

EUROPEAN COMMISSION PROPOSAL ON CBCR

Impact of public CBCR on business and jobs in Europe

QUESTIONS AND ANSWERS

INTRODUCTION

On 12 April 2016, the European Commission released a legislative proposal to introduce public country by country reporting (CBCR) for large multinational companies (MNCs). If implemented comprehensively, public CBCR would increase corporate and tax transparency by enabling NGOs and citizens worldwide to 'follow the money'.¹ It will also contribute to ensuring that taxes are paid where they are due, thus providing adequate revenue for critical public services. It is also increasingly being recognised by the business community and investors as a necessary tool that can benefit the wider economy, and level the playing field between large MNCs and SMEs.²

As this Q&A will show, the economic benefits of this measure largely outweigh the potential administrative burdens associated with the implementation of public CBCR. Comprehensively implemented CBCR legislation will increase business transparency and benefit the wider economy.

1. Would public country by country reporting put European MNCs at a competitive disadvantage compared to other MNCs?

No. The proposal would cover all MNCs with operations within the European Union, meaning that a large majority of MNCs worldwide will be required to report information on a country by country basis.

Under the European Commission's proposal, all MNCs with a subsidiary in the EU Single Market will be required to report information on a country by country basis. The European Commission currently estimates that 90% of the largest MNCs worldwide have at least one subsidiary within the European Union.³ The scope of the European Commission's legislative proposal ensures that all MNCs operating within the EU will be required to compete on an equal footing, regardless of whether they are headquartered in the EU or not.

As Morris Pearl, a former Executive Director of BlackRock, puts it: "The competitiveness of a firm relies on the health, strength, and growth of the firm – not on tax disclosures. Though disclosing material may influence investors to make decisions one way or another, if every company releases the appropriate disclosures, then every company is equally tasked with an additional consideration when addressing investor decisions."⁴ One respondent to Christian Aid's survey of FTSE-100 companies said that: "The possible competitive disadvantages that may arise [can be] substantially reduced were all relevant MNCs required to disclose this trade sensitive information."⁵

Box 1: Do Corporate Claims on Public Disclosure Stack Up?



In July 2016, Transparency International published a [report](#) assessing the impact public country by country reporting would have on the competitiveness of firms. The report, which analyses the performance over a three-year period of 28 European and Indian companies, shows that the idea that competitiveness will be harmed by greater country by country reporting is not backed up by the evidence. What the research found is that:

- There is no definitive correlation between public CBC reporting and standard measures of competitiveness
- Eighty-six per cent of the European companies that already publicly report on a CBC basis assessed in the report (such as BNP Paribas, Deutsche Telekom or Telefonica, among others) improved or maintained their revenue performance
- More than ninety per cent of the assessed Indian companies that report on a subsidiary-by-subsidary basis had a revenue growth comparable or higher than an average of their international companies in a similar sector

2. Would the disclosure requirements under public country by country reporting have a negative impact on investors and investment into the EU economy?

No. On the contrary, investors favour public CBCR as a lack of disclosure about corporate tax practices puts shareholders increasingly at risk.

A recent report by the FACT Coalition in the United States concluded that investors are at “an increasing risk due to the lack of information disclosed by companies about their tax practices.”⁶ Multinationals’ approach to taxation have reputational, cash-flow and financial risks, and investors are increasingly calling for access to public CBCR information in order to be able to assess these risks. Under current disclosure rules, investors frequently have very little information on a company’s tax strategy. For markets to be able to function properly, it is critically important for institutional investors and the public to be armed with sufficient information in order to meaningfully assess the business operations, management and risks public companies are facing. Having access to CBCR information would allow investors to make better investments decisions, investing in firms who are enhancing shareholder value through sound investments, rather than those which rely on aggressive tax-reduction strategies.

