New Zealand

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. New Zealand’s implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations. However, it is noted that an obligation on an entity to file a CbC Report in New Zealand only arises upon a notification being issued by the Inland Revenue and the effectiveness of this system should be monitored.

Part A: Domestic legal and administrative framework

2. New Zealand has not introduced specific legislation for CbC Reporting. Instead, New Zealand will rely on existing powers in the Tax Administration Act 1994, which allow the Commissioner of the Inland Revenue to require the provision of information or documents necessary or relevant for any purpose relating to the administration or enforcement of taxes. This is supported by guidance on the Inland Revenue website describing the requirements imposed on groups. Each MNE group within the scope of CbC Reporting whose Ultimate Parent Entity is resident in New Zealand will be contacted in writing by the Inland Revenue and notified that it is required to submit a CbC Report, together with details of the required form and content of the CbC Report. In respect of paragraph 8 of the terms of reference (OECD, 2017a), no inconsistencies were identified. However, it is noted that no obligation to file a CbC Report arises unless notification is given by the Inland Revenue. It is therefore key to the effectiveness of this system that the Inland Revenue correctly identifies all New Zealand resident entities that are the Ultimate Parent Entity of an MNE group within the scope of CbC Reporting and issues a notification, and this should be monitored.

Part B: Exchange of information framework

3. New Zealand 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 effect for 2016, and is also a signatory of the CbC MCAA. It has provided its notifications under Section 8 (e) (i) of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. It is noted that New Zealand has signed a bilateral QCAA with the United States. As of 12 January 2018, New Zealand has 51 bilateral relationships activated under the CbC MCAA and under a bilateral Competent Authority agreement (CAA). New Zealand 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 New Zealand meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.\textsuperscript{3}

**Part C: Appropriate use**

4. There are no concerns to be reported for New Zealand. New Zealand 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, 2017b). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use. New Zealand meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.\textsuperscript{3}

**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. New Zealand has not introduced specific legislation for CbC Reporting. Instead, New Zealand will rely on existing powers in the Tax Administration Act 1994, which allow the Commissioner of the Inland Revenue to require the provision of information or documents necessary or relevant for any purpose relating to the administration or enforcement of taxes. This is supported by guidance on the Inland Revenue website describing the requirements imposed on groups. Each MNE group within the scope of CbC Reporting whose Ultimate Parent Entity is resident in New Zealand will be contacted in writing and notified that they are required to submit a CbC Report, together with details of the required form and content of the CbC Report.

**(a) Parent entity filing obligation**

Summary of terms of reference:\textsuperscript{4} 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).

7. The New Zealand Inland Revenue identifies all New Zealand resident entities that are the Ultimate Parent Entities of an MNE group with consolidated group income in a fiscal year of EUR 750 million or more. The Inland Revenue then writes to the entity to notify it that it is required to file a CbC Report for the following fiscal year.\textsuperscript{5} No obligation to file a CbC Report arises until such notification is sent. An Ultimate Parent Entity is also sent details of the Action 13 Report (OECD, 2015) and OECD guidance on CbC Reporting, and so all definitions contained in OECD publications are indirectly incorporated into New Zealand’s CbC Reporting framework. New Zealand also indicates that any additional guidance issued by the OECD would be forwarded to the Ultimate Parent Entities concerned.
8. No inconsistencies were identified with respect to the parent entity filing obligation. However, the effectiveness of this framework relies on the Inland Revenue being able to identify all New Zealand resident entities that are the Ultimate Parent Entity of an MNE Group within the scope of CbC Reporting and issuing a notification, and this should be monitored.

**(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).

9. The first filing obligation for a CbC Report in New Zealand applies in respect of reporting fiscal years commencing on or after 1 January 2016. Guidance issued by the Inland Revenue sets out the information which must be included in a CbC Report, which is all of, and only, the information required under the minimum standard, and the Excel spreadsheet sent by the Inland Revenue to Ultimate Parent Entities for completion accurately reflects the OECD CbC Template. The CbC report must be filed by 12 months after the last day of the reporting fiscal year. The Ultimate Parent Entity is sent details of the Action 13 Report (OECD, 2015) and OECD guidance on CbC Reporting (OECD, 2018), and so all definitions and interpretative guidance contained in OECD publications are reflected. New Zealand also indicates that any additional guidance issued by the OECD would be forwarded to the Ultimate Parent Entities concerned.

