



# **BEPS Action 13 on Country-by-Country Reporting**

## **PEER REVIEW DOCUMENTS**

October 2020



OECD/G20 Base Erosion and Profit Shifting Project

# **BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents**

October 2020



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# Abbreviations and acronyms

<b>APA</b>	Advance pricing arrangement
<b>BEPS</b>	Base erosion and profit shifting
<b>CbC</b>	Country-by-Country
<b>CFA</b>	Committee on Fiscal Affairs
<b>G20</b>	Group of twenty
<b>MCAA</b>	Multilateral component authority agreement
<b>MNE</b>	Multinational enterprise
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>XML</b>	Extensible markup language



# Summary

The Action Plan on Base Erosion and Profit Shifting (“BEPS Action Plan”) identified 15 actions to address BEPS in a comprehensive manner. In October 2015, the G20 Finance Ministers endorsed the BEPS package which includes the report on Action 13: Transfer Pricing Documentation and Country-by-Country Reporting (“the 2015 Action 13 Report”, OECD (2015)).

The Country-by-Country (CbC) reporting requirements contained in the 2015 Action 13 Report, OECD (2015), form one of the four BEPS minimum standards. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the Inclusive Framework on BEPS commit to implementing the Action 13 minimum standard and to participating in the peer review, on an equal footing.

The purpose of a peer review is to ensure the effective and consistent implementation of an agreed standard and to recognise progress made by jurisdictions in this regard. Peer reviews should be conducted in a manner that is clear; targets the core elements of the standard and areas of risk; ensures that jurisdictions are treated fairly and equally; and is resource efficient.

The peer review is a review of the legal and administrative framework put in place by a jurisdiction to implement the CbC reporting standard. This peer review is a separate exercise to the 2020 review to evaluate whether modifications to the CbC reporting standard should be made.

The peer review will evaluate the Inclusive Framework member’s implementation of the standard against an agreed set of criteria. These criteria are set out in terms of reference, which include each of the elements that a jurisdiction needs to demonstrate it has fulfilled in order to show proper implementation of the standard. The Action 13 Report, OECD (2015), recommended that the first CbC Reports be required to be filed for fiscal years beginning on or after 1 January 2016. It was however acknowledged that some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to the law. In this respect, the peer review will take account of the specific timeline followed by certain jurisdictions, and the review will focus on the efforts taken by these jurisdictions in order to meet their commitment to implement the minimum standard.

The manner in which the peer review is undertaken is set out in an agreed methodology. The methodology sets out the procedural mechanisms by which jurisdictions will complete the peer review, including the process for collecting the relevant data, the preparation and approval of reports, the outputs of the review and the follow up process.

The terms of reference and methodology do not alter the Action 13 minimum standard. Any terms used in the terms of reference or methodology take their meaning from the language and context of the 2015 Action 13 Report, OECD (2015), and the references therein.

The peer review will be undertaken by an Ad Hoc Joint Working Party 6 – Working Party 10 sub-group (hereafter referred to as the “CbC Reporting Group”).

## Notes

1. The peer review applies to reviews conducted in the context of the Inclusive Framework for BEPS Implementation. The modalities for reviews of jurisdictions of relevance, which may be identified in the future and which have not joined the Inclusive Framework, will be agreed in due course.

# Approach to the peer review of Action 13 – CbC Reporting

This document contains the key documents to be used for the peer review, which reflect the agreed approach: (1) the terms of reference and (2) the methodology for the conduct of peer reviews of the Action 13 minimum standard.

The terms of reference focus on the following three key aspects of the CbC reporting standard that a jurisdiction must meet:<sup>1</sup>

- A. The domestic legal and administrative framework<sup>2</sup>
- B. The exchange of information framework; and
- C. The confidentiality and appropriate use of CbC reports.

A consolidated report on the outcomes of the peer reviews will be submitted to the Inclusive Framework on BEPS on an annual basis, with more frequent reporting including requests for guidance and decision as and when needed.

## Notes

1. In the course of conducting the peer review, information will also be sought for monitoring purposes as to the implementation of the other transfer pricing documentation set out in the Action 13 Report, OECD (2015), being the Master File and Local File or equivalent. This is not part of the minimum standard and will not be considered in the peer review on CbC reporting.
2. This includes legislation, regulations and other guidance and the administrative and regulatory framework.



# Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on country-by-country reporting

## Background - Summary of the Action 13 minimum standard

1. The objective of the CbC report is to provide tax administrations with a high level overview of the operations and tax risk profile of the largest multinational enterprise groups ("MNE" Groups). CbC reporting applies to MNE Groups with annual consolidated group revenue of EUR 750 million or more (or near equivalent in local currency) in the immediately preceding fiscal year. The CbC report is prepared on an annual basis, and includes information broken down for each jurisdiction in which the MNE Group operates. This includes the amount of revenue from unrelated parties and related parties, profit or loss before income tax, income tax paid and accrued, stated capital, accumulated earnings, number of employees and tangible assets, as well as a list of every entity in the group, its jurisdiction of tax residence and the nature of its business, and a section for additional explanatory information. In order to ensure consistency in the implementation of CbC reporting across a large number of jurisdictions, the Action 13 Report contains a standard template in accordance with which the CbC report must be prepared.

2. The framework for CbC reporting will generally operate as follows: the Ultimate Parent Entity of the MNE Group will prepare and file its CbC report with the tax administration in its jurisdiction of tax residence. That tax administration will automatically exchange the CbC report with the tax administrations in the jurisdictions listed in the CbC report as being a place in which the MNE Group has a Constituent Entity resident for tax purposes. This exchange is carried out subject to the terms of an International Agreement (such as the multilateral Convention on Mutual Administrative Assistance in Tax Matters or a Double Tax Convention or a Tax Information Exchange Agreement) permitting automatic exchange of information, as well as a Qualifying Competent Authority Agreement which sets out the operational details of the exchange of CbC reports. Other filing mechanisms, known as surrogate parent filing and local filing, can be used in specific cases as an alternative to this general mechanism.

3. The Action 13 Report and the relevant International Agreements and Qualifying Competent Authority Agreements set out the necessary safeguards for the international exchange of CbC reports. In addition to confidentiality obligations that apply to any exchange of information under an International Agreement, there are important provisions relating to the permitted use of the CbC reports. The standard permits the use of CbC reports for assessing high-level transfer pricing risk, for assessing other BEPS-related risks, and, where appropriate, for economic and statistical analysis. The standard requires that no tax administration will use information in the CbC reports as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and full comparability

analysis. The information in a CbC report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate, and should not be used by tax administrations to propose transfer pricing adjustments based on a global formulary apportionment of income. If a jurisdiction does make such an adjustment, it commits that the jurisdiction's competent authority will promptly concede the adjustment in any relevant competent authority proceeding.

4. The Action 13 Report recommended that jurisdictions introduce CbC reporting with respect to fiscal years beginning on or after 1 January 2016, subject to the time necessary to complete domestic legislative processes, that CbC reports be filed within 12 months of the end of the MNE Group's fiscal year, and that CbC reports be exchanged within 15 months of the end of the MNE Group's fiscal year (18 months for the first reporting period).

5. The Action 13 Report, however, acknowledged that some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to the law. Each member of the Inclusive Framework will be included in the peer review for each year, providing an opportunity to report on the progress in implementing CbC reporting.<sup>1</sup>

## Terms of Reference

6. These terms of reference break down the key components of the standard into specific criteria, focused around three key elements:

- A. The domestic legal and administrative framework
- B. The exchange of information framework
- C. The confidentiality and appropriate use of CbC reports

7. Each Inclusive Framework member jurisdiction will be assessed against these terms of reference. Defined terms used throughout this document take their meaning from the 2015 Action 13 Report (OECD, 2015), including the model legislation it contains and issued Guidance on the Implementation of CbC Reporting. For convenience, a glossary of certain key terms is included in section D of these terms of reference.

