2020 REVIEW OF COUNTRY-BY-COUNTRY REPORTING

Action 13

Public Consultation Meeting
12-13 May 2020
HOUSEKEEPING ANNOUNCEMENTS
Press ALT
to see your Meeting Controls
Message to participants

Mute and unmute your microphone, activate or deactivate your camera
If case of poor audio quality, switch to dial-in by telephone.
See participants and participant actions.
Rename yourself e.g.
Country/Organisation: Firstname LASTNAME
If you want to intervene:
1. Raise your hand
2. Wait for the chair to give you the floor
3. Unmute your microphone
4. Intervene
5. Mute your microphone and lower your hand
Raise hand to request to speak

Lower and mute when finished
If you wish to switch viewing modes.
Chat and select person to chat with. You can type a message and address it privately to OECD: Support.
Message to participants

If you have technical problems, please use CHAT to speak to:
OECD - Sonia Nicolas
Thank you
INTRODUCTORY REMARKS
ITEM 2

GENERAL TOPICS CONCERNING THE IMPLEMENTATION AND OPERATION OF BEPS ACTION 13
BASTIAN BUCK (GRI)
PUBLIC CONSULTATION MEETING ON THE REVIEW OF CBC REPORTING (BEPS ACTION 13)

GRI 207: Tax 2019

Bastian Buck
Chief of Standards, GRI
Who We Are

• GRI is an international independent organization that has pioneered sustainability reporting for two decades.

• The GRI Standards are the global common language for sustainability reporting, designed to help communicate an organization’s impacts on the economy, the environment, and society.

• The GRI Standards are developed through a transparent, multi-stakeholder process, following the Due Process of the Global Sustainability Standards Board (GSSB) – GRI’s independent standard-setting body.

• The GRI Standards are available as a free public...
GRI 207: Tax 2019

- Developed to promote greater transparency of organizations’ approach to taxes.
- First global reporting standard to combine management approach disclosures on tax strategy, with public country-by-country reporting of income, taxes, and business activities.
- Released December 2019; effective for reports or other materials published on or after 1 January 2021.
- Available in 10 languages as of May 2020.

Learn more: globalreporting.org/standards
Development of GRI 207: Tax 2019

Expert input
Content developed by a multi-stakeholder Technical Committee of leading experts and practitioners and overseen by the Global Sustainability Standards Board (GSSB) GRI’s dedicated standard-setting body.

Multi-stakeholder engagement
Transparent and inclusive development process in the public interest including a 90-day public comment period. ~85 submissions by >110 organizations across business, investment institutions, civil society, labor & mediating institutions >40% of the submissions came from investment companies, who collectively manage assets worth in excess of 2.5 trillion US dollars globally

Full transparency
All GSSB standard-setting meetings and materials are open to the public following the GSSB’s Due Process Protocol.
GRI 207: Tax 2019
Summary of contents

Management approach disclosures

Disclosure 207-1 Approach to tax

Disclosure 207-2 Tax governance, control, and risk management

Disclosure 207-3 Stakeholder engagement and management of concerns related to tax

Topic-specific disclosure

Disclosure 207-4 Country-by-country reporting
GRI 207: Tax 2019
Country-by-country reporting

Reporting requirements

The reporting organization shall report the following information:

a. All tax jurisdictions where the entities included in the organization’s audited consolidated financial statements, or in the financial information filed on public record, are resident for tax purposes.

b. For each tax jurisdiction reported in Disclosure 207-4-a:
   i. Names of the resident entities;
   ii. Primary activities of the organization;
   iii. Number of employees, and the basis of calculation of this number;
   iv. Revenues from third-party sales;
   v. Revenues from intra-group transactions with other tax jurisdictions;
   vi. Profit/loss before tax;
   vii. Tangible assets other than cash and cash equivalents;
   viii. Corporate income tax paid on a cash basis;
   ix. Corporate income tax accrued on profit/loss;
   x. Reasons for the difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax.

c. The time period covered by the information reported in Disclosure 207-4.
Why public reporting on Tax?

• Domestic revenue, including via taxes, is vital to achieving the SDGs.

• Strong demand for increased tax transparency from a variety of stakeholders including investors, civil society, labor and the public.

