

## United States

### 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 Country-by-Country (CbC) reports. The United States' implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one definitional issue in relation to its domestic legal and administrative framework. The report, therefore, contains one recommendation to address this issue. The United States' competent authority should also continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.

#### *Part A: Domestic legal and administrative framework*

2. The United States has rules (primary and secondary law, as well as guidance) that impose and enforce CbC requirements on multinational enterprise groups (MNE Groups) whose Ultimate Parent Entity is resident for tax purposes in the United States. The first filing obligation for a CbC report in the United States commences in respect of fiscal years commencing on or after 30 June 2016. In addition, the United States has allowed US MNE Groups to file a CbC report for earlier reporting periods beginning on or after 1 January 2016 under a “parent surrogate filing” mechanism. The United States meets all the terms of reference relating to the domestic legal and administrative framework,<sup>1</sup> with the exception of:

- the exclusion of revenue other than “unrelated business taxable income” (UBTI) from the definition of “revenues” for certain tax-exempt entities,<sup>2</sup>

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

3. The United States will rely on double tax conventions (DTCs) and tax information exchange agreements (TIEAs) permitting Automatic Exchange of Information as well as the Convention on Mutual Administrative Assistance in Tax Matters to exchange CbC reports with its intended partners. As of 12 January 2018, the United States' competent authority has signed 34 arrangements with competent authorities of other jurisdictions of the Inclusive Framework. The United States' competent authority should continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.

### ***Part C: Appropriate use***

4. The United States 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> The United States 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. The United States has primary law and secondary law in place which implements the BEPS Action 13 minimum standard, and has also issued guidance in this respect.<sup>5</sup>

#### ***(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. The United States 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<sup>7</sup> and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the determination of the annual consolidated group revenue,<sup>8</sup> it is noted that in relation to Constituent Entities which are certain types of tax-exempt organisations or with respect to certain tax-favoured plans or schemes, the definition of “revenue” includes only revenue reflected in “unrelated business taxable income” (UBTI),<sup>9</sup> being income not related to the main tax-exempt function of the entity, and thus generally subject to tax. This is different to the definition of “revenues” in the Action 13 minimum standard<sup>10</sup> and in guidance issued by the OECD in April 2017 which states that “*In determining whether the total consolidated group revenue of an MNE Group is less than EUR 750 million (...), all the revenue that is (or would be) reflected in the consolidated financial statements should be used*”.<sup>11</sup> The United States explains that the definition in its law is not inconsistent with the minimum standard and that tax-exempt organisations (TEOs) derive funding to pursue their tax-exempt purpose from a variety of sources. Funding derived from donations from the public, grants from governmental entities and other TEOs, and fees for activities associated with the tax exempt purpose (such as hospital fees or educational tuition) is not taxable income to the TEO. The TEO is taxable on its UBTI, which consists of income from a trade or business unrelated to its charitable, educational, or other tax-exempt purpose as well as certain rents, royalties, interest or annuities received from controlled entities. The United States’ CbC regulations

define revenue of a TEO by reference to the TEOs UBTI. The United States further explains that, although donations, grants, hospital fees, adoption fees, tuition, and the like might be considered “revenue” in a broad accounting sense (there is no other accounting label for those items), it does not believe those items constitute the revenue of a business enterprise as contemplated by Action 13 and accordingly should not be included in the definition of revenues for purposes of CbC Reporting. Nevertheless, it is recommended that the United States ensure that the definition of “consolidated group revenue” for the purposes of applying the threshold is consistent with the definition in the Action 13 minimum standard, as further clarified by OECD guidance.

9. 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).

10. The first filing of a CbC report in the United States commences in respect of the reporting period of a U.S. MNE Group<sup>12</sup> commencing on or after 30 June 2016.<sup>13</sup> In addition, the United States has allowed US MNE Groups to file a CbC report for earlier reporting periods beginning on or after 1 January 2016 under a “parent surrogate filing” mechanism.<sup>14</sup>

11. With respect to the content of the CbC report (paragraph 8 (b) ii. and iv. of the terms of reference (OECD, 2017b)), in relation to Constituent Entities which are certain types of tax-exempt organisations or with respect to certain tax-favoured plans or schemes, the definition of “revenue” includes only revenue that is UBTI. This is different to the definition of “revenues in the Action 13 minimum standard<sup>15</sup> and as further clarified in OECD guidance (which does not envisage any exclusion of any amounts).<sup>16</sup> The United States explains that items of funding derived by TEOs which are not qualified as UBTI do not constitute the revenue of a business enterprise as contemplated by Action 13 and accordingly should not be included in the definition of revenues for purposes of completing Table 1 of a CbC report. The United States notes that the overwhelming majority of a TEO’s “revenues” are derived from donations, grants, fundraising activities, and fees from the public for its tax-exempt activities, and all of the profits are devoted to the TEO’s tax-exempt purpose. Very little, and in most cases none, of a TEO’s “revenue” is derived from related party transactions. The United States also notes that U.S. TEOs, other than churches, are required to make some information publicly available, including information relating to related party transactions.<sup>17</sup>