As Morris Pearl, a former Executive Director of BlackRock, puts it: “Incredibly, even though the blowback against egregious tax practices is a substantial risk to multinational companies and a significant threat for shareholders, it is often impossible for investors to determine how healthy a company really is and whether or not the profits are merely a reflection of aggressive tax planning.”⁷ He argues that investors need more information in order to be able to “protect the integrity of the market” and require MNCS to report “exactly how they are doing business, including where they pay taxes and how much.”⁸ Public CBCR would accordingly increase the stability of financial markets and mitigate against stock depreciation of companies that are caught using aggressive tax planning structures.

In early 2017, Norway’s sovereign wealth fund, the largest of its kind in the world, set out clear expectations in new guidance to the MNCs in which it invests, that they should pay their taxes where they generate their economic value and that they should publish their country by country reporting information.⁹ Meanwhile, the Dutch institutional investors’ representative Eumedion, in its response to the European Parliament’s recommendation to include CBCR under the Shareholder Rights Directive, said that “investors will benefit from increased public transparency on where taxes are paid (‘country by country reporting’) since it increases overall transparency and allows for a more detailed analysis by investors. It will also offer shareholders the opportunity to have a

Box 2: What do businesses think of public country by country reporting?



“Promoting greater disclosure of taxes paid per country increases overall corporate transparency and allows for a more detailed analysis by investors.”

[Eurosif](#)



“Multinational enterprises should publish country-by-country breakdowns of how and where their business model generates economic value, where that value is taxed and the amount of tax paid as a result. Where companies choose not to apply such transparency principles, they should be ready publicly to state why.”

[Norges Bank Investment Management](#)



“A matter likely to be pertinent with the Parliament is the issue of tax transparency and the good work undertaken on CBCR. Barclays took the decision to go above and beyond the CRD IV requirements applicable to European banks. Alongside our annual report we publish a highly accessible country snapshot that sets out clear details and explanations of turnover, employee numbers, the profits we generate and the taxes we pay in each country. So I’m proud that Barclays is an industry leader in tax transparency through our country snapshot and proud of our tax principles which guide our behaviour.”

[Mark Hubbard, Managing Director, Tax – Barclays Bank](#)

dialogue with the board of the company on this topic.”¹⁰

3. Would public country by country reporting result in undue costs or administrative burdens for multinational companies?

No. The costs associated with making country by country reporting public are minor, as large MNCs will already be required to provide this information on a confidential basis to their tax authorities.

It is inevitable that there will be some modest costs incurred by multinational companies in order to prepare the data required under country by country reporting, however, these costs should not be overstated. In its impact assessment the European Commission evaluated the “cost of a CBCR [...] to be on average around EUR 100,000 for a large MNE group.” This means that for groups having a yearly turnover above €40million, the cost would represent a maximum of 0.25% of the yearly turnover and no more than 0.014% for very large groups with a yearly turnover above €750 million.¹¹

CBCR requirements should not cause a significant administrative or cost burden to large multinational firms. Any competent tax director of an MNC will already have the information required for public CBCR readily available, including information on their employee headcounts and costs, profits, tax provision and tax paid, assets employed and intra-group transactions by state. Any additional costs would relate to the preparation of data for presentation purposes, which the OECD has highlighted as unlikely to impose a significant burden on companies.¹² In a survey of FTSE-100 companies by Christian Aid, only two companies raised concerns about costs. In both cases, this was a plea to ensure that the compliance burden is proportionate, rather than claiming costs as a definitive reason to object to public reporting requirements.¹³

Box 1: Country by Country Reporting – A survey of FTSE100 companies' views



In September 2015, Christian Aid produced a [survey](#) of FTSE-100 companies' views on country by country reporting. The survey (to which 54 FTSE-100 MNCs responded) found that:

- Only a minority of FTSE-100 companies are clearly and unequivocally opposed to public CBCR
- Most companies would appear not to object strongly to legislation requiring public CBCR of them and their competitors
- Companies seem less concerned about the public disclosure of commercially sensitive information in CBC reports if the disclosure is required by law of all similar companies
- Only 2 companies raised the issue of costs in their response to the Christian Aid survey

Moreover, all countries within the European Union will already require MNCs to disclose country by country reporting information to their tax administrations, as agreed under the Council Directive as regards the mandatory automatic exchange of information in the field of taxation (DAC4).¹⁴ Under the DAC4 agreement, companies will be required to provide key information (including revenue, profits, taxes paid, and number of employees by country operation) to their national tax authorities. Given this existing obligation, it is clear that there would be minimal extra costs for MNCs to make these information reports public.

