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. Germany’s implementation of the Action 13 minimum standard meets all applicable terms of reference, except that it raises one issue in relation to its domestic legal and administrative framework. The report, therefore, contains one recommendation to address this issue.

Part A: Domestic legal and administrative framework

2. Germany has legislation in place that imposes and enforces CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the Germany. The filing obligation for a CbC report in Germany commences in respect of fiscal years commencing on or after 1 January 2016. Germany meets all the terms of reference relating to the domestic legal and administrative framework, except the following area where there is one apparent difference with the international Action 13 minimum standard:

- the scenarios in which local filing may be required that differ from those set out in the minimum standard.

Part B: Exchange of information framework

3. Germany is a signatory of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol (OECD/Council of Europe, 2011), which is in force for 2016, and is also is a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. As of 12 January 2018, Germany has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU). Germany has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Germany meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Part C: Appropriate use

4. There are no concerns to be reported for Germany. Germany indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD Guidance on the appropriate use of information contained in...
Country-by-Country reports (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use.\(^6\) Germany meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.\(^7\)

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

5. 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.

6. Germany has legislation in place (primary law)\(^6\) which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning on or after 1 January 2016. Germany has published an administrative order which refers to the definitions contained in the Action 13 Report (OECD, 2015 - Annex III to Chapter V - Transfer Pricing Documentation - Country-by-Country Report).

**(a) Parent entity filing obligation**

<table>
<thead>
<tr>
<th>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).</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Germany has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities(^8) of MNE Groups which have consolidated group revenues equal to or above EUR 750 million, 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 by the Action 13 report (OECD, 2015).</td>
</tr>
<tr>
<td>8. Under the terms of reference, Constituent Entities include any business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size and materiality grounds. This requirement does not appear to be included in the German Fiscal Code.(^9) However, Germany confirms that it has published an administrative order which refers to the definitions contained in the CbC report template in the Action 13 Report (OECD, 2015): the term “Constituent Entity” is thus referred to, which includes “any business unit from the MNE Group's Consolidated Financial Statements solely on size and materiality grounds”.</td>
</tr>
<tr>
<td>9. No inconsistencies were identified with respect to the parent entity filing obligation.</td>
</tr>
</tbody>
</table>

**(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). |

10. The first filing obligation for a CbC report in Germany applies in respect of reporting fiscal years commencing on or after 1 January 2016. A CbC Report is to be filed no later than one year after the end of the reporting fiscal year.\(^\text{10}\)

11. The German Fiscal Code sets out the information to be included in a group's CbC Report: it is noted that the German translation of the terms “Income Tax Paid” and “Income Tax Accrued” is slightly different from the English version. The term “Revenue” is defined in Section 138a (2) of the German Fiscal Code as including "revenue and other income from business transactions". It is not clear that revenue from transactions other than business transactions should be included. In addition, Section 138 (a) 2 of the German Fiscal Code appears to require the use of consolidated financial statements as the source of data for an MNE group's CbC Report. However, Germany confirms that all definitions will be applied consistently with the information as contained in the CbC report template in the Action 13 Report (OECD, 2015). Germany has published an administrative order which refers to the definitions contained in the Action 13 Report’s CbC report.\(^\text{11}\) Therefore, a uniform understanding, consistent with the terms of reference, can be ensured.\(^\text{12}\)

12. 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).

13. Germany has introduced local filing requirements\(^\text{14}\) due to the EU directive.\(^\text{15}\) Germany’s requirements differ from the circumstances contemplated under paragraph 8 (c) iv. of the terms of reference (OECD, 2017b). Examples of such cases are:

- where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but there is no international agreement between Germany and this jurisdiction
- where the Ultimate Parent Entity of an MNE Group is required to file a CbC Report with the tax authority in its residence jurisdiction, but has not complied with this obligation
- where the tax authority in the residence jurisdiction of the Ultimate Parent Entity of an MNE Group has failed to exchange the group's CbC report with Germany, but this falls short of systemic failure.