### ***A. The domestic legal and administrative framework***

8. Jurisdictions should put in place the domestic legal and administrative framework to ensure CbC reporting by the relevant taxpayers to the tax administration. This requires the following:

- a. **Parent entity filing obligation.** Introducing a CbC report filing obligation on Ultimate Parent Entities:
  - i. which applies to an entity which is resident in its jurisdiction and which is the Ultimate Parent Entity of an MNE Group;
  - ii. which applies to MNE Groups with annual consolidated group revenue in the immediately preceding fiscal year of 750 million Euro or more (or a near equivalent amount in domestic currency as of January 2015);
  - iii. whereby the Ultimate Parent Entity is required to include in the CbC report any Constituent Entity that is (i) any separate business unit of the MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of the MNE Group were traded on a public securities exchange, (ii) any such business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size and materiality grounds, and (iii) any permanent establishment of any separate business unit of the MNE Group included in

- (i) or (ii) provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;
- iv. which would not exclude an entity from CbC reporting other than as permitted by the 2015 Action 13 Report (OECD, 2015).
- b. **Scope and timing of parent entity filing.** Providing that the filing of a CbC report by an Ultimate Parent Entity (or, if applicable, by a Surrogate Parent Entity) must be in accordance with the following:
  - i. reporting commences from a specific fiscal year;<sup>2</sup>
  - ii. the CbC report includes all of, and only, the information as contained in the CbC report template in the Action 13 Report<sup>3</sup> (OECD, 2015) with regard to each jurisdiction in which the MNE Group operates;
  - iii. the CbC report is required to be filed no later than 12 months after the last day of the reporting Fiscal Year of the MNE Group;
  - iv. where rules or guidance are issued on other aspects of filing requirements (e.g. details on source of data, currency issues, definitions of information to be reported), ensuring that they are not inconsistent with, and do not circumvent, the minimum standard.
- c. **Limitation on local filing obligation.**<sup>4</sup> If local filing requirements have been introduced, that such requirements apply only as follows:
  - i. whereby local filing applies to a Constituent Entity resident for tax purposes in the given jurisdiction;
  - ii. that the content of the CbC report is not required to contain more than that required of an Ultimate Parent Entity;
  - iii. that even if the conditions for local filing in (iv) have otherwise been met, no local filing of a CbC report can be required by the jurisdiction unless it has met the requirements of confidentiality, consistency and appropriate use;<sup>5</sup>
  - iv. that no local filing of a CbC report relating to a particular fiscal year can be required unless one or more of the following conditions have been met with respect to that fiscal year:
    - v. the Ultimate Parent Entity of the MNE Group is not obligated to file a Country-by-Country Report in its jurisdiction of tax residence; or
    - vi. the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a party by the time for filing the Country-by-Country Report;<sup>6</sup> or
    - vii. there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified to the Constituent Entity by its tax administration;
    - viii. if there is more than one Constituent Entity of the same MNE Group that is resident for tax purposes in the jurisdiction, an MNE Group is allowed to designate one Constituent Entity to file the CbC report which would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the given jurisdiction.
- d. **Limitation on local filing in case of surrogate filing.**<sup>7</sup> If local filing requirements have been introduced, local filing will not be required when there is surrogate filing<sup>8</sup> in another jurisdiction by an MNE Group, to the extent that the following conditions are met with respect to that fiscal year:
  - i. the jurisdiction of the Surrogate Parent Entity requires filing of CbC reports that include all of, and only the information as contained in the CbC report template in the Action 13 Report (OECD, 2015);<sup>9</sup>

- ii. there is a Qualifying Competent Authority Agreement in effect with the jurisdiction of tax residence of the Surrogate Parent Entity by the filing deadline of the CbC report;
  - iii. the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the jurisdiction otherwise imposing local filing of any Systemic Failure;
  - iv. the CbC report is exchanged by the jurisdiction of the Surrogate Parent Entity;
  - v. the jurisdiction of the Surrogate Parent Entity has been notified by the Constituent Entity resident for tax purposes that it is the Surrogate Parent Entity, by a certain date (if such notifications are required);
  - vi. a notification is received from the Constituent Entity resident for tax purposes in the jurisdiction indicating the identity and tax residence of the Reporting Entity, by a certain date (if such notifications are required).
- e. **Effective implementation.** Providing for enforcement provisions and monitoring relating to CbC reporting's effective implementation:<sup>10</sup>
- i. having mechanisms (such as notifications and penalties) to enforce compliance by all Ultimate Parent Entities and Surrogate Parent Entities with their filing obligations;
  - ii. applying the above mechanisms effectively;
  - iii. determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed a CbC report, and in the case of local filing, determining the number of Constituent Entities filing CbC reports.

## ***B. The exchange of information framework***

9. The peer review will consider whether and to what extent jurisdictions have international exchange of information agreements that allow automatic exchange of information. Jurisdictions should exchange the CbC reports submitted to them by the Ultimate Parent Entity or Surrogate Parent Entity with certain other tax administrations. Jurisdictions should:

- a. Within the context of the international exchange of information agreements that allow automatic exchange of information,<sup>11</sup> have Qualifying Competent Authority Agreements that are in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use prerequisites that underpin the Action 13 minimum standard;
- b. Ensure that each of the mandatory fields of information required in the template contained in Annex III to the Transfer Pricing Guidelines Chapter V Transfer Pricing Documentation – Country-by-Country Report as contained in the 2015 Action 13 Report (OECD, 2015) are present in the information exchanged;<sup>12</sup>
- c. With respect to each CbC report, ensure that the CbC reports are exchanged with all tax jurisdictions listed in Table 1 of the CbC reporting template, provided there is an International Agreement and Qualifying Competent Authority Agreement in place with such jurisdictions;
- d. Ensure that the information to be exchanged is transmitted to the relevant jurisdictions on an annual basis in accordance with the timelines provided for in the relevant Qualifying Competent Authority Agreements;<sup>13</sup>
- e. Ensure that a temporary suspension of exchange of information or termination of a Qualifying Competent Authority Agreement would be carried out only as per the conditions set out in such agreement;
- f. Ensure that their Competent Authority consults with the other Competent Authority before making a determination of Systemic Failure or significant non-compliance by that other Competent Authority;

- g. Ensure that the format used for the information to be exchanged complies with the OECD XML Schema and the information is provided in accordance with the OECD XML Schema User Guide;
- h. Ensure that an appropriate encryption method and method for electronic data transmission are in place.

### **C. Confidentiality and appropriate use of CbC reports**

10. Jurisdictions should ensure that CbC reports are kept confidential and used appropriately. This requires the following:

11. With respect to confidentiality, jurisdictions should:

- a. Have international exchange of information mechanisms which provide that any information received shall be treated as confidential and, unless otherwise agreed by the jurisdictions concerned, may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information clause. Such persons or authorities should use the information only for such purposes unless otherwise agreed between the parties and in accordance with their respective laws;
- b. Have the necessary domestic rules or procedures to give effect to the restrictions contained in the International Agreement and related Qualifying Competent Authority Agreement;
- c. Have in place and enforce legal protections of the confidentiality of the information contained in CbC reports which are received by way of local filing, which preserve the confidentiality of the CbC report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD, 2011), a Tax Information Exchange Agreement or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes;
- d. Have effective penalties for unauthorised disclosures or unauthorised use of confidential information;
- e. Ensure confidentiality in practice, for instance having in place a review and supervision mechanism to identify and resolve any breach of confidentiality;
- f. Respect the terms of the International Agreement and related Qualifying Competent Authority Agreement, including the limitation on use of information received for taxable periods covered by the agreement.

12. With respect to appropriate use:

- a. Jurisdictions should have in place mechanisms (such as legal or administrative measures) to ensure that CbC reports which are received through exchange of information or by way of local filing:
  - iv. can be used only to assess high-level transfer pricing risks and other BEPS-related risks and, where appropriate, for economic and statistical analysis;
  - v. cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis;
  - vi. are not used on their own as conclusive evidence that transfer prices are or are not appropriate;

- vii. are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income).
- b. Where an adjustment is made in contravention of the above conditions, that jurisdiction making such an adjustment will promptly concede such adjustment in any competent authority proceedings.<sup>14</sup>
- 13. Jurisdictions should have in place procedures or mechanisms to ensure that a consultation process takes place between Competent Authorities in cases where an adjustment of the taxable income of a Constituent Entity, as a result of further enquiries based on the data in the CbC report, leads to undesirable economic outcomes.<sup>15</sup>

#### **D. Defined terms**

14. The following defined terms used throughout this document take their meaning from the model legislation contained in the 2015 Action 13 Report (OECD, 2015) (and the CbC reporting Multilateral Competent Authority Agreement (MCAA) where relevant):

15. “MNE Group” means any Group that (i) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and (ii) is not an Excluded MNE Group.

16. “Excluded MNE Group” means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than 750 million Euro (or an amount in local currency approximately equivalent to 750 million Euro as of January 2015) during the Fiscal Year immediately preceding the reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year.

17. “Reporting Entity” means the Constituent Entity that is required to file a country-by-report conforming to the requirements in Article 4 in its jurisdiction of tax residence on behalf of the MNE Group. The Reporting Entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or any entity described in paragraph 2 of Article 2 of the model legislation.