10. 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).

11. New Zealand does not apply or plan to introduce local filing.

**(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).
12. New Zealand does not apply or plan to introduce local filing.

\textit{(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).

13. New Zealand has a system in place to monitor compliance with CbC Reporting. Because Ultimate Parent Entities are identified by the Inland Revenue well in advance of the filing deadline and receive notification of their obligation to file a CbC Report, it is possible for the Inland Revenue to monitor compliance by these groups. New Zealand also has existing rules in place to enforce compliance and impose penalties as appropriate.\(^6\)

14. There are no specific processes in place that would allow to take appropriate measures in case New Zealand 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. New Zealand notes that the administration of CbC Reporting is being carried out by International Revenue Strategy at Inland Revenue, which area is also responsible for exchanges of information. Accordingly, they will be able to follow up quickly any errors or non-compliance notified by other jurisdictions. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be monitored.

15. No inconsistencies were identified with respect to the effective implementation.

\textit{Conclusion}

16. In respect of paragraph 8 of the terms of reference (OECD, 2017a), no inconsistencies were identified. However, the effectiveness of New Zealand’s framework relies on the Inland Revenue being able to identify all New Zealand resident entities that are the Ultimate Parent Entity of an MNE group within the scope of CbC Reporting and issuing a notification, and this should be monitored.

\textbf{Part B: The exchange of information framework}

17. 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 (OECD, 2017a).

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).
18. New Zealand 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 26 October 2012, in force on 1 March 2014 and in effect for 2016), and (ii) to 38 bilateral tax conventions in effect for 2016 which allow Automatic Exchange of Information.

19. New Zealand signed the CbC MCAA on 12 May 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 23 February 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. It is noted that New Zealand has signed a bilateral QCAA with the United States. As of 12 January 2018, New Zealand has 51 bilateral relationships activated under the CbC MCAA and under a bilateral CAA. New Zealand 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 New Zealand meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

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

Part C: Appropriate use

21. 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: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and 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 are not used on their 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 (paragraphs 12 (a) of the terms of reference).

22. 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 (paragraphs 12 (a) of the terms of reference).
adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), New Zealand 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, 2017b). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use. It has also provided a copy of its internal guidance on appropriate use.

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

Conclusion

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

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Notes

1 Paragraph 8 of the terms of reference (OECD, 2017a).
2 Paragraph 9 (a) of the terms of reference (OECD, 2017a).
3 Paragraph 12 (a) of the terms of reference (OECD, 2017a).
4 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, 2017a).
5 New Zealand notes that MNE Groups with 31 December balance dates are required to collect CbC data for the 12 months beginning 1 January 2016. For 31 March and 30 June balance date MNE Groups, they are required to collect CbC data for the 12 months beginning 1 April 2016 and 1 July 2016 respectively.
6 New Zealand notes that CbC reports will be requested under section 17 of the Tax Administration Act 1994. It is an offence not to comply with a notice issued under section 17. An offence occurs where a MNE does not provide, or knowingly does not provide, information to Inland Revenue when required to do so by a tax law (sections 143 and 143A of the Tax Administration Act 1994). These sections are part of the day-to-day administration of our tax law, so New Zealand has considerable experience in their application. If there is non-compliance with a section 17 notice then an application for a court order can be sought under section 17A of the Tax Administration Act 1994. This section is part of the day-to-day administration of the tax law, so New Zealand has considerable experience in its application.
8 New Zealand also lodged a Unilateral Declaration dated 4 January 2018 on “the effective date for exchanges of information under the Multilateral Competent Authority Agreement on the exchange of Country-by-Country Reports” to have effect from 1 January 2016 for CbC Reporting with jurisdictions that have not deposited their instruments of ratification by 31 August 2015.
9 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