• Public country–by–country reporting will provide a better understanding of how an organization contributes to the different economies in which it operates.

• Increased transparency will lead to increased confidence and accountability in the eyes of stakeholders; promoting trust in the tax practices of organizations and in tax systems.

• More information on tax practices and taxes paid will inform public debate and support the development of socially desirable tax policy.
## Summary comparison with OECD BEPS CBCR Template

<table>
<thead>
<tr>
<th>Item</th>
<th>GRI 207: Tax 2019</th>
<th>OECD BEPS (Action 13)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public reporting</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Threshold for reporting</td>
<td>Tax has been identified as a material topic</td>
<td>MNEs with a consolidated annual revenue &gt;EUR 750 million</td>
</tr>
<tr>
<td>Source of information</td>
<td>Relevant data to be reconciled with audited consolidated financial statements; otherwise not specified</td>
<td>Choice of data of data source; must be consistent year-on-year</td>
</tr>
<tr>
<td>Timing</td>
<td>Period covered by the most recent audited consolidated financial statements. May report information for the period covered by the statements immediately preceding the most recent ones</td>
<td>Covers a fiscal year with report to be filed no later than 12 months after the last day of the reporting fiscal year</td>
</tr>
<tr>
<td>Data aggregation</td>
<td>Data to be reported by country</td>
<td>Data to be reported by country</td>
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</table>

Note: this is for illustrative purposes only and should not be relied upon for reporting purposes.
## Summary comparison with OECD BEPS CBCR Template

### Part 2/2

<table>
<thead>
<tr>
<th>Item</th>
<th>GRI 207: Tax 2019</th>
<th>OECD BEPS (Action 13)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total revenues</td>
<td>✗</td>
<td>✓</td>
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<tr>
<td>Revenue from third parties</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Revenue from related parties between jurisdictions only</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Profit/loss before tax</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Tax paid (on cash basis)</td>
<td>✓ flexibility to report withholding tax separately</td>
<td>✓</td>
</tr>
<tr>
<td>Tax accrued – current year</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Tangible assets or other than cash and cash equivalents</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Number of employees FTE basis</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

Reasons for the difference between corporate tax accrued on profit/loss and the tax due if the statutory tax rate is:

- ✓
- ✗

Note: this is for illustrative purposes only and should not be relied upon for reporting purposes.
DAVID ERNICK (PWC)
MASAFUMI HAMADA (KEIDANREN)
General Topics Concerning the Implementation and Operation of BEPS Action 13

12th May 2020
Keidanren understands the significance of BEPS Action 13 measures, but the burden to identify, gather, and organize the information is considerable.

In compliance with the original purpose, CbCR should be used for high-level risk assessment.

We are strongly concerned that CbCR may lead to arbitrary taxation. A system that relies exclusively on CbCR is unsound.

CbCR in its current format was recently introduced, so hasty changes such as introduction of entity-based approach, jurisdictional consolidation and additional columns should be avoided.
Implementation of CbCR

• We prefer treaty-based exchange of CbCR to local filing.
• If competent authority agreements have not been concluded due to the lack of confidentiality or inappropriate use in a recipient jurisdiction, MNE groups should be allowed to suspend the local filing of CbCR until remedial measures are adopted.
In jurisdictions where submission of master files is mandatory, **the formats and information requested should be standardized.**

Jurisdictions should **respect the submission deadline** in the jurisdiction where the **ultimate parent entity** is located.

**Examples of additional data:**

- Functions, assets and risk analysis of entities contributing at least 10% of the total group revenue or assets or profits.
- Names and ratios of the parent entity’s major shareholders.
- Details of key service arrangements other than R&D.
- Details of R&D personnel employed worldwide.
- Specific group financing.
- Top 10 unrelated-party lenders.
- Information about bilateral APAs.
SOL PICCIOTTO (BMG)
Inclusive Framework on BEPS
Public Consultation on
Country-by-Country Reporting
12-13 May 2020

Sol Picciotto
International Centre for Tax & Development
Coordinator, BEPS Monitoring Group
Session Two
Elements of the Action 13 Report
CbCRs and Transfer Pricing Documentation

- **CbCR is a Transparency Tool**
  - Verify that tax aligns with economic activities and value creation
  - Should and inevitably will be public (political decision)
  - High-level data: should not be treated as commercially confidential
  - Disclosure is a condition of the privilege of incorporation
  - Uniform application ensures competitive fairness

