

OECD releases outcomes of third phase of peer reviews on BEPS Action 13

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Executive summary

On 24 September 2020, the Organisation for Economic Co-operation and Development (OECD) released the [compilation of the outcomes of the third phase of peer reviews](#) (the Compilation) of the minimum standard on Action 13 (*Transfer Pricing Documentation and Country-by-Country Reporting*) of the Base Erosion and Profit Shifting (BEPS) project. As Action 13 is a minimum standard, all members of the Inclusive Framework on BEPS have committed to implement it, and to be reviewed and monitored by their peers.

According to the executive summary accompanying the Compilation, over 90 jurisdictions have already introduced legislation to impose a filing obligation for Country-by-Country (CbC) Reporting (CbCR) on multinational enterprise (MNE) groups, covering almost all MNE groups with consolidated group revenue equal to or exceeding €750 million. Where legislation is in place, the implementation of CbCR has been found to be largely consistent with the Action 13 minimum standard. However, 41 jurisdictions have received a general recommendation to either put in place or finalize their domestic legal or administrative framework. Of the jurisdictions that have already introduced the legislation, 34 jurisdictions received one or more recommendations to make improvements to specific areas of their framework. Moreover, 76 jurisdictions have multilateral or bilateral competent authority agreements in place, which results in more than

2500 exchange relationships. In addition, 82 jurisdictions have provided detailed information about the appropriate use of CbC reports, enabling the Inclusive Framework to obtain sufficient assurance that measures are in place to ensure the appropriate use.

Further work will continue to monitor the implementation and operation of CbCR and to highlight progress made by jurisdictions to address the recommendations that have been made.

Also, the OECD has indicated that the 2020 review of the CbCR minimum standard, which was announced in 2015 at the presentation of the BEPS Final Reports, will be finalized before the end of the year. In the context of this review, members of the Inclusive Framework will assess whether the design and underlying conditions of the minimum standard should be adjusted.

Detailed discussion

Background

In October 2015, the OECD released the final reports on all 15 focus areas of the BEPS Action Plan.¹ Action 13 specifically relates to CbCR and established certain reporting requirements as a minimum standard, which is subject to peer review. On 1 February 2017, the OECD released terms of reference for the peer review of BEPS Action 13 on CbCR (Peer Review Document).² The terms of reference in the Peer Review Document focus on three key aspects of CbCR: (i) the domestic legal and administrative framework; (ii) the exchange of information framework; and (iii) the confidentiality and appropriate use of CbC reports.

The peer review process is a staged approach, which is intended to allow for the early detection of inconsistencies with the minimum standard as well as to provide the opportunity to take action to address inconsistencies. Each phase of the peer review focused on different key aspects of jurisdictions' implementation. During phase one of the peer review, the review focused on the domestic legal and administrative framework as well as certain aspects of confidentiality. During phase two, the review focused on the exchange of information framework and appropriate use. For the current phase three, the review covers all three key aspects of jurisdictions' implementation.

On 23 May 2018, the OECD released the first compilation of annual peer reviews, reflecting the review of 95 jurisdictions that provided legislation or information pertaining to the implementation of CbCR.³ On 3 September 2019, the OECD released the second compilation of annual peer reviews, covering a total of 116 jurisdictions.⁴

Annual peer review report on CbCR (Phase three - Compilation)

On 24 September 2020, the OECD released the third compilation of annual peer reviews and an accompanying [press release](#). The reviews generally reflect the status of implementation as of 31 March 2020, with the exception of the information on the exchange of CbC reports, which reflects the status as of 31 December 2019.

The Compilation covers the peer review of 131 jurisdictions participating in the Inclusive Framework.⁵ Some Inclusive Framework members⁶ were not included in the peer review, either because they joined after 1 December 2019 (at which point it was too late to incorporate them into the current peer review process) or because they opted out of the peer review in accordance with the peer review terms of reference. Jurisdictions opting out of the peer review are required to confirm that they do not have any resident entities that are the Ultimate Parent Entity of an MNE group with revenue above the consolidated revenue threshold, and that they will not require local filing of CbC reports. Each of the jurisdictions reviewed received its own individual report, which together make up the Compilation.