14. While noting that Germany’s view is that it applies local filing in line with international law,\(^\text{16}\) for the purpose of the peer review of the jurisdictions of the Inclusive Framework for BEPS, it is recommended that Germany assess its local filing...
requirements and its impact in practice, and ensure that they would apply in scenarios that should not differ from paragraph 8 (c) iv. of the terms of reference (OECD, 2017b).

(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. Germany’s local filing requirements will not apply if there is surrogate filing in another jurisdiction.¹⁷ No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(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. Germany has legal mechanisms in place to identify MNE groups whose Ultimate Parent Entity is resident in Germany and to enforce compliance with the minimum standard. Every taxpayer must confirm in its tax return if it is the Ultimate Parent Entity of an MNE group required to file a CbC report, a surrogate entity which will file a CbC report in Germany, or a Constituent Entity in an MNE group with a foreign Ultimate Parent Entity (including details of the identity and tax residence of the Ultimate Parent Entity. In cases of non-compliance with CbC Reporting, the German Fiscal Code includes provisions to impose a penalty of up to EUR 10 000, as well as measures to enforce compliance.

17. As regards specific processes in place that would allow to take appropriate measures in case Germany 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, Germany indicates that the above mentioned penalties would be applicable. This aspect will be further monitored once the actual exchanges of CbC reports will commence.

18. No inconsistencies have been identified with the terms of reference on effective implementation.

Conclusion

19. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Germany has a domestic framework to impose and enforce CbC requirements on MNE Groups whose UPE is resident for tax purposes in Germany. Germany meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of
apparent inconsistencies with the terms of reference with respect to the limitation on local filing (paragraph 8 (c) of the terms of reference (OECD, 2017b)).

Part B: The exchange of information framework

20. 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 framework as specified in paragraph 9 (a) of the terms of reference.

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).

21. Germany has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to (i) the Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol (OECD/Council of Europe, 2011) (signed on 3 November 2011 and in force on 1 December 2015), and (ii) around 90 bilateral tax conventions which allow Automatic Exchange of Information. As an EU Member State, Germany is also committed to the exchange of CbC Reports within the European Union under the EU Council Directive (2016/881/EU).

22. Germany signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 15 March 2017. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. As of 12 January 2018, Germany has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU).

23. Germany has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Germany meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

24. Against the backdrop of the still evolving exchange of information framework, at this point in time Germany meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

25. 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).

26. In order to 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, and in order to ensure that the information in a CbC report 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; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Germany has provided information that the obligation to comply with the appropriate use of CbC reports is enshrined in writing in its law and this binds all tax administration employees. Germany has further confirmed that, within the organisational structure of the German tax administration and the German legal system, measures are in place to ensure the appropriate use of CbC Reporting information in all six areas identified in the OECD Guidance on the appropriate use of information contained in Country-by-Country reports (OECD, 2017a).

27. There are no concerns to be reported for Germany in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

28. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Germany. Germany thus meets these terms of reference.
Summary of recommendations on the implementation of Country-by-Country Reporting

<table>
<thead>
<tr>
<th>Aspect of the implementation that should be improved</th>
<th>Recommendation for improvement</th>
</tr>
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<tbody>
<tr>
<td>Part A Domestic legal and administrative framework - Limitation on local filing</td>
<td>For the purpose of the peer review of the jurisdictions of the Inclusive Framework for BEPS, it is recommended that Germany assess its local filing requirements and its impact in practice, and ensure that they would apply in scenarios that should not differ from paragraph 8 (c) iv. of the terms of reference (OECD, 2017b).</td>
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<tr>
<td>Part B Exchange of information framework</td>
<td></td>
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<tr>
<td>Part C Appropriate use</td>
<td>-</td>
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</tbody>
</table>

