

United States

1. The United States was first reviewed during the 2017/2018 peer review. This report is supplementary to the United States' 2017/2018 peer review report (OECD, 2018^[1]). The first filing obligation for a CbC report in the United States applies to reporting fiscal years commencing on or after 1 July 2016. The United States also allows its MNE groups to file a CbC report on a voluntary basis, for reporting fiscal years beginning between 1 January 2016 and 30 June 2016 (i.e. "parent surrogate filing").

Summary of key findings

2. The United States' implementation of the Action 13 minimum standard meets all applicable terms of reference (OECD, 2017^[2]) relating to the domestic legal and administrative framework, with the exception of:

- the exclusion of revenue other than "unrelated business taxable income" from the definition of revenues for certain tax exempt entities. This recommendation remains unchanged since the 2017/2018 peer review.

3. The United States implementation of the Action 13 minimum standard meets all applicable terms of reference relating to the exchange of information framework, with the exception of:

- the United States' competent authority should continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions, and with which the United States has an agreement in effect that allows for the automatic exchange of information. This recommendation remains unchanged since the 2017/2018 peer review.

Part A: The domestic legal and administrative framework

4. The United States has primary and secondary laws in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations.

(a) Parent entity filing obligation

5. The United States' 2017/2018 peer review included a recommendation that the United States ensure that the definition of "consolidated group revenue" for the purposes of applying the threshold is consistent with the definition in the Action 13 minimum standard as further clarified by OECD guidance. This recommendation remains in place.

6. With respect to paragraph 8(a) iv. of the terms of reference, since 30 March 2018 the United States' rules provide for modifications to the reporting requirements for U.S. MNE groups that are "specified national security contractors".¹ An MNE group with a UPE

organized in or having tax residence in the United States is a specified national security contractor if more than 50 per cent of the MNE group's annual revenue in the preceding reporting period, as determined in accordance with US GAAP, is attributable to contracts with the US Department of Defense or other US government intelligence or security agencies. An MNE group that qualifies as a specified national security contractor is permitted to submit a modified CbC report, including aggregated financial and employee data for the entire MNE group in Table 1 and only the UPE's information in Table 2. As a modified CbC report does not contain details of the jurisdiction of any constituent entities other than the UPE, based on national security concerns, the CbC report will not be exchanged with tax administrations in other jurisdictions. The Action 13 Report states at paragraph 55 that “*no exemptions from filing the Country-by-Country Report should be adopted apart from the exemptions outlined in this section*” (the EUR 750 000 000 revenue threshold). The United States has explained that an MNE group that qualifies as a specified national security contractor is nevertheless under a filing obligation but is permitted to submit a modified report as described above. The US has further explained that the basis for modifications to the reporting requirements is that unmodified reports contain information the disclosure of which would be contrary to public policy (*ordre public*) under the provisions of Article 26(3)(c) of the United States Model Income Tax Convention 2016. Such provisions are contained in all of the international agreements that the United States intends to use for the exchange of CbC reports. Further, in order to qualify for the modified reporting, an MNE group must have at least USD 425 000 000 of revenue from relevant contracts in the preceding reporting period. The United States has explained that the number of MNE groups likely to meet this threshold is therefore very limited, and estimates this to be no more than two per cent of MNE groups that would otherwise be within the scope of CbC reporting in the United States in any given fiscal year. The United States IRS will monitor the number of MNE groups claiming the specified national security contractor status and, if the number of MNE groups claiming this status exceeds this estimate, or the IRS has concerns about a particular MNE group's qualification for the modified reporting, the IRS will request further information. If an MNE group filing a modified CbC report does not qualify as a specified national security contractor, penalties may apply. In light of the United States' explanations and the limited number of MNE groups that are likely to qualify for the specified national security contractor status, no recommendation is made, but use of modified reporting will be monitored.

(b) Scope and timing of parent entity filing

7. No changes were identified with respect to the scope and timing of parent entity filing. The United States' 2017/2018 peer review included a recommendation that the United States ensure that the definition of “revenue” for the purposes of completing Table 1 is consistent with the definition in the Action 13 minimum standard as further clarified by OECD guidance. This recommendation remains in place.

(c) Limitation on local filing obligation

8. No changes were identified with respect to the limitation on local filing obligation.

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

9. No changes were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

10. No changes were identified with respect to the effective implementation.

Conclusion

11. There is no change to the conclusion in relation to the domestic legal and administration framework for the United States since the previous peer review. The United States meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of the exclusion of revenue other than unrelated business taxable income from the definition of revenues.