4. Will public country by country reporting divulge sensitive commercial information or trade secrets of companies?

No. Public country by country reporting discloses very basic information and makes it accessible. However, very large groups already engage in intelligence gathering through expensive database and monitoring which puts SMEs at a competitive disadvantage.

Some companies argue that implementing public CBCR would harm their competitiveness, and that divulging the financial information required by CBCR would risk the divulgence of commercially sensitive information or trade secrets. However, full public CBCR is already in force for the EU banking sector under the Capital Requirements Directive IV, and EU banks have not been placed at a competitive disadvantage vis-à-vis their competitors from other regions. In November 2015, the UK banks HSBC and Barclays gave evidence before the European Parliament Special Committee on Tax Rulings, and said that implementing public CBCR has not hampered their commercial interests.¹⁵

A study prepared by PwC for the European Commission assessing the economic consequences of CBCR under CRD IV found that only one bank “expressed concerns about the confidential nature of some of the data to be made public, particularly with regards to the disclosure of profit or loss before tax and of public subsidies received.”¹⁶ A survey by Christian Aid of FTSE100 companies meanwhile revealed that only three companies (6% of those responding) suggested that a concern about revealing commercially sensitive information justified opposition to legislation on public CBCR.¹⁷

As a PwC partner puts it, “the argument that ‘company secrets’ would be disclosed appears to be founded on the thought that, currently, data is safe within the company. Much (big) data is already publicly available. Furthermore, the information to be disclosed will not consist of secret formulas, but merely basic information on the difference between financial and tax accounting.”¹⁸ Multinational companies already engage in gathering economic intelligence on competitors, and the idea that country aggregated information on staff, assets, and economic activity in each country would suddenly dramatically enhance their surveillance capacity seems tenuous at best.

5. What impact would public country by country reporting have on small and medium-sized enterprises?

The European Commission’s proposal does not impose any burdens on SMEs, and could help to correct the current competitive disadvantage they face relative to their bigger competitors.

The current proposal for public CBCR would only apply to the largest MNCs, which due to their size and complexity are best equipped to engage in potentially aggressive tax planning, often to the detriment of their smaller SME competitors. The current proposal would not apply to SMEs, who frequently only operate in one country and are therefore unable to shift profits from one jurisdiction to another. Whether the legislation applies to companies above the €750m threshold (which would cover 6500 companies worldwide according to the European Commission Impact Assessment), or above the €40m threshold (approximately 20,000 EU groups according to the same impact assessment), this remains a small number – less than 1% - compared to the 26 million companies inventoried in the EU in 2014.¹⁹

According to the European Commission’s Impact Assessment, a company with cross-border operations in the EU is estimated to pay on average **30% less tax** than a similar firm active in only one country.²⁰ This large tax differential can be explained by the fact that SMEs are generally more domestically-based relative to their larger competitors, and therefore unable to exploit the significant tax advantages accrued by large MNCs who shift profits from high-tax to low-tax jurisdictions through aggressive tax planning schemes. The European Commission’s Impact Assessment also notes that the “comparable disadvantage of competitor [SMEs] is further worsened when Member States impacted by aggressive tax planning are forced to shift to less mobile tax bases which affect national businesses, including SMEs.”²¹

Public CBCR would be a significant tool to shed light on and counter the aggressive profit-shifting practices of large MNCs, and thereby help to level the playing field between large and small firms. The European Commission’s Impact Assessment also states that a fairer distribution of fiscal pressure between SMEs and large MNCs could “further SME’s capacity to support growth and job creation, and could further market entry, competition, and innovation.”²² This is especially relevant when considering that SMEs account for as much as 85% of all new jobs in the EU.²³

6. Is country by country reporting information too complex for citizens to understand? Could making this information publicly available cause ordinary citizens to misinterpret the data?

