Uruguay

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. Uruguay does not yet have a complete legal and administrative framework in place to implement CbC Reporting. It is recommended that Uruguay finalize its domestic legal and administrative framework in relation to CbC requirements as soon as possible. For the moment, Uruguay's implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review, except that it raises five timing, interpretative and substantive issues in relation to its domestic legal and administrative framework, which relate to the finalisation of the domestic legal and administrative framework. The report contains, therefore one recommendation to address these issues.

Part A: Domestic legal and administrative framework

2. Uruguay has rules (primary law) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Uruguay.[1] The first filing obligation for a CbC report in Uruguay commences in respect of fiscal years commencing on or after 1 January 2017. It is recommended that Uruguay finalize its domestic legal and administrative framework in relation to CbC requirements as soon as possible. For the moment,[2] Uruguay meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of:

- the definitions of "Ultimate Parent Entity" and "Constituent Entity" which are yet to be introduced or completed,[3]
- the absence of a specific amount for the revenue threshold[4] established under Uruguay's law to trigger the CbC Reporting obligation,
- the absence of a deadline for filing a CbC report,[5]
- the conditions for local filing which need to be amended or clarified,[6]
- the absence of a provision whereby a single Constituent Entity of the same MNE Group may be designated to file the CbC report which would satisfy the local filing requirement of all the Constituent Entities.[7]

Part B: Exchange of information framework

3. Uruguay is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which came into force on 1 December 2016. It will be in force for fiscal years starting as from 1 January 2017 (Uruguay's CbC requirements will apply for periods commencing on or after 1 January 2017). Uruguay is also a signatory to the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Uruguay has 49 bilateral relationships

activated under the CbC MCAA. Against the backdrop of the evolving exchange of information framework, at this point in time Uruguay meets the terms of reference relating to the exchange of information framework for the year in review. It is noted that Uruguay will not be exchanging reports in 2018.[8]

Part C: Appropriate use

4. Uruguay has not yet provided information on measures relating to appropriate use.[9] Uruguay is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Uruguay 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. Uruguay has primary law in place for implementing the BEPS Action 13 minimum standard.[10] Uruguay indicates that a regulatory decree is to be published. No guidance has been published yet.

(a) Parent entity filing obligation

Summary of terms of reference:[11] 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. Uruguay has primary legislation to impose a CbC filing obligation on Ultimate Parent Entities of MNE Groups of large economic dimension.[12] The legislation is however incomplete at this moment. Uruguay indicates that it is currently updating its legal framework which includes publishing a regulatory decree, which will introduce a number of details.

8. With respect to the definition of an "Ultimate Parent Entity", there is no such definition in Uruguay's primary law. Although the law makes reference to the Ultimate Parent Entity as one of the reporting entities, there is no definition of this term. Uruguay affirms this definition will be introduced by secondary law definition in a manner consistent with the terms of reference. It is recommended that Uruguay introduce a definition of an "Ultimate Parent Entity" consistent with the terms of reference.[13]

9. There is also no definition of a "Constituent Entity" in Uruguay's legislation.[14] [15] Uruguay affirms that the regulatory decree will expressly introduce this definition in a manner consistent with the terms of reference. It is recommended that Uruguay introduce this definition in its domestic legal and administrative framework.

10. The domestic legislation makes reference to a consolidated revenue threshold above which the filing obligation is triggered, the amount of which would be set in the secondary law.[16] Uruguay indicates that the threshold amount will be specified by the secondary law, taking into account the equivalent amount in domestic currency of EUR 750 million in a manner consistent with the terms of reference. It is recommended that Uruguay introduce a threshold amount consistent with the terms of reference.[17]

11. No other inconsistencies were identified with respect to Uruguay'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).

12. The first filing obligation for a CbC report in Uruguay commences in respect of periods commencing on or after 1 January 2017.[18] There is no filing deadline in Uruguay's primary law.[19] Uruguay indicates that it will follow the terms of reference to allow the CbC reports being filed within 12 months as from the end of the fiscal year: this would be introduced in the regulatory decree in a manner consistent with the terms of reference. It is recommended that Uruguay introduce a filing deadline for the submission of the CbC reports in its secondary law, consistent with the terms of reference.[20]

13. 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).

