15 July 2020

Global Tax Alert

OECD releases new corporate tax statistics including anonymized and aggregated Country-by-Country report statistics

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Executive summary

On 8 July 2020, the Organisation for Economic Co-operation and Development (OECD) released the second edition of the annual Corporate Tax Statistics publication (the report) together with an updated database. The database is intended to assist in the study of corporate tax policy and expand the quality and range of data available for the analysis of base erosion and profit shifting (BEPS) activity. For the first time, the database includes anonymized and aggregated Country-by-Country (CbC) reporting statistics, reflecting information for 2016 provided by 26 member jurisdictions of the Inclusive Framework on BEPS and covering about 4,000 multinational enterprise (MNE) groups that operate across more than 100 jurisdictions worldwide. The OECD also published a list of Frequently Asked Questions on the anonymized and aggregated CbC reporting data.

As highlighted in the press release accompanying the release of the report and the database, the OECD views the new statistics as suggesting some preliminary insights that, despite the data limitations, are indicative of the existence of BEPS behavior and reinforce the need to continue to address remaining BEPS issues as part of the Inclusive Framework's work on Pillar 2 of the ongoing international efforts to address the tax challenges arising from digitalization of the economy (the BEPS 2.0 project).

This second edition of the database also includes for the first time information on controlled foreign company (CFC) rules and on interest limitation rules, which the OECD indicates can assist in understanding progress related to the implementation of BEPS Actions 3 and 4.

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Background

In October 2015, the OECD released the final reports on all 15 Action areas of the BEPS project.[1] The recommendations made in the reports ranged from new minimum standards to reinforced international standards, common approaches to facilitate the convergence of national practices, and guidance drawing on best practices. The BEPS Action 11 report, titled *Measuring and Monitoring BEPS*, is intended to estimate the scale of BEPS, identify indicators of BEPS, and provide recommendations for improving the measurement of BEPS.

On 15 January 2019, the OECD released the first edition of the Corporate Tax Statistics publication, which provided internationally comparable statistics and analysis covering approximately 100 countries on four main categories of data: (i) corporate tax revenues; (ii) statutory corporate income tax rates; (iii) corporate effective tax rates; and (iv) tax incentives related to innovation.[2]

Second edition of corporate tax statistics

The second edition of the database, released on 8 July 2020, includes new data categories and statistics that have been collected and stored by the OECD in various existing datasets. The database contains the following main categories of data:

- Corporate tax revenues
- Statutory corporate income tax rates
- Corporate effective tax rates
- Tax incentives for research and development (R&D)
- Anonymized and aggregated statistics collected via CbC reports
- Intellectual property regimes
- CFC rules
- Interest limitation rules

The OECD analysis in the report shows that corporate income tax is a significant source of tax revenues for governments across the globe, accounting for 14.6% of total tax revenues on average across 93 jurisdictions in 2017, compared to 12.1% in 2000. Corporate taxation is relatively more important in developing countries, comprising on average 18.6% of all tax revenues in Africa and 15.5% in Latin America and the Caribbean, as compared to an average of 9.3% in OECD jurisdictions.

Statutory corporate income tax rates have been decreasing on average over the last two decades, although considerable variation among jurisdictions remains. The average combined statutory tax rate for all covered jurisdictions was 20.6% in 2020, compared to 20.7% in 2019 and 28.0% in 2000. Also, R&D tax incentives are increasingly being used to promote business R&D with 30 out of the 36 OECD jurisdictions offering tax relief for R&D expenditures in 2019, compared to 19 in 2000.

Anonymized and aggregated statistics collected via CbC reports

CbC reporting was implemented as part of the final report on Action 13, *Transfer Pricing Documentation and Country-by-Country Reporting*, to support tax administrations in the high-level detection and assessment of transfer pricing and other BEPS-related risks.[3] Under BEPS Action 11, jurisdictions also agreed to regularly publish anonymized and aggregated CbC report statistics to support the ongoing economic and statistical analysis of MNEs and BEPS.

