

Zambia

Overview of CbC reporting requirements

First reporting fiscal year: Ending on 31 December 2021

Consolidated group revenue threshold: EUR 750 million

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 domestic legal framework: 2021/2022

Summary of recommendations

Area of implementation	Recommendations for improvement
Domestic legal and administrative framework	<p>It is recommended that Zambia amend the definition of MNE Group or otherwise clarify the definition to be in line with the standard.</p> <p>It is recommended that Zambia 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 Zambia take steps to ensure that local filing only occurs in the circumstances permitted under the minimum standard.</p> <p>It is recommended that Zambia amend the definition of surrogate filing or otherwise clarify the definition to be in line with the standard.</p> <p>It is recommended that Zambia 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 Zambia.</p> <p>It is recommended that Zambia publish the full content and format requirements of the CbC Report.</p>
Exchange of information framework	<p>It is recommended that Zambia 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 Zambia has an international exchange of information agreement in effect that allows for the automatic exchange of tax information.</p> <p>It is recommended that Zambia 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 Zambia 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

Zambia's 2018/2019 peer review confirmed that Zambia has a legislative filing requirement in effect, but did not include a review of that legislation. Zambia's legislation has now been reviewed.

A legislative filing requirement is in effect which applies to all Ultimate Parent Entities of MNE Groups above a certain threshold and which required inclusion of all constituent entities.¹

A CbC reporting filing obligation applies in Zambia for fiscal years ending on or after 31 December 2021 and filing is required within 12 months after the reporting year end. Zambia 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.

The definition of MNE Group

The definition in Zambia's legislation says: "multi-national enterprise group" meaning a group of associated business entities established in two or more States that is not an excluded multi-national enterprise group and includes an enterprise that is resident for tax purposes in one State and is subject to tax with respect to the business carried out through a permanent establishment in another State.

The definition of MNE group is intended to include businesses which are subject to tax in different jurisdictions, by having entities which are tax resident in different jurisdictions, or through being taxable in a different jurisdiction through a permanent establishment. The legislative reference to businesses being established rather than being tax resident in different jurisdictions, plus the use of "AND including an entity taxed through a permanent establishment" could be read as only applying to groups that have business through permanent establishments, so describing a narrower group of MNEs than the standard intends. It is recommended that Zambia amend the definition of MNE Group or otherwise clarify the definition to be in line with the standard.

The definition of Ultimate Parent Entity

The definition in Zambia's legislation says: "the constituent entity directly or indirectly owns a sufficient interest in one or more of the constituent entities of the multi-national enterprise group and it is required to prepare consolidated financial statements under accounting principles generally applied..."

The intention of this definition is to describe the entity at the top of the group which is required to produce consolidated accounts because of the level of interest it owns in other entities in the group, directly or indirectly. The legislative definition has the word "and" where the model legislation has "such that" and so does not have the specification on level of interest and could be read to include any entity in the group which prepares consolidated accounts. It is recommended that Zambia amend the definition of Ultimate Parent Entity or otherwise clarify the definition to be in line with the standard.

The local filing provision

The local filing definition in Zambia's legislation applies to "A constituent entity which is not an ultimate parent entity of a multi-national enterprise group" and the legislative definition of multinational enterprise group does not specifically exclude groups which do not meet the threshold requirement. This can be read as requiring constituent entities of all multinational groups of any size to make a local filing if the conditions are met and is therefore too broad. It is recommended that Zambia amend the definition of MNE groups to specify that it does include excluded MNE groups, or to otherwise specify a threshold requirement for local filing.

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

The surrogate filing provision

The provision in Zambia's legislation relating to surrogate filing includes the condition that "the State of tax residence of the surrogate parent entity notifies the Commissioner-General of a system failure." This is incorrect. The requirement is that the jurisdiction of tax residence of the Surrogate Parent Entity has not notified a Systemic Failure. As written the legislation does not meet the requirement to dis-apply a local filing requirement where there is surrogate filing, except where a systemic failure has occurred and this will be very rare. It is recommended that Zambia amend the definition or otherwise clarify the definition to be in line with the 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 Zambia, the reference to Zambia'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 Zambia, 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 Zambian 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 Zambia 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 Zambia.

Contents of the Country-by-Country report

The information included in the legislative Annex 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 Zambia publish the full content and format requirements of the CbC Report.

The exchange of information framework

Zambia 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 Zambia 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 Zambia 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 2018/2019 peer review.

It is recommended that Zambia 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.

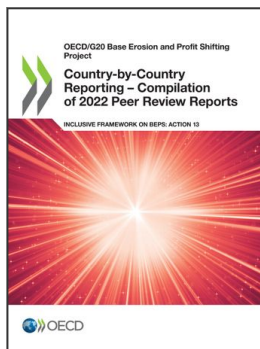
Appropriate use of CbC reports

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

It is recommended that Zambia 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 2018/2019 peer review.

Note

¹ <https://www.enotices.co.zm/download/statutory-instrument-no-117-of-2020-the-income-tax-transfer-pricing-amendment-regulations-2020-pdf/>.



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