

OECD releases new methodology for peer reviews of BEPS Action 13 on Country-by-Country Reporting

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Executive summary

On 29 October 2020, the Organisation for Economic Co-operation and Development (OECD) released an updated version of the [peer review documents](#) on the Base Erosion and Profit Shifting (BEPS) Action 13 minimum standard on Country-by-Country (CbC) Reporting (CbCR), including a revised methodology.

The purpose of the peer reviews is to ensure the consistent and effective implementation of the CbCR minimum standard. In October 2019, the Inclusive Framework on BEPS (the Inclusive Framework) extended the mandate for these peer reviews beyond the original 2020 date (see the OECD [press release](#)). The new peer review documents form the basis on which the continuing BEPS Action 13 peer review processes will be undertaken.

The updated peer review documents include the agreed terms of reference containing the evaluation criteria for the minimum standard and the assessment methodology for the peer review process. With respect to the terms of reference, there has been no change to the ones agreed by the Inclusive Framework in 2017. In contrast, the peer review documents contain a revised methodology that replaces the one agreed by the Inclusive Framework in 2017, which expired with the completion of the third annual peer review in September 2020.

The peer review is a separate process following the 2020 review to evaluate whether modifications to the CbCR minimum standard should be made. After the release in 2021 of the report on the 2020 review findings and any implications for the CbCR minimum standard, the Inclusive Framework will next consider whether any further changes to the methodology are needed and, if so, the timing of such changes.

Detailed discussion

Background

In October 2015, the OECD released the final reports on all 15 focus areas of the BEPS Action Plan. The recommendations made in the reports range from new minimum standards to reinforced international standards, common approaches to facilitate the convergence of national practices, and guidance drawing on best practices.

Minimum standards are the BEPS recommendations that all members of the Inclusive Framework are committed to implement. These are some of the recommendations included in Action 5 on harmful tax practices, Action 6 on treaty abuse, Action 13 on transfer pricing documentation and CbCR and Action 14 on dispute resolution.

The minimum standards are subject to a peer review process. The mechanics of the peer review process were not included as part of the final reports on these Actions. Instead, the OECD indicated at the time of release of the BEPS reports that it would, at a later stage, issue peer review documents on these Actions providing the terms of reference and the methodology to conduct the peer reviews at a later date.

On 1 February 2017, the OECD released the first peer review documents on BEPS Action 13.¹ According to the methodology included in the peer review documents, the peer review follows a staged approach. The peer reviews consist of three phases structured into annual reviews, starting respectively in 2017, 2018, and 2019. Each year's review process culminates in the production of an annual consolidated report on the outcomes of the peer reviews.

The OECD has already released the first,² second,³ and third⁴ compilation of annual peer reviews of the minimum standard on BEPS Action 13. As indicated in the OECD press release in October 2019, the Inclusive Framework extended the mandate for these peer reviews beyond the original 2020 date.

Action 13 peer review documents

The peer review documents on Action 13, which reflect the approach agreed by the Inclusive Framework for reviewing compliance with the CbCR minimum standard from 2020 onwards, contain two sections:

- (i) The *terms of reference*, which are unchanged from the original mandate in 2017, and which set out the criteria for assessing the implementation of the minimum standard.
- (ii) The *methodology* which sets out the procedural mechanism by which jurisdictions will complete the peer reviews from 2020 onwards. This includes the process for collecting the relevant data, the preparation and approval of reports, the outputs of the review and the follow-up process. The methodology contemplates collecting data relevant to the peer review by using standardized questionnaires that are sent to the reviewed jurisdiction as well as peers (i.e., the other members of the Inclusive Framework).

The revised methodology replaces the one agreed by the Inclusive Framework in 2017, which expired with the completion of the third annual peer review in September 2020. An annual peer review process will be applied to all members of the Inclusive Framework and non-member jurisdictions relevant to the work (i.e., any non-Inclusive Framework member jurisdiction with a CbCR requirement that is considered relevant to Inclusive Framework member jurisdictions by the CbCR Group,⁵ which includes the Ad Hoc Joint Working Party 6⁶ and the Working Party 10 sub-group⁷).

To collect data relevant to the peer review each year, jurisdictions should provide responses in sufficient detail through the self-assessment questionnaire included in the peer review document. The questionnaire is subject to two rounds of approvals by the CbCR Group. The questionnaire covers each aspect of the terms of reference and some statistical information (e.g., how many CbC reports have been filed in the jurisdiction, and how many CbC reports have been sent to other jurisdictions). It also includes one optional question on the Master file and Local file requirements that a jurisdiction has in place, which is used to explain a country's implementation of Action 13.⁸ All responses will be available to the members of the Inclusive Framework. The responses will be confidential and for official use only. These documents will not be made publicly available.

Each year's peer review process will culminate in the production of a report on the status of the implementation of CbCR, which will cover all key aspects of the BEPS Action 13 minimum standard. The annual report will contain two parts. First, the introduction and executive summary, which will explain the background of the peer review and provide an overview of the progress made by Inclusive Framework members in implementing CbCR in accordance with the items of the terms of reference. Second, with respect to each member of the Inclusive Framework and jurisdiction of relevance, the annual report will contain a short section on that jurisdiction's implementation of the CbCR standard. The report will include proposed recommendations for addressing any shortcomings for each jurisdiction, if necessary. There will be no rating of compliance in the peer review. Further, the peer review methodology provides that the annual report will remain confidential but can be made public if the Inclusive Framework decides to declassify it.

Next steps

The first peer review based on this revised methodology began in September 2020 and will be submitted to the Inclusive Framework for approval by no later than September 2021.

The wider review of the BEPS Action 13 minimum standard (the 2020 review) is ongoing and is a separate project from the peer review process. Through the 2020 review, the Inclusive Framework will assess whether modifications will be made to the content and requirements contained in the Action 13 annual report. The outcomes of this wider 2020 review are scheduled to be released in 2021. Once this review is completed, the Inclusive Framework will consider whether any further changes to the peer review methodology are needed and, if so, the timing of such changes.

Implications

The purpose of the peer reviews is to ensure the effective implementation by the countries that are members of the Inclusive Framework of the agreed standards on CbCR. The outcome of the peer reviews may lead to additional technical guidance or further changes to be implemented by jurisdictions. It will be important for taxpayers to stay abreast of any additional changes.

Endnotes

1. 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.
2. See EY Global Tax Alert, [OECD releases first annual peer review report \(Phase 1\) on Action 13](#), dated 29 May 2018.
3. 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.
4. See EY Global Tax Alert, [OECD releases outcomes of third phase of peer reviews on BEPS Action 13](#), dated 29 September 2020.
5. This could include, for example: (i) a non-Inclusive Framework member jurisdiction which has a local filing requirement that may apply to constituent entities of an MNE group whose UPE is resident in an Inclusive Framework member jurisdiction; or (ii) a non-Inclusive Framework member jurisdiction which has, or wishes to enter into, a qualifying competent authority agreement with an Inclusive Framework member jurisdiction.
6. Group in charge on the Taxation of Multinational Enterprises.
7. Group in charge of Exchange of Information and Tax Compliance.
8. Only the CbC report is a minimum standard under Action 13. The Master file and Local file are not a minimum standard.

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