The second edition of Corporate Tax Statistics includes the first release of aggregated CbC report statistics, which are for the year 2016 and are based on CbC reports filed in 26 jurisdictions that cover nearly 4,000 MNE groups. Of the 137 members of the Inclusive Framework, only 58 jurisdictions received CbC reports from MNEs for the fiscal year starting in 2016, with only 46 having implemented mandatory reporting for the fiscal year 2016 and 12 having received some CbC reports under voluntary filing. Of the jurisdictions receiving CbC reports, only 35 were estimated to have received a sufficient number of CbC reports to be able to provide aggregated statistics while ensuring taxpayer confidentiality. Of these 35, the first data release presents CbC report statistics from a total of 26 jurisdictions – a coverage rate of 74%. Some jurisdictions did not provide anonymized and aggregated CbC report statistics for various reasons, including choosing not to submit (or to withdraw their submissions) because of concerns over data quality, technical difficulties and legal issues.

According to the report, the aggregated CbC report data are subject to a number of limitations, including, for example, that much of the data is too aggregated to allow detailed investigation of specific BEPS channels and that several jurisdictions, including some large ones, have not submitted aggregated CbC report statistics to the OECD for publication.

In the report, the OECD notes that there is a time lag in the data and that the implementation of measures designed to combat BEPS has advanced significantly since 2016, but nevertheless views the first release of CbC report statistics as suggesting some preliminary insights on BEPS:

- According to the OECD, the data are indicative of a misalignment between the location where profits are reported and the location where economic activities occur. For example, high- and middle-income jurisdictions account for a higher share of employees (respectively 32% and 37% of total employees) and tangible assets (respectively 35% and 23% of total tangible assets) than of profits (respectively 28% and 19%). On the other hand, in investment hub jurisdictions, on average MNEs report a relatively high share of profits (25%) compared to their share of employees (4%) and tangible assets (11%).
- Revenues per employee tend to be higher in jurisdictions that have statutory corporate income tax rates of zero or that are investment hubs. The OECD notes that this may be a high-level indicator of BEPS and that it could also reflect differences in capital intensity or in worker productivity.
- On average, the share of related party revenues in total revenues is higher for MNEs in some jurisdictions. The OECD notes that high levels of related party revenues may be commercially motivated and that they are also a high-level risk assessment factor and could be indicative of tax planning.
- The composition of business activity differs across jurisdictions. In high-, middle- and low-income jurisdictions, sales, manufacturing and services are the most prevalent activities; in investment hub jurisdictions, the predominant activity is "holding shares and other equity instruments." The OECD notes that a concentration of holding companies is a risk assessment factor and could be evidence of certain tax planning structures and that, as with related party revenues, such a concentration may reflect genuine commercial arrangements.

The OECD indicates that it expects the coverage and quality of this new dataset to improve for future editions of the database, as MNEs improve the consistency of their reporting, jurisdictions improve the consistency of their data collection practices and additional jurisdictions provide data, and as issues arising in the initial years of data collection are addressed.

In the press release, the OECD notes the limitations of the data but expresses the view that the data are indicative of the existence of BEPS behavior and reinforce the need to continue to address remaining BEPS issues as part of the Inclusive Framework's work on Pillar 2 of the BEPS 2.0 project.

Controlled foreign company rules

The final report on Action 3, *Designing Effective Controlled Foreign Company Rules*, set out recommended approaches for the development of CFC rules to ensure the taxation of specified categories of MNE income in the jurisdiction of the parent company in order to counter offshore structures that result in no or indefinite deferral of taxation.[4]

The OECD gathers information on progress related to the implementation of Action 3, namely: (i) whether a jurisdiction has CFC rules in place; (ii) the jurisdiction's definition of CFC income; and (iii) whether the jurisdiction's CFC rules include a substantial economic activity test and, if so, the nature of the test, and, finally, whether there are any exceptions to application of the CFC rules. This information is included in the database for the first time and it covers the CFC rules in place in 2019.