Part A: Domestic legal and administrative framework

The first part of each jurisdiction's report analyzes whether the jurisdiction has put in place a domestic legal and administrative framework to ensure CbCR by the required taxpayers to the tax administration, and, when applicable, whether the recommendations made in the first annual peer review have been addressed by the assessed jurisdiction or whether the recommendations remain in place because they have not yet been addressed. Part A covers: (i) the parent entity filing obligation; (ii) the scope and timing of the parent entity filing obligation; (iii) the limitation on the local filing obligation; (iv) the limitation on local filing in the case of surrogate filing; and (v) the effective implementation.

According to the executive summary accompanying the Compilation, over 90 jurisdictions have a domestic legal framework for CbCR in place, covering almost all MNE groups with consolidated group revenue at or above the threshold of €750 million. Several jurisdictions have final legislation approved that is awaiting official publication. According to the OECD press release, where legislation is in place, the implementation of CbCR has been found largely consistent with the Action 13 minimum standard.

Out of the 131 assessed jurisdictions,⁷ 41 jurisdictions received a general recommendation to put in place or finalize their domestic legal and administrative framework, and 34 jurisdictions received one or more recommendations for improvements to specific areas of their framework. This includes amending definitions in the legislation to ensure they are in line with the minimum standard, clarifying and amending the group revenue threshold, and limiting requirements for local filing of reports.

Part B: Exchange of information framework

The second part of each report addresses whether and to what extent jurisdictions have international exchange of information agreements in place that allow for the automatic exchange of CbC reports. This includes reviewing all aspects of exchange of information, including: (i) the exchange of information framework; (ii) the content of information exchanged; (iii) the completeness of exchanges; (iv) the timeliness of exchanges; (v) the process for temporary suspension of exchange or termination of qualifying competent authority agreement (QCAA); (vi) consultation with the other Competent Authority before determining systemic failure or significant non-compliance; (vii) the format for information exchange; and (viii) the method for transmission.

According to the Compilation, 76 jurisdictions have multilateral or bilateral competent authority agreements in place. As of August 2020, 88 jurisdictions⁸ have signed the CbC Multilateral Competent Authority Agreement (MCAA) and over 2500 bilateral exchange relationships have been activated. These include exchange relationships under the CbC MCAA, between European Union (EU) Member States under EU Council Directive 2016/881/EU and between signatories to bilateral competent authority agreements for exchanges under Double Tax Conventions or Tax Information Exchange Agreements.

The Compilation encourages jurisdictions that do not have effective agreements in place to take further steps to sign the CbC MCAA and/or activate the bilateral relationships under the CbC MCAA. Another option suggested in the Compilation for countries that have not signed the CbC MCAA is to continue to work actively toward signing bilateral competent authority agreements with jurisdictions in the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.

Of the 131 assessed jurisdictions, 58 jurisdictions⁹ met all the terms of reference regarding the exchange of information. The remaining 73 jurisdictions received one or more recommendations for improvements in specific areas. These recommendations include, for example, taking steps to have qualifying competent authority agreements in place with jurisdictions participating in the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions, and with which the assessed jurisdiction has an exchange of information agreement in effect that provides for the automatic exchange of tax information. The recommendations also include taking 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 the first actual exchanges of information.

Part C: Confidentiality and appropriate use

The third and final part of each report assesses whether jurisdictions have measures in place to ensure that CbC reports are kept confidential and are used appropriately. With respect to confidentiality, jurisdictions should: (i) have international exchange of information mechanisms that provide that any information received shall be treated as confidential; (ii) have in place and enforce legal protections of the confidentiality of the information contained in CbC reports that are received by way of local filing; (iii) have effective penalties for unauthorized disclosures or unauthorized use of confidential information; and in general, (iv) ensure confidentiality in practice.

