

## Switzerland

### 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. Switzerland'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. Switzerland has rules (primary and secondary law) that impose and enforce CbC requirements on the Ultimate Parent Entity of multinational enterprise group ("MNE" Group) that is resident for tax purposes in Switzerland. The first filing obligation for a CbC report in Switzerland will apply in respect of reporting fiscal years beginning on or after 1 January 2018. Switzerland meets all the terms of reference relating to the domestic legal and administrative framework.<sup>1</sup>

#### *Part B: Exchange of information framework*

3. Switzerland 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 came into force on 1 January 2017. The Convention is therefore not in effect with respect to the fiscal year starting on 1 January 2016. It is noted that Switzerland allows an Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Switzerland to file a CbC report for reporting fiscal years 2016 and 2017 under a voluntary parent surrogate mechanism. Switzerland has submitted a Unilateral Declaration to align the effective date of the Convention with the first intended exchanges of information on CbC reports under the CbC MCAA (as permitted under paragraph 6 of Article 28 of the Convention), in order to enable exchanges of CbC reports relating to the reporting fiscal years 2016 and 2017 with other jurisdictions that also provide the same Unilateral Declaration. Switzerland is also a signatory of the CbC MCAA (signed on 27 January 2016). It has provided notifications under Section 8 of this agreement and it intends to have the CbC MCAA in effect with all members of the Inclusive Framework and all signatories to the CbC MCAA as of the notification date (1 December 2017). As of 12 January 2018, Switzerland has 49 bilateral relationships activated under the CbC MCAA. Against the backdrop of the still evolving exchange of information framework, at this point in time Switzerland meets the terms of reference.<sup>2</sup>

#### *Part C: Appropriate use*

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

## 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. Switzerland has primary legislation (the “CbCR law”) and secondary legislation<sup>5</sup> to implement the BEPS Action 13 minimum standard, establishing the necessary requirements including the filing and reporting obligations. No guidance has been published.

### (a) Parent entity filing obligation

Summary of terms of reference:<sup>6</sup> 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. Switzerland 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. It is noted that there is no definition of an “MNE Group” in the CbCR law. However, Switzerland indicates that such definition in the CbCR law is not required, as the definition contained in the CbC MCAA is directly applicable under the Swiss legal framework.

9. With respect to the annual consolidated group revenue threshold (paragraph 8 (a) ii of the terms of reference (OECD, 2017b)), it is noted that a Constituent Entity resident in Switzerland may be required to file a CbC report in certain circumstances (local filing)<sup>7</sup> where the MNE Group whose Ultimate Parent Entity, which would not be resident in Switzerland, would have a certain total consolidated group revenue that the Federal Council will set in accordance with the international standards.<sup>8</sup> The Federal Council has set the annual consolidated group revenue threshold to trigger the filing obligation at CHF 900 million Swiss Francs.<sup>9</sup> Further the explanation report to the CbCR ordinance clarifies that Switzerland will not require a local filing from a Constituent Entity (which is a Swiss tax resident) if the MNE Group does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.<sup>10</sup>

10. No inconsistencies were identified with respect to the parent entity filing obligation.<sup>11</sup>

*(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).

11. The first filing obligation for a CbC report in Switzerland will apply in respect of reporting fiscal years beginning on or after 1 January 2018. In addition, Switzerland allows Ultimate Parent Entities of MNE Groups resident in Switzerland to file a CbC report for earlier reporting fiscal years under a “voluntary parent surrogate filing” mechanism.<sup>12</sup> The CbC report will have to be filed within 12 months after the end of the reporting fiscal year of the MNE Group.<sup>13</sup>

12. 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).