14. Uruguay has introduced local filing requirements as from the reporting period starting on or after 1 January 2017.[21] Local filing applies as a "default rule" i.e. it would apply unless certain conditions (exceptions) are met: local filing requirements will apply in all circumstances unless the CbC report is submitted by a reporting entity of the MNE Group to a tax administration with which Uruguay has a Competent Authority Agreement on the exchange of information in effect, held within the framework of international agreements or conventions, and the said report can be effectively exchanged with the Tax Administration (DGI). This is wider than the circumstances when local filing may be

required under paragraph 8 (c) iv. a) b) and c) of the terms of reference (OECD, 2017). Examples of cases where local filing may be required under Uruguay's primary law, but would not be permitted under the minimum standard, include:

- where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but has not complied with this obligation,[22]
- where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but there is no international agreement between Uruguay and this jurisdiction,[23]
- where the tax authority in the residence jurisdiction of the Ultimate Parent Entity of an MNE Group has failed to exchange the MNE Group's CbC report with Uruguay, but this falls short of systemic failure (e.g. there has been an isolated failure).[24]

15. It is recommended that Uruguay amend its legislation or otherwise takes steps (e.g. completing the conditions in the secondary law) to ensure that local filing is only required in the circumstances contained in the terms of reference.

16. In addition, with respect to paragraph 8 (c) v. of the terms of reference (OECD, 2017), there is no provision in Uruguay's primary legislation to provide that, where local filing is required and there is more than one Constituent Entity of the same MNE Group that is resident for tax purposes in Uruguay, one Constituent Entity be designated to file the CbC report which would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in Uruguay. Uruguay affirms that the regulatory decree will expressly introduce a provision to allow one Constituent Entity to be designated to file the CbC report which would satisfy the filing requirement of all the Constituent Entities of such MNE Group in a manner consistent with the terms of reference. It is recommended that Uruguay implement this provision consistent with the terms of reference.

17. 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).

18. Uruguay's local filing requirements will not apply if there is surrogate filing in another jurisdiction.[25] No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference)..

19. Uruguay has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to all taxpayers and entities which would be part of the MNE Group in Uruguay. There are also penalties in place in relation to the filing of a CbC report for failure:[26] a penalty applies in case of any formal infringements related to the transfer pricing regime. In addition, the general powers of the tax administration would be applicable.[27]

20. There are no specific processes in place that would allow Uruguay to take appropriate measures in case it 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.[28] As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

21. In respect of paragraph 8 of the terms of reference (OECD, 2017), Uruguay has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Uruguay. Uruguay meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the definitions of "Ultimate Parent Entity" and "Constituent Entity" (paragraphs 8 (a) i. and iii. and 18 of the terms of reference (OECD, 2017)); (ii) the annual consolidated group revenue threshold (paragraphs 8 (a) ii. of the terms of reference (OECD, 2017)); (iii) the deadline for filing a CbC report (Paragraph 8 (b) iii. of the terms of reference (OECD, 2017)); (iv) the local filing conditions (paragraphs 8 (c) iv. a) b) and c) of the terms of reference (OECD, 2017)) and (v) the provision whereby a single Constituent Entity may be designated to file the CbC report which would satisfy the local filing requirement of all Constituent Entities (paragraph 8 (c) v. of the terms of reference (OECD, 2017)).

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, 2017).

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. Uruguay 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 1 June 2016, in force on 1 December 2016). The Convention is therefore not in effect with respect to the fiscal year starting 1 January 2016. It will however be in force for fiscal years starting as from 1 January 2017 (Uruguay's CbC requirements will apply for periods commencing on or after 1 January 2017).