18. “Ultimate Parent Entity” means a Constituent Entity of an MNE Group that meets the following criteria:

- viii. it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence<sup>16</sup>; and
- ix. there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in subsection (i) above in the first mentioned Constituent Entity.

19. “Qualifying Competent Authority Agreement” means an agreement (i) that is between authorised representatives of those jurisdictions that are parties to an International Agreement and (ii) that requires the automatic exchange of Country-by-Country Reports between the party jurisdictions.

20. “Surrogate Parent Entity” means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the Country-by-Country Report in that Constituent Entity’s jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in subsection (ii) of paragraph 2 of Article 2 of the model legislation applies.

21. “Systemic Failure” with respect to a jurisdiction means that a jurisdiction has a Qualifying Competent Authority Agreement in effect with another jurisdiction, but has suspended automatic exchange

(for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to that other jurisdiction Country-by-Country Reports in its possession of MNE Groups that have Constituent Entities in that other jurisdiction.

## Notes

1. It is recognised that developing countries may face capacity challenges in implementing CbC reporting. The G20 has asked that the OECD take into account those capacity challenges in the timelines for implementation of the BEPS package, and this has been done by the Inclusive Framework in adjusting the Action 5 timelines and allowing for the deferral of the Action 14 peer reviews. Many developing countries are interested in receiving CbC reports, and as such will introduce CbC reporting obligations even if they do not have any MNE Groups headquartered in their jurisdiction that would be subject to CbC reporting. This is because introducing domestic legislation for CbC reporting is a precondition in order to receive CbC reports. However, it is possible that there are developing countries that do not have any MNE Groups headquartered in their jurisdiction that would be subject to CbC reporting, and that are not yet ready to receive CbC reports. In such cases, rather than find such developing countries to have failed to implement CbC reporting, the peer review will instead require a certification process whereby the jurisdiction could confirm that there are no MNE Groups within scope that are headquartered in the country and documenting how that fact is known for the year in question. This would be confirmed for each year. Where this certification is made, such countries would therefore not be subject to further peer review for the year in question.
2. The minimum standard recommends that the first CbC reports be required to be filed for MNE fiscal years on or after 1 January 2016. However, it is acknowledged that some jurisdictions may need time to follow their particular domestic legislative process and they may therefore introduce a later start date.
3. See Annex III to Chapter V Transfer Pricing Documentation – Country-by-Country Report. (OECD, 2015).
4. A “local filing” obligation means an obligation to file or otherwise make available a CbC report imposed on a Constituent Entity other than the Ultimate Parent Entity of an MNE Group. Local filing is not required to be introduced in order to meet the minimum standard and the absence of local filing requirements will not affect the outcome of the peer review on CbC reporting.
5. See Paragraph 60 of the Action 13 Report (OECD, 2015).
6. It is noted that Paragraph 60 of the Action 13 Report (OECD, 2015) does not allow this condition to be invoked by the given jurisdiction in the circumstance where it is not willing to enter into a Qualifying Competent Authority Agreement with the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes (i.e., in the context of the MCAA it does not designate such jurisdiction as an intended exchange partner), despite the fact that this latter jurisdiction meets the requirements of confidentiality, consistency and appropriate use.
7. “Surrogate filing” means filing for a particular Fiscal Year by a Surrogate Parent Entity of a CbC report conforming to the requirements in the jurisdiction of residence of the Surrogate Parent Entity for filing CbC reports, with the tax administration of this jurisdiction on or before the date required by this jurisdiction for the filing of CbC reports.

8. Including parent surrogate filing (or “voluntary filing”) as per the OECD Guidance on the Implementation of Country-by-Country Reporting on 2015 BEPS Action 13 (OECD, 2015) issued in June 2016, which may apply for a transitional period.
9. See Annex III to the Transfer Pricing Guidelines Chapter V Transfer Pricing Documentation – Country-by-Country Report.
10. Jurisdictions may use a variety of different mechanisms to ensure effective implementation of CbC reporting obligations. The terms of reference require that there be one or more mechanisms in place and that such mechanism(s) be effective in practice. The terms of reference do not prescribe that a particular mechanism must be used to meet the minimum standard.
11. It is acknowledged that jurisdictions may not have exchange of information instruments in place with all members of the Inclusive Framework. Jurisdictions are encouraged to expand the coverage of their international agreements for exchange of information. However, as this can take time, for the purposes of the peer reviews, jurisdictions will be assessed on their compliance with the minimum standard in respect of the exchange of information network in effect for the year of the particular annual review.
12. The template is also contained in the MCAA.
13. Although jurisdictions which would exchange information on CbC reports may set specific dates, it is expected that there would at least be an annual exchange of information in order to meet the policy intention of the minimum standard. For exchanges of information under the CbC Multilateral Competent Authority Agreement (MCAA), the following timelines apply:
  - (i) For the first exchange of CbC reports, no later than 18 months after the last day of the fiscal year of the MNE Group
  - (ii) For subsequent exchanges, no later than 15 months after the last day of the fiscal year of the MNE Group.
14. A separate peer review of mutual agreement procedures is being carried out in connection with the BEPS Action 14 Report (*Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD, 2015). The peer review of CbC reporting is separate from the Action 14 peer review.
15. See footnote 1 to paragraph 59 of the 2015 Action 13 Report (OECD, 2015).
16. Where a partnership is the Ultimate Parent Entity, for the purpose of determining where it is required to file the CbC report in its capacity as the Ultimate Parent Entity, the jurisdiction under whose laws the partnership is formed / organised will govern if there is no jurisdiction of tax residence. See OECD Guidance on the Implementation of Country-by-Country Reporting on BEPS Action 13 issued in June 2016.

# Methodology for the conduct of peer reviews of the Action 13 minimum standard on country-by-country reporting

## Introduction and scope

22. This methodology sets out the process for undertaking the peer reviews of jurisdictions' compliance with the Action 13 minimum standard on Country-by-Country (CbC) reporting. It sets out the scope, the information that will be used to conduct the reviews, the timelines and procedures, outline of the peer review reports, the process for discussion and approval of reviews, amendments and interpretation, and the confidentiality of peer review documents. This methodology replaces one agreed by the Inclusive Framework on BEPS (the Inclusive Framework) in 2017, which expired with the completion of the third annual peer review in September 2020. There has been no change to the terms of reference agreed by the Inclusive Framework in 2017.

23. Under this methodology, all members of the Inclusive Framework and non-member jurisdiction relevant to the work<sup>1</sup> (jurisdictions of relevance) will undergo an annual peer review process. Each year's peer review process will culminate in the production of a report on the status of implementation of CbC reporting, which will cover all key aspects of the BEPS Action 13 minimum standard. As part of the BEPS Action Plan, the 2015 Action 13 report (OECD, 2015) is being reviewed in 2020. Once this review is completed, the Inclusive Framework will consider if any further changes to this methodology are needed and, if so, the timing of these changes.

## Information used to conduct the peer review

24. The sources of information that will be used in the review of each member of the Inclusive Framework and jurisdiction of relevance (together, reviewed jurisdictions) include:

- Information from the reviewed jurisdiction in a self-assessment questionnaire to be completed for each year of the review, as well as supporting materials such as legislation and other explanatory material;
- Information from peers (i.e., other members of the Inclusive Framework), providing input and feedback on the exchange of information and appropriate use of CbC reports. This input and feedback will be obtained annually through peer input questionnaires;

- Information provided to the OECD Secretariat in its role as Co-ordinating Body Secretariat for the Multilateral Convention for Mutual Administrative Assistance in Tax Matters and the CbC Reporting Multilateral Competent Authority Agreement (MCAA); and
- Information on the assessments of confidentiality and data safeguards conducted in the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) with respect to the automatic exchange of information.<sup>2</sup>

Once an aspect of a jurisdiction's implementation of CbC reporting has been reviewed, the self-assessment questionnaire will be used to provide details of any changes and actions taken to address recommendations or monitoring points<sup>3</sup>, if applicable.

25. Because peer review is an intergovernmental process, business and civil society groups' participation in the formal evaluation process and, in particular, the evaluation exercise and the discussions in the CbC Reporting Group is not specifically solicited. The publication of the schedule of upcoming reviews would enable interested parties to provide information either to tax administrations or to the OECD Secretariat.<sup>4</sup> However, as the process works on the basis of a peer review system, the report ultimately reflects the views of the peers of the reviewed jurisdictions.