12. In addition, the United States indicates that some TEOs own interests in subsidiaries that would be consolidated under U.S. GAAP if the TEO were a publicly traded corporation. The vast majority of such subsidiaries are U.S. entities that are non-taxable because they are organized as partnerships, single-owner limited liability companies, or tax-exempt corporations. A small minority of the subsidiaries are foreign entities, some of which are investment companies organized in low-tax jurisdictions, and some of which are tax-exempt entities in their tax jurisdiction of residence. TEOs can

enter into transactions with taxable foreign subsidiaries. Based on the United States' review of the publicly-available Forms 990 of several of the larger U.S. TEOs, it was found that most related party transactions of TEOs involve simple transfers of cash or property (mainly funding and donations) to related domestic TEOs for use in their tax-exempt activities. The most common related party service transaction involves fundraising to support the charitable or educational purpose. Moreover, in many cases, related party service and property transactions are reflected at cost. Transactions between a TEO and its investment entity typically consist of capital contributions from the TEO, which would not be revenue under any definition, and distributions from the investment entity. Nevertheless, it is recommended that the United States ensure that the definition of "revenue" for the purposes of completing Table 1 is consistent with the definition in Action 13 minimum standard, as further clarified by OECD guidance.

13. The CbC report must be filed with the US Ultimate Parent Entity's income tax return for the taxable year, in or with which the reporting period ends, on or before the due date (including extensions) for filing that return or as otherwise prescribed by the Form 8975 (to be used to file a CbC report).<sup>18</sup> The United States indicates that this is generally within 8.5 months of the taxable year end. However, because the CbC report may be prepared based on a reporting year that ends within the taxable year, in certain instances, the reporting period will end more than 12 months before the tax return is filed. This may result in a CbC report being filed later than the date recommended in the Action 13 minimum standard. As a result, the CbC report may subsequently be exchanged with a partner jurisdiction later than the timeline envisaged in the Action 13 Report (OECD, 2015).<sup>19</sup> The United States indicates that such instances should be minimal and would be mitigated by the fact that the United States will be exchanging CbC reports on an at least monthly basis. As the United States will anticipate the exchange of information deadlines with its treaty partners, no recommendation is made but this aspect will be further monitored to ensure that the filing deadline in these limited cases will not impact the ability of the United States to meet its obligations relating to the exchange of information under the terms of reference.<sup>20</sup>

14. 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).

15. The United States does not apply or plan to introduce local filing.

*(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. The United States does not apply or plan to introduce local filing.<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. The United States' rules provide for mechanisms to enforce compliance by all US Ultimate Parent Entities and Surrogate Parent Entities<sup>22</sup> with their filing obligations: the United States indicates that penalties may apply for failure to file a CbC report under a general regime provided for in the Internal Revenue Code (I.R.C. § 6038(b)). This penalty regime should allow the US tax authorities to compel the production of the information required in a CbC report.

18. The United States indicates that the statute of limitations with respect to a tax return that requires a CbC report generally will not begin to run until the CbC report is filed (once the CbC report is required under US law); if the taxpayer establishes a reasonable cause for the failure to file the CbC report, the statute of limitation will not begin to run with respect to the item(s) related to the CbC report until the CbC report is filed.<sup>23</sup> In addition, the United States indicates that it will develop a process to identify taxpayers reporting revenue of USD 850 million or more on their US tax return to monitor their compliance with the CbC Reporting requirement, and will follow up with those taxpayers that have not filed.

19. However, it appears that the provisions under (I.R.C. § 6038(b)) would not address shortcomings in relation to incomplete or erroneous filing of a CbC report relating to a US Constituent Entity which would be part of a US MNE Group.<sup>24</sup> The United States notes that there are return-preparer penalties (which may include a fine or imprisonment) which may apply for providing false or fraudulent information as to a material matter. Additionally, in cases where there is no external return preparer, similar penalties may apply for entity officials that sign the return on behalf of an entity as well as the entity on whose behalf the return is signed. In addition, although set forth in Treas. Reg. § 1.6038-4, the U.S. CbC Reporting regulations were issued under the authority of sections 6001, 6011, 6012, 6031, and 6038 of the Internal Revenue Code. Those provisions provide authority for the Treasury Department and the IRS to issue regulations requiring taxpayers to furnish information that is deemed necessary to determine whether the taxpayer is liable to tax. Those provisions provide authority for the IRS to request information directly from the taxpayer to the extent the IRS deems such information necessary to determine whether the taxpayer is liable to tax. The IRS indicates that it will develop a process to notify taxpayers and to request missing information or correction of

erroneous information if it discovers that there are deficiencies or errors in a filed CbC Report. As such, no recommendation is made but this will be monitored.