- **Master File**
  - Data needed by all relevant tax authorities for profit allocation
  - More standardisation, but no restriction on additional data

- **OECD Role**
  - The present system is complex & bureaucratic, restricts dissemination
  - ‘Appropriate use’ controls unjustified with shift to formulaic methods
  - Focus should be on data **quality** and **comparability**
Improve Data Quality in CbCR & Master File

- **Definitions & Methodology**
  - **MNE Group**: taxable presence in two or more countries
    - *Constituent Entity*: fixed base/habitual presence of personnel/agent and/or BEPS Action 1 new taxable presence definition
  - **Income**: consolidated by country & reconciled to global consolidated accounts
  - **Groups**: common control = ownership 25%, no further threshold
    - *Tax Paid*: by recipient country also for withholding tax

- **Additional Data: CbCR or Master File?**
  - Breakdown of related party payments: Master File
  - R&D expenditures: relevant to activities: CbCR
  - Deferred taxes (also Uncertain Tax Positions): Master File
  - Employee costs: relevant for DEMPE, also for value creation: either
    - SIC Codes: important for data analysis: CbCR

* issues not raised in Discussion Document
ITEM 3

TOPICS CONCERNING THE SCOPE OF CBC REPORTING
TOMMASO FACCIO (ICRICT)
Item 3. TOPICS CONCERNING THE SCOPE OF CBC REPORTING

Tommaso Faccio – Head of secretariat, ICRICT
The Times They Are a-Changin'
Better data quality
Better access
Better coverage
Should the level of the consolidated group revenue threshold be reduced

Revenue threshold should be lowered.

- Current revenue threshold discriminate against developing countries, where smaller MNEs can be responsible for larger shares of economic activity – and for larger shares of tax risk.

- An obvious starting point would be to lower the threshold to €40mn (EU definition of “large undertaking”)

• COMPLIANCE COSTS
AWESTA SARKASH
(SMALL BUSINESS MAJORITY)
TANIA SAULNIER (MEDEF)
Should the level of the consolidated group revenue threshold be reduced?

- Action 13 still in early stages: need to gain robust and comprehensive experience before introducing any significant changes
- Focus should remain on the largest MNE Groups
- Interaction with the work on the tax challenges of the digitalisation of the economy
- Covid-19 crisis calls for retaining the status quo: top priority is to preserve and sustain businesses!
BREAK
ITEM 4
TOPICS CONCERNING THE CONTENT OF A CBC REPORT
Country-by-country reporting

Professor Richard Murphy
Professor of Practice in International Political Economy, City University, London
and
Tax Research LLP
CBCR was always intended to be - and primarily is - accounting data

• The first iteration of CBCR, which I wrote in 2003, was written as an accounting standard
• Nothing has changed since then
• CBCR stands or falls on the basis of its credibility as accounting data
• The OECD CBCR standard is not at present credible accounting data
The intention was to provide a different lens on the trading of the corporation.

- The aim of CBCR was to view the MNC’s activities when consolidated by jurisdiction.
- That consolidation was intended to reconcile to the group accounts – to provide data credibility.
- And to then add to that jurisdiction view intra-group transaction data by jurisdiction to explain how those local results arose.
- It was always a country-based view.
- It was never an entity-based view.
The intention was to provide a different lens on the trading of the corporation

• An entity-based view is the complete antithesis of what CBCR was and should be.
• CBCR assumes that the MNC is in substance a single entity arbitrarily subdivided into entities for operational or legal convenience.
• CBCR’s objective was to provide a new perspective on the impact of that single entity as it was spread geographically.
• An entity-based approach is the complete antithesis of that.
• To make it absolutely clear: an entity-based report would not be CBCR.
The whole point of CBCR was that data should be consolidated at the jurisdiction level.

- In addition, aggregated data at the jurisdiction level makes literally no sense at all.
- It provides data that it is impossible to meaningfully interpret. That is why consolidation exists.
- If you want a risk indicator that can be distorted at the taxpayer’s choice simply by creating additional transactions in some jurisdictions with the aim of misleading tax authorities then allow aggregation.
- If you want meaningful data to inform decision making on tax and many other issues then consolidate at the jurisdiction level.
- The choice is as simple as that.
Is there any data missing from Table 1?