#### **Timeline and items covered for each peer review stage**

26. The review of every member of the Inclusive Framework on BEPS (including any identified jurisdictions of relevance) will be conducted annually in accordance with the following timelines. A detailed timeline is provided in the Annex.

27. The first three annual peer reviews were based on a methodology agreed by the Inclusive Framework in February 2017. The first peer review based on this revised methodology will begin in September 2020 and will be submitted to the Inclusive Framework for approval by no later than September 2021.

#### **Data gathering and review process**

28. Each year, the review of every reviewed jurisdiction will be conducted in accordance with the following data gathering and review processes which are presented in chronological order (a detailed timeline is provided in the Annex). Taking into account the need to efficiently manage resources, the approval process for annual reports by the CbC Reporting Group will, to a large extent, be carried out through the written procedure. Two rounds of approvals by the CbC Reporting Group through the written procedure will take place. Where material relating to a reviewed jurisdiction has not been approved under the written procedure, there will be a third round of approvals conducted through discussion at a meeting of the CbC Reporting Group.

Process	Explanation
1. Secretariat sends self-assessment questionnaire to all Inclusive Framework members and jurisdictions of relevance (the reviewed jurisdictions), for completion.	The self-assessment questionnaire covers each aspect of the terms of reference. Jurisdictions should provide responses in sufficient detail to allow an assessment to take place, and where relevant should include supporting material such as a copy of relevant legal provisions. No confidential taxpayer-specific information should be included.  Questionnaire responses and any supporting material should be provided in English or French.

2. Reviewed jurisdictions submit completed self-assessment questionnaire to Secretariat.	<p>The Secretariat will perform a high-level check of the questionnaires received in order to identify any obvious problems (such as missing answers / incorrect interpretation of questions / obvious errors / etc.) or for any necessary clarification. The Secretariat will discuss these with the relevant jurisdiction and where relevant the jurisdiction will be encouraged to submit a revised questionnaire.</p>
3. Self-assessment questionnaire will be made available to peers in the CbC Reporting Group.	<p>The received questionnaire (or the revised questionnaire as the case may be) will be made available by being uploaded to the CbC Reporting Group secure ONE Members and Partners site.</p>
4. Peer input questionnaire sent to all Inclusive Framework members, for completion.	<p>All members of the Inclusive Framework will be given the opportunity to examine the questionnaires and to provide peer input on their experience with respect to the reviewed jurisdiction in connection with CbC reporting.</p> <p>Jurisdictions providing peer input should not include any confidential taxpayer-specific information. Peer input is encouraged but not required.</p> <p>Peer input questionnaires should be answered in English or French.</p>
5. Peer input questionnaire responses provided to Secretariat and shared with the reviewed jurisdiction.  Reviewed jurisdictions may provide written comments to Secretariat.	<p>The Secretariat will share the peer input received on a reviewed jurisdiction only with that reviewed jurisdiction.</p> <p>Reviewed jurisdictions will have the opportunity to respond to the peer input to the Secretariat.</p>
6. Draft section on each reviewed jurisdiction sent to that jurisdiction for comments / approval.  Written comments from reviewed jurisdictions.	<p>The Secretariat will prepare a draft of a short section for each reviewed jurisdiction (i.e., an individual section of the annual report), with any Secretariat proposals for recommendations for improvement where relevant. The outline of the draft section on each Inclusive Framework member is included in the next section of this methodology.</p> <p>Each reviewed jurisdiction will have the opportunity to review its draft section, and to provide comments to the Secretariat in advance of the draft section being circulated to the CbC Reporting Group. The Secretariat will discuss with the reviewed jurisdiction the incorporation of any changes to its draft section.</p> <p>If the reviewed jurisdiction does not provide any comments on its section, it will be considered to have approved the section.</p>

<p>7. Compilation of individual sections sent by Secretariat to the CbC Reporting Group for comments/approval (first round of approval by the CbC Reporting Group).</p> <p>Revised draft section sent by Secretariat to the reviewed jurisdiction concerned for comments/approval.</p>	<p>The Secretariat will prepare a compilation containing all draft sections relating to each reviewed jurisdiction which does not anticipate further implementation activity in the review period, and send the compilation to the CbC Reporting Group for approval. This will be the first round of approval by the CbC Reporting Group. Where a reviewed jurisdiction anticipates that it will undertake further implementation activity before the current peer review is completed, the draft section for this reviewed jurisdiction will not be included in the compilation sent for approval at this stage.</p> <p>If comments are received that necessitate a change to the draft section for the reviewed jurisdiction, a revised draft section will be sent to that jurisdiction for agreement.</p> <p>Sections which are not the subject of any written comments from the CbC Reporting Group will be considered to be approved.<sup>5</sup></p>
<p>8. Revised draft section sent by Secretariat to the reviewed jurisdiction concerned for approval.</p>	<p>If comments from the CbC Reporting Group are received that necessitate a change to the draft section for the reviewed jurisdiction, a revised draft section will be sent to that jurisdiction for agreement.</p>
<p>9. Draft annual report sent to the CbC Reporting Group for approval of any material not yet approved (second round of approval by the CbC Reporting Group).</p>	<p>The Secretariat will prepare a compilation containing all draft sections relating to each reviewed jurisdiction which was not approved in the first round of approval, and send to the CbC Reporting Group for approval. This will also include revised draft sections for reviewed jurisdictions that were included in the compilation for the first round of approval but where comments were received and so they were not approved during that round. This will be the second round of approval.</p> <p>If comments from the CbC Reporting Group are received that necessitate a change to the draft section for the reviewed jurisdiction, a revised draft section will be sent to that jurisdiction for agreement.</p> <p>Sections which are not the subject of any written comments from the CbC Reporting Group will be considered to be approved.<sup>6</sup></p>
<p>10. Approval of annual report by CbC Reporting Group at meeting (third round of approval by the CbC Reporting Group).</p>	<p>In respect of any reviewed jurisdiction's draft section that has not been approved under the written procedure in either the first round or the second round of approval, that jurisdiction's draft section will be tabled for discussion at a meeting of the CbC Reporting Group. This will be the third round of approval by the CbC Reporting Group and will also include approval of the non-jurisdiction specific sections of the report.</p> <p>The CbC Reporting Group meeting will constitute the last possible time when a reviewed jurisdiction may present updated information demonstrating actions taken to address or improved any issue found during the review process.</p> <p>See below for more detail on the process for approval of reports.</p>

## Outline of annual report on CbC reporting implementation

29. The annual report will contain two parts. First, the introduction and executive summary. This will explain the background to the peer review and give an overview of the progress made by Inclusive Framework members in implementing CbC reporting in accordance with the items of the terms of reference.

30. 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 CbC reporting standard. The report will include proposed recommendations to address any shortcomings for each jurisdiction, if necessary. There will be no rating of compliance in the peer review.

31. The section of the annual report for each reviewed jurisdiction will contain:

- an overview of implementation and current status, including outstanding recommendations; and
- to the extent that a jurisdiction has undertaken implementation activity which has not been discussed in earlier reviews, a description of this implementation activity with respect to:
  - domestic legal and administrative framework, including any action taken to address recommendations or monitoring points from previous reviews (if any);
  - exchange of information, including any action taken to address recommendations or monitoring points from previous reviews (if any);
  - confidentiality and appropriate use, including any action taken to address recommendations or monitoring points from previous reviews (if any);
  - the jurisdiction's response to the review (if any).

## Discussion and approval of annual report

32. Specific sections of the annual report will be submitted to the CbC Reporting Group for approval under the written procedure. Delegates of the CbC Reporting Group will be asked to approve the individual sections in the annual report pertaining to specific Inclusive Framework members.

33. Any section of the annual report that is not approved by written procedure will be scheduled for discussion at a meeting of the CbC Reporting Group. At the meeting, for each reviewed jurisdiction whose section was not approved via the written procedure, the Secretariat will briefly introduce the section of the draft annual report that relates to the jurisdiction. CbC Reporting Group delegates will have an opportunity to ask any additional questions regarding the reviewed jurisdiction. The reviewed jurisdiction will have the opportunity to have its views represented to the CbC Reporting Group. It will have the option of attending the meeting and participating in the discussions of its review either in person or remotely, or of asking the Secretariat to explain the reviewed jurisdiction's comments to the CbC Reporting Group.<sup>7</sup> The reviewed jurisdiction may also provide a response to its review, to be included in the section on that jurisdiction.

34. On the basis of the discussion, the CbC Reporting Group may agree sections of the annual report that were not agreed under written procedure.