No. Sound businesses should not have figures which they are afraid to show to the public. Instead of creating misunderstanding, CBCR represents an opportunity for MNCs to explain more clearly how their tax practices work.

In their responses to the public consultation about country by country reporting, MNCs said that they were especially concerned about the possible misunderstandings that could be caused by revealing more detailed accounting information to the public. For this reason, the Proposal’s Article 48c(4) gives MNCs the possibility to add a narrative explaining their reports. Some MNCs already publish very lengthy and complicated annual reports, and few reporting requirements on CBCR would not add to this complexity.²⁴ Banks, which are already required to comply with public CBCR under CRD IV, often use their CBCR reports in order to give a more nuanced view to their customers on how they arrange their tax affairs, adding additional narrative to explain their tax arrangements.²⁵

As Jane McCormick, KPMG's Global Head of Tax, wrote in her evidence to the European Parliament's Committee on tax rulings: "As with any other business practice, if companies can't explain what they are doing on tax than either they shouldn't be doing it or they need to get better at communicating."²⁶ Business leaders are increasingly recognising that an inability to explain their tax arrangements can impact their business reputation and brand. Increasingly cognisant of this fact, it is perhaps for this reason that PwC's 17th Annual CEO survey found that almost six out of ten CEOs (59%) agree that "multinationals should be required to publish revenue, profit and tax disclosures on a country by country basis."²⁷

Campaigners for more tax transparency have meanwhile already started to use the public CBCR information published by banks. In 2017, Oxfam published its report *'Opening the Vaults'*, examining the CBC reports made available by 20 of the largest banks in Europe. What the investigation clearly shows is that European banks "have for a long time been artificially shifting their profits to countries with very low, or zero, corporate tax rates."²⁸ While tax havens account for 26% of the total profits made by the 20 investigated banks, these tax haven countries "account for only 12 per cent of their turnover and 7 per cent of their employees."²⁹ The report clearly confirms the need to extend transparency to all sectors of the economy to combat tax avoidance.

7. Would the EU's public country by country reporting requirement contradict or undermine the OECD standard on country by country reporting?

No. The EU would not disclose information received by tax administration as the requirement is directed to companies. The OECD BEPS recommendations are voluntary guidelines.

In October 2015, the OECD published Action 13 of the BEPS Action Plan on country by country reporting. The OECD's BEPS actions are soft law legal instruments that are not legally binding.³⁰ In 2016, the EU adopted country by country reporting for EU tax administration in the DAC IV Directive which requires tax administration to automatically exchange the information. Public CBCR is separate legislation which shares some of the objectives of the DAC4 Directive and the OECD BEPS Action 13, contributing to the fight against base erosion and profit shifting, but has wider policy objectives, responding to the need for a greater public transparency. As the European Commission has concluded in its Impact Assessment, "given their complementary purposes, the OECD BEPS Action 13 model and public reporting could well co-exist."³¹

In fact, while for tax administration CBCR is a tax avoidance assessment tool allowing for further investigation, public CBCR would be a risk assessment tool for national tax systems as a whole; permitting public debate and necessary tax reforms in Europe and beyond. What is more, it would be a misconception to think that the public CBCR might violate the confidentiality of the OECD tax exchange systems, as the proposal does not require the Member States to disclose any data – the requirement is directed to companies.

¹ A Joint CSO Q&A on the importance of CBCR available here: https://financialtransparency.org/wp-content/uploads/2016/02/Joint_Civil_Society_QA_pCBCR.pdf.

² See answer to Question 5 of this Q&A

³ European Commission: Impact Assessment, p. 28.

⁴ Pearl, Morris. An Investor's Case for CBC Transparency. <http://taxlawjournal.columbia.edu/article/an-investors-case-for-cbc-transparency/>.

⁵ Christian Aid: Country by Country Reporting: A Survey of FTSE100 companies' views, page 10.

⁶ FACT Coalition. Investors at Risk by Lack of Corporate Tax Disclosures. <https://thefactcoalition.org/new-report-investors-at-risk-by-lack-of-corporate-tax-disclosures/>.