20. The United States indicates that the IRS is currently developing a process to take any appropriate measure if another competent authority notifies the IRS that it has reason to believe that an error may have led to incorrect or incomplete reporting with respect to 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 monitored.

### *Conclusion*

21. In respect of paragraph 8 of the terms of reference (OECD, 2017b), the United States has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose UPE is resident for tax purposes in the United States. The United States meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the exclusion of revenue other than UBTI from the definition of “revenues” (paragraphs 8. (a) ii. and 8 (b) ii. and iv. of the terms of reference (OECD, 2017b)).

## **Part B: The exchange of information framework**

22. 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).

23. The United States has a legal framework that permits the automatic exchange of CbC reports. The United States indicates that it has:

1. double tax conventions (DTCs) permitting Automatic Exchange of Information with Australia, Austria, Bangladesh, Barbados, Belgium, Bermuda, Bulgaria, Canada, China (People’s Republic of), Cyprus,<sup>25</sup> Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Malta, Morocco, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Sri Lanka, Spain, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, and Venezuela;
2. tax information exchange agreements (TIEAs) permitting Automatic Exchange of Information with Antigua and Barbuda, Aruba, Bailiwick of Jersey, Barbados, Bermuda, Bonaire, Saba, and Saint Eustatius, Brazil, British Virgin Islands, Cayman Islands, Colombia, Curaçao, Dominica, Dominican Republic, Gibraltar, Grenada, Guernsey, Guyana, Honduras, Isle of Man, Jamaica, Liechtenstein, Marshall Islands, Mauritius, Mexico, Monaco, Panama, Peru, Saint Lucia, Sint Maarten and Trinidad and Tobago.



3. the Convention on Mutual Administrative Assistance in Tax Matters (signed 28 June 1989, and in force since 1 April 1995), not amended by the 2010 Protocol.

24. The United States' competent authority indicates that it is actively negotiating QCAAs with all Inclusive Framework jurisdictions with respect to which the United States has a legal instrument permitting the Automatic Exchange of Information and which have satisfied the United States' data safeguards and confidentiality review. As of 12 January 2018, it has concluded bilateral arrangements on the basis of these instruments with 34 competent authorities of the following jurisdictions:<sup>26 27</sup> in addition, the United States will be spontaneously exchanging CbC reports with respect to fiscal year beginning in 2016 with France. A number of additional bilateral arrangements are also expected to be signed soon. While noting that some time is needed for bilateral negotiations, the United States' competent authority should continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.

### **Conclusion**

25. The United States' competent authority should continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.

## **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: 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).

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), the United States 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 the United States 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 the United States. The United States 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: determination of the “consolidated group revenue” threshold and definition of “revenue” - Content of CbC report	It is recommended that the United States ensure that the definition of “consolidated group revenue” for the purposes of applying the threshold is consistent with the definition in the Action 13 minimum standard, as further clarified by OECD guidance; and that the definition of “revenue” for the purposes of completing Table 1 is consistent with the definition in Action 13 minimum standard, as further clarified by OECD guidance.
Part B	Exchange of information framework	The United States’ competent authority should continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.
Part C	Appropriate use	-

### Notes

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

<sup>2</sup> Paragraph 8. (a) ii. and 8. (b) ii. and iv. 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> Primary law consists of provisions in Title 26 of the United States Code (U.S.C. §§ 6001, 6011, 6012, 6031 and 6038). The United States indicates that these provisions provide general authority to request information from taxpayers, including CbC Reporting. Secondary law consists of Treasury Regulations § 1.6038-4 which set forth the specific requirements to file CbC reports (secondary law). Guidance has also been issued (Revenue Procedure 2017-23, 2017-7 I.R.B. 915) to address parent surrogate filing for reporting periods that begin before the effective date of Treasury Regulations § 1.6038-4 (i.e. before 30 June 2016).

<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> It is noted that the rules exclude from the definition of a “business entity” entities which are properly classified as trusts under § 301.7701-4 (except grantor trusts within the meaning of section 671, all or a portion of which is owned by a person other than an individual). The United States clarified that the Treasury regulations concerning the definition of a trust distinguish between “ordinary trusts” and “business trusts.” The difference, in sum, is that an ordinary trust is created to protect and preserve assets for beneficiaries and a business trust is engaged in a regular trade or business activity that would ordinarily be conducted through a corporation or partnership. Business trusts are not properly characterized as trusts for U.S. tax purposes and thus are classified as business entities for purposes of CbC Reporting. Ordinary trusts are properly classified as trusts for U.S. tax purposes and generally are not treated as business entities for purposes of CbC Reporting. However, the U.S. CbC Reporting regulations also treat any trust as a business entity if all, or a portion, of the trust is treated as owned by a person other than an individual under I.R.C. § 671 (a “grantor trust”).