35. The CbC Reporting Group will submit the agreed annual report to the Inclusive Framework, inviting it to adopt the report. In the exceptional circumstances that the CbC Reporting Group is unable to approve a section relating to a particular reviewed jurisdiction, this will be referred to the Inclusive Framework together with an explanation. The CbC Reporting Group may also seek guidance from the Inclusive Framework if any issue of importance needs to be considered.

## Amendments and interpretation

36. The CbC Reporting Group may agree to any amendments to the terms of reference, methodology or questionnaires for undertaking the peer reviews. Any such amendments will be agreed by the CbC Reporting Group members on the basis of consensus and approved by the Inclusive Framework.

37. The CbC Reporting Group may agree additional technical guidance to clarify the Action 13 minimum standard, which would be submitted for approval to Working Party 6 or Working Party 10 as appropriate, and for further approval by the Inclusive Framework. If new guidance is agreed, jurisdictions will be expected to adjust their implementation to reflect that guidance, if necessary, as soon as is practicable. It is acknowledged that jurisdictions may require additional time to implement such changes including any necessary changes to domestic law.

## Confidentiality of peer review documents

38. Documents produced by a reviewed jurisdiction during a review (including responses to the questionnaire for reviewed jurisdictions, responses to the peer input questionnaire and responses to the Secretariat's queries) as well as draft documents and written comments on draft documents and peer comments, will be treated as confidential and for official use only. These documents will not be made publicly available. Any breach of confidentiality should be brought to the attention of the Chair of the CbC Reporting Group, who will decide on the appropriate action in consultation with the CbC Reporting Group as appropriate. The annual report will remain confidential but will be made public if the Inclusive Framework decides to declassify it.

## Notes

<sup>1</sup> Any non-IF member jurisdiction with a CbC reporting requirement that is relevant to IF member jurisdictions, in the view of the CbC Reporting Group. This could include, for example:

- a non-IF member jurisdiction which has a local filing requirement that may apply to constituent entities of an MNE group whose UPE is resident in an IF member jurisdiction, or
- a non-IF member jurisdiction which has, or wishes to enter into, a qualifying competent authority agreement with an IF member jurisdiction.

<sup>2</sup> The Global Forum conducts expert assessments of confidentiality and data safeguards with respect to the standard on automatic exchange of information. Given its expertise in this area and the importance of ensuring that the reviews are conducted efficiently, the CbC Reporting Group will rely on the work of the Global Forum on confidentiality and data safeguards and will not form its own conclusions on this aspect of the review.

<sup>3</sup> A monitoring point is an issue that the Inclusive Framework agrees needs to be monitored rather than requiring a recommendation for improvement

<sup>4</sup> For example, in a number of areas, business may possess relevant information.

<sup>5</sup> Exceptionally, approved reports may be reconsidered only in the case of new peer input or other evidence of implementation failure later in the same review period.

<sup>6</sup> Exceptionally, approved reports may be reconsidered only in the case of new peer input or other evidence of implementation failure later in the same review period.

<sup>7</sup> These options address the fact that not all members of the Inclusive Framework are represented on the CbC Reporting Group



# Self-assessment questionnaire for reviewed jurisdictions

This questionnaire is for each reviewed jurisdiction to provide information on its own legislation, processes and procedures in place to meet the minimum standard under Action13.

The terms of reference for this peer review cover three areas of focus for the peer review, the “Domestic Legal Framework” (part I of Section C), the “Exchange of Information Framework” (part II of Section C), and Confidentiality and Appropriate Use” (part III of Section C).

The terms of reference (TOR) for the peer review of the Action 13 minimum standard were agreed in 2017 and are included in the published Peer Review Documents. Information is included in each section of the questionnaire as to the part of the TOR concerned.

Responses to this questionnaire will be made available to members of the Inclusive Framework on BEPS (the Inclusive Framework). Completed questionnaires are confidential and for official use only. These responses will not be made publicly available. If the laws of the reviewed jurisdiction prevent certain information in the questionnaire from being disclosed to the members of the Inclusive Framework, the reviewed jurisdiction should advise the Secretariat. In such cases, the confidential information may either not be provided to the Secretariat, or it may be provided to the Secretariat but redacted from the version of the questionnaire that is made available to members of the Inclusive Framework.

The responses will be used by the CbC Reporting Group in reviewing each reviewed jurisdiction's compliance with the minimum standard.

## Instructions for completion of the questionnaire

### All jurisdictions

Please provide your contact details here:

Jurisdiction	Contact Name	Organisation	Email address	Date of submission of questionnaire

### Jurisdictions included in last year's peer review

Please follow the instructions in Section A.

### Jurisdictions not included in last year's peer review

Please follow the instructions in Section B.

## Section A: Jurisdictions included in last year's peer review report

If your jurisdiction was included in last year's peer review report, please complete this section and follow the instructions below.

If your jurisdiction was not included in last year's peer review report, please continue directly to Section B.

1. Since last year's peer review, have there been any changes to your jurisdiction's implementation of CbC reporting with respect to its:

#### **a) domestic legal and administrative framework?**

Yes  / No

If yes, please provide a brief summary of the changes here and complete all relevant questions in Section C, Part I

#### **b) exchange of information framework?**

Yes  / No

If yes, please provide a brief summary of the changes here and complete all relevant questions in Section C, Part II

**c) confidentiality and appropriate use?**

Yes  / No

If yes, please provide a brief summary of the changes here and complete all relevant questions in Section C, Part III

**d) overall implementation and enforcement**

Have any issues arisen concerning your jurisdiction's application of rules and procedures to ensure successful enforcement and application of any part of the standard or that could otherwise affect this peer review?

Yes  / No

If yes, please provide details of the issues arising here and complete the relevant questions in Section C:

**All jurisdictions that were included in last year's peer review should also complete questions 11, 20, 21, 26 and 27 in Section C.**

**Other than as described in this section, it is not necessary to complete any other part of this questionnaire.**

## Section B: Jurisdictions not included in last year's peer review report

**If your jurisdiction was not included in last year's peer review report, please complete this section and follow the instructions below.**

2. Has your jurisdiction finalised the domestic legal framework for CbC reporting?

Yes  / No

**If yes, please do not answer the remaining questions in this section. Continue directly to Section C and complete all questions in that section.**

**If no, please complete all other questions in this section. You do not need to complete any other section of this questionnaire.**

3. Please describe below any plans you have to introduce CbC reporting, the details of any draft legislation you have and when you anticipate rules being introduced:

4. Are there any MNE Groups headquartered in your jurisdiction that are required to file CbC reports under the Action 13 minimum standard?

Yes  / No

Please provide details on how your jurisdiction has verified the existence or absence of such MNE Groups, and how it will continue to monitor the situation:

5. Does your jurisdiction wish to receive CbC reports on MNE Groups headquartered in other jurisdictions?

Yes  / No

6. Has your jurisdiction implemented local filing requirements on resident Constituent Entities of MNE Groups headquartered in another jurisdiction or does it plan to do so in the next 12 months?

Yes  / No

If you answered NO to ALL of questions 1, 3, 4 and 5 above, you may choose to opt out of this year's peer review as described in Paragraph 5 of the TOR. .

Please note that all member jurisdictions of the Inclusive Framework have committed to implement the BEPS minimum standards, including CbC reporting. Opting out of this year's peer review does not affect this commitment, which remains in effect.

7. Do you wish to opt out of this year's peer review?

Yes  / No

## Section C: Implementation of CbC Reporting

### Part I – The domestic legal and administrative framework

These questions are asked in order to assess implementation against Terms of Reference, Part A, Paragraph 8.

#### ***Details of domestic legal provisions***

1. Please provide details of the provisions in your domestic legal framework relating to the CbC reporting obligations, as well as the link to such provisions (if any).

Please also provide a copy translated into either English or French.

You may also provide us with any comments or explanation of these provisions, if you think it will help us to understand them.

a) Primary Law (e.g. legislation)

Link to the text:

Your comments:

b) Secondary Law (e.g. regulations)

Link to the text:

Your comments:

c) Guidance

Link to the text:

Your comments:

d) Other

Link to the text:

Your comments:

### **Definitions**

2. Please tell us about the definitions in your legislation for CbC filing requirements here:

a) Does your legal framework define “Group” consistently with the following meaning?

*a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange*

Yes  / No

Your comments:

b) Does the domestic legal framework define “MNE Group” consistently with the following meaning?

*a Group that includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction and is not an Excluded MNE group*

Yes  / No

Your comments:

c) Does the domestic legal framework define “Constituent Entity” consistently with the following meaning?