With respect to appropriate use, the peer review process includes an assessment of whether jurisdictions have in place mechanisms to ensure that CbC reports that are received can only be used to assess high-level transfer pricing risks and other BEPS-related risks, as well as for economic and statistical analysis where appropriate, and that CbC reports cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence regarding the appropriateness of transfer prices or to make adjustments to the income of any taxpayer on the basis of an allocation formula.

According to the executive summary accompanying the Compilation, 82 jurisdictions have provided detailed information, enabling the Inclusive Framework to obtain sufficient assurance that measures are in place to ensure the appropriate use of CbC reports. Other jurisdictions either did not yet have measures in place relating to appropriate use, indicated that they are taking steps to have measures in place to ensure appropriate use of information, or did not provide information on this point. Moreover, 15 jurisdictions¹⁰ are non-reciprocal jurisdictions (i.e., they have committed to send CbC reports to their exchange partners but will not receive CbC reports submitted to the tax authorities in other jurisdictions and will not apply local filing). As such, for these 15 jurisdictions, there was no assessment done on their compliance with respect to Part C.

For the assessment of the confidentiality requirements, the Compilation notes that the reviews relied on the work and conclusions of the Global Forum on Transparency and Exchange of Information for Tax Purposes. The Global Forum has conducted preliminary expert assessments of confidentiality and data safeguards with respect to the standard on automatic exchange of information (AEOI). Of the 131 assessed jurisdictions, 78 have undergone an assessment by the Global Forum on confidentiality and data safeguards in the context of implementing the AEOI standard and did not receive any recommendation. In contrast, 10 jurisdictions are currently working on an action plan issued by the Global Forum as a consequence of its review. Because it contains non-public information on jurisdictions' internal systems and procedures, the outcomes of that work are not published, and no further information regarding the review of confidentiality is provided in the Compilation.

Other CbCR-related work

According to the press release accompanying the Compilation, CbC reports are central to several related projects, including the International Compliance Assurance Programme (ICAP)¹¹ pilot for the multilateral risk assessment of large MNEs, the Comparative Risk Assessment (CoRA) initiative to improve tax administrations' understanding of common international tax risk factors and consistency in the interpretation of potential risk indicators, and the Tax Risk Evaluation and Assessment Tool (TREAT) that is currently being developed by the OECD to help tax administrations use CbC reports to identify important indicators of potential tax risk.

In addition to these initiatives, the press release notes that the OECD is also advancing the work on the 2020 review of the CbCR minimum standard and will take into account the feedback received from the [public consultation](#) launched in February 2020¹² and the virtual meeting that was held in May 2020.¹³

Implications

The peer review process will continue to monitor the implementation and operation of CbCR and to report on progress made by jurisdictions to address recommendations that have been made.

The Compilation highlights the significant progress made with respect to implementation of CbCR requirements around the world and the increased sharing of tax and financial data among tax authorities as a result. Taxpayers should therefore expect that information provided to one tax authority through the filing of a CbC report will be shared with other relevant jurisdictions.

In addition, plans for future deployment of OECD risk assessment tools, together with the existing use of CbCR data analytics by many tax authorities, underscores the need for MNEs to be confident that their data governance approach is sufficient to meet both current and future demands.