Notes

1 Paragraph 8 of the terms of reference (OECD, 2017b).
2 Paragraph 8 (c) iv. a) b) and c) of the terms of reference (OECD, 2017b).
3 Paragraph 9 (a) of the terms of reference (OECD, 2017b).
4 These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.
5 Paragraph 12 (a) of the terms of reference (OECD, 2017b).
6 Primary law consists of Paragraph 3 of section 90 Fiscal Code and Section 138a and Section 31 Einführungsgesetz zur Abgabenordnung sowie EU-Amtshilfegesetz (EUAHIG) und Finanzverwaltungsgesetz Gesetz zur Umsetzung der Änderungen der EU-Amtshilferichtlinie und von weiteren Maßnahmen gegen Gewinnkürzungen und –verlagerungen (BGBL 2016 I Seite 3000).
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, 2017b).
8 It is noted with respect to the definition of an “Ultimate Parent Entity” under German law that the reference included in the terms of reference to “an entity that does not prepare Consolidated Financial Statements, but would be required to do so if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence” (“deemed listing provision”) is not expressly reflected in the German legislation. However, Germany explained that, under the accounting standards applicable in Germany, the requirement to prepare Consolidated Financial Statements applies also to entities which are non-listed, if certain conditions are met (control, ownership etc.). This requirement also may apply to partnerships and other fiscally transparent entities under certain conditions. In addition, Germany confirms that the definition of an “Ultimate Parent Entity” is not to be read as meaning that an “Ultimate Parent Entity” which voluntarily prepares Consolidated Financial Statements would be subject to CbC requirements.
9 It is also noted that under the terms of reference, a permanent establishment should only be separately disclosed as a Constituent Entity in a CbC Report if a separate financial statement for the permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes is prepared. However, this not expressly reflected in the German legislation section 138a (2) 2 of the Fiscal Code which requires all permanent establishments to be separately disclosed as Constituent Entities. However, Germany explained that, under the accounting standards applicable in Germany, a permanent establishment would generally not be required to prepare a separate financial statement for financial reporting purposes. It is only if a permanent establishment would exceptionally appear for tax reporting or internal management control purposes as a distinct legal entity that the permanent establishment would have to be shown in the CbC report and would be treated as a Constituent Entity.
It is noted that in limited circumstances where a CbC Report where a German resident entity had reason to believe a CbC Report would be filed but this proved not to be the case, the deadline is extended to one month after the non-submission became known.

The administrative order contains a link to the OECD website relating to CbC Reporting: www.bzst.de/DE/Steuern_International/CbCR/cbcr_node.html (accessed 20 April 2018).

This also ensures that MNE Groups are allowed to MNE group to use different sources of data in completing its CbC report, including consolidation reporting packages, separate entity statutory reporting statements, regulatory financial statements or internal management accounts.

As the administrative order mentioned above refers to the Action 13 Report (OECD, 2015), it is noted that interpretative guidance has been issued by the OECD in April and in July 2017 (e.g. it clarifies the definition of “Revenue – Related Party” and explains that “for the third column of Table 1 of the CbC report, the related parties, which are defined as “associated enterprises” in the Action 13 report (OECD, 2015), should be interpreted as the Constituent Entities listed in Table 2 of the CbC report”). In order to ensure consistency with OECD guidance, Germany refers to the OECD website on the website of the Federal Taxation Office www.bzst.de/DE/Steuern_International/CbCR/cbcr_node.html (accessed 20 April 2018). Therefore, Germany indicates that the reference to interpretative guidance is always very up-to-date.

It is noted that under paragraph (4) of section 138a, if a “domestic constituent entity submits the CbC report, all of the other constituent entities shall be relieved of this requirement. If a constituent entity is unable to submit the CbC report by the deadline [for filing a CbC report], in particular because it cannot procure or produce the report, then it shall notify the Federal Central Tax Office accordingly by the deadline [for filing the CbC report] while at the same time providing all of the information (…) that it has at its disposal or that it can procure”.


See Section 138a (4) of the German Fiscal Code.

Germany has not provided a list of these bilateral conventions.

It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.
References


http://dx.doi.org/10.1787/9789264241480-en.

http://dx.doi.org/10.1787/9789264115606-en.