(i) *any separate business unit of the MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes (or would be so required if equity interests in such business unit of an MNE Group were traded on a public securities exchange ),*  
 (ii) *any such business unit that is excluded from these Statements solely on size and materiality grounds, and*  
 (iii) *any permanent establishment of any separate business unit in (i) or (ii) provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes*

Yes  / No

Your comments:

d) Does the domestic legal framework define “Consolidated Financial Statements” consistently with the following meaning?

*the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity*

Yes  / No

Your comments:

e) Does the domestic legal framework define “Ultimate Parent Entity”<sup>1</sup> consistently with the following meaning?

*a Constituent Entity of an MNE Group*

*(i) which owns directly or indirectly a sufficient interest in one or more other Constituent Entities of an MNE group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in your jurisdiction (or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence) and*

*(ii) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest in an entity described under (i) in the first mentioned Constituent Entity*

Yes  / No

Your comments

f) If local filing is required, does the domestic legal framework define “Surrogate Parent Entity” consistently with the following meaning?

*one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the Country-by-Country Report in that Constituent Entity's jurisdiction of tax residence, on behalf of such MNE Group*

Yes  / No

Your comments

g) Does the domestic legal framework define “Reporting Entity” consistently with the following meaning?

*the Constituent Entity that is required to file a country-by-country report in its jurisdiction of tax residence on behalf of the MNE Group*

Yes  / No

Your comments

h) Does the domestic legal framework define “Fiscal Year” consistently with the following meaning?

*an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements*

Yes  / No

Your comments

i) Does the domestic legal framework define “Reporting Fiscal Year” consistently with the following meaning?

the Fiscal Year the financial and operational results of which are reflected in the Country-by-Country Report

Yes  / No

Your comments

j) If local filing is required, does the domestic legal framework define “Qualifying Competent Authority Agreement” consistently with the following meaning?

an agreement (i) that is between authorised representatives of those jurisdictions that are parties to an International Agreement and (ii) that requires the automatic exchange of Country-by-Country Reports between the party jurisdictions

Yes  / No

Your comments

k) If local filing is required, does the domestic legal framework define “International Agreement” consistently with the following meaning?

the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral Tax Convention, or any Tax Information Exchange Agreement to which your jurisdiction is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information

Yes  / No

Your comments

l) If local filing is required, does the domestic legal framework define “Systemic Failure” consistently with the following meaning?

where your jurisdiction has a Qualifying Competent Authority Agreement in effect with another jurisdiction, but that other jurisdiction has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to your jurisdiction CbC reports in its possession of MNE Groups that have Constituent Entities in your jurisdiction

Yes  / No

Your comments

m) Please put anything else you wish to tell us about your definitions here:

***Primary filing obligation on the Ultimate Parent Entity of an MNE Group***

3. Please tell us about the Ultimate Parent Entity filing requirements in your jurisdiction here:

a) Is an Ultimate Parent Entity resident for tax purposes in your jurisdiction required to file a CbC report under your domestic legal framework?

Yes  / No

Your comments:

b) Does the requirement to file a CbC report apply to the Ultimate Parent Entities of MNE Groups with consolidated group revenue of 750 million Euro or more (or near equivalent in domestic currency as of January 2015) during the fiscal year immediately preceding the reporting fiscal year, and to no other Ultimate Parent Entities resident for tax purposes in your jurisdiction?

Yes  / No

Your comments:

c) Are there any specific exemptions from CbC reporting requirements other than the 750 million Euro threshold which would exclude an entity from CbC reporting?

Yes  / No

If yes, please describe.

d) Is the CbC report required to include all Constituent Entities in the MNE Group?

Yes  / No

Your comments:

e) Is the Ultimate Parent Entity required to file a CbC report on an annual basis?

Yes  / No

Your comments:

f) Is the Ultimate Parent Entity required to file with respect to an annual accounting period with respect to which it prepares its financial statements?

Yes  / No

Your comments:

g) Does the required CbC report include all, and only, the information contained in Annex III to the Transfer Pricing Guidelines Chapter V Transfer Pricing Documentation – Country-by-Country Report?

Yes  / No

If no, please provide details explaining which items of information are not required and the reasons why/ or details on the additional items of information and the reasons why they are required.

h) Does the required CbC report conform to the general and specific instructions contained in sections B and C of Annex III to the Transfer Pricing Guidelines Chapter V Transfer Pricing Documentation – Country-by-Country Report?

Yes  / No

If no, please provide details.

i) Is the Ultimate Parent Entity required to file no later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group?

Yes  / No

If no, is the filing date compatible with the dates for exchanges of information with the Jurisdictions with which your Jurisdiction has a Qualifying Competent Authority Agreement?

j) What is the first fiscal reporting year for CbC requirements in your jurisdiction?

### ***Local Filing<sup>2</sup>***

4. Do you impose a local filing requirement on Constituent Entities which are resident for tax purposes in your jurisdiction?

Yes  / No

If no, please go to question 5.

If yes, please tell us about the requirement here:

a) Has your jurisdiction met the confidentiality, consistency and appropriate use requirements for CbC?

Yes  / No

Your comments:

b) Is one of the conditions under which local filing can be required that the Ultimate Parent Entity of the MNE Group is not obligated to file a Country-by-Country Report in its jurisdiction of tax residence?

Yes  / No

Your comments:

c) Is one of the conditions under which local filing can be required that the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which your jurisdiction is a party, but does not have a Qualifying Competent Authority Agreement in effect with your jurisdiction by the time for filing the Country-by-Country Report?

Yes  / No

Your comments:

d) Is one of the conditions under which local filing can be required that there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified to the Constituent Entity by your jurisdiction?

Yes  / No

Your comments:

e) Can local filing be required in any other circumstance?

In particular, please indicate whether local filing is required:

- in situations where your jurisdiction has not entered into a QCAA with the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes despite the fact that this latter jurisdiction has carried out all the necessary steps to bring the QCAA in effect, including meeting the requirements of confidentiality, consistency and appropriate use; or
- in situations where your jurisdiction has not met the requirements of confidentiality, consistency and appropriate use; or
- in situations where your jurisdiction does not have an International Agreement in effect with the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes.

f) Is local filing deactivated if there is surrogate filing (including voluntary parent surrogate filing) in another jurisdiction?

Yes  / No

Please tell us about any conditions for deactivation

g) Is the content of the CbC report submitted through local filing more than the content of a CbC report filed by a Ultimate Parent Entity in your jurisdiction?

Yes  / No

If yes, please tell us what the differences are.

h) If there is more than one Constituent Entity of the same MNE Group that is resident for tax purposes in the jurisdiction, can one Constituent Entity be designated to file the CbC report which would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in your jurisdiction?

Yes  / No

Your comments:

i) Please confirm that your jurisdiction applies local filing in accordance with the OECD guidance on the effect of currency fluctuations on application of the filing threshold and provide a link to where your legislation or guidance confirms this:

Yes  / No

Your comments:

j) Please tell us anything else you want us to know about your local filing requirement here:

### ***Surrogate Filing***

5. Do you allow surrogate filing by Constituent Entities which are resident for tax purposes in your jurisdiction?

Yes  / No

If no, please go to question 6.

If yes, please tell us about the requirement here:

a) Are the reporting requirements the same as those applicable for Ultimate Parent Entities which are resident for tax purposes in your jurisdiction?

Yes  / No

Your comments:

- b) As a transition mechanism, if you are not able to make a legal requirement immediately, will you allow parent surrogate filing of the CbC report (i.e. voluntary filing) by an MNE Group whose Ultimate Parent Entity is resident in your jurisdiction?

Yes  / No

Your comments:

- c) If yes, are the reporting requirements the same as those applicable for Ultimate Parent Entities which are resident for tax purposes in your jurisdiction?

Yes  / No

Your comments:

- d) If your country allows parent surrogate filing of the CbC report (i.e. voluntary filing) as a transition mechanism, will this parent surrogate filing mechanism be in line with the published OECD guidance on parent surrogate filing?<sup>3</sup>

Yes  / No

Your comments:

***Effective Implementation***

6. Tell us about your mechanism to ensure effective implementation of your filing requirements here:

- a) Do you have a mechanism to validate whether all Ultimate Parent Entities and Surrogate Parent Entities that were to file in your jurisdiction did file a CbC report, such as notifications, risk assessment or audit processes?

Yes  / No

If yes, please describe.

