

# Kenya

## Overview of CbC reporting requirements

First reporting fiscal year: Commencing on or after 1 January 2022

Consolidated group revenue threshold: KES 95 billion

Filing deadline: 12 months following the end of the reporting fiscal year

Local filing required: Yes

Surrogate parent entity filing permitted: Yes

First review of the domestic legal framework: 2022/2023

## Summary of recommendations

Area of implementation	Recommendations for improvement
Domestic legal and administrative framework	<p>It is recommended that Kenya amend the filing threshold or otherwise clarify that it is in line with the standard.</p> <p>It is recommended that Kenya take steps to amend legislation or otherwise clarify that an MNE Group should consider its requirement to file using the consolidated group revenue for its fiscal year immediately preceding a reporting fiscal year for comparison with the threshold.</p> <p>It is recommended that Kenya amend the definition of Ultimate Parent Entity or otherwise clarify the definition to be in line with the standard.</p> <p>It is recommended that Kenya publish the full content and format requirements of the CbC Report.</p> <p>It is recommended that Kenya takes steps to amend legislation or otherwise clarify that a locally filed CbC report should be filed within 12 months of the end of the reporting period.</p> <p>It is recommended that Kenya take steps to ensure that local filing only occurs in the circumstances permitted under the minimum standard.</p> <p>It is recommended that Kenya clarify that the annual consolidated group revenue threshold calculation rule applies in line with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Kenya.</p>
Exchange of information framework	<p>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.</p> <p>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.</p>
Appropriate use	<p>It is recommended that Kenya take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.</p>

## The domestic legal and administrative framework

Kenya's 2017/2018 peer review report included a recommendation to take steps to implement legislation to impose a CbC reporting filing requirement. Kenya has since introduced such a filing requirement and this recommendation is removed.<sup>1 2</sup>

A CbC reporting filing obligation applies in Kenya for fiscal years beginning on or after 1 January 2022 and filing is required 12 months after the reporting year end. Kenya has enforcement requirements to ensure compliance with rules on CbC reporting.

There are a number of areas where there are recommendations to improve the legislation.

### ***Filing Threshold***

Kenya's legislation specifies a filing threshold of KES 95 billion. The minimum standard requires a filing threshold of EUR 750 million or a near equivalent amount in domestic currency as of January 2015. The filing threshold specified in Kenya's legislation is not consistent with this. It is recommended that Kenya amend the filing threshold or otherwise clarify that it is in line with the standard.

### ***Reporting fiscal year***

Kenya's legislation does not specify that the threshold requirement refers to MNE Groups' consolidated group revenue of its immediately preceding fiscal year. It is recommended that Kenya takes steps to amend legislation or otherwise clarify that an MNE Group should consider its requirement to file using the consolidated group revenue of its fiscal year immediately preceding a reporting fiscal year for comparison with the threshold.

### ***The definition of Ultimate Parent Entity***

The definition in Kenya's legislation refers to an entity that is resident in Kenya for tax purposes, is not controlled by another entity, and owns or controls an MNE Group. The definition in Kenya's legislation does not adequately capture the requirement to prepare consolidated financial statements, as is required under the standard. Furthermore, the definition in Kenya's legislation also fails to cover circumstances where an entity owns directly or indirectly a sufficient interest in one or more other Constituent Entities such that it would be required to prepare Consolidated Financial Statements if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence (the "deemed listing provision"), which is required under the standard. Finally, the definition in Kenya's legislation does not extend to entities which are located in a jurisdiction other than Kenya. It is recommended that Kenya amend the definition of UPE or otherwise clarify the definition to be in line with the standard.

### ***Contents of the Country-by-Country report***

The information included in the legislation does not include all of the template of the Country-by-Country report and does not include any details of what should be included under each heading in the report. It is recommended that Kenya publish the full content and format requirements of the CbC Report.

### ***The local filing provision***

Kenya's legislation specifies a filing deadline within 12 months after the end of the reporting year for ultimate parent entities but does not include a filing deadline for local filing. It is recommended that Kenya takes steps to amend legislation or otherwise clarify that a locally filed CbC report should be filed within 12 months of the end of the reporting period.

The local filing requirement in Kenya's legislation applies even where a UPE located in a jurisdiction other than Kenya files a report in its jurisdiction of tax residence and that jurisdiction has a qualifying competent authority agreement with Kenya, and the competent authority of that jurisdiction has not notified Kenya of a systemic failure. This is a broader application of local filing than allowed by the standard.

Kenya has a legislative requirement which is in effect despite Kenya not yet meeting all of the consistency, confidentiality and appropriate use conditions. It is therefore recommended that Kenya take steps to ensure that local filing only occurs in the circumstances permitted under the minimum standard.

### **Currency Fluctuations**

Where an MNE Group draws up, or would draw up, its Consolidated Financial Statements in a currency other than that specified by Kenya, the reference to Kenya's threshold has the effect as if it were a reference to the equivalent in that currency at the average exchange rate for the accounting period. While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in Kenya, it may be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Kenya tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such a Group.

It is recommended that Kenya clarify that the annual consolidated group revenue threshold calculation rule applies in line with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than Kenya.

### **The exchange of information framework**

Kenya has no bilateral relationships in place for the exchange of CbC reports nor processes 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.

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. This recommendation remains in place since the 2017/2018 peer review.

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. This recommendation remains in place since the 2018/2019 peer review.

### **Appropriate use of CbC reports**

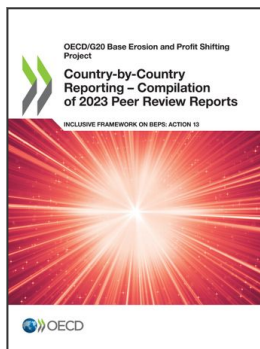
Kenya does not yet have controls in place to ensure the appropriate use of CbC reports.

It is recommended that Kenya take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. This recommendation remains in place since the 2017/2018 peer review.

### **Notes**

<sup>1</sup> <https://kra.go.ke/images/publications/Finance--Act-2022.pdf>.

<sup>2</sup> In June 2023, Kenya introduced legislative amendments. It has not been possible to carry out a review of the amendments for this peer review but a review will take place as part of the next peer review.



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