

Slovak Republic

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. The Slovak Republic's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. The Slovak Republic has rules (primary law) that impose and enforce CbC requirements on the Ultimate Parent Entity of a multinational enterprise group ("MNE" Group) that is resident for tax purposes in the Slovak Republic. The first filing obligation for a CbC report in the Slovak Republic commences in respect of the fiscal years beginning on 1 January 2016 or later. The Slovak Republic meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework

3. The Slovak Republic is a signatory to 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 of this agreement and intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under the same agreement. The Slovak Republic has also signed a bilateral Competent Authority Agreement (CAA) with the United States. As of 12 January 2018, the Slovak Republic has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. The Slovak Republic 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, the Slovak Republic meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.²

Part C: Appropriate use

4. There are no concerns to be reported for the Slovak Republic. The Slovak Republic 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.³ The Slovak Republic meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.⁴

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. The Slovak Republic has primary law in place for implementing the BEPS Action 13 minimum standard, establishing the necessary requirements including the filing and reporting obligations.⁵ No guidance has been published.

(a) Parent entity filing obligation

Summary of terms of reference:⁶ 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 Slovak Republic has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on 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 by the Action 13 report (OECD, 2015).⁷

8. No inconsistencies were identified with respect to 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).

9. The first filing obligation for a CbC report in the Slovak Republic commences in respect of the fiscal year of the MNE group beginning on or after 1 January 2016.⁸ The CbC report must be filed within 12 months after the end of the reporting fiscal year of the MNE Group.⁹

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. The Slovak Republic has introduced local filing requirements in respect of reporting fiscal years beginning on or after 1 January 2017.¹⁰ No inconsistencies were identified with respect to the limitation on local filing obligation.¹¹

(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. The Slovak Republic's local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group.¹² 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: 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. The Slovak Republic has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to the Ultimate Parent Entity, the Surrogate Parent Entity or any other Constituent Entity.¹³ The Slovak Republic indicates that it is currently analysing possible mechanisms how to validate that the entities with filing obligations actually file a CbC report. There are also penalties in place in relation to the obligations for CbC Reporting which include penalties for failure to file the CbC report.¹⁴

14. The Slovak Republic notes the following specific processes in place that would allow to take appropriate measures in case the Slovak Republic 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:

- Under Article 3(2) of the Tax Administration Act: a tax administrator shall perform tax administration in close cooperation with a taxable entity and other persons and shall advise them of their procedural rights and obligations if provided so by this Act. The tax administrator shall be obliged to deal with any matter which is the subject of tax administration, to attend to it without undue delay and expeditiously, and shall use the most suitable means leading to the correct determination and assessment of tax.
- Under Article 13(8) of the Tax Administration Act: if a filing has any deficiencies due to which it does not qualify for a discussion, the competent authority shall invite the taxable entity to eliminate such deficiencies according to its instruction and within the specified time limit. It shall also advise the taxable entity of the consequences connected with the failure to eliminate them.

Conclusion

15. In respect of paragraph 8 of the terms of reference (OECD, 2017b), the Slovak Republic has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the Slovak Republic. The Slovak Republic meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

16. 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, 2017b).

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).

17. The Slovak Republic has domestic legislation that permits the automatic exchange of CbC reports.¹⁵ 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 29 May 2013, in force on 1 March 2014 and in effect for 2016) which allows the Automatic Exchange of Information. The Slovak Republic has also implemented EU Council Directive 2016/881/2016 amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.

18. The Slovak Republic 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. The Slovak Republic also signed a bilateral CAA with the United States on 21 June 2017. As of 12 January 2018,

Slovak Republic has 54 bilateral relationships activated under the CbC MCAA¹⁶ or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. The Slovak Republic 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, the Slovak Republic meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

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

Part C: Appropriate use

20. 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).

21. 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), the Slovak Republic 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. The Slovak Republic has also provided a copy of its guidance of appropriate use.

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

Conclusion

23. In respect of paragraph 12 (a) of the terms of reference, there are no concerns to be reported for the Slovak Republic. The Slovak Republic thus meets these terms of reference.

Summary of recommendations on the implementation of country-by-country reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information	-
Part C	Appropriate use	-

Notes

¹ Paragraph 8 of the terms of reference (OECD, 2017b).

² Paragraph 9 (a) of the terms of reference (OECD, 2017b).

³ These questions were circulated to all members of the Inclusive Framework following the release of the *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017) on 6 September 2017, further to the approval of the Inclusive Framework.

⁴ Paragraph 12 (a) of the terms of reference (OECD, 2017b).

⁵ Primary law consists of Act 43/2017 Coll. amending and supplementing Act No. 442/2012 Coll. on International Assistance and Cooperation in Tax Administration adopted on 1 February 2017 (hereafter referred to as the “Act”). No secondary law or guidance was issued.

⁶ 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).

⁷ See Article 22b of the Act.

⁸ See Article 24b(1) of the Act.

⁹ See Article 22b(1) of the Act.

¹⁰ See Article 24b (2) of the Act.

¹¹ See Article 22c of the Act. It should be noted in the English translation of Article 22c (1) that the word “not “ has been erroneously omitted from the first sentence. The Slovak Republic confirms that this is a translation mistake. There is thus no issue to be reported in this respect.

¹² See Article 22d of the Act.

¹³ See Article 22e of the Act. It also indicates that in addition to the obligations and the sanctions in the Act, it is possible to use the provisions of the Tax Administration Act 563/2009 of Coll. (chapter four: Tax Enforcement Proceedings): www.finance.gov.sk/en/Default.aspx?CatID=405 (accessed 23 April 2018).

¹⁴ See Article 22g of the Act: the Tax Authority will impose a penalty of up to EUR 10 000 for failure to file the CbC report and a penalty of up to EUR 3 000 for failure to make the appropriate notifications; in both cases the penalty will be imposed repeatedly for repeat offences.

¹⁵ See Article 22b of the Act.

¹⁶ 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

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