

OECD Reviews BEPS Action 13 Country-by-Country Reporting – Consultation and Hearing

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In brief

The OECD recently initiated a review under BEPS Action 13 of country-by-country reporting (CbCR) based on a mandate in the final 2015 BEPS report that an assessment occur in 2020. CbCR is a minimum standard for participating BEPS Inclusive Framework (IF) members, pursuant to which all large multinational enterprises (MNEs) are required to prepare a CbC report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. This CbC report is shared with tax administrations in these jurisdictions, for use in high level transfer pricing and BEPS risk assessments. The first CbCR reporting requirement took effect in 2016 in some jurisdictions, so in-scope multinationals and tax authorities have only had a few years of experience with this complex reporting framework.

As a result of the mandated review, Working Parties 6 (transfer pricing) and 10 (exchange of information) worked jointly to develop a consultation document that was released in February 2020 for public comment, and which received nearly 80 submissions from a diverse group of stakeholders. An initial public hearing scheduled for March 2020 was postponed due to the coronavirus pandemic, and instead a virtual 2-day public hearing was held 12-13 May. This alert discusses several of the key areas of the consultation and public hearing comments.

In detail

Consultation Topics

The public consultation document sets out three main areas for review: (i) general implementation concerns; (ii) issues concerning the scope of CbCR; and (iii) issues concerning the content of CbC reports. A key focus of the implementation portion of the document involves the appropriate and effective use of these reports. The basis in 2015 for consensus around Action 13 was limiting CbCR as a tool for high-level risk assessment of companies' transfer pricing and other BEPS-related risks; it was made specifically clear that CbCR was not to be a substitute for a detailed transfer pricing analysis of individual transactions and prices that would need to be conducted based on a full functional and comparability analysis.

From risk-assessment tool to public CbCR?

The original intent for CbCR as a high-level risk assessment tool only was echoed frequently by business commenters at the public consultation. Indeed, a large concern to many businesses arising from the 2020 review is the extent to which reported information would not remain limited to just tax authorities. Since the release of the 2015 BEPS final action reports, a number of civil society organizations have made plain their strong desire for the information contained in CBC reports to be made public in order to have another level of accountability regarding the amount of tax paid and tax strategies pursued by large multinational enterprises. At the hearing, numerous speakers from non-governmental organizations made requests that CbCR data be made public.

Observation: The Consultation Document does not raise public CbCR as a topic under review or invite specific feedback on this issue, although several commenters expressed their desire for public reporting. At the hearing, the OECD Secretariat indicated that the scope of the review was focused on the framework established in the Action 13 Final Report, which may limit how far the IF will go in proposing or making changes.

Numerous administrative burdens

A point raised by a number of business commenters is that any changes to the CbCR framework be evaluated taking into account the resources and investments such changes would necessitate versus its benefits. Implementation by MNEs and tax authorities of Action 13 has required significant costs to develop appropriate data collection systems and financial advisor review, so any revisions should consider if additional investments and resources are commensurate with the benefits to governments. This is especially important as there has been very little evidence that to date governments are using CbCR reports in tax compliance activities. Another recurring request from the business community was further work to ensure consistency among tax authorities in implementing CbCR, as local filing requirements frequently differ among jurisdictions, creating compliance burdens for affected MNEs. And with the background of the COVID-19 crisis, some commenters noted that further time is needed for both tax authorities and taxpayers to gain robust and comprehensive experience with CbCR before introducing significant changes, as it is more prudent to consider small improvements to the existing standard rather than making large systemic changes.

Observation: A request made by PwC in its [comment letter](#) concerns reworking the notification requirement. The OECD's model CBC legislation (which many countries have incorporated as their domestic CbC legislation) requires that each constituent entity of an MNE group that is required to file a CbC report must notify its tax administration of the identity and jurisdiction of tax residence of the reporting entity for the MNE group.

In practice, that has resulted in a costly administrative burden for MNE groups, because they are required to determine their notification obligations in each jurisdiction each year in a constantly changing environment, even though it is unclear what purpose is served by the notification requirements.

Consequently, PwC recommends removing the notification requirement entirely or making it easier for the taxpayer to satisfy, such as adding it as a field in the tax return or a standardization of the notification form and the timing of notification.

