

Sweden

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. Sweden's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. Sweden has rules (primary law and guidance) that impose and enforce CbC Reporting requirements on the Ultimate Parent Entity (UPE) of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in Sweden. The first filing obligation for a CbC report in Sweden commences in respect of reporting fiscal years beginning on 1 January 2016 or later. Sweden meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework

3. Sweden is a signatory to 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 have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under the same agreement. Sweden has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, Sweden has 53 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Sweden 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 Sweden meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review process.²

Part C: Appropriate use

4. There are no concerns to be reported for Sweden. Sweden 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 Sweden 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.

6. Sweden has primary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.⁵ Guidance has also been published.⁶

(a) Parent entity filing obligation

Summary of terms of reference:⁷ 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. Sweden has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on UPEs 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 Sweden'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).

9. The first filing obligation for a CbC report in Sweden commences in respect of reporting fiscal years beginning on 1 January 2016 or later.⁸ The CbC report must be filed within 12 months of the last day of reporting fiscal year end⁹ of the MNE Group.

10. No other 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).

11. Sweden has introduced local filing requirements in respect of reporting fiscal years beginning on 1 January 2016¹⁰ or later.

12. Under Sweden's law, local filing requirements can be triggered if "the jurisdiction in which the Ultimate Parent Entity is resident does not have a Qualifying Competent Authority Agreement for filing such reports in effect to which Sweden is a Party" by the time that the CbC report should be filed with the Swedish Tax Authority.¹¹ 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 (a) in Sweden's legislation. However, Sweden confirms that in practice the law will be applied in a manner consistent with the OECD terms of reference. Sweden also indicates that this is reflected in its legislative preworks which state that a Qualifying Competent Authority Agreement presupposes that both countries are parties to an international treaty, such as the treaty of the European Council or the OECD Convention and therefore, it needs not be stated in the conditions. As such, no recommendation is made but this will be monitored.

13. No other 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).

14. Sweden's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.¹² 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: 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).

15. Sweden has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other group company resident in Sweden.¹³ Sweden indicates there are no penalties in place in relation to late or inaccurate filing of a CbC report. However, the Swedish tax authority could file for an injunction including a penalty. If the CbC report is not produced after such an injunction, the penalty could be deemed payable by the courts.

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

17. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Sweden has a domestic legal and administrative framework to impose and enforce CbC requirements on the UPE of an MNE Group that is resident for tax purposes in Sweden. Sweden 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. Sweden has domestic legislation that permits the automatic exchange of CbC reports. 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 September 2011 and in effect for 2016). Sweden has also implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards to the mandatory Automatic Exchange of Information in the field of taxation.

20. Sweden signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 6 July 2017. It intends to have the CbC MCAA in effect with a large number of other signatories of this agreement which provide notifications under Section 8(1)(e) of the same agreement. Sweden also signed a bilateral CAA with the United States. As of 12 January 2018, Sweden has 53 bilateral relationships activated under the CbC MCAA¹⁴ or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Sweden 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 Sweden 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 Sweden 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: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or 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), Sweden 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 Sweden 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 the Sweden. Sweden 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 Primary law implementing CbC Reporting consists of law SFS 2011:1244 amending the Swedish Administrative Tax Code (*Svensk författningssamling 2011:1244 Ch. 33a*) (hereafter the “Tax Code”). The Swedish tax Agency provided an in-office translation of the CbC Reporting sections included in Chapter 33a of the Tax Code.

Sweden indicates that objective of secondary law (*Skatteförfarandeförordningen (2011:1261) Ch. 7, par. 2 a*) is to ensure that the main business activity(ies) of each constituent entity is stated in accordance with table 2 of the Annex III of the Transfer Pricing documentation – CbC Report.

⁶ The Swedish tax agency provides a technical user guide to enable MNEs to be compliant with Swedish legislation, which follows the OECD schema and guidelines, available at www.skatteverket.se/cbcr (accessed 23 April 2018). The text is available in Swedish only. In addition, the Swedish tax authority provides legal guidance on its external website “Rättslig vägledning”.

⁷ 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).

⁸ See CbC Peer Review Questionnaire – Question 6(j)

⁹ See Para 11 of the Chapter 33a of the Tax Code

¹⁰ See Para 11 of the Chapter 33a of the Tax Code

¹¹ See Article 2 of Para 5 of Chapter 33a of the Tax Code.

¹² See Para 7 of Chapter 33a of the Tax Code.

¹³ See Paras 8 and 9 of Chapter 33a of the Tax Code.

¹⁴ 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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