- b) Does the domestic legal framework include penalties for a failure to file a CbC report, a late filing of a CbC report, inaccurate filing of a CbC report, or other penalties?

Yes  / No

If yes, please describe the penalties and your jurisdiction's experience in applying the penalties.

- c) Does your jurisdiction have enforcement powers to compel the production of a CbC report?

Yes  / No

If yes, please describe your jurisdiction's experience in applying the compulsion powers.

d) Does your jurisdiction use other legal or administrative mechanisms to enforce compliance by Ultimate Parent Entities and (if relevant) Surrogate Parent Entities?

Yes  / No

If yes, please describe, including an explanation of how your jurisdiction ensures that these enforcement mechanisms are effectively applied.

e) Do you have a process to take appropriate measures if you are told by another jurisdiction that a Reporting Entity may have submitted incorrect or incomplete information to you, or that there is non-compliance of a Reporting entity with its obligation to file in your jurisdiction?

Yes  / No

If yes, please describe.

### ***Guidance and other comments***

7. If your domestic legal framework provides additional, or more detailed guidance on issues not contained in Annex III to the Transfer Pricing Guidelines Chapter V Transfer Pricing Documentation – Country-by-Country Report please describe them here:

8. Please tell us anything else you think we should know about your domestic legal and administrative framework here:

## Part II – The exchange of information framework

These questions are asked in order to assess implementation against the terms of reference in Part B Paragraph 9.

### ***Exchange of information agreements***

9. Where Qualifying Competent Authority Agreements are in place, do you have the necessary legal basis to automatically exchange CbC reports?

Yes  / No

If yes, please describe. If such legal basis is not yet in place, please describe the steps being taken to put the necessary legal basis in place here:

10. List the exchange of information agreements that you have in force and that permit automatic exchange of information<sup>4</sup> here:

11. List the jurisdictions with which you have a Qualifying Competent Authority Agreement (QCAA) in effect, other than those already listed on the OECD website at the date of submission of your completed questionnaire, here. Please also include the first fiscal year for which each QCAA is in effect.

### ***Exchange of information processes***

12. Tell us how your jurisdiction ensures that CbC reports are exchanged with all of the jurisdictions with which it has a QCAA in effect for that exchange, including any internal supervision mechanism.

13. Do you have a secure international transmission method for exchanging CbC reports?

Yes  / No

If it is something other than the Common Transmission System, please describe how the system ensures that transmissions of CbC reports are secure here:

14. Are you using the OECD XML Schema and User Guide for international exchange of CbC reports?

Yes  / No

If no, please explain here:

15. Have you been advised by another jurisdiction that you have caused a Systemic Failure or "significant non-compliance" as defined within the terms of a QCAA?

Yes  / No

If yes, please explain the circumstances and steps being taken to rectify the issue here:

16. Does your jurisdiction have a process to ensure that your Competent Authority consults with another Competent Authority prior to determining that the other Competent Authority has caused a Systemic Failure?

Yes  / No

Please include information as to how this process works, whether this has ever occurred and how long the process took here:

17. Does your jurisdiction have a process to ensure that your Competent Authority consults with another Competent Authority prior to making a determination that there is or has been significant non-compliance with the terms of the relevant QCAA?

Yes  / No

Please include information as to how this process works, whether this has ever occurred and how long the process took here:

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18. How does your jurisdiction ensure that a temporary suspension of exchange of information or termination of a Qualifying Competent Authority Agreement would be carried out only as per the conditions set out in such agreement?

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19. Please tell us anything else you wish to add in relation to the exchange of information framework here:

(for example, if your jurisdiction is in the process of negotiating QCAs which are not yet in effect, you may wish to include the number of such QCAs that you expect to enter into effect during the current year and next year)

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#### ***Reports received and exchanged<sup>5</sup>***

20. Please tell us how many CbC reports have been filed in your jurisdiction<sup>6</sup>

(i) For all reporting periods ending in Period 1, being the most recent full calendar year before the commencement of this review By:		(ii) For reporting periods ending in Period 2 – the calendar year immediately before Period 1. By:	
Ultimate Parent Entities		Ultimate Parent Entities	
Surrogate Parent Entities		Surrogate Parent Entities	
Constituent Entities		Constituent Entities	

under local filing rules		under local filing rules	
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21. Please tell us about the reports filed in your jurisdiction by an Ultimate Parent Entity or Surrogate Parent Entity that you have sent to other jurisdictions here:

<p>a) How many transmissions<sup>7</sup> have been made in total, with respect to CbC reports for each of the above periods?</p> <p>(i) Period 1  (ii) Period 2</p>
<p>b) How many of those transmissions were made on time?</p> <p>(i) Period 1  (ii) Period 2</p>
<p>c) If transmissions were made late, how many were:</p> <p>Less than 1 month late?  (i) Period 1  (ii) Period 2</p> <p>Between 1 month and 3 months late?  (i) Period 1  (ii) Period 2</p> <p>More than 3 months late?  (i) Period 1  (ii) Period 2</p>
<p>d) Please tell us why these transmissions were made late.</p>

e) Please tell us about any transmissions which should have been made and have not been made at all.

f) If there was a fault or breakdown in process that made these transmissions late or not made at all, please tell us what you have done to address the problem.

g) Please tell us anything else you think we should know about the reports you have received and exchanged.

### Part III – Confidentiality and appropriate use

These questions are asked in order to assess implementation against the terms of reference in Part C Paragraph 10, 11 and 12.

#### ***Confidentiality***

22. Has your jurisdiction been reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes' on confidentiality and data safeguards in the context of implementing the AEOI Standard?

Yes  / No

If yes, please tell us the outcome of the review, or about where you are in the process, here:

If no, you will need to undergo assessment. Please contact our colleagues in the Global Forum [email address to be added] to talk about this.

### ***Appropriate Use***

There is OECD Guidance on appropriate use: [www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf](http://www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf), which provides details on this requirement.

23. How does your jurisdiction ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks and, where appropriate, for economic and statistical analysis?

Please include details of any procedures and how these are enforced in practice. This could include a description of which officials are permitted to access CbC reports, the process for sharing CbC reports with tax auditors, a description of how risk assessment and audit staff are trained on the use of CbC reports and how staff are supervised in this regard.

24. How does your jurisdiction ensure that CbC reports received through exchange of information or local filing: are not used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income)?

Please include details of any written procedures and how these are enforced in practice. This could include a description of how CbC reports are used in combination with other information in the course of transfer pricing assessments and audits, how transfer pricing risk assessment and audit staff are trained on the use of CbC reports, and how staff are supervised in this regard.

25. Please explain your measures to meet the requirements here:

a) Do the multilateral and/or bilateral competent authority agreements signed by your jurisdiction include the appropriate use of information contained in CbC Reports, as a condition of obtaining and using CbC Reports?

Yes  / No

Please explain and give details of any competent authority agreements signed by your jurisdiction which do not contain an appropriate use condition, or which limit or qualify this condition.

b) Does your tax authority have a clear written policy in place governing the use of CbC Reports, including guidance on appropriate use?

Yes  / No

Please attach a copy of these written procedures or a link to where they can be found on a public website.

c) Is this policy communicated to all staff likely to have access to CbC Reports in the course of their work?

Yes  / No

Please provide any useful details e.g. how and when this policy was disseminated.

d) Is the use of CbC Reports controlled or monitored to ensure appropriate use, which may include imposing restrictions<sup>8</sup> on access to CbC Reports, and/or ensuring that appropriate use is adequately evidenced?

Yes  / No

Please provide any useful details.

e) Is guidance or training provided to appropriate tax authority staff in your jurisdiction that clearly sets out their commitments:

- to notify the Co-ordinating body Secretariat or other competent authority immediately of any cases of non-compliance with the appropriate use condition; and
- to promptly concede any competent authority proceeding that involves a tax adjustment made in contravention of the appropriate use condition?

Yes  / No

Please provide any useful details. If these two obligations are not reflected in written guidance or legislation, please explain how the relevant tax authority staff is made aware of them.

f) Are there measures in place to ensure controls described in answers to questions 15a) to e) are reviewed and the outcomes of these reviews documented?

Yes  / No

Please provide any useful details.

g) Are any other measures applied in your jurisdiction to ensure the appropriate use of CbC Reports?

Yes  / No

Please provide information on the measures applied, including copies of guidance provided where this would be helpful.

26. Has there been a breach of the conditions on confidentiality or appropriate use regarding a CbC report received through exchange of information or local filing in your jurisdiction?

