Côte d’Ivoire

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Côte d’Ivoire has primary law in place to implement CbC Reporting but an administrative instruction is needed to complete the framework. It is recommended that Côte d’Ivoire finalize its domestic legal and administrative framework in relation to CbC requirements as soon as possible. For the moment, Côte d’Ivoire’s implementation of the Action 13 minimum standard meets the terms of reference for the year in review, except that it raises two substantive issues in relation to its domestic legal and administrative framework. The report contains, therefore two recommendations to address these issues in addition to the general recommendation to finalize the domestic legal and administrative framework. In addition, Côte d’Ivoire should put in place an exchange of information framework as well as measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. Côte d’Ivoire has rules (primary law) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Côte d’Ivoire. Côte d’Ivoire indicates that an administrative instruction is needed to complete the framework. The first filing obligation for a CbC report in Côte d’Ivoire commences in respect of fiscal years commencing on or after 1 January 2018. It is recommended that Côte d’Ivoire finalize its domestic legal and administrative framework in relation to CbC requirements as soon as possible. Specifically, it is recommended that Côte d’Ivoire:

- introduce or complete the definitions of an “Ultimate Parent Entity”, “MNE Group”, “Group” and “Constituent Entity”
- have enforcement measures in case of an incomplete or erroneous filing of a CbC report.

Part B: Exchange of information framework

Côte d’Ivoire is not a signatory of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol (OECD/Council of Europe, 2011), and is also not a signatory to the CbC MCAA. As of 12 January 2018, Côte d’Ivoire does not have bilateral relationships activated under the CbC MCAA. In respect of the terms of reference under review, it is recommended that Côte d’Ivoire take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive
Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Côte d’Ivoire will not be exchanging CbC reports in 2018.

**Part C: Appropriate use**

In respect of the terms of reference under review, Côte d’Ivoire does not yet have measures in place relating to appropriate use. It is recommended that Côte d’Ivoire take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Côte d’Ivoire will not be exchanging CbC reports in 2018.

**Part A: The domestic legal and administrative framework**

3. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

4. Côte d’Ivoire has primary legislation in place to implement the BEPS Action 13 minimum standard. Côte d’Ivoire indicates that an administrative instruction is needed to complete its domestic legal and administrative framework.

(a) **Parent entity filing obligation**

Summary of terms of reference: Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

5. Côte d’Ivoire has primary legislation to impose a CbC filing obligation on Ultimate Parent Entities of MNE Groups meeting certain conditions. The legal and administrative framework is however incomplete at this moment: Côte d’Ivoire indicates that it will be preparing an administrative instruction to complete this framework, which will introduce a number of details.

6. Under Côte d’Ivoire’s primary legislation, companies that control other companies located outside Côte d’Ivoire are required to file an annual declaration with the tax administration, following the end of each fiscal year, which includes the breakdown per jurisdiction of the group’s profits and various economic, accounting and tax aggregates. The companies concerned by this requirement are legal persons established in Côte d’Ivoire, fulfilling the following conditions: (i) they have a consolidated turnover (excluding tax) of XOF 491 967 750 000 or more in respect of the fiscal year subject to declaration; (ii) they are subject to the obligation to prepare consolidated financial statements, pursuant to articles 74 et following of the Uniform Act of the OHADA relating to accounting law and financial information; (iii) they control entities established outside Côte d’Ivoire; (iv) they are not under the control of a company located in Côte d’Ivoire which is itself subject to the filing of this declaration, or established in a country with which Côte d’Ivoire has an agreement providing for the exchange of information for tax purposes and which is subject to a similar filing obligation.
7. With respect to the definition of an “Ultimate Parent Entity”, Côte d’Ivoire’s legislation defines an Ultimate Parent Entity by reference to a legal person being required to prepare consolidated financial statements under accounting principles, but it does not include an entity that would be required to prepare consolidated financial statements if its equity interests were traded on a public securities exchange in Côte d’Ivoire (“deemed listing provision”), as required under paragraph 18 i. of the terms of reference (OECD, 2017). It is also unclear whether the legislation would apply to entities which do not have legal personality.

8. In addition, under the terms of reference, the Ultimate Parent Entity shall not be held by another Constituent Entity that owns directly or indirectly sufficient interest to be considered as an Ultimate Parent Entity. This is not reflected in Côte d’Ivoire’s primary law, which instead contains the following conditions in the primary filing obligation provisions: the Ultimate Parent Entity is “not under the control of a company located in Côte d’Ivoire which is itself subject to the filing of this declaration, or established in a country with which Côte d’Ivoire has an agreement providing for the exchange of information for tax purposes and which is subject to a similar filing obligation”.