Endnotes

1. See EY Global Tax Alert, [OECD releases final reports on BEPS Action Plan](#), dated 6 October 2015.
2. See EY Global Tax Alert, [OECD releases peer review documents on BEPS Action 5 on Harmful Tax Practices and on BEPS Action 13 on Country-by-Country Reporting](#), dated 6 February 2017.
3. See EY Global Tax Alert, [OECD releases first annual peer review report \(Phase 1\) on Action 13](#), dated 25 May 2018.
4. See EY Global Tax Alert, [OECD releases outcomes of the second phase of peer reviews on BEPS Action 13 and announces public consultation](#), dated 9 September 2019.
5. Andorra, Angola, Anguilla, Antigua and Barbuda, Argentina, Armenia, Aruba, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Belize, Benin, Bermuda, Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands, Brunei Darussalam, Bulgaria, Cabo Verde, Cameroon, Canada, Cayman Islands, Chile, China (People's Republic of), Colombia, Congo, Costa Rica, Cote d'Ivoire, Croatia, Curacao, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Egypt, Estonia, Eswatini (Kingdom of), Faroe Islands, Finland, France, Gabon, Georgia, Germany, Gibraltar, Greece, Greenland, Grenada, Guernsey, Haiti, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Jamaica, Japan, Jersey, Jordan, Kazakhstan, Kenya, Korea, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China), Malaysia, Maldives, Malta, Mauritius, Mexico, Monaco, Mongolia, Montserrat, Morocco, Namibia, Netherlands, New Zealand, Nigeria, North Macedonia (Republic of), Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovak Republic (Slovakia), Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turks and Caicos Islands, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Vietnam and Zambia.
6. Albania, Burkina Faso, Cook Islands, Honduras, Montenegro and, Saint Kitts and Nevis.
7. Morocco and Ukraine implemented legislation to meet the BEPS Action 13 minimum standard in 2020 and hence they could not be assessed in this review.
8. Andorra, Anguilla, Argentina, Aruba, Australia, Austria, Bahamas, Bahrain, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Bulgaria, Canada, Cayman Islands, Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Curacao, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Gabon, Georgia, Germany, Gibraltar, Greece, Guernsey, Haiti, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Macau (China), Malaysia, Malta, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turks and Caicos Islands, United Arab Emirates, United Kingdom and Uruguay.
9. Anguilla, Argentina, Australia, Austria, Belgium, Bermuda, Brazil, Bulgaria, Canada, Cayman Islands, Colombia, Croatia, Curaçao, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Isle of Man, Italy, Japan, Jersey, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Qatar, Russia, San Marino, Saudi Arabia, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, United Kingdom, Uruguay.
10. Anguilla, Bahamas, Bahrain, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Costa Rica, Curacao, Nigeria, Peru, Qatar, Romania, Turks and Caicos Islands and the United Arab Emirates.
11. See EY Global Tax Alerts, [OECD launches International Compliance Assurance Programme pilot](#), dated 26 January 2018 and [OECD's Forum on Tax Administration announces International Compliance Assurance Programme \(ICAP\) 2.0 and publishes new Pilot Handbook](#), dated 4 April 2019.
12. See EY Global Tax Alert, [OECD releases Consultation Document on the review of Country-by-Country Reporting](#), dated 11 February 2020.
13. See EY Global Tax Alert, [OECD holds public consultation on the 2020 review of country-by-country reporting](#), dated 15 May 2020.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Belastingadviseurs LLP, Rotterdam

- ▶ Ronald van den Brekel ronald.van.den.brekel@nl.ey.com
- ▶ Marlies de Ruiter marlies.de.ruiter@nl.ey.com
- ▶ Maikel Evers maikel.evers@nl.ey.com

Ernst & Young Belastingadviseurs LLP, Amsterdam

- ▶ David Corredor-Velásquez david.corredor.velasquez@nl.ey.com
- ▶ Konstantina Tsilimigka konstantina.tsilimigka@nl.ey.com
- ▶ Roberto Aviles Gutierrez roberto.aviles.gutierrez@nl.ey.com

Ernst & Young LLP (United States), Global Tax Desk Network, New York

- ▶ Jose A. (Jano) Bustos joseantonio.bustos@ey.com

Ernst & Young LLP (United States), Washington, DC

- ▶ Barbara M. Angus barbara.angus@ey.com
- ▶ Arlene S. Fitzpatrick arlene.fitzpatrick@ey.com

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EYG no. 006591-20Gbl

1508-1600216 NY
ED None

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