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

<sup>9</sup> See Treas. Reg. § 1.6038-4(d)(3)(ii).

<sup>10</sup> See Part C. Specific instructions in the Annex III to Chapter V of Transfer Pricing Documentation – Country-by-Country Report (OECD, 2015): “Revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenue should exclude payments received from other Constituent Entities that are treated as dividends in the payer’s tax jurisdiction”.

<sup>11</sup> See question IV.2. in “*Guidance on the implementation of Country-by-Country Reporting*” (OECD, 2018).

<sup>12</sup> See definition of “US MNE Group” in Treas. Reg. § 1.6038-4(b)(5).

<sup>13</sup> See Treas. Reg. § 1.6038-4(k).

<sup>14</sup> See Revenue Procedure 2017-23 (2017-7 I.R.B. 915).

<sup>15</sup> See Part C. Specific instructions in the Annex III to Chapter V of Transfer Pricing Documentation – Country-by-Country Report. It is also noted that the minimum standard does not envisage any exemptions from filing the CbC report (paragraph 55 of the Action 13 Report, OECD, 2015).

<sup>16</sup> See question 1.2 in part II in “*Guidance on the implementation of Country-by-Country Reporting*” (OECD, 2018): “*When financial statements are used as the source of the data to complete the CbC template, which items shown in the financial statements should be reported as Revenues in Table 1? All revenue, gains, income, or other inflows shown in the financial statement prepared in accordance with the applicable accounting rules relating to profit and loss, such as the income statement or profit and loss statement, should be reported as Revenues in Table 1 (...)*”.

<sup>17</sup> U.S. TEOs, other than churches, are required to make their income tax return, Form 990, publicly available. Many TEOs publish their Forms 990 on their websites, and others can be accessed via Guidestar.org. Schedule R of Form 990 requires the TEO to provide certain information, including the name, address, primary activity, and legal domicile, with respect to all controlled foreign and domestic disregarded entities, partnerships, corporations, and trusts. Additionally, Schedule R requires detailed information with respect to related party transactions, including identification of the related parties, the types of transactions between the related parties, the amount of the transactions, and the method (e.g., cost or fair market value) used to determine the amount of the transaction.

<sup>18</sup> See Treas. Reg. § 1.6038-4(f).

<sup>19</sup> Please refer to the Model Multilateral Competent Authority Agreement, Model Competent Authority Agreement on the basis of a DTC, Model Competent Authority Agreement on the basis of a TIEA which envisage that the CbC reports should be exchanged as soon as possible and no later than 18 months after the last day of the fiscal year of the Reporting Entity of the MNE Group for the first year for which CbC requirements are applicable, and no later than 15 months after the last day of the fiscal year of the Reporting Entity of the MNE Group for subsequent years.

<sup>20</sup> Paragraph 9 (d) of the terms of reference (OECD, 2017b).

<sup>21</sup> It is noted that the United States’ legal and administrative framework allows only surrogate filing for MNE Groups whose Ultimate Parent Entity is tax resident in a US territory or possession and that have a Constituent Entity within the United States.

<sup>22</sup> It is noted that the US legal and administrative framework allows only surrogate filing for MNE Groups whose Ultimate Parent Entity is tax resident in a US territory or possession and that have a Constituent Entity within the United States.

<sup>23</sup> See Internal Revenue Code § 6501(c)(8).

<sup>24</sup> The dollar penalty for failure to furnish information set out under subsection (b) appears to apply for failure to furnish information with respect to any foreign business required under paragraph (1) of subsection (a).

<sup>25</sup> Note by Turkey

The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

<sup>26</sup> Australia, Belgium, Bermuda, Brazil, Canada, Colombia, Czech Republic, Denmark, Estonia, Finland, Greece, Guernsey, Iceland, Ireland, Isle of Man, Italy, Jamaica, Jersey, Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, South Africa, Sweden and the United Kingdom.

<sup>27</sup> It is noted that some bilateral arrangements are not yet concluded with some jurisdictions of the Inclusive Framework which have law in place for the fiscal year 2016.

## References

- OECD (2018), *Guidance on the Implementation of Country-by-Country Reporting*, OECD, Paris. [www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm](http://www.oecd.org/ctp/exchange-of-tax-information/guidance-on-country-by-country-reporting-beps-action-13.htm).
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