13. Switzerland introduced a local filing requirement in respect of reporting fiscal years beginning on or after 1 January 2018.<sup>14</sup>

14. 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 requirements can be required if the “*jurisdiction of residence of the Ultimate Parent Entity is not a partner jurisdiction*”.<sup>15</sup> Switzerland explains that the provision for local filing does not contain an explicit reference to “Qualifying Competent Authority Agreement”. However, for the purpose of local filing the CbCR law Act refers to the term “partner jurisdiction”. A “*Partner jurisdiction*” is defined as “*a country or territory with which Switzerland has agreed to automatically exchange CbC reports*”.<sup>16</sup> 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”. The condition in Switzerland’s CbCR law may be interpreted as being wider than this, as applying to situations where there is no current international agreement between Switzerland and the residence jurisdiction of the

Ultimate Parent Entity, which is not permitted under the terms of reference. However, Switzerland confirms that the local filing provision contained in the CbCR law will be applied only in line with the Model Legislation and terms of reference. This was also the intention of the Swiss Federal Council and was confirmed by the Swiss Parliament. The dispatch of the Swiss Federal Council to the Swiss Parliament specifically mentions this point as follows: “*Les cas de figure permettant d’appliquer le mécanisme secondaire devraient être limités à ceux recommandés par le modèle de législation interne mis à disposition par l’OCDE dans le rapport sur l’action 13.*” («*The cases in which the secondary mechanism may apply should be limited to those that are recommended in the Model Legislation made available by the OECD in the Action 13 Report*”).<sup>17</sup> Switzerland quoted on the website of the State Secretariat for International Finance SIF a reference to the above-cited paragraph in the dispatch.<sup>18</sup>

15. No inconsistencies were identified with respect to the limitation on local filing obligation.<sup>19 20</sup>

#### ***(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).

16. Switzerland’s local filing requirements would not apply if there was surrogate filing in another jurisdiction by an MNE group.<sup>21</sup>

#### ***(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. Switzerland has legal mechanisms in place to enforce compliance with the minimum standard in its CbCR law. There are notification mechanisms that would apply to Ultimate Parent Entities and Surrogate Parent Entities in Switzerland.<sup>22</sup> There are also penalties in relation to the filing and registration obligations of CbC Reporting:<sup>23</sup>

(i) penalties for non-filing or late filing (ii) penalties for incorrect or inaccurate filing and (iii) general penalties for non-compliance with the Swiss Federal Tax Administration’s orders. Switzerland may also conduct inspections to verify that the obligations of the Constituent Entities are fulfilled.<sup>24</sup>

18. With respect to specific processes in place that would allow to take appropriate measures in case Switzerland 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, Switzerland reports the following procedure: according to Articles 16 and 22 of the CbCR law, the Swiss

Federal Tax Administration would be able to request from the concerned Reporting entity to correct an incorrect or incomplete report or to comply with the CbCR law and the applicable agreement (e.g. the CbC MCAA).<sup>25</sup>

### Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Switzerland has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Switzerland. Switzerland meets all 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, 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).

21. Switzerland has domestic legislation that permits the automatic exchange of CbC reports.<sup>26</sup> 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) (the “Convention”) (signed on 15 October 2013, entered into force on 1 January 2017). Switzerland has submitted a Unilateral Declaration to align the effective date of the Convention with the first intended exchanges of information on CbC reports under the CbC MCAA (as permitted under paragraph 6 of Article 28 of the Convention<sup>27</sup>), in order to enable exchanges of CbC reports relating to the reporting fiscal years 2016 and 2017<sup>28</sup> with other jurisdictions that also provide the same Unilateral Declaration.

22. Switzerland is also a signatory of the CbC MCAA (signed on 27 January 2016) and has submitted a full set of notifications under Section 8. It intends to have the CbC MCAA in effect with all members of the Inclusive Framework and all signatories to the CbC MCAA as of the notification date (1 December 2017). Switzerland indicates that it has not yet decided whether it will be negotiating bilateral QCAAs. As of 12 January 2018, Switzerland has 49 bilateral relationships activated under the CbC MCAA. Switzerland 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).<sup>29</sup> Against the backdrop of the still evolving exchange of information framework, at this point in time Switzerland meets the terms of reference.

