

Turkey

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. It is recommended that Turkey finalise its domestic legal and administrative framework in relation to CbC requirements as soon as possible (taking into account its particular domestic legislative process) and put in place an exchange of information framework as well as measures to ensure and appropriate use.

Part A: Domestic legal and administrative framework

2. Turkey does not yet have a complete 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 Turkey. It is recommended that Turkey take steps to finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, taking into account its particular domestic legislative process.¹ Specifically, it is recommended that Turkey ensure that local filing requirements will only apply consistently with the terms of reference.²

Part B: Exchange of information framework

3. Turkey has not yet completed a domestic legal basis for the exchange of information. Turkey has signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) on 3 November 2011, which is not in force yet. The Convention was ratified by the Turkish parliament on 20 May 2017 and Turkey expects that the process to the Convention entry into force will be completed soon. Turkey has Double Taxation Agreements with 88 countries, 83 of them are in effect that allow Automatic Exchange of Information. As of 12 January 2018, Turkey does not yet have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review,³ it is recommended that Turkey take steps to have the Convention in force as soon as possible and have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Turkey will not be exchanging CbC reports in 2018.

Part C: Appropriate use

4. In respect of the terms of reference under review,⁴ because Turkey does not have measures in place in all six areas, it is recommended that Turkey take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Turkey will not be exchanging CbC reports in 2018.

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. Turkey has primary legislation in place regarding transfer pricing documentation requirements.⁵ Turkey does not yet have secondary legislation in place for CbC Reporting purposes. No guidance has been issued so far.

7. Turkey reports draft secondary legislation is close to become final. The Secretariat has not received an official translation of the draft legislation. According to Turkey, the draft legislation is in line with the Action 13 report (OECD, 2015).

(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).

(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).

(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).

8. Turkey reports that the draft legislation requires local filing under one or more of the following conditions:

- The Ultimate Parent Entity of the MNE Group is not obligated to file a CbC Report in its jurisdiction of tax residence; or
- There is no Qualifying Competent Authority Agreement for the exchange of CbC report between the Turkish Revenue Administration and the competent authority in the relevant country in which Ultimate Parent Entity resides; or
- There has been a systemic failure.

9. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a) 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 Turkey’s draft legislation. According to Turkey, there are no specific separate definitions of “QCAA” and “International Agreement”. Therefore, under Turkey’s draft legislation, local filing may be required in circumstances where there is no current international agreement between Turkey and the residence jurisdiction of the Ultimate Parent Entity, which is not permitted under the terms of reference. In its response to questions raised during the CbC peer review report drafting process, Turkey explained that it is party to the Convention and has 88 bilateral tax conventions (83 in effect) which provide for Automatic Exchange of Information. As such, there will be relatively few cases in practice where Turkey does not have a current international agreement with the residence jurisdiction of the Ultimate Parent Entity of an MNE group which has Constituent Entities in Turkey. Nevertheless, it is recommended that Turkey amend the above condition or otherwise takes steps to ensure that the CbC Reporting local filing obligation will only apply in the circumstances contained in the terms of reference.

10. 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).

(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).

11. Turkey does not yet have its legal and administrative framework complete to implement CbC Reporting.

12. Turkey intends to apply CbC requirements for taxable years commencing on or after 1 January 2017. It is therefore recommended that Turkey take steps to finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, in line with the terms of reference.

Conclusion

13. In respect of paragraph 8 of the terms of reference (OECD, 2017a), Turkey does not yet have a complete 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 Turkey. It is recommended that Turkey take steps to finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible. Specifically, it is recommended that Turkey ensure that local filing requirements will apply consistently with the terms of reference.

Part B: The exchange of information framework

14. 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 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).

15. Turkey has not yet completed a domestic legal basis for the exchange of information. Turkey has signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) on 3 November 2011. The Convention was ratified by the Turkish parliament on 20 May 2017 and Turkey expects that the process to the Convention entry into force will be completed soon. Turkey is not a signatory to the CbC MCAA. Turkey has Double Taxation Agreements with 88 countries, 83 of them are in effect⁷ that allow Automatic Exchange of Information

16. As of 12 January 2018, Turkey does not yet have bilateral relationships activated under the CbC MCAA.

17. It is recommended that Turkey take steps to enable exchanges of CbC reports, in particular:

- bringing the Convention into force as soon as possible, notably depositing its instrument of ratification, carrying on any internal process so that the Convention is brought into effect and lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention;^{8,9}
- signing the CbC MCAA;
- having QCAAs in effect.

Conclusion

18. It is recommended that Turkey take steps to have the Convention in force as soon as possible and have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Turkey will not be exchanging CbC reports in 2018.

Part C: Appropriate use

19. 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).

20. 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), Turkey indicates that measures are currently being developed 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, 2017b). Because Turkey does not have measures in place in all six areas, it is recommended that Turkey take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Turkey will not be exchanging CbC reports in 2018.

Conclusion

21. In respect of paragraph 12 (a) it is recommended that Turkey take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Turkey will not be exchanging CbC reports in 2018.

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	It is recommended that Turkey take steps to finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible, in line with the terms of reference.
Part A	Domestic legal and administrative framework – local filing conditions	It is recommended that Turkey amend the conditions for local filing or otherwise takes steps to ensure that the CbC Reporting local filing obligation will only apply in the circumstances contained in the terms of reference.
Part B	Exchange of information	It is recommended that Turkey take steps to have the Convention in force as soon as possible and have QCAAs in effect yet with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Turkey 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 8 (c) iv. of the terms of reference (OECD, 2017a).

³ Paragraph 9 (a) of the terms of reference (OECD, 2017a).

⁴ Paragraph 12 (a) of the terms of reference (OECD, 2017a).

⁵ General transfer pricing law: Article 13 of the Corporate Income Tax Law (the CITL No. 5520).

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 Turkey has TIEAs with Bermuda and Jersey, but they only permit exchange of information on request.

⁸ 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.”

⁹ Reliance on Double Tax Agreements or Tax Information and Exchange Agreements may also be a possible route.

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.
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