24. Uruguay signed the CbC MCAA on 30 June 2016 and submitted a full set of notification under section 8 of the CbC MCAA on 30 March 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. As of 12 January 2018, Uruguay has 49 bilateral relationships activated under the CbC MCAA. Uruguay indicates that it has no other intended QCAAs at the moment.[29] Against the backdrop of the evolving exchange of information framework, at this point in time Uruguay meets the terms of reference relating to the exchange of information framework for the year in review. It is noted that Uruguay will not be exchanging reports in 2018.

Conclusion

25. Against the backdrop of the evolving exchange of information framework, at this point in time Uruguay meets the terms of reference regarding the exchange of information framework under review for this first annual peer review process. It is noted that Uruguay will not be exchanging reports in 2018.

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. Uruguay does not yet have measures in place relating to appropriate use. Uruguay affirms that the regulatory decree will expressly introduce mechanisms to ensure appropriate use of CbC Reports in a manner consistent with the terms of reference. It is recommended that Uruguay take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Uruguay will not be exchanging CbC reports in 2018.

Conclusion

28. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017), Uruguay is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Uruguay 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 Uruguay finalise its domestic legal and administrative framework as soon as possible. Specifically, it is recommended that Uruguay: - introduce or complete the definitions of an "Ultimate Parent Entity" and "Constituent Entity" in a manner that is consistent with the terms of reference; - set an amount for the annual consolidated group revenue threshold in a manner that is consistent with the terms of reference; - set a deadline for filing a CbC report in a manner that is consistent with the terms of reference; - amend the conditions for local filing or otherwise take steps to ensure that local filing can only be required in the circumstances contained in the terms of reference; - implement a provision whereby a single Constituent Entity of the same MNE Group may be designated to file the CbC report which would satisfy the local filing requirement of all the Constituent Entities in Uruguay.
Part B	Exchange of information framework	-
Part C	Appropriate use	Uruguay is recommended to take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

[1] Paragraph 8 of the terms of reference (OECD, 2017).

[2] Uruguay affirms that the regulatory decree will expressly introduce items to address the recommendations made in line with the specific terms of reference.

[3] Paragraphs 8 (a) i. and iii. and 18 of the terms of reference (OECD, 2017).

[4] Paragraphs 8 (a) ii. of the terms of reference (OECD, 2017).

[5] Paragraphs 8 (b) iii. of the terms of reference (OECD, 2017).

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

[7] Paragraph 8 (c) v. of the terms of reference (OECD, 2017).

[8] Paragraph 9 (a) of the terms of reference (OECD, 2017).

[9] Paragraph 12 (a) of the terms of reference (OECD, 2017).

[10] Uruguay's primary law consists of Law 19.484 of 5 January 2017, which is available at https://parlamento.gub.uy/documentosyleyes/leyes/ ley/19484 (accessed 23 April 2018).

[11] 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, 2017).

[12] The domestic legislation does not expressly make reference to above a certain threshold of revenue. It is expected that the threshold amount will be specified by the secondary law, taking into account the equivalent amount in domestic currency of EUR 750 million.

[13] Paragraph 18 of the terms of reference (OECD, 2017).

[14] Uruguay indicates that although there is no specific reference to the term "Constituent Entity" or "business unit", the law makes reference to the notion of "entity" (which, from a technical point of view, is understood in a broad sense). It notes that the law was written in a broad sense, allowing the regulatory decree to introduce some terms (or define them) in a more restricted way. The following subparagraphs make reference to this notion (see first subparagraph, article 46 ter, Title 4 of the 1996 T.O: "*The IRAE taxpayers that are part of a multinational group of large economic dimension, when fall within the definition of related parties provided in the following subparagraph, will be subject to the country by country rules stated in this article. The provision of this paragraph also apply to the head offices and their permanent establishments, when one of them is an IRAE taxpayer, and other resident entities of a multinational group with their foreign subsidiaries, branches, permanent establishments or other type of non-resident entities related to them, as long as they are part of a multinational group of large economic dimension*".

