

Malta

1. Malta was first reviewed during the 2017/2018 peer review. This report is supplementary to Malta's 2017/2018 peer review report (OECD, 2018^[1]). The first filing obligation for a CbC report in Malta commences in respect of fiscal years beginning on or after 1 January 2016.

Summary of key findings

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

Part A: The domestic legal and administrative framework

3. Malta has primary and secondary laws in place for implementing the BEPS Action 13 minimum standard¹ establishing the necessary requirements, including the filing and reporting obligations. Guidance has also been published.² Malta has provided an update with respect to the processes it has in place to ensure effective implementation.

(a) Parent entity filing obligation

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

(b) Scope and timing of parent entity filing

5. No changes were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

6. No changes were identified with respect to the limitation on local filing obligation.

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

7. No changes were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

8. Malta's 2017/2018 peer review included a general monitoring point concerning the fact that there was no specific process that would allow it to take appropriate measures in case Malta is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. Since the 2017/2018 peer review, Malta has provided updated information, explaining that, in such a situation, the Commissioner for Revenue will send an official notification to the Reporting Entity to request the correct/complete information. In the event that no reply is received to the Commissioner's request, not only would the Reporting Entity be liable to penalties, but there is also the possibility to initiate

criminal proceedings by making a formal request to the Commissioner of Police. In view of this update and specific process, the monitoring point is removed.

Conclusion

9. There is no change to the conclusion in relation to the domestic legal and administration framework for Malta since the previous peer review. Malta 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

10. As of 31 May 2019, Malta has 66 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, Malta 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.³ Regarding Malta's exchange of information framework, no inconsistencies with the terms of reference were identified.

(b) Content of information exchanged

11. Malta 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.

12. Peer input was received from one 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

13. Malta 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.

14. Peer input was received from one 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

15. Malta 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.

16. Peer input was received from one jurisdiction in relation to the completeness of exchanges. There are no concerns to be reported in respect of the timeliness of exchanges:⁴

(e) Temporary suspension of exchange or termination of QCAA

17. Malta 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.

18. Peer input was received from one 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

19. Malta 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.

20. Peer input was received from one 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

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

22. Peer input was received from one 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

23. Malta indicates that it uses the Common Transmission System to exchange CbC reports.⁵

24. Peer input was received from one jurisdiction in relation to the method for transmission. There are no concerns to be reported in respect of the method used for transmission.

Conclusion

25. Malta has in place the necessary 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.

Part C: Appropriate use

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

27. No information or peer input was received for the reviewed jurisdiction suggesting any issues with appropriate use. There are no concerns to be reported in respect of appropriate use.

Conclusion

28. Malta 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	-
Part C	Appropriate use	-

Notes

¹ Primary law consists of Articles 76 and 96 of the Income Tax Act: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8658 and Article 10A of the Income Tax Management Act: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8841. Secondary law consists of the “Cooperation With Other jurisdiction on Tax Matters Regulations”: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11696&l=1> as amended by means of Legal Notice 344 of 2017 entitled “Cooperation with Other Jurisdiction on Tax Matters (Amendment) Regulations, 2017”: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11696&l=1>.

² See guidance entitled “Guidelines for the implementation of the EU Council Directive 2016/881/EU of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC4) in Malta and the 2015 Final Report on Action 13 of the OECD/G20 Base Erosion and Profit Shifting Project” at https://cfr.gov.mt/en/inlandrevenue/itu/Documents/CbCR%20Guidelines_Version%204.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.

⁴ Delays due entirely to the fact that an exchange partner was not able to participate in the exchange of CbC reports are not considered to raise concerns with respect to the jurisdiction under review.

⁵ Countries exchanging under the EU Council Directive (2016/881/EU) use the Common Communication Network (CCN).



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