In the discussion on the scope of CbCR, there was a strong divide between business and civil society opinions regarding the appropriate revenue threshold. Most MNEs prefer the existing EUR 750 million annual revenue threshold, as there is less likelihood of slipping across the line based on abnormal swings in yearly sales, whereas several civil society speakers believed the threshold should be significantly lowered (such as to EUR 40 million in line with the definition of "large undertaking" in EU law, or US \$100 million consistent with other US corporate reporting thresholds). Several IF member delegates voiced concerns that developing countries are not able to get CbCR data and would be interested in a lower threshold to account for broader in-country business activity.

Concerning the content of CbC reports, there was a clear divide between stakeholders on the issues of reporting aggregate versus consolidated data, and on an entity versus jurisdictional basis. Several speakers warned that aggregate reporting can lead to distortions but acknowledged that consolidated data can be tricky as not all jurisdictions have financial reporting rules requiring jurisdictional consolidation and there might be no business purpose for consolidation in some circumstances. There were also views expressed that reporting on an entity basis could cause problems in comparability among taxpayers and could require significant reconfiguration of IT systems.

Observation: Specific CbC reporting systems have been developed by MNEs to produce aggregate data (with the only commercial rationale being CbC report production) and a switch to consolidated data would generally incur a disproportionate cost to any marginal perceived benefit. Additionally, presenting Table 1 information on an entity-by-entity basis rather than by tax jurisdiction would add significant complexity and review/ governance requirements for companies, while providing the local tax administration no more useful information that it can get from accounts, the tax return, local file and other typical transfer pricing documentation. It would also be nearly impossible for countries without entity level statutory accounts and tax returns (e.g., the United States).

The scope of CbC reporting presented a diverse set of issues for stakeholders to consider. For example, on the issue of groups under common control, commenters revealed different views, with some comments that the universe of likely affected entities would be small compared to the administrative hoops countries would need to go through to adopt necessary legislation. A general theme on the issue was that any control tests should be simple in nature, such as more than 50%, so as to not harm the investment industry.

On the subject of using a multiple year horizon to determine if MNE groups should be excluded from reporting because they are lower than the threshold, most commenters felt comfortable using a 3-5 year window to take into account unusual events and to reduce volatility. There was less consensus on including extraordinary income in the threshold calculation, with some believing a better solution was simply greater clarification in current guidance.

There were various views regarding whether additional information fields should be added to the CbCR tables, such as tax identification numbers, industry codes, and the categorization of stateless entities. Many speakers agreed that requiring additional information might be acceptable if it is not overly burdensome or duplicative of existing reporting of the same information elsewhere, although some commenters cautioned that timing and costs were critical considerations.

Observation: CbC reporting is not “perfect,” and contains significant flaws in design and administration. That is perhaps not surprising, as the original BEPS project in 2015 resulted in decisions being made quickly and only skeletal guidance provided by the OECD.

Many of the recommendations may be too ambitious in scope, should require a high bar for accepting any changes given the role of CbC reporting as a transfer pricing risk assessment tool, and should be carefully weighed against the potential damage to that fragile consensus the OECD has achieved to date. It is unlikely that CbCR can be a talismanic tool beyond limited utility for transfer pricing, and it seems nearly impossible that most countries would amend their current CbC rules quickly and on a uniform basis, to maintain that consensus.

Next Steps

The Inclusive Framework intends to develop proposals for possible changes to the CbCR framework by the end of 2020 and will continue to work with tax authorities on administrative issues arising from reporting, exchanging, and use of CbC reports. That work will play out as politicians and civil society continue efforts to have CbC data made public, and as the Inclusive Framework’s attempts at a consensus solution on the tax problems arising from the digitalizing economy are refined. Companies, governments, and tax professionals should be carefully watching these developments with a big picture view given the connectivity that corporate tax reporting has in these diverse, but increasingly unified, areas.

Key takeaways from the Consultation and Hearing

- The business community expressed the need for CbCR data to remain limited to tax authorities and serve only as a high-level risk assessment tool
- Because CbC reporting is a complex undertaking, there is strong business community consensus that any changes should be narrow and measured
- Although the CbCR review was mandated for 2020 action, the Inclusive Framework is aware that further changes to CbC data collection may be necessary depending on the outcomes of the digitalization project

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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