• The GRI CBCR standard makes clear just what is missing. In particular:
  • Labour cost is included, which is vital to get labour based apportionments right
  • The GRI capital requirement relates to productive and not financial capital, which is the only appropriate basis to work out where profit is really earned rather than to where it is reallocated, which the OECD standard does not expose at present
  • A tax reconciliation is required

• Table 1 should be amended to include this data

• But, best, the GRI standard should be adopted
SEVERINE PICARD (TUAC)
MICHAEL PLOWGIAN (KPMG)
PETER SCULLY (RIO TINTO)
Topics concerning the contents of a CBC report

Peter Scully
15 May 2020
Should information in table 1 be presented by entity rather than by tax jurisdiction?

Providing information by constituent entity rather than jurisdiction provides a false sense of security.

• In some cases the data for the whole jurisdiction gives a better, more meaningful picture of the MNE particularly where there are many entities in the jurisdiction.

• In some jurisdictions the MNE group’s tax is determined on a consolidated basis rather than for each entity, meaning entity information may not be readily available without significant system changes and could be extremely onerous.

• Some entities are used for multiple different functions and may share employees and functions across many entities in the jurisdiction.
Should consolidated data rather than aggregated data be used in table 1?

MNE’s should have the ability to report data on either a consolidated or aggregate basis, irrespective of the UPE jurisdiction, as long as the basis of preparation is disclosed.

Aggregated data is not always meaningful:
- It can significantly overstate related party revenues in a particular jurisdiction.
- This is especially the case where local entities are grouped or ‘consolidated’ for tax purposes.

Challenges if enforcing the use of consolidated data:
- While the use of consolidated data has its merits, practical implementation would be very difficult and extremely onerous.
- Significant process & technical investment would be required by MNE’s to identify and eliminate only transactions within a jurisdiction. This would take time to put in place and will most likely lead to different approaches being taken by different MNEs.
- It is also not clear how the impact of consolidation can be restricted to related party revenue as referred to in the consultation – there may be an impact on the PBIT numbers, Accumulated Earnings, and Stated Capital.
Should additional columns be added to table 1?

Adding an additional column for deferred tax charge:

✓ There could be significant benefit in adding an additional column for deferred tax charge into table 1.
✓ The deferred tax charge provides additional information that is already required for financial reporting purposes.
✓ This will help users of the report understand any mismatch between the calculation of profit before tax (calculated under accounting principles) and the income tax accrued (calculated under the relevant tax laws)
✓ Provides additional meaningful information to the stakeholders
Should additional columns be added to table 1? (continued)

- Having the deferred tax charge would enable users a more reasonable consideration of the country effective tax rate for the MNE (when they add this column to the income tax accrued column)

- Including a column for the deferred tax charge will only add to the information currently reported and help tax authorities focus their attention on the groups with a low total effective tax rate.

- Users of the report will still be able to calculate the effective tax rate on a current tax accrued and cash tax basis using the information currently available.
Should additional columns be added to table 1? (continued)

Challenges of this approach

- MNE’s are required to recognised movements in deferred tax assets and liabilities for financial reporting purposes so there should be no particular challenge on the basis the income tax accrued is already provided.

- There may be instances which could create a distortion in ETR which would require explanation, such as changes to legislated tax rates.

The ‘problem’ that including deferred tax creates is likely much smaller than the problem its inclusion would be seeking to fix.
END OF DAY 1
2020 REVIEW OF COUNTRY-BY-COUNTRY REPORTING

Action 13

Public Consultation Meeting
12-13 May 2020
ITEM 5
TOPICS CONCERNING THE SCOPE OF CBC REPORTING
MARÍA ABUÍN PORTO (FERROVIAL)
item 5. Topics Concerning the Scope of CbC Reporting

Should a single enterprise with one or more foreign permanent establishments be a Group for the purposes of CbC reporting?

- Under Ferrovial understanding PE and branches are already included in the CbC scope as “constituent entities” (art.1.4 Model legislation related to CbC reporting). However, any clarification in this definition would be helpful.

- The CbC report is meant to be used for tax authorities as a high-level risk assessment and therefore PE data should be included to achieve this goal.

