

OECD releases Consultation Document on the review of Country-by- Country Reporting

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Executive Summary

On 6 February 2020, the Organisation for Economic Co-operation and Development (OECD) released a public consultation document on the review of Country-by-Country (CbC) reporting (the [Consultation Document](#)). The Consultation Document is based on the mandate set out in the 2015 Base Erosion and Profit Shifting (BEPS) Action 13 final report (Transfer Pricing Documentation and Country-by-Country Reporting) for a 2020 review of CbC reporting. The Consultation Document contains topics concerning the implementation and operation of BEPS Action 13, the scope of CbC reporting, the content of a CbC report, and other aspects of BEPS Action 13 (the master file and local file). The topics discussed in the Consultation Document reflect issues where interpretative guidance has not resulted in a consistent approach to be applied by all jurisdictions and issues that can only be addressed through a change to the minimum standard, which would require agreement in the Inclusive Framework, the group of 137 interested countries and jurisdictions participating on an equal footing in the development of standards on BEPS-related issues.

Interested parties are invited to submit their comments on the questions raised within the Consultation Document and on all aspects of the BEPS Action 13 report by 6 March 2020. The [public consultation meeting](#) on the 2020 review of BEPS Action 13 will be held on 17 March 2020.

Detailed discussion

Background

On 5 October 2015, the OECD released its final report on Action 13, Transfer Pricing Documentation and Country-by-Country Reporting,¹ under its BEPS Action Plan. The report introduced a standardized, three-tiered approach to transfer pricing documentation for multinational enterprises (MNEs), consisting of a master file, a local file, and a CbC report. The Action 13 report also included a mandate for a review of the BEPS Action 13 minimum standard, to be completed by the end of 2020, which would take into account matters including:

- i) Whether modifications to the content of CbC reports should be made to require the reporting of additional or different data
- ii) The appropriateness of the applicable revenue threshold
- iii) The effectiveness of filing and dissemination mechanisms
- iv) The implementation of the BEPS Action 13 implementation package

To give greater certainty to tax administrations and MNE groups on the implementation and operation of CbC reporting rules, the OECD has been issuing additional guidance since June 2016.² The OECD updated the guidance in December 2016,³ April 2017,⁴ July 2017,⁵ September 2017,⁶ November 2017,⁷ February 2018,⁸ September 2018,⁹ November 2019¹⁰ and December 2019.¹¹ Moreover, the OECD has developed a staged peer review process to assess key aspects of jurisdictions' implementation.¹² The OECD has already released the first¹³ and second¹⁴ compilation of annual peer reviews of the minimum standard on BEPS Action 13. The next annual peer review (phase three) was launched in July 2019 and is to be completed and released during summer 2020.

The OECD has also released various other materials to support jurisdictions introducing CbC reporting requirements. In September 2017, for example, the OECD issued two handbooks (one on the effective implementation of CbC reporting and another on effective tax risk assessment for tax administrations)¹⁵ and a report on the appropriate use of information contained in CbC reports.¹⁶ In November 2019, the OECD published a summary of common errors made by MNE groups in preparing CbC reports, and in December 2019, it released a summary of CbC reporting notification requirements. Moreover, a CbC Tax Risk Evaluation and

Assessment Tool (TREAT) is under development, which should assist tax administrations in reading and interpreting CbC reports.

On 6 February 2020, the OECD released a public Consultation Document on matters where the Inclusive Framework members seek input from stakeholders in conducting this 2020 review. The views and proposals included in the Consultation Document do not represent the consensus views of the Committee on Fiscal Affairs (CFA), the Inclusive Framework or its subsidiary bodies but are intended to provide stakeholders with substantive proposals for analysis and comment.

Consultation Document

The Consultation Document comprises 18 topics for review organized in three chapters:

- ▶ Chapter 1 addresses general topics concerning the implementation and operation of BEPS Action 13.
- ▶ Chapter 2 addresses topics concerning the scope of CbC reporting.
- ▶ Chapter 3 addresses topics concerning the content of a CbC report.

Each chapter includes general background information, examples of benefits and challenges with respect to each topic, the changes that would need to be made to the BEPS Action 13 package to address a topic and specific questions for public consultation.

