million threshold of the “Guidance on the Implementation of Country-by-Country Reporting” (OECD, 2018).

¹² It is noted that Spain’s legislation and guidance do not contain any provision relating to the “Source of data” to complete a CbC report. Spain indicates that it will provide for clarifications in this respect if difficulties or inconsistencies in CbC reports are detected. This will be monitored.

¹³ See Article 13.1 paragraph 2 of the regulation. These requirements apply to Constituent Entities that are tax resident in Spain as well as to permanent establishments of non-resident entities.

¹⁴ See Article 13.1 paragraph 3 of the regulation.

¹⁵ Listed here:

www.minhfp.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/cdi.aspx (accessed 23 April 2018). All double tax agreements allow Automatic Exchange of Information except with Switzerland and Panama.

¹⁶ Spain indicates that it will further update the list of jurisdictions it intends to exchange CbC reports with, before the first exchanges of information in June 2018. Note: Spain also has an exchange relationship with Gibraltar on the basis of the EU Council Directive (2016/881/EU).

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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), “Spain”, 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/10.1787/9789264300057-90-en>

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