- Investment throughout a subsidiary (sometimes for business reasons) should not entail different tax compliance obligations → avoid discrimination.

UNIFIED APPROACH PILLAR 1: change part of the tax allocation from a territoriality principle (Permanent Establishment) to a sales (consumers/user) one → CbC should be reviewed.
item 5. Topics Concerning the Scope of CbC Reporting

**Should separate CbC reports be prepared by groups that are under common control and which in aggregate have consolidated group revenue above the CbC reporting threshold?**

**FROM** consolidated financial accounts requirement
**TO** a common control (participation over 50%)

**PROS:**
- Avoid discrimination of holding Groups against investment entities, exempt from consolidation of financial statements requirement but competing in the same industries (ex. PPP). Furthermore “collective investment vehicles” should not be excluded from the CbC information obligation as mentioned in the Public Consultation Document → all the business players should support the same compliance costs.
- Tax Administration will gather further information of common controlled Groups whether controlled by industrial or financial players.

**CONS:**
- Increment of compliance costs for entities included in the CbC report under the new approach. However, considering its financial capacities the UPE´s compliance burden should be like MNEs.
- Inclusion of medium-small size Groups, when considering the common controlling could reach the threshold. To avoid small Groups CbC compliance cost, minimum individual threshold for the controlled Groups could be considered.

**TO AVOID POTENTIAL LACK OF INFORMATION AT THE UPE LEVEL, THE CBC SHOULD BE FILLED AT THE CONTROLLED ENTITY LEVEL WITH AN IDENTIFICATION OF THE COMMON UPE**
OLIVIA LALLY (EURODAD)
Review of BEPS Action 13: The need for public country by country reporting

Meeting to discuss the public consultation on the review of country by country reporting, Organisation for Economic Co-operation and Development, 12 – 13 May, 2020

Olivia Lally
Senior Policy and Advocacy Officer
Tax Justice
# Joint civil society submission

<table>
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<td>Centre national de coopération au développement (CNCD-11.11.11)</td>
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<td>Church Action for Tax Justice</td>
<td>Oxfam International</td>
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<td>Comité Catholique Contre la Faim et pour le Développement – Terre Solidaire</td>
<td>Professor Richard Murphy</td>
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<td>(CCFD-Terre Solidaire)</td>
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<td>Fair Tax Mark</td>
<td>WEED - World Economy, Ecology &amp; Development</td>
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<td>Financial Transparency Coalition</td>
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Coronavirus crisis – the new context
We believe that the existing system should evolve to public country by country reporting. Public country by country reporting would ensure that **all tax authorities and governments** would have access to the information.

Furthermore, it would provide citizens, parliamentarians, unions, journalists and civil society organisations with information which is important when it comes to assessing the **effectiveness** and **fairness** of the corporate tax system.
Many countries, especially developing countries, do not have access to CBC data. Analysis suggests that the ‘agreement in effect’ requirement of the CBC MCAA has resulted in regional imbalances in access to reports.

Many governments, parliamentarians and other relevant institutions do not have access to data, which is necessary to enable evidence-based policy making and improve tax laws.

Estimates from OECD have suggested that 85-90 per cent of the world’s multinational corporations do not meet the current threshold of €750 million turnover. (OECD, 2015)

Lack of transparency prevents data from effectively informing dialogue on tax challenges arising from the digitalisation of the economy.

Limitations to the reporting template have become evident.
More than 100 developing countries were not part of the negotiation of the BEPS package, including Action 13.

Data from the OECD website suggests that of the 119 states with activated exchange relationships, only 57 states have access to reports, and only three African states can currently receive CBC reports – Mauritius, Seychelles and South Africa. This suggests an imbalance between geographic regions. (OECD, Jan. 2020)

Appropriate use criteria can pose challenges for developing countries’ capacity and oblige them to change laws and processes. They also severely limit use of data.

