

Kenya

1. Kenya was first reviewed during the 2017/2018 peer review. This report is supplementary to Kenya's 2017/2018 peer review report (OECD, 2018^[1]). There is no filing obligation for a CbC report in Kenya yet.

Summary of key findings

2. Kenya does not yet have legislation in place for implementing the BEPS Action 13 minimum standard. It is recommended that Kenya take steps to implement a domestic legal and administrative framework to impose and enforce CbC reporting requirements as soon as possible.

3. It is recommended that Kenya take steps to have qualifying competent authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions and with which Kenya has an international exchange of information agreement in effect that allows for the automatic exchange of tax information.

4. It is recommended that Kenya take steps to implement processes or written procedures to ensure that the exchange of information is conducted in a manner consistent with the terms of reference (OECD, 2017^[2]) relating to the exchange of information framework ahead of the first exchanges of information.

5. It is recommended that Kenya take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

6. It is however noted that Kenya will not be exchanging CbC reports in 2019.

Part A: The domestic legal and administrative framework

7. Kenya does not yet have legislation in place for implementing the BEPS Action 13 minimum standard. Kenya expects to implement the legislative and administrative requirements of Action 13 during 2019.

(a) Parent entity filing obligation

(b) Scope and timing of parent entity filing

(c) Limitation on local filing obligation

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

(e) Effective implementation

8. Kenya does not yet have its legal and administrative framework in place to implement CbC Reporting and thus does not implement CbC Reporting requirements for the 2018 fiscal year.

9. It is recommended that Kenya take steps to implement a domestic legal and administrative framework to impose and enforce CbC reporting requirements as soon as possible.

Conclusion

10. In respect of paragraph 8 of the terms of reference, Kenya 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 Kenya. It is recommended that Kenya take steps to implement a domestic legal and administrative framework to impose and enforce CbC reporting requirements as soon as possible.

Part B: The exchange of information framework

(a) Exchange of information framework

11. As of 31 May 2019, Kenya has no bilateral relationships in place for the exchange of CbC reports. It is recommended that Kenya take steps to have qualifying competent authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions and with which they have an international exchange of information agreement in effect that allows for the automatic exchange of tax information. It is however noted that Kenya will not be exchanging CbC reports in 2019.

(b) Content of information exchanged

12. Kenya does not have processes or written procedures in place that are intended to ensure that each of the mandatory fields of information required in the CbC reporting template are present in the information exchanged.

(c) Completeness of exchanges

13. Kenya does not have processes or written procedures in place that are intended to ensure that CbC reports are exchanged with all tax jurisdictions listed in Table 1 of a CbC report with which it should exchange information as per the relevant QCAA.

(d) Timeliness of exchanges

14. Kenya does not have processes or written 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 QCAs.

(e) Temporary suspension of exchange or termination of QCAA

15. Kenya does not have processes or written procedures in place that are intended to ensure that a temporary suspension of the exchange of information or termination of a relevant QCAA would be carried out only as per the conditions set out in the relevant QCAA.

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

16. Kenya does not have processes or written procedures in place that are intended to ensure that its Competent Authority consults with the other Competent Authority before making a determination of systemic failure or significant non-compliance with the terms of the relevant QCAA by that other Competent Authority.

(g) Format for information exchange

17. Kenya has not confirmed the format that will be used for the international exchange of CbC reports.

(h) Method for transmission

18. Kenya has not indicated that it uses the Common Transmission System, or any other mechanism, to exchange CbC reports.

Conclusion

19. It is recommended that Kenya take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites and with which Kenya has an international exchange of information agreement in effect that allows for the automatic exchange of tax information.

20. Further, it is recommended that Kenya take steps to implement processes or written procedures 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 ahead of its first exchanges of information. It is however noted that Kenya will not be exchanging CbC reports in 2019.

Part C: Appropriate use

21. Kenya does not yet have measures in place relating to appropriate use. No changes were identified in respect of appropriate use. The recommendation in the 2017/2018 peer review for Kenya to take steps to have measures in place relating to appropriate use ahead of the first exchanges of information remains in place. It is however noted that Kenya will not be exchanging CbC reports in 2019.

Conclusion

22. There is no change to the conclusion in relation to the appropriate use for Kenya since the previous peer review. The recommendation for Kenya to take steps to ensure that the appropriate use condition is met ahead of its first exchanges of information remains in place. It is however noted that Kenya will not be exchanging CbC reports in 2019.

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 Kenya take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible.
Part B	Exchange of information framework	It is recommended that Kenya take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisite and with which it has international agreement that allow the automatic exchange of information.
Part B	Exchange of information framework	It is recommended that Kenya take steps to implement the necessary processes or written procedures 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	It is recommended that Kenya take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.



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