Yes  / No

*If yes, please describe the cause of the breach, the steps taken to remedy the breach and prevent a future breach. In addition, if the breach was in connection with a CbC report received pursuant to the MCAA, please note whether your jurisdiction notified the Co-ordinating Body Secretariat of the breach immediately.*

27. Has your jurisdiction made an adjustment to the taxable income of a Constituent Entity in connection with a CbC report in contravention of the limits on appropriate use?

Yes  / No

If yes, did your jurisdiction concede the adjustment in a competent authority proceeding, if such proceeding occurred?

28. Please tell us anything else you think we should know about your arrangements for confidentiality, and appropriate use here:

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***OPTIONAL QUESTION –***

***Other Transfer pricing documentation - Master File and Local File***

This information will not be used for the purposes of peer review, but may be used to understand the implementation of other elements of the Action 13 report by members of the IF

29. Please tell us about the requirements your jurisdiction has for a Master File and Local File as set out in Annexes I and II of the 2015 Action 13 Report, to be prepared and/or filed?

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***End of questionnaire***

## Note

<sup>1</sup> Where a partnership is the Ultimate Parent Entity, for the purpose of determining where it is required to file the CbC report in its capacity as the Ultimate Parent Entity, the jurisdiction under whose laws the partnership is formed / organised will govern if there is no jurisdiction of tax residence. See OECD Guidance on the Implementation of Country-by-Country Reporting on BEPS Action 13 issued in June 2016.

<sup>2</sup> A “local filing” obligation means an obligation to file or otherwise make available a CbC report imposed on a Constituent Entity other than the Ultimate Parent Entity of an MNE Group. Local filing is not required to be introduced in order to meet the minimum standard and the absence of local filing requirements will not affect the outcome of the peer review on CbC reporting

<sup>3.</sup> OECD Guidance on the Implementation of Country-by-Country Reporting on BEPS Action 13 issued in June 2016, which may apply for a transitional period.

<sup>4.</sup> Please indicate for each agreement whether there are restrictions as regards certain fiscal periods that apply later than 2016 for the exchanges of CbC reports due to the effective date provisions of such agreements.

<sup>5</sup> Where a jurisdiction has difficulty reporting with reference to periods ending between two dates, they may instead choose to report statistics in this questionnaire with reference to periods beginning in the previous 12 months (eg periods beginning on or between the 1 January 2017 and 31 December 2017 rather than periods ending on or between 1 January 2018 and 31 December 2018). Jurisdiction should be consistent in their approach each year and where they are reporting periods beginning in the previous calendar year, should note that in their response.

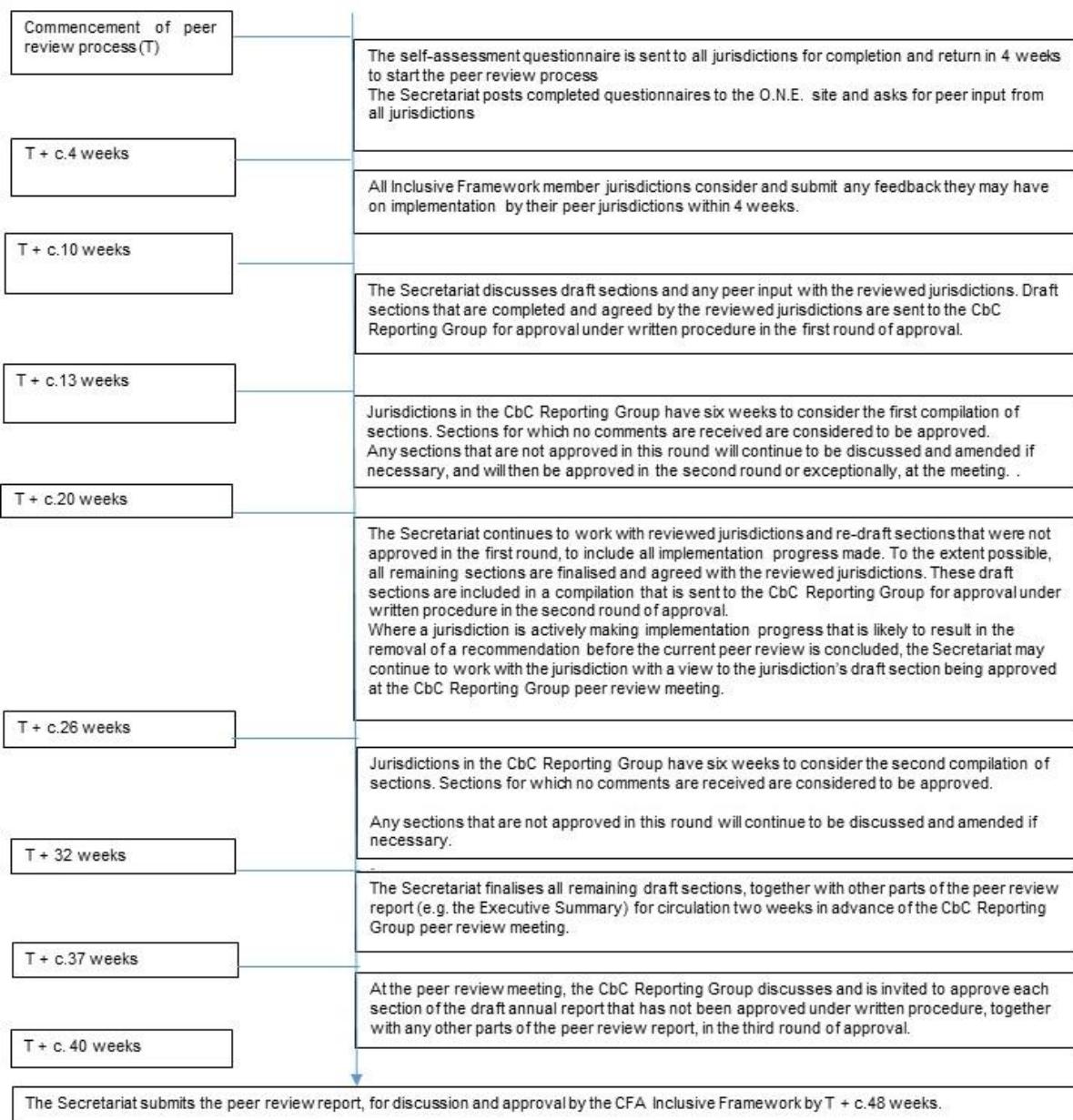
<sup>6</sup> If fewer than five CbC reports were filed in your jurisdiction and your jurisdiction has confidentiality concerns associated with reporting specific numbers or experiences in applying enforcement measures in this section of the questionnaire, please respond “fewer than five.”

<sup>7</sup> Where fewer than five CbC reports were filed in your jurisdiction, if your jurisdiction has confidentiality concerns associated with reporting specific numbers, please respond “fewer than five”. For the purpose of reporting the number of CbC reports transmitted, these should be counted as the number of jurisdictions that are sent the CbC report, as opposed to the number of CbC reports filed in your jurisdiction. A transmission is a single report sent to a single jurisdiction. If one CbC report is sent to eight jurisdiction this is eight transmissions. If two CbC reports are each sent to eight jurisdiction this will be 16 transmissions. A CbC report would be considered to be transmitted on time if it was made available to the recipient jurisdiction, even if that jurisdiction did not retrieve the CbC report. This should be indicated in the “any other comments” line in the table.

<sup>8</sup> The “restrictions” mentioned do not relate to security access restrictions in general, but to measures which prevent personnel involved in the tax assessment or tax audit of the relevant MNE group from accessing the CbC reports. An example of the type of restriction mentioned might be if a tax administration operates a centralised risk assessment structure with a dedicated risk assessment team (which may be a single national team or a number of regional teams), which conducts risk assessment separate from the tax audit function. If your tax administration operates a decentralized risk assessment model (e.g. where tax risk assessments are conducted by or with the participation of tax auditors, which have access to an MNE group's CbC report), please explain how appropriate use is adequately evidenced.



# Annex 1. Peer review indicative timeline





# References

- OECD (2016), *Country-by-Country Reporting XML Schema: User Guide for Tax Administrations and Taxpayers*, OECD Publishing, Paris. DOI: <http://www.oecd.org/tax/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations-and-taxpayers.pdf>.
- OECD (2016), *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13*, OECD Publishing, Paris. DOI: <https://www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.htm>.
- OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264241633-en>.
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- OECD/Council of Europe (2011), The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264115606-en>.



# **BEPS Action 13 on Country-by-Country Reporting**

**PEER REVIEW DOCUMENTS**

