

Hong Kong (China)

1. Hong Kong was first reviewed during the 2017/2018 peer review. This report is supplementary to Hong Kong's 2017/2018 peer review report (OECD, 2018^[1]). Since the last peer review, Hong Kong has introduced primary legislation in order to implement CbC Reporting requirements. The filing obligation for a CbC report in Hong Kong applies to reporting fiscal years commencing on or after 1 January 2018. Hong Kong also allows Hong Kong's MNE groups to file a CbC report on a voluntary basis, for reporting fiscal years beginning between 1 January 2016 and 31 December 2017.

Summary of key findings

2. Hong Kong's implementation of the Action 13 minimum standard meets all applicable terms of reference (OECD, 2017^[2]).

3. Hong Kong's 2017/2018 peer review included a recommendation that Hong Kong take steps to enable exchanges of CbC reports under existing international agreements. With respect to reporting periods beginning in 2017 and 2018, Hong Kong has proactively engaged its DTA partners in establishing bilateral relationships for the exchange of CbC reports and concluded twelve bilateral CAAs as of 31 March 2019. As the process is still going on, the recommendation remains in place for these periods. With respect to reporting periods beginning on or after 1 January 2019, Hong Kong has taken steps to ensure bilateral relationships for the exchange of CbC reports under the CbC MCAA are in place and so, for these periods, the recommendation no longer applies.

4. Hong Kong's 2017/2018 peer review included a recommendation that Hong Kong finalise its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible. Hong Kong now has the primary law in place to impose and enforce CbC requirements. As such, the recommendation with respect to domestic legal and administrative framework issued in the 2017/2018 peer review is removed.

Part A: The domestic legal and administrative framework

5. Hong Kong has primary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements including the filing and reporting obligations.¹ Guidance has also been published.²

(a) Parent entity filing obligation

6. Hong Kong has primary law which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have a consolidated group revenue above a certain threshold, 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).³

7. No inconsistencies were identified with respect to Hong Kong's domestic legal framework in relation with the parent entity filing obligation.⁴

(b) Scope and timing of parent entity filing

8. The first filing obligation for a CbC report in Hong Kong commences in respect of fiscal years beginning on 1 January 2018 or later⁵ with a “parent surrogate filing” mechanism which allows the Ultimate Parent Entities of MNE Groups resident in Hong Kong to voluntarily file CbC reports for fiscal years beginning between 1 January 2016 and 31 December 2017.⁶ The CbC report must be filed within 12 months of the last day of the fiscal year of the MNE Group.⁷

9. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

10. Hong Kong has introduced local filing requirements in respect of fiscal years beginning on or after 1 January 2018.⁸

11. No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

12. Hong Kong's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group, subject to conditions. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

13. Hong Kong has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Hong Kong entities.⁹ There are also penalties in place in relation to the filing of a CbC report: (i) penalties for failure to file a CbC report and late filing and (ii) penalties for inaccurate information.¹⁰

Conclusion

14. Hong Kong's 2017/2018 peer review included a recommendation that Hong Kong finalises its domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible. Hong Kong now has the primary law in place to impose and enforce CbC requirements. As such, the recommendation with respect to domestic legal and administrative framework issued in the 2017/2018 peer review is removed. Hong Kong meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

(a) Exchange of information framework

15. Hong Kong's 2017/2018 peer review included a recommendation that Hong Kong take steps to enable exchanges of CbC reports under existing international agreements. With respect to reporting periods beginning in 2017 and 2018, Hong Kong has proactively engaged its DTA partners in establishing bilateral relationships for the exchange of CbC reports and concluded twelve bilateral CAAs as of 31 March 2019. As the process is still going on, the recommendation remains in place for these periods. With

respect to reporting periods beginning on or after 1 January 2019, Hong Kong has taken steps to have in place bilateral relationships for the exchange of CbC reports under the CbC MCAA and so, for these periods, the recommendation no longer applies.

16. As of 31 May 2019, Hong Kong has 56 bilateral relationships in place for the exchange of CbC reports, including those activated under the CbC MCAA and bilateral CAAs. Twelve of these bilateral relationships apply to reporting periods beginning in 2017 and 2018. All 56 bilateral relationships apply to reporting periods beginning on or after 1 January 2019. With respect to reporting periods beginning in 2017 and 2018, it is recommended that Hong Kong continue to take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions and with which Hong Kong has an international exchange of information agreement in effect that allows for the automatic exchange of tax information.¹³ With respect to reporting periods beginning on or after 1 January 2019, Hong Kong has taken steps to put in place sufficient bilateral relationships for the exchange of CbC reports under the CbC MCAA and so, for these periods, no recommendation is made¹¹.

(b) Content of information exchanged

17. Hong Kong has processes in place that are intended to ensure that each of the mandatory fields of information as required in the CbC template are present in the information exchanged. It has provided details in relation to these processes.

18. No information or peer input was received for the reviewed jurisdiction in relation to the content of information exchanged. There are no concerns to be reported in respect of the content of information exchanged.

(c) Completeness of exchanges

19. Hong Kong has processes in place that are intended to ensure that CbC reports are exchanged with all tax jurisdictions listed in Table 1 of a CbC reporting template with which it should exchange information as per the relevant QCAAs. It has provided details in relation to these processes.

20. No information or peer input was received for the reviewed jurisdiction in relation to the completeness of exchanges. There are no concerns to be reported in respect of the completeness of exchanges.

(d) Timeliness of exchanges

21. Hong Kong has processes in place that are intended to ensure that the information to be exchanged is transmitted to the relevant jurisdictions in accordance with the timelines provided for in the relevant QCAAs and terms of reference. It has provided details in relation to these processes.