### Conclusion

23. Against the backdrop of the still evolving exchange of information framework, at this point in time Switzerland meets the terms of reference.

## Part C: Appropriate use

24. 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).

25. 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), Switzerland 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.

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

### Conclusion

27. In respect of paragraph 12 (a) of the terms of reference, there are no concerns to be reported for Switzerland. Switzerland 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

<sup>1</sup> Paragraph 8 of the terms of reference (OECD, 2017b).

<sup>2</sup> Paragraph 9 (a) of the terms of reference (OECD, 2017b).

<sup>3</sup> 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.

<sup>4</sup> Paragraph 12 (a) of the terms of reference (OECD, 2017b).

<sup>5</sup> The Swiss Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals (“CbCR law”) being the Primary Law in Switzerland (see [www.admin.ch/opc/fr/classified-compilation/20162186/index.html](http://www.admin.ch/opc/fr/classified-compilation/20162186/index.html), accessed 23 April 2018), the Swiss Ordinance on the International Automatic Exchange of Country-by-Country Reports of Multinationals (“CbCR ordinance”) being the Secondary Law in Switzerland (see [www.admin.ch/opc/fr/classified-compilation/20171498/index.html](http://www.admin.ch/opc/fr/classified-compilation/20171498/index.html), accessed 23 April 2018 and the corresponding explanation report [www.news.admin.ch/news/message/attachments/49805.pdf](http://www.news.admin.ch/news/message/attachments/49805.pdf), accessed 23 April 2018).

<sup>6</sup> 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).

<sup>7</sup> See Article 8 of the CbCR law.

<sup>8</sup> See Article 6 of the CbCR law.

<sup>9</sup> See Article 3 of the CbCR ordinance.

<sup>10</sup> See explanation report to Article 3 of the CbCR ordinance « *Même lorsqu'il atteint le seuil de CHF 900 millions (francs), un groupe d'entreprises multinationales ne doit pas fournir de déclaration si le seuil fixé en monnaie nationale de l'État de résidence de la société mère n'est pas atteint et qu'il correspond à EUR 750 millions, valeur au 1er janvier 2015* » (Even when it reaches the threshold of CHF 900 million, a group of multinational enterprises is not obliged to provide a declaration if the threshold fixed in the national currency of the State of residence of the parent company is not reached and if it corresponds to EUR 750 million, value as of 1 January 2015).

<sup>11</sup> It is noted that in Article 2 letter f (definition of an Ultimate Parent Entity), reference is not made specifically to a public securities market exchange “in Switzerland” in relation to the deeming listing provision.

<sup>12</sup> See Article 30 of the CbCR law. Groups can submit a country-by-country report if they so wish for tax periods before 2018. The Act provides that the Federal Tax Administration (FTA) will transmit these reports on the basis of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports to partner states from 2018.

<sup>13</sup> See Article 11.1 and Article 2 letter j of the CbCR law. Switzerland indicates that Article 2 letter j of the CbCR law refers to the following Swiss laws, which define “Fiscal Year”: Article 31 para. 2 of the Federal Act of 14 December 1990 on the harmonization of the direct taxes of cantons and municipalities (StHG), ([www.admin.ch/opc/fr/classified-compilation/19900333/index.html](http://www.admin.ch/opc/fr/classified-compilation/19900333/index.html), accessed 23 April 2018): “The fiscal period corresponds to the commercial period.”; and Article 79 para. 2 of the Federal Act of 14 December 1990 on the federal direct tax (DBG), ([www.admin.ch/opc/fr/classified-compilation/19900329/index.html](http://www.admin.ch/opc/fr/classified-compilation/19900329/index.html), accessed 23 April 2018): “The fiscal period corresponds to the commercial period.”

<sup>14</sup> See Article 8 of the CbCR law.

<sup>15</sup> See Article 8 of the CbCR law.

<sup>16</sup> See Article 2 letter b of the CbCR law.