Restriction to local filing makes it challenging for developing countries to effectively use this mechanism.
States that are part of the CBCR exchange system but are not receiving CBC reports (info from OECD website as of January 2020)

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<tr>
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<tbody>
<tr>
<td>Angola</td>
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<td>Jordan</td>
<td>St. Kitts and Nevis</td>
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</table>

Source: OECD, January 2020
Researchers have found that:

- Reporting provides greater transparency and data that is otherwise unavailable. This data can help identify profit-shifting to tax havens by European banks. (Dutt et. al., 2019)
- The measure has already dis-incentivised profit-shifting to low tax jurisdictions. (Overesch and Wolff, 2018)
- Reporting has not negatively impacted on the sector’s competitiveness. (Gaita, 2016)
- The data has enabled unique and detailed analysis of the sector’s activity within tax havens. (Bouvatier et al. 2017)

The EU has also been considering a legislative proposal to introduce public country by country reporting for all sectors since 2016.
The emergence of supportive businesses and investors, as well as the experience of banking sector reporting in the EU has allayed concerns and provoked the establishment of new guidance and voluntary reporting initiatives.

• In December 2019, the Global Reporting Initiative (GRI) launched a new tax standard, known as GRI 207: Tax, which has been integrated into their sustainability reporting templates and includes public country by country reporting.

• The Fair Tax Mark provides certification for businesses that commit to and implement responsible tax practices, including public country by country reporting.

• Investors are increasingly calling for public country by country reporting – for example, Norway’s Sovereign Wealth fund and Danish pension funds PKA, MP Pension, Pensam and PFA have all called for public reporting.

• In addition, many companies like Vodafone, BHP Billiton and Unilever have independently published information about how much tax they pay and where they pay it.
Decision making on international taxation should take place in an intergovernmental tax commission under the auspices of the United Nations, where all countries can participate on equal footing.

Country by country reporting must be made public to ensure that all tax administrations, governments and other stakeholders have access to the information. This is critical to ensuring equal access for developing and enabling evidence-based policy making on taxation.

Improve and align the standard:

- Public country by country reporting should integrate the GRI standard, thereby:
  - Ensuring reconciliation with global, consolidated group accounts;
  - Dealing with intra-group transactions on a consistent basis; and
  - Requiring entity-level reporting for any ‘stateless’ entities.
- Table 1 should include deferred taxes and uncertain positions, research and development expenditure, interest, royalty and service fees income and expenses with related parties, as well as total employee expenses.
- Table 1 should also include withholding taxes shown in the jurisdiction in which they are paid. This should replace the existing treatment of withholding taxes.
Recommendations for review of Action 13 (2/2)

Scope
• Single entities conducting business in more than one jurisdiction and meeting the reporting threshold should be within scope of public CBCR.
• The definition of a Constituent Entity should be updated to ensure that it is not possible for entities to avoid reporting by circumventing Permanent Establishment or taxable presence definitions. It should not be necessary for an entity to prepare a separate financial statement in order to be classified as a Constituent Entity.

Threshold
The threshold for “large corporations” should be set to match the European Union definition of a “large undertaking”, which states that: “Large undertakings shall be undertakings which on their balance sheet dates exceed at least two of the three following criteria: (a) balance sheet total: EUR 20 000 000; (b) net turnover: EUR 40 000 000; (c) average number of employees during the financial year: 250.”
Thank you for your attention

➤ Read the joint civil society submission here.

Contact us:

✉️ olally@eurodad.org

@olivia_lally

@eurodad

facebook.com/Eurodad

eurodad.org
Topics concerning the scope of country-by-country reporting

Alison Lobb – Deloitte LLP
13 May 2020
Topics concerning the scope of CbC reporting
Single enterprise with one or more foreign permanent establishments

- Inclusion consistent with CbC reporting principles and objectives

- Number of large single enterprises likely small
  - Time and effort required to update domestic legislation may not be justified

- Heavy reliance on financial information produced for permanent establishment tax compliance purposes
  - May not be available until close to local tax return filing deadlines
  - Extension of standard CbC report filing deadline may be warranted
Topics Concerning the Scope of CbC Reporting
Groups under common control

• Practical difficulties
  - Information on direct/indirect shareholders and on shareholders’ other direct and indirect holdings required annually
  - Groups do not have control over this information / legal basis to demand
  - Strong evidence of usefulness and proportionality required

• Number of affected organisations likely small

• Level of transfer pricing / BEPS risks
  - Lower than in groups held by a common corporate entity
  - Highly divisionalised with separate management and finance functions
  - Potentially operating in different industries
  - No common board of directors – lower scale of controlled transactions