Part B: The exchange of information framework

(a) Exchange of information framework

12. As at 31 May 2019, the United States has 43 bilateral relationships activated under bilateral QCAAs.² A number of additional bilateral arrangements are expected to be signed soon. While noting that some time is needed for bilateral negotiations the United States' competent authority should continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions, and with which the United States has an agreement in effect that allows for the automatic exchange of information.

(b) Content of information exchanged

13. The United States has procedures in place that are intended to ensure that each of the mandatory fields of information as required in the CbC template are present in the information exchanged. It has provided details in relation to these procedures.

(c) Completeness of exchanges

14. The United States has procedures in place that are intended to ensure that CbC reports are exchanged with all tax jurisdictions listed in Table 1 of a CbC reporting template with which it should exchange information as per the relevant QCAAs. It has provided details in relation to these procedures.

(d) Timeliness of exchanges

15. The United States has procedures in place that are intended to ensure that the information to be exchanged is transmitted to the relevant jurisdictions in accordance with the timelines provided for in the relevant QCAAs and terms of reference. It has provided details in relation to these procedures.

16. Despite these procedures, the United States and peer jurisdictions indicate that a number of CbC reports were exchanged late. These late exchanges were due to early system difficulties, which have since been corrected, or to errors in MNE data, which have been or are being corrected using the United States procedures for ensuring correct data, therefore no recommendation is required.

(e) Temporary suspension of exchange or termination of QCAA

17. The United States has processes in place that are intended to ensure that a temporary suspension of the exchange of information or termination of a relevant QCAA be carried out only as per the conditions set out in the QCAA. It has provided details in relation to those processes.

(f) Consultation with other Competent Authority before determining systemic failure or significant non-compliance

18. The United States has written procedures in place that are intended to ensure that the Competent Authority consults with the other Competent Authority prior to making a determination that there is or has been significant non-compliance with the terms of the relevant QCAA or that the other Competent Authority has caused a systemic failure. It has provided details in relation to those procedures.

(g) Format for information exchange

19. The United States confirms that it uses the OECD XML Schema and User Guide (OECD, 2017^[3]) for the international exchange of CbC reports.

(h) Method for transmission

20. The United States indicates that it uses the Common Transmission System to exchange CbC reports.

Conclusion

21. The United States has in place the necessary processes and written procedures to ensure that the exchange of information is conducted in a manner consistent with the terms of reference relating to the exchange of information framework.

Part C: Appropriate use

22. No changes were identified in respect of appropriate use.

23. No information or peer input was received for the reviewed jurisdiction suggesting any issues with appropriate use.

Conclusion

24. The United States meets all the terms of reference relating to the appropriate use of CbC reports.

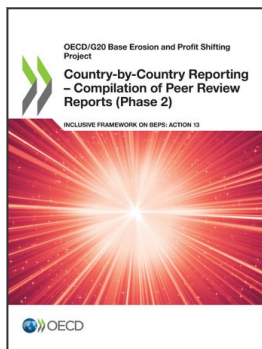
Summary of recommendations on the implementation of country-by-country reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework – limitation on local filing obligation	It is recommended that the United States ensure that the definition of “consolidated group revenue” for the purposes of applying the threshold is consistent with the definition in the Action 13 minimum standard, as further clarified by OECD guidance; and that the definition of “revenue” for the purposes of completing Table 1 is consistent with the definition in the Action 13 minimum standard, as further clarified by OECD guidance.
Part B	Exchange of information framework	The United States competent authority should continue to work actively towards signing bilateral competent authority arrangements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions and with which the United States has an agreement in effect that allows for the automatic exchange of information
Part C	Appropriate use	-

Notes

¹ See IRS Notice 2018-31.

² In addition, joint statements have been issued by the Competent Authorities of the United States and France and by the Competent Authorities of the United States and Germany expressing the intention to spontaneously exchange CbC reports for fiscal years of MNE groups commencing on or after January 1, 2016 and before January 1, 2017, while bilateral QCAAs is being negotiated.



From:
**Country-by-Country Reporting – Compilation of
Peer Review Reports (Phase 2)**
Inclusive Framework on BEPS: Action 13

Access the complete publication at:
<https://doi.org/10.1787/f9bf1157-en>

Please cite this chapter as:

OECD (2019), “United States”, in *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 2): Inclusive Framework on BEPS: Action 13*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/d2880b47-en>

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