According to the report, information on the presence of CFC rules is available for 122 Inclusive Framework member jurisdictions. Of these, 49 jurisdictions indicated that CFC rules were in place in 2019. Jurisdictions apply a variety of criteria to determine control and they also use varied definitions of CFC income, with some applying CFC rules to any type of income while others apply the rules only to passive income. Finally, jurisdictions also take varied approaches to the use of substantial activity tests. The report indicates that out of the 49 jurisdictions that had CFC rules in 2019, 11 did not have substantial activity tests in place.

Interest limitation rules

The final report on Action 4, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments*, recommended that countries implement a "fixed ratio" rule that would limit net interest deductions claimed by an entity (or a group of entities operating in the same country) to a fixed percentage of earnings before interest, taxes, depreciation and amortization (EBITDA).[5] Further work on two aspects of the approach outlined in the Action 4 report was completed in 2017.[6]

The OECD gathers information on progress related to the implementation of Action 4, namely whether a jurisdiction has an interest limitation rule in place and, if so, the main design features of the rule. This information is included in the database for the first time and it covers the interest limitation rules in place in 2019.

According to the report, information on the presence of interest limitation rules is available for 134 Inclusive Framework member jurisdictions. Of these, 67 indicated that interest limitation rules were in place in 2019. Many jurisdictions reported having more than one interest limitation rule in place. Of the 67 jurisdictions that had interest limitation rules, the most common were thin capitalization rules (43 jurisdictions) and earnings stripping rules (33 jurisdictions).

Thin capitalization rules disallow the tax deductibility of intra-group interest payments if a specified threshold is exceeded, where the threshold is based on a debt-to-equity or debt-to-assets ratio. Thin capitalization rules most commonly reference a debt to-equity ratio (although a debt-to-assets ratio is used in some jurisdictions), where the ratio values range from 0.3:1 in Brazil to 6:1 in Switzerland, with ratios of 2:1, 3:1 and 4:1 being very common as well.

Earnings stripping rules restrict tax deductibility if the ratio of interest to EBITDA exceeds a specified threshold. While OECD guidance recommends the use of EBITDA in the denominator, it also allows for the use of rules based on earnings before interest and taxes (EBIT). In addition, it allows interest limitation rules that make reference to other ratios, such as Denmark's rule that applies the ratio of interest to the tax value of total assets. Among the 33 jurisdictions with earnings stripping rules, the most commonly referenced ratio was interest-to-EBITDA (30 jurisdictions), with ratio values ranging from 10% in Romania to 30%, with the latter being the most common ratio (24 jurisdictions).

Intellectual property regimes

The final report on Action 5, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*, covered two main areas: (i) defining a "substantial activity" criterion to be applied when determining whether tax regimes are harmful; and (ii) improving transparency,[7] and it touched on a wide variety of topics, including substance requirements for intellectual property (IP) and other regimes.

The database includes a basic description of IP regimes in place in 2019. The information reported for each IP regime in the database is: (i) the name of the regime; (ii) the qualifying IP assets; (iii) the reduced tax rate that applies under the IP regime; and (iv) the status of the IP regime as determined by the OECD's Forum on Harmful Tax Practices (FHTP). The database draws on the detailed information collected by the FHTP for its peer reviews of preferential tax regimes. The information and the status presented are as of November 2019. Changes to regimes that have been legislated in 2019 but are not effective until 2020 are not reflected in this edition of the database.