• Questions under tax audit may be more appropriate
Topics Concerning the Scope of CbC Reporting
Groups under common control – control tests, thresholds

• Control tests
  − Simple test needed to provide certainty and to be cost-effective
  − Existing complex domestic anti-avoidance tests over burdensome - e.g. detailed examination of the legal rights of shares

• Paragraph 26 states that the rules would not apply to ‘the investments of widely held collective investment vehicles, which do not pose the same transfer pricing risk.’
  − All collective investment vehicles are considered by reference to standard CbC rules – i.e. test based on accounting standards for consolidation

• Finance functions of groups under common control are likely not integrated.
  − Would the measure be proportionate to the risks posed
  − Why would a lower revenue threshold be proportionate for such groups but not more widely?
EVA LUTHI (EBIT)
TOPICS CONCERNING THE SCOPE OF CbC REPORTING

Should a single enterprise with one or more foreign permanent establishments be a Group for the purposes of CbC reporting?

**EBIT submission 6 March 2020 to the OECD public consultation document:**
Are there any benefits from clarifying the definition of a Group to include a single entity that conducts business through one or more permanent establishments, in other jurisdictions in addition to those described in this document?

- We believe that the issue of PEs is already covered under article 1 (2) of the Model legislation related to CbC reporting and similar articles in the competent authority agreements in the BEPS Action 13 Report. An MNE group includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a PE in another jurisdiction.

Are there any practical challenges to MNE groups resulting from clarifying the definition of a Group to include a single entity that conducts business through one or more permanent establishments in other jurisdictions, in addition to those described in this document?

- No practical challenges are foreseen however, we consider that the issue is already covered.
TOPICS CONCERNING THE SCOPE OF CBC REPORTING

Should separate CbC reports be prepared by groups that are under common control and which in aggregate have consolidated group revenue above the CbC reporting threshold?

EBIT submission 6 March 2020 to the OECD public consultation document:

Are there any practical challenges to MNE groups from requiring a CbC report to be filed by groups under the common control of an individual or individuals acting together, in addition to those described in this document?

- Control would have to be tightly defined. If we move beyond a strict accounting consolidation to an objective or subjective control test, then care will have to be taken to minimise the new scope of that test. The concern that appears to be identified relates to wealthy individuals and families, and any solution needs to be narrowly targeted to that problem.

- A poorly defined control test would be of particular concern to investment funds that take a number of legal forms. If such measures are being put in place, the exception should not only apply to widely held collective investment vehicles. A ‘widely held collective investment vehicle’ is not a defined term and there is no apparent reason as to why the exclusion would not be applied to other investment vehicles.

www.ebit-business-tax.com
ITEM 6
TOPICS CONCERNING THE SCOPE OF CBC REPORTING
KARL BERLIN (ØRSTED)
OLIVIER HERMANN (TEI)
Public Consultation Meeting on the Review of Country-by-Country Reporting (BEPS Action 13)
12-13 May 2020

Item 6 – Topics concerning the scope of CBC reporting
Threshold for excluded MNE Groups: One year v. more than one year of consolidated revenue

- Objective: reduce volatility caused by unusual spike in business, currency fluctuations, M&A etc.
- Three to five years averaging of revenues
- Option 1 preferred
- Additional guidance on “revenue” is needed
Consolidated group revenue: Extraordinary income

► Consistency with guidance on definition of items reported in CbCR template
  ▪ Extraordinary income is to be included in "Revenues."

► Definition of extraordinary income varies
  ▪ Inclusion may increase comparability across MNE groups
  ▪ Exclusion may lead to controversies

► Extraordinary income does not reflect recurring trading income
  ▪ Extraordinary income may cause MNE group to exceed threshold
  ▪ Extraordinary income is not necessarily an indicator of profit shifting

► Either approach can be supported
  ▪ Provide clarity on definition of extraordinary income or loss
  ▪ Extraordinary loss? How should losses be treated?
Clarify definition of “gains from investment activity”

- Gain v. *income* - Consultation document §69 - Interest income, dividends
- Gain or Loss v. *proceeds*

Consistency with guidance on definition of items reported in CbCR template

- Gains from investment activities are to be included in "Revenues."
- Dividends from constituent entities – US Treasury Regulations §1.6038-4(d)(3)