<sup>17</sup> See page 44, [www.admin.ch/opc/fr/federal-gazette/2017/33.pdf](http://www.admin.ch/opc/fr/federal-gazette/2017/33.pdf) (accessed 23 April 2018). Switzerland further indicates that the dispatch will be considered by courts when interpreting the Swiss CbCR law.

<sup>18</sup> [www.sif.admin.ch/sif/en/home/themen/informationsaustausch/automatischer-informationsaustausch/cbcr.html](http://www.sif.admin.ch/sif/en/home/themen/informationsaustausch/automatischer-informationsaustausch/cbcr.html) (accessed 23 April 2018): “Swiss business units of groups which are domiciled abroad can be obliged to submit a country-by-country report in Switzerland in certain cases. However, as Switzerland indicated in the [dispatch of 23 November 2016](#) (accessed 23 April 2018), this obligation will be restricted to cases for which the OECD Model Law makes provision for in the report on BEPS action 13.”

<sup>19</sup> See Article 8 of the CbCR law: it is noted that local filing by Constituent Entities is required upon request of the Swiss tax administration subject to meeting the conditions for local filing.

<sup>20</sup> It is noted that Article 11 paragraph 2 of the CbCR law provides, in case of local filing, that the deadline for submission of the CbC report begins on the day on which the Federal Tax Administration (FTA) requests CbC report in writing from the Constituent Entity resident in Switzerland.

<sup>21</sup> See Article 8 paragraph 2 and Article 9 of the CbCR law.

<sup>22</sup> See Article 10 of the CbCR law.

<sup>23</sup> See Articles 12, 25 and 26 of the CbCR law. Article 12 of the CbCR law contains a penalty for late filing or failure to file of 200 Swiss Francs per day after the filing deadline (with a maximum of CHF 50 000 (Swiss Francs)). Article 25 of the CbCR law contains a maximum penalty of CHF 100 000 for wilfully incorrect or incomplete CbC reports. Article 26 of the CbCR law contains a maximum penalty of CHF 10 000 for not following the administrative order of the Swiss Federal Tax Administration issued according to Article 22 of the CbCR law.

<sup>24</sup> See Article 22 of the CbCR law:

“1. The Swiss tax administration shall supervise the performance of the obligations arising from the applicable Convention and this Law on their completeness and conformity with the international standard on the basis of the information available”.

2. If it finds that a constituent entity resident in Switzerland has not fulfilled or has only partially fulfilled its obligations, it shall grant it an opportunity to remedy the shortcomings found. It sets an appropriate time limit by making it aware of the measures provided for in para. 3.

3. If the entity has not remedied the shortcomings within the time limit, the AFC may: a. Require the books, supporting evidence and other documents of the entity or examine them on site; b. Require oral or written information.



4. In case of dispute, the Swiss tax administration makes a decision.

5. Upon request, it shall issue a decision on the following: a. The qualification of the reporting entity within the meaning of the applicable agreement and this Act; b. The content of the country-by-country declaration under the applicable Convention and this Act.

See also Article 26 of the CbCR law: “Any person who, in the context of a review under Article 22 intentionally fails to comply with a decision served on him by an authority subject to the penalty in the present Article shall be punishable by a fine not exceeding CHF 10 000”.

<sup>25</sup> See Article 16 of the CbCR law: “1. The Swiss tax administration shall ensure the proper application of the applicable Convention and of this Act. 2. It shall take all necessary measures and arrangements to this end. 3. It may prescribe the use of specific forms and require certain forms to be transmitted in electronic form only”.

See also Article 22 described above.

<sup>26</sup> For further details, see footnote 4.

<sup>27</sup> Paragraph 6 of Article 28 of the Convention reads as follows: “[...] Any two or more Parties may mutually agree that the Convention [...] shall have effect for administrative assistance related to earlier taxable periods or charges to tax.”

<sup>28</sup> In respect of reporting fiscal years 2016 and 2017, Switzerland intends to send CbC reports that were filed in Switzerland under a voluntary parent surrogate filing mechanism.

<sup>29</sup> 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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