According to the report, the database contains information on 51 IP regimes that were in place in 38 jurisdictions in the year 2019. Thirty-seven regimes in total were found by the FHTP to be not harmful; 22 of these regimes were found to be not harmful after having been amended to align with the Action 5 minimum standard. Two regimes (in Italy and in Turkey) were found by the FHTP to be not harmful but have a transition rule that was found to be harmful for a limited period of time. One regime (in Jordan) was found by the FHTP to be harmful. Three regimes are in the process of being amended or eliminated because they were not compliant with the BEPS Action 5 minimum standard. Ten regimes are still under review by the FHTP, because it has not yet been determined whether they meet the Action 5 minimum standard. This is the case with newly introduced IP regimes (including the US Foreign-Derived Intangible Income (FDII) regime) and IP regimes of jurisdictions that have recently joined the Inclusive Framework.

The report indicates that future editions of the database will incorporate the effects of IP regimes into the corporate effective tax rate analysis.

Implications

The first release of aggregated CbC report data provides a new source of information for analyzing MNE activities. However, the data contain some significant limitations that need to be taken into account in assessing the information.

It is important to note that the OECD views this new data as suggesting a number of preliminary insights, which could have an impact on the negotiations of the BEPS 2.0 project. In this regard, the OECD indicates that the 2016 CbC report data included in the report suggest the existence of remaining BEPS issues that should be addressed through Pillar 2 of the BEPs 2.0 project. However, the Final BEPS reports were issued in October 2015. Thus, as of 2016, the implementation process had only just begun. Almost all of the legislative changes that have been made to date by countries worldwide to implement the BEPS measures entered into effect in years after 2016. For example, the OECD Transfer Pricing Guidelines were updated on 10 July 2017 to incorporate the changes agreed during the BEPS project. The *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (Multilateral Instrument), which is a tool for the introduction of the minimum standards on treaty abuse (Action 6) and on dispute resolution (Action 14), entered into force on 1 July 2018. Moreover, in the European Union (EU), EU Member States were required to transpose the Anti-Tax Avoidance Directive into legislation by the end of 2019. These are just three examples illustrating that the level of implementation of measures to address BEPS was still quite limited as of 2016, the year covered by the CbC report data included in the OECD database. The effects of the significant implementation of BEPS measures that has happened around the world will only be seen when data for more recent years is analyzed.

The database will continue to be updated annually and it is expected that future editions will include CbC report data from additional countries and for additional years, which the OECD may view as suggesting additional insights related to trends in BEPS.

Businesses are advised to review the report and the database and consider the implications of OECD's interpretations of this new CbC report data included therein.

Endnotes

1. See EY Global Tax Alert, *OECD releases final reports on BEPS Action Plan*, dated 6 October 2015.
2. See EY Global Tax Alert, *The Latest on BEPS and Beyond*, dated 28 January 2019.
3. 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.
4. See EY Global Tax Alert, *OECD releases final report on CFC rules under BEPS Action 3*, dated 11 October 2015.
5. See EY Global Tax Alert, *OECD releases final report on limitations on interest deductions under Action 4*, dated 14 October 2015.
6. See EY Global Tax Alert, *The Latest on BEPS*, dated 3 January 2017.
7. See EY Global Tax Alert, *OECD releases final report on countering harmful tax practices under Action 5*, dated 8 October 2015.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Belastingadviseurs LLP, Rotterdam

- Ronald van den Brekel ronald.van.den.brekel@nl.ey.com
- Marlies de Ruiter marlies.de.ruiter@nl.ey.com
- Maikel Evers maikel.evers@nl.ey.com

Ernst & Young Belastingadviseurs LLP, Amsterdam

- David Corredor-Velásquez david.corredor.velasquez@nl.ey.com
- Konstantina Tsilimigka konstantina.tsilimigka@nl.ey.com

Ernst & Young Solutions LLP, Singapore

- Luis Coronado luis.coronado@sg.ey.com

Ernst & Young LLP (United States), Global Tax Desk Network, New York

- Jose A. (Jano) Bustos joseantonio.bustos@ey.com

Ernst & Young LLP (United States), Washington, DC

- Barbara M. Angus barbara.angus@ey.com

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EYG no. 004726-20Gbl

1508-1600216 NY
ED None

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