

Malaysia

1. Malaysia was first reviewed during the 2017/2018 peer review. This report is supplementary to Malaysia's 2017/2018 peer review report (OECD, 2018^[1]). The first filing obligation for a CbC report in Malaysia applies in respect of reporting fiscal years commencing on 1 January 2017. Malaysia also allows its MNE groups to file a CbC report on a voluntary basis, for reporting fiscal years beginning between 1 January 2016 and 31 December 2016.

Summary of key findings

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

3. Malaysia's 2017/2018 peer review report recommended that Malaysia publish detailed guidelines on the content and filing of CbC reports as soon as possible. Malaysia has published detailed guidance¹ and the recommendation is therefore removed.

4. Malaysia's 2017/2018 peer review included a recommendation that Malaysia take steps to introduce administrative mechanisms to enforce compliance by Ultimate Parent Entities in Malaysia, which do not rely on a person first being convicted of an offence. It is now clear that Malaysia has an administrative process to levy a fine for non-compliance prior to and outside of the conviction process, and so the recommendation is removed.

5. Malaysia's 2017/2018 peer review included a recommendation that Malaysia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. Malaysia now has measures in place to ensure the appropriate use of information, the recommendation with respect to appropriate use issued in the 2017/2018 peer review is removed.

Part A: The domestic legal and administrative framework

6. Malaysia has primary and secondary laws in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.

(a) Parent entity filing obligation

7. No changes were identified with respect to the parent entity filing obligation.

(b) Scope and timing of parent entity filing

8. The 2017/2018 peer review report recommended that Malaysia publish detailed guidelines on the content and filing of CbC reports as soon as possible. Malaysia has published detailed guidance² and the recommendation is therefore removed.

(c) Limitation on local filing obligation

9. No changes were identified with respect to local filing. Malaysia does not have local filing rules.

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

10. No changes were identified with respect to local filing. Malaysia does not have local filing rules.

(e) Effective implementation

11. Malaysia's 2017/2018 peer review included a recommendation that Malaysia take steps to introduce administrative mechanisms to enforce compliance by Ultimate Parent Entities in Malaysia, which do not rely on a person first being convicted of an offence. Malaysia is able to levy a fine (called a compound) via a compound letter to an MNE who has not submitted a report or notification or has submitted an incorrect return. This procedure allows the MNE to pay the compound and file the return or correct the incorrect return. Legal action, which may result in a penalty upon conviction, is commenced only if the compound is not paid and/or the return not submitted or corrected. It is now clear that Malaysia has an administrative process to levy a fine for non-compliance prior to and outside of the conviction process and the recommendation is therefore removed.

12. Malaysia's 2017/2018 peer review identified that it had no specific processes to take appropriate measures in case it is notified by another jurisdiction that it has reason to believe with respect to a reporting entity that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a reporting entity with respect to its obligation to file a CbC report. No recommendation was made as filing was not due to commence, but the point was to be monitored. Malaysia has implemented a process to take appropriate measures so the monitoring point is removed.

Conclusion

13. Malaysia 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***

14. As of 31 May 2019, Malaysia has 63 bilateral relationships, including those activated under the CbC MCAA, under bilateral CAAs and under the EU Council Directive (2016/881/EU). Within the context of its international exchange of information agreements that allow automatic exchange of information, Malaysia has taken steps to have qualifying competent authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions. Regarding Malaysia's exchange of information framework, no inconsistencies with the terms of reference were identified.³

(b) Content of information exchanged

15. Malaysia has procedures 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 procedures.

(c) Completeness of exchanges

16. Malaysia has procedures 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 procedures.

(d) Timeliness of exchanges

17. Malaysia has procedures 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.

(e) Temporary suspension of exchange or termination of QCAA

18. Malaysia has processes or written procedures in place 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.

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

19. Malaysia has procedures 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.

(g) Format for information exchange

20. Malaysia confirms that it uses the OECD XML Schema and User Guide (OECD, 2017^[3]) for the international exchange of CbC reports.

(h) Method for transmission

21. Malaysia indicates that it uses the Common Transmission System to exchange CbC reports.

Conclusion

22. Malaysia has the necessary processes and written procedures in place to ensure that the exchange of information is conducted in a manner consistent with the terms of reference relating to the exchange of information framework.

Part C: Appropriate use

23. The 2017/2018 peer review included a recommendation that Malaysia take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. Malaysia now has measures 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 CbC Reports* (OECD, 2017^[4]). Malaysia has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use. The recommendation on appropriate use is therefore removed.

Conclusion

24. Malaysia meets all the terms and conditions in relation to appropriate use.

Summary of recommendations on the implementation of country-by-country reporting

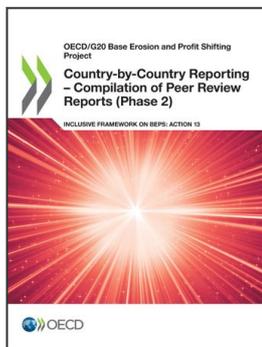
Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework – limitation on local filing obligation	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

Notes

¹ http://lampiran1.hasil.gov.my/pdf/pdfam/CbCR_Guidelines_2017_NL.pdf

² http://lampiran1.hasil.gov.my/pdf/pdfam/CbCR_Guidelines_2017_NL.pdf

³ 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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