⁷ Pearl, Morris. How Companies Like Apple Dodge Taxes and Their Own Investors. https://www.nytimes.com/2016/09/21/opinion/how-companies-like-apple-dodge-taxes-and-their-own-investors.html?_r=0.

⁸ Ibid.

⁹ Norges Bank Investment Management. Tax and Transparency: Expectations towards Companies.

<https://www.nbim.no/contentassets/48b3ea4218e44caab5f2a1f56992f67e/expectations-document---tax-and-transparency---norges-bank-investment-management.pdf>

¹⁰ <https://www.eumedion.nl/en/public/knowledgenetwork/position-papers/2016-01-srd---statement-triloog.pdf>

¹¹ European Commission: Impact Assessment assessing the potential for further transparency on income tax information, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0117&from=EN>, p. 43.

¹² OECD. Discussion Draft on Transfer Pricing Documentation and CbC Reporting. <https://www.oecd.org/ctp/transfer-pricing/volume1.pdf>, page 9.

¹³ Christian Aid: Country by Country Reporting: A Survey of FTSE100 companies' views. <http://www.christianaid.org.uk/images/country-by-country-survey-sept-15.pdf>, page 17.

¹⁴ Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation. <http://data.consilium.europa.eu/doc/document/ST-7148-2016-INIT/en/pdf>.

¹⁵ European Parliament: Evidence from HSBC and Barclays in front of the TAXE Committee. <https://www.youtube.com/watch?v=a1UJCKT4iki>.

¹⁶ European Commission: General assessment of potential economic consequences of CBCR under CRD IV. http://ec.europa.eu/internal_market/company/docs/modern/141030-cbcr-report_en.pdf, page 137.

¹⁷ Christian Aid. Country by Country Reporting: A Survey of FTSE100 companies' views, page 13.

¹⁸ PwC: 11 Reasons to be Transparent on Tax. <https://www.ifac.org/global-knowledge-gateway/business-reporting/discussion/11-reasons-be-transparent-tax>.

¹⁹ Eurostat: Business demography statistics. http://ec.europa.eu/eurostat/statistics-explained/index.php/Business_demography_statistics#Active_enterprises_in_the_business_economy.

²⁰ European Commission: Impact Assessment, p. 16.

²¹ European Commission: Impact Assessment, p. 16.

²² European Commission: Impact Assessment, p. 32.

²³ European Commission: Entrepreneurship and small and medium-sized enterprises. <http://ec.europa.eu/growth/smes/>.

²⁴ For example, Royal Dutch Shell's annual report for 2013, freely available online, is 200 pages long, with more than 70 pages of financial reporting. Available in http://reports.shell.com/annual-report/2013/servicepages/downloads/files/entire_shell_ar13.pdf

²⁵ For example, Barclays PLC's CBCR report includes information on how much tax they have paid in each country, what their tax principles are & how they approach to taxation works. Available in https://www.home.barclays/content/dam/barclayspublic/docs/InvestorRelations/ResultAnnouncements/2016FYResults/20170223_Barclays_PL_Country_Snapshot_2016.pdf

²⁶ Jane McCormick. Introductory statement before the TAXE Committee. http://www.sven-giegold.de/wp-content/uploads/2015/03/Jane-McCormick_KPMG_introduutory-statement.pdf

²⁷ PwC. 17th Annual Global CEO Survey: Tax strategy, corporate reputation and a changing international tax system. <http://www.pwc.com/gx/en/tax/publications/assets/ceo-survey-tax-perspectives.pdf>

²⁸ Oxfam. Opening the Vaults: The use of Tax Havens by Europe's Biggest Banks. <https://www.oxfam.org/sites/www.oxfam.org/files/bp-opening-vaults-banks-tax-havens-270317-en.pdf>, page 6.

²⁹ Oxfam. Opening the Vaults, page 15.

³⁰ OECD. BEPS – Frequently Asked Questions. <http://www.oecd.org/ctp/beps-frequentlyaskedquestions.htm>

³¹ European Commission: Impact Assessment, p. 47