Chapter 1: General topics concerning the implementation and operation of Action 13

1. **Implementation of the BEPS Action 13 minimum standard:** The Inclusive Framework seeks comments on the general status of implementation of CbC reporting by members of the Inclusive Framework.
2. **The appropriate and effective use of CbC reports:** The Inclusive Framework seeks comments with respect to the use of CbC reports by tax administrations and on what impact such use has had on the number and nature of requests for additional information.
3. **Other elements of the BEPS Action 13 report:** In Annex I and II to Chapter V of the OECD Transfer Pricing Guidelines, the OECD set out the information to be included in the master file and local file. The master file and local file are not part of the BEPS minimum standards and are not subject to peer review. This has led a number of jurisdictions to introduce master

file and local file requirements that differ from, or go further than, BEPS Action 13. The Inclusive Framework invites comments from stakeholders regarding cases where jurisdictions have implemented master file requirements that differ from, or go further than, the documents listed in Annex I to Chapter V of the OECD Transfer Pricing Guidelines.

Chapter 2: Topics concerning the scope of CbC reporting

4. **Should a single enterprise with one or more foreign permanent establishments be a Group for the purposes of CbC reporting?** The Consultation Document states that it is not clear from the current definition of the term “Group” included in Article 1 of the model legislation related to CbC reporting whether a single enterprise that is resident in one jurisdiction and that conducts business through permanent establishments (PEs) in other jurisdictions falls within this definition. Further, it is not clear that a single entity could be viewed as preparing consolidated financial statements, even if it prepares financial statements that incorporate the results of its PEs. Therefore, the definition of a Group could be amended to make it clear that it covers these situations.
5. **Should separate CbC reports be prepared by MNE groups that are under common control and that in aggregate have consolidated group revenue above the CbC reporting threshold?** Tax administrations and some stakeholders are concerned that the current definition of an MNE Group does not cover all combinations of enterprises that may pose a transfer pricing or other BEPS risk to the jurisdictions in which they operate. The Inclusive Framework seeks comments on the introduction of a CbC reporting filing obligation that would apply where all of the following conditions are met:
 - ▶ An individual (or individuals acting together) directly or indirectly control (which could be defined based on more than 50% of voting rights, 50% of both voting rights and equity or accounting principles) two or more groups
 - ▶ Looked at together, the groups include entities resident in more than one jurisdiction or include an entity resident in one jurisdiction that is subject to tax on profits from activities undertaken through a PE in another jurisdiction

- ▶ Looked at together, the groups have aggregate consolidated group revenue in the immediately preceding fiscal year of at least €750 million
- ▶ Two or more of the groups each have consolidated group revenue in the immediately preceding fiscal year of at least an agreed proportion (e.g., one-quarter, one-third, etc.) of the general CbC reporting consolidated group revenue threshold.

6. **Should the level of the consolidated group revenue threshold be reduced?** The BEPS Action 13 minimum standard subjects MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of more than €750 million or a near equivalent amount in domestic currency as of January 2015. The Inclusive Framework seeks input on the benefits and practical challenges of reducing this threshold.
7. **Should a jurisdiction with a consolidated group revenue threshold denominated in a currency other than the Euro be required or permitted to rebase its threshold periodically?** The Consultation Document notes that since January 2015, exchange rates have fluctuated so that thresholds in currencies other than the Euro that were equivalent to €750 million in January 2015 may now have a value that is higher or lower than such amount. This raises a question as to whether non-Euro thresholds should remain at their current level, or whether they should be rebased periodically. The Inclusive Framework seeks the views of stakeholders as to the advantages or disadvantages of the six different possible approaches.
8. **Should the threshold for Excluded MNE Groups take into account more than one year of consolidated group revenue?** The Inclusive Framework invites comments on a possible change to the operation of the consolidated group revenue threshold which would take into account an MNE group’s revenue for more than one fiscal year. The Consultation Document provides three possible options, but also invites comments on any other possible changes to the operation of the rule.

Further, the Consultation Document provides that each of these options could be supplemented with a provision to permit an MNE group to file a CbC report on a voluntary basis if it falls outside of the scope of CbC reporting for a year but anticipates being required to file a CbC report in future.