22. No information or peer input was received for the reviewed jurisdiction in relation to the timeliness of exchanges. There are no concerns to be reported in respect of the timeliness of exchanges.

(e) Temporary suspension of exchange or termination of QCAA

23. Hong Kong has processes in place that are intended to ensure that a temporary suspension of the exchange of information or termination of a relevant QCAA be carried out only as per the conditions set out in the QCAA. It has provided details in relation to those processes.

24. No information or peer input was received for the reviewed jurisdiction in relation to a temporary suspension of exchange or termination of a QCAA. There are no concerns to be reported in respect of the temporary suspension of exchange or termination of QCAA.

(f) Consultation with other Competent Authority before determining systemic failure or significant non-compliance

25. Hong Kong has processes in place that are intended to ensure that the Competent Authority consults with the other Competent Authority prior to making a determination that there is or has been significant non-compliance with the terms of the relevant QCAA or that the other Competent Authority has caused a systemic failure. It has provided details in relation to those processes.

26. No information or peer input was received for the reviewed jurisdiction in relation to the requirement for a consultation before determining systemic failure or significant non-compliance. There are no concerns to be reported in respect of consultation with the other Competent Authority before determining systemic failure or significant non-compliance.

(g) Format for information exchange

27. Hong Kong confirms that it uses the OECD XML Schema and User Guide for Tax Administrations (OECD, 2017^[31]) for the international exchange of CbC reports

28. No information or peer input was received for the reviewed jurisdiction in relation to the format for information exchange. There are no concerns to be reported in respect of the format of information exchange.

(h) Method for transmission

29. Hong Kong indicates that it uses the Common Transmission System to exchange CbC reports.

30. No information or peer input was received for the reviewed jurisdiction in relation to the method for transmission. There are no concerns to be reported in respect of the method used for transmission.

Conclusion

31. With respect to reporting periods beginning in 2017 and 2018, Hong Kong has proactively engaged its DTA partners in establishing an exchange of information framework that allows automatic exchange of CbC reports under the DTAs and concluded twelve bilateral CAAs as of 31 March 2019. The process is still going on. The recommendation in the 2017/2018 peer review for Hong Kong to take steps to complete such a framework and have QCAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites remains in place for these periods. With respect to reporting periods beginning on or after 1 January 2019, Hong Kong has taken steps to ensure bilateral relationships for the exchange of CbC reports under the CbC MCAA are in place and so, for these periods, the recommendation no longer applies.

Part C: Appropriate use

32. No changes were identified in respect of appropriate use. There were no recommendations issued in the 2017/2018 peer review.

33. No information or peer input was received for Hong Kong suggesting any issues with appropriate use. There are no concerns to be reported in respect of appropriate use.

Conclusion

34. Hong Kong meets all the terms of reference relating to the appropriate use of CbC reports.

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	It is recommended that Hong Kong continues to take steps to enable exchanges of CbC reports under existing international agreements for reporting periods beginning in 2017 and 2018.
Part C	Appropriate use	-

Notes

¹ The legislation for CbC reporting is provided in Part 9A of the Inland Revenue (Amendment) (No. 6) Ordinance 2018 (“Amendment Ordinance”). The Amendment Ordinance can be accessed at the following link: www.gld.gov.hk/egazette/pdf/20182228/es12018222827.pdf (see pages 81 to 88, 91 to 109 and 127 to 134).

² Basic guidance on CbC reporting is provided in the website of the Inland Revenue Department (“IRD”), which is accessible at the following link: www.ird.gov.hk/eng/tax/dta_cbc.htm.

³ See sections 58B, 58D and 58E of the Amendment Ordinance.

⁴ A Constituent Entity in Hong Kong would only be required to file a CbC report in Hong Kong under local filing requirements if its Ultimate Parent Entity meets the filing threshold as determined in its jurisdiction of tax residence, and provided that the threshold is equivalent to EUR 750 million as of January 2015 (section 58D(4) and (5) of the Amendment Ordinance). Hong Kong confirms that these provisions operate in line with the question IV. 1. “Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the “Guidance on the implementation of country-by-country reporting”: www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf.

⁵ See section 58E(1) of the Amendment Ordinance.

⁶ See section 58E(2) of the Amendment Ordinance.

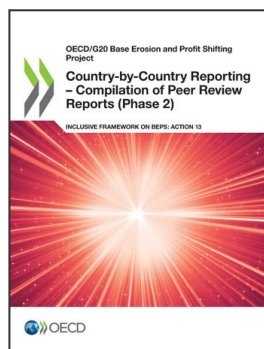
⁷ See section 58B(2), (3) and (4) of the Amendment Ordinance.

⁸ As per schedule 44 to the Amendment Ordinance, section 58F relating to the local filing obligation applies in relation to an accounting period beginning on or after 1 January 2018.

⁹ See section 58H of the Amendment Ordinance.

¹⁰ As per sections 80G and 80H of the Amendment Ordinance, a reporting entity or a service provider engaged by the entity which, without a reasonable excuse, fails to file a CbC report, files the report late or provides inaccurate information in the report is liable on conviction to a fine up to HKD 50 000. Where the relevant offence is committed with intent to defraud, a reporting entity is subject to a fine up to HKD 50 000 and an imprisonment up to 3 years. In the case of a continuing failure to file a CbC report after conviction, the reporting entity is liable to a further fine not exceeding HKD 500 for every day or part thereof during which the offence continues.

¹¹ No inconsistency with the terms of reference will be identified where a QCAA is not in effect with one or more jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions, but this is due to circumstances that are not under the control of the reviewed jurisdiction. This may include, for example, where the other jurisdiction intends to exchange CbC reports using the MCAA but it does not have the Convention in effect for the relevant fiscal period, or where the other jurisdiction has declined to have a QCAA in effect with the reviewed jurisdiction.



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