[15] Uruguay indicates that its law does not make a specific reference to the term "Consolidated Financial Statements". However, it is understood that the general accounting principles should be followed. Specific references to the accounting principles or any other accounting terms would be added in the regulatory decree. It is also noted that Uruguay adopts the International Accounting Standards. As a general principle, commercial companies are subject to these standards pursuant to Decree N° 291/2014, in the wording given by Decree N° 372/2015. Under particular circumstances, other accounting rules can be specifically imposed by a particular competent regulatory body (e.g. for Financial Institutions, Public Companies, etc.).

[16] See fourth subparagraph, article 46 ter, Title 4 of the 1996 T.O.: "*the multinational groups of large economic dimension, mentioned in the first subparagraph of this article, will be those whose consolidated revenue exceeds the threshold amount set by the Executive Branch*".

[17] Paragraph 8 (a) ii. of the terms of reference (OECD, 2017).

[18] See ninth subparagraph, article 46 ter, Title 4 of the 1996 T.O.

[19] See fifth subparagraph, article 46 ter, Title 4 of the 1996 T.O.

[20] Paragraph 8 (b) iii. of the terms of reference (OECD, 2017).

[21] See fifth subparagraph, article 46 ter, Title 4 of the 1996 T.O.

[22] Local filing would not be permitted in this circumstance under paragraph 8 (c) iv. a) of the terms of reference (OECD, 2017).

[23] Local filing would not be permitted in this circumstance under paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017).

[24] Local filing would not be permitted in this circumstance under paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017).

[25] See fifth and sixth subparagraph, article 46 ter, Title 4 of the 1996 T.O.

[26] See article 46 bis of Title 4 of the 1996 T.O.: this article provides a fine up to the equivalent of approximately USD 200 000 for cases such as failure to file a sworn declaration or to file the presentation of the transfer pricing documentation report. This penalty shall be applicable gradually according to the severity of the violation and other circumstances prescribed by law. Failure to comply with CbC obligations will be also subject to the general rules stated in the Tax Code.

[27] Uruguay indicates that any taxpayer that is resident in Uruguay is obliged to keep records of the financial position and information related to business or activity of the entity, to require the taxpayer's appearance before the DGI or pertinent authority, to provide information and to perform tax audits of real estate and chattel properties held or occupied by the taxpayer. Penalties

may be imposed in case the obligations are not met: Article 70 of the Tax Code states that the taxpayers and other responsible agents are obligated to collaborate in the fields of determination, audit and investigation undertaken by the Tax Administration. In particular, they are obligated to file tax returns, reports, or any other documentation asked by the Tax Administration; communicate any change in its particular situation; facilitate the audit process undertaken by the tax inspectors. Article 469 of the Law 17.930 (in the wording provided by article 68 of Law 18.083) provides a fine up to the equivalent of approximately USD 200 000 in the case of the infringement of the said article 70 of the Tax Code, among other situations. This penalty shall be applicable gradually according to the severity of the violation and other circumstances prescribed by law.

[28] Uruguay indicates that it has a general penalty-system in place: both for refusing to provide information or for hindering the actions of a tax official, the Tax Administration (DGI) may impose administrative penalties of between UYU 350 (Uruguayan peso and UYU 6 660 (USD 12 to USD 230) for 2016 (USD 1: UYU 29).

Furthermore, Uruguay notes that article 68 of the Tax Code provides that the Tax Administration has the most extensive powers of "inspection" and "investigation". Additionally, article 306 of the Law 18.996 clarifies that the powers provided by the article 68 above mentioned authorize the General Directorate of the DGI to request information both within the framework of a particular inspection or with general purposes by means of a resolution. The non-compliance of providing that information within the scope of this article shall be punished with an administrative fine. This penalty can be aggravated according to the seriousness of the infringement, in such a case the fine can be increased up a thousand times the maximum fine described before (i.e. USD 230 000).

Finally, where a person is in contempt (including open disobedience with an official's orders), penal sanctions of 3-18 months imprisonment may eventually apply (article 173, Criminal Code).

[29] 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

OECD (2017), "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.

OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264115606-en.