9. **Should extraordinary income be included in consolidated group revenue?** Jurisdictions currently differ in their practices as to whether extraordinary income is required to be included in consolidated group revenue or is excluded. The Inclusive Framework invites comments on the benefits and practical challenges of requiring extraordinary income be included in consolidated group revenue.
10. **Should gains from investment activity be included in consolidated group revenue?** Jurisdictions currently differ in their practices as to whether gains from investment activity are required to be included in consolidated group revenue or are excluded. It could be considered beneficial for the coherence of the minimum standard for a consistent approach to be applied. The Inclusive Framework invites comments on the benefits and practical challenges of requiring gains from investment activity to be included in consolidated group revenue.
11. **In cases where the previous 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?** According to the current CbC reporting guidance, a jurisdiction may adopt any of the following three approaches to deal with short accounting periods:
- Use the actual total consolidated group revenue of the MNE group for the short accounting period.
 - Adjust the consolidated group revenue for the short accounting period to reflect the consolidated group revenue that would correspond to a 12-month accounting period.
 - Calculate the pro-rata share of the €750 million threshold that would correspond to the short accounting period.

The Inclusive Framework invites comments from stakeholders on jurisdictions committing to apply either approach B or approach C (which in substance should have the same effect), but no longer applying approach A. The same approach should also be applied in cases where the preceding fiscal year of an MNE group is more than 12 months.

Chapter 3: Topics concerning the content of a CbC report

12. **Should information in Table 1 be presented by entity rather than by tax jurisdiction?** The Inclusive Framework invites comments from stakeholders on amendments to the BEPS Action 13 report to require Table 1 to be completed with information on each constituent entity rather than with aggregate tax jurisdiction-wide information.
13. **Should consolidated data rather than aggregate data be used in Table 1?** The Inclusive Framework invites comments on the benefits and challenges with respect to requiring the use of in-country consolidated data in Table 1 of the CbC report rather than aggregate data. Moreover, the Consultation Document recognizes that consolidated data may be used in specific circumstances under the OECD CbC reporting guidance and notes that if an in-country consolidated approach as contemplated in the Consultation Document is not adopted, such guidance would continue to apply.
14. **Should additional columns be added to Table 1?** The Inclusive Framework seeks input from stakeholders on the following possible additional columns for Table 1: (i) related party interest income, related party royalty income and related party service fee income; (ii) related party interest expense, related party royalty expense and related party service fee expense, or total related party expenses; (iii) research and development expenditure; and (iv) deferred taxes. The Consultation Document clarifies that if specific types of related party receipts are to be included separately in Table 1, these amounts could be excluded from the general related party revenues column to avoid double counting, but these receipts would be included in profit before tax. Moreover, if an additional column is not added for deferred taxes, the definition of income tax accrued (current year) could be amended to include changes in deferred tax.
15. **Should changes be made to how constituent entities that are not resident in any tax jurisdiction for tax purposes are categorized for CbC reporting purposes and how information on these entities is reported in Table 1?** The BEPS Action 13 final report requires a separate line to be included in Table 1 for all constituent entities that are not tax resident in any jurisdiction (so-called stateless constituent entities). The Consultation

Document further indicates that constituent entities that are not tax resident anywhere can be broken down into three broad categories.

The Consultation Document states that the current approach poses a number of issues in using CbC reporting information for the purposes of a high-level risk assessment or economic and statistical analysis. The Consultation Document outlines four possible approaches to address such issues.

16. **Should fields required in the XML schema (e.g., tax identification number) that are not in the CbC reporting template in the BEPS Action 13 final report be incorporated into the template?**

The Inclusive Framework seeks comments from stakeholders on amendments to the CbC reporting template to ensure it contains all of the information required to be included in the XML schema when a CbC report is exchanged.

17. **Should standardized industry codes be included in Table 2?**

The Inclusive Framework invites comments from stakeholders on whether Table 2 could require the use of standardized industry codes for each constituent entity in order to facilitate a comparison of the results of an MNE group in a particular jurisdiction with those of other specific entities or MNE groups operating in the same sector or with average results for all entities operating in the sector.

18. **Should pre-determined fields be added to Table 3, in addition to free text?**

The Inclusive Framework seeks comments from stakeholders on the introduction of predetermined fields in Table 3 to provide additional information or clarification concerning the preparation and content of an MNE group's CbC report, as well as information on any changes to an MNE group that would assist in the understanding of its CbC report. The Consultation Document notes that the BEPS Action 13 final report specifies only limited cases where an MNE group must include information in Table 3 and that subsequent interpretative guidance identifies specific information that an MNE group should be encouraged or required to include in Table 3 where relevant. The Consultation Document also indicates that in general, the experience of tax administrations is that MNE groups have made little use of Table 3 in practice. Thus, the Consultation Document provide the following list of possible fields for inclusion in Table 3:

- ▶ Applicable accounting standards used for determining constituent entities
- ▶ Source of data
- ▶ Identification of any material acquisitions, disposals or restructurings of constituent entities that have occurred during the reporting fiscal year
- ▶ Notation that Table 1 includes information on constituent entities included in consolidated financial statements using proportionate consolidation rules
- ▶ Where proportionate consolidation rules have been applied, the number of employees of the relevant constituent entity are reported on a pro-rata basis
- ▶ Notation that income tax refunds have been included in revenues rather than income tax paid (cash basis), as permitted under the applicable accounting standards
- ▶ Notation that accumulated earnings includes negative accumulated earnings (i.e., accumulated losses) for some constituent entities
- ▶ Notation that Table 1 contains information prepared on a consolidated tax jurisdiction-wide basis
- ▶ Whether the ultimate parent entity (UPE) was a constituent entity in another MNE group in the preceding fiscal year
- ▶ Whether the UPE is exempt from income tax in its tax jurisdiction of residence
- ▶ Whether the UPE is a not for profit entity

Next steps

Interested parties are invited to submit their comments on all aspects of the BEPS Action 13 report and specifically on the questions raised throughout the Consultation Document by 6 March 2020. All comments on the Consultation Document will be made available to public, via the OECD website, in advance of the public consultation meeting, which will be held on 17 March 2020, at the OECD Conference Centre in Paris.

Furthermore, the press release accompanying the Consultation Document notes that the work on the [two-pillar approach to address the tax challenges arising from the digitalization of the economy](#)¹⁷ may include consideration as to whether elements of the framework or principles underpinning CbC reporting may be used to support the implementation and operation of Pillar One and/or Pillar Two. However, this is not addressed in this Consultation Document.

Implications

It is important for companies to follow these developments closely as they unfold in the coming months. Companies may wish to participate in the consultation and provide feedback based on their experiences with CbC reporting. Companies might also begin to evaluate the impact of the potential changes on their reporting obligations.

Endnotes

1. See EY Global Tax alert, [OECD releases final report on transfer pricing documentation and Country-by-Country reporting under Action 13](#), dated 21 October 2015.
2. See EY Global Tax alert, [OECD releases additional Guidance on implementation of Country-by-Country reporting](#), dated 29 June 2016.
3. See EY Global Tax alert, [OECD updates guidance on Country-by-Country Reporting and launches new site on country-specific implementation](#), dated 5 December 2016.
4. See EY Global Tax alert, [OECD updates its Guidance on Country-by-Country Reporting](#), dated 7 April 2017.
5. See EY Global Tax alert, [OECD releases update of Guidance on the Implementation of Country-by-Country Reporting](#), dated 19 July 2017.
6. See EY Global Tax alert, [OECD releases further guidance on Country-by-Country Reporting](#), dated 7 September 2017.
7. See EY Global Tax alert, [OECD releases additional guidance on Country-by-Country Reporting](#), dated 4 December 2017.
8. See EY Global Tax alert, [OECD releases country approaches to Country-by-Country Reporting Guidance and adds additional questions](#), dated 9 February 2018.
9. See EY Global Tax alert, [OECD releases additional guidance on Country-by-Country Reporting and updated exchange relationships](#), dated 14 September 2018.
10. See EY Global Tax alert, [OECD releases additional guidance on Country-by-Country Reporting and a summary of common errors made by MNE Groups in preparing these reports](#), dated 7 November 2019.
11. See EY Global Tax alert, [OECD releases additional guidance on Country-by-Country Reporting and a summary of related notification requirements](#), dated 13 January 2020.
12. See EY Global Tax Alert, [OECD releases peer review documents on BEPS Action 5 on Harmful Tax Practices and on BEPS Action 13 on Country-by-Country Reporting](#), dated 6 February 2017.
13. See EY Global Tax Alert, [OECD releases first annual peer review report \(Phase 1\) on Action 13](#), dated 25 May 2018.
14. See EY Global Tax alert, [OECD releases outcomes of the second phase of peer reviews on BEPS Action 13 and announces public consultation](#), dated 9 September 2019.
15. See EY Global Tax alert, [OECD publishes two handbooks on Country-by-Country reporting](#), dated 3 October 2017.
16. See EY Global Tax alert, [OECD releases further guidance on Country-by-Country Reporting](#), dated 7 September 2017.
17. See EY Global Tax alert, [OECD documents on BEPS 2.0 include new details and identify issues under consideration on Pillar One and Pillar Two](#), dated 7 February 2020.

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