9. It is recommended that Côte d’Ivoire complete the definition of an “Ultimate Parent Entity” consistent with the terms of reference.

10. There is also no definition of a “MNE Group”, a “Group” and a “Constituent Entity” in Côte d’Ivoire’s primary legislation. It is recommended that Côte d’Ivoire introduce these definitions in its domestic legal and administrative framework.

11. No other inconsistencies were identified with respect to Côte d’Ivoire’s domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

12. The first filing obligation for a CbC report in Côte d’Ivoire commences in respect of periods commencing on or after 1 January 2018. The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.

13. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).
14. Côte d’Ivoire has not introduced local filing requirements as from the reporting period starting on or after 1 January 2018.

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

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. Côte d’Ivoire has not introduced local filing requirements as from the reporting period starting on or after 1 January 2018.

**(e) Effective implementation**

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting’s effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

16. Côte d’Ivoire has introduced penalties in place in relation to the filing of a CbC report for failure to file and late filing. There are however no penalties in relation to incomplete or erroneous filing of a CbC report. It is recommended that Côte d’Ivoire implement enforcement measures in case of incomplete or erroneous filing of a CbC report.

17. There are no specific processes in place that would allow Côte d’Ivoire to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

**Conclusion**

18. In respect of paragraph 8 of the terms of reference (OECD, 2017), Côte d’Ivoire has primary law that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Côte d’Ivoire. Côte d’Ivoire indicates that an administrative instruction is needed to complete the framework. It is recommended that Côte d’Ivoire finalize its domestic legal and administrative framework in relation to CbC requirements as soon as possible. Based on its primary law, Côte d’Ivoire meets the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the definitions of “Ultimate Parent Entity”, “MNE Group”, Group and “Constituent Entity” (paragraphs 8 (a) i. and iii. and 18 of the terms of reference (OECD, 2017)) and (ii) the absence of enforcement measures in case of incomplete or erroneous filing of a CbC report (paragraph 8 (e) of the terms of reference (OECD, 2017)).
Part B: The exchange of information framework

19. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

20. Côte d’Ivoire is not a Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol (OECD/Council of Europe, 2011) (“the Convention”) and is also not a signatory to the CbC MCAA. Côte d’Ivoire does not report any Double Tax Agreements or Tax Information Exchange Agreements that allow Automatic Exchange of Information.

21. As of 12 January 2018, Côte d’Ivoire does not have bilateral relationships activated under the CbC MCAA. It is recommended that Côte d’Ivoire take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Côte d’Ivoire will not be exchanging CbC reports in 2018.

Conclusion

22. In respect of the terms of reference under review, it is recommended that Côte d’Ivoire take steps to put in place an exchange of information framework that allows Automatic Exchange of Information and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Côte d’Ivoire will not be exchanging CbC reports in 2018.

Part C: Appropriate use

23. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).
24. Côte d’Ivoire does not yet have measures in place relating to appropriate use. It is recommended that Côte d’Ivoire take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Côte d’Ivoire will not be exchanging CbC reports in 2018.

**Conclusion**

25. It is recommended that Côte d’Ivoire take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Côte d’Ivoire will not be exchanging CbC reports in 2018.
Summary of recommendations on the implementation of Country-by-Country Reporting

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<thead>
<tr>
<th>Part</th>
<th>Aspect of the implementation that should be improved</th>
<th>Recommendation for improvement</th>
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<tbody>
<tr>
<td>A</td>
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<tr>
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Notes

1 Paragraph 8 of the terms of reference (OECD, 2017).
2 Paragraphs 8 (a) i. and iii. and 18 of the terms of reference (OECD, 2017).
3 Paragraph 8 (e) of the terms of reference (OECD, 2017).
4 Paragraph 9 (a) of the terms of reference (OECD, 2017).
5 Paragraph 12 (a) of the terms of reference (OECD, 2017).
6 Côte d’Ivoire’s primary law consists of Article 36 bis of the General Tax Code.
7 The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).
9 It appears that these provisions may in fact trigger an instance of local filing for entities in Côte d’Ivoire when there is no requirement to file CbC report on an entity located in another jurisdiction, which would be considered as their Ultimate Parent Entity as per the terms of reference. Where such a filing obligation would occur under the “primary” filing provision of Côte d’Ivoire’s legislation, there would be no provisions (i) which would allow an MNE Group to designate one Constituent Entity to file the CbC report and (ii) which would deactivate this filing obligation when a CbC report is made available through surrogate filing.
10 Paragraph 18 of the terms of reference (OECD, 2017).
11 See last paragraph of Article 36 bis of the General Tax Code: Failure to produce the CbC report within the legal deadlines is sanctioned by a fine of XOF 5 000 000.
References