If investment activities not part of operating activities, inclusion may cause MNE group to be subject to CbCR in one year

- Use multi-year approach to determine threshold

Comparability, consistency, neutrality
Consolidated group revenue: 
Preceding fiscal year of MNE Group ≠ 12 months

► Adjustment needed to ensure consistency and neutrality across MNE groups
  ▪ Adjusting threshold (approach 3) seems simpler

► Adjust/prorate only if fiscal year of group in total is not 12 months
  ▪ No adjustment to group revenue if certain acquired constituent entities have a short fiscal year in year of acquisition
SOL PICCIOTTO (BMG)
Inclusive Framework on BEPS
Public Consultation on Country-by-Country Reporting
12-13 May 2020

Sol Picciotto
International Centre for Tax & Development Coordinator, BEPS Monitoring Group
Session Six
Scope of CbC Reporting:
Items Affecting the Revenue Threshold
Items Affecting the Revenue Threshold

- **Problem of Cliff Effect**
  Less salient if threshold were lower
  Now system is established, lower threshold is appropriate, important for small countries

- **Variations between Years**
  Need to avoid reporting gaps
  Once over threshold should report unless 3-year average <80% of threshold
  Simpler than alternatives proposed

- **Extraordinary Income**
  Important to clarify, all income should be included
  Very unlikely to make a significant difference to meeting threshold

- **Investment Income**
  Important to clarify, all income should be included
  Relevant to size threshold, may affect income allocation

- **Short Fiscal Year**
  Important to clarify, part-year data inappropriate
  Either of the adjustment options seem suitable
BEN SEMPER (MAZARS – UK)
Must consider the increasing burden (in terms of cost and resources) on taxpayers to provide what could become an ever increasing level of information;

Mazars welcomes refinements that improve the presentation & interpretation of CbCR information and ensures global alignment of procedures (including notification);

CbC Report just one tool to be used for risk assessment purposes. Tax authorities should use all information available (including the other Action 13 documentation, local accounts and tax returns) before embarking on and undertaking tax audits.
ITEM 6. TOPICS CONCERNING THE SCOPE OF CBC REPORTING

6.A. Should the threshold for Excluded MNE Groups take into account more than one year of consolidated group revenue?

Mazars’ Position: In favor of multiple year data

Suggested Methodology: Mathematical average of annual total consolidated revenue of the previous 3 years prior to the reporting year

Reasoning: Provides a balance between the transparency desired by tax authorities and the burden on businesses who currently operate close to the current single year threshold.

Additional Challenges: No additional comments
ITEM 6. TOPICS CONCERNING THE SCOPE OF CBC REPORTING

6.B. Should extraordinary income be included in consolidated group revenue?

6.C. Should gains from investment activity be included in consolidated group revenue?

Mazars' Position: Not in favour of including these items for the purposes of calculation of consolidated group revenue; prefer to avoid divergence from basic principles of preparing data for CbCR.

Reasoning:
- When deviating from generally accepted accounting practice complexities arise in compiling data, reporting and interpretation.
- Increase volatility vs threshold
- CbCR – part of transfer pricing documentation requirements; Extraordinary income would typically be excluded from transfer pricing analysis, due to irregular and non-recurring nature & investment (capital) gains are also often excluded from the scope of transfer pricing under local rules.

Additional Challenges: No additional comments
6.D. In cases where the immediately preceding fiscal year of an MNE Group is of a period other than 12 months, should the consolidated group revenue threshold (or, alternatively, consolidated group revenue in the immediately preceding fiscal year) be adjusted in determining whether the MNE Group is an Excluded MNE Group?

Mazars’ Position:

• In favour of adjusting the threshold or alternatively adjusting the consolidating group revenue as these MNE Groups should definitely not be considered as Excluded MNE Groups.

• However as both approaches are basically same, there is no particular benefit of one proposal over the other.
BREAK
ITEM 7
TOPICS CONCERNING THE CONTENT OF A CBC REPORT
ROCIO BERMUDEZ (REPSOL)
DIDIER JACOBS (OXFAM)
ULRICH SAUTER (NOVARTIS)
GRAEME WOOD (P&G)
END OF THE PUBLIC CONSULTATION MEETING

Thank you for your participation