



OECD releases public consultation document on 2020 review of country-by-country reporting practices

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The G20/OECD Inclusive Framework on Base Erosion and Profit Shifting on 6 February released a public consultation document concerning country-by-country (CbC) reporting under BEPS Action 13. The public input obtained in this process will inform the Inclusive Framework's review of the minimum standard for CbC reporting to tax authorities, a project that is scheduled for completion by the end of 2020. The views and proposals in the document do not reflect a consensus position of the governments involved but are designed to provide substantive proposals for further review and public comment.

The discussion topics on which the Inclusive Framework requested public comments are organized into three categories: general topics concerning implementation and operation of BEPS Action 13, topics concerning the scope of CbC reporting, and topics concerning the contents of the CbC report. Some discussion topics explore potential changes that could have far-reaching impact on MNEs if they are adopted in local legislation, while others may have more limited effects. We review these discussion topics below.

Key topics to monitor

Three discussion topics pose questions that could lead to fundamental changes to the CbC reporting regime:

- Should information in Table 1 be presented by entity rather than by tax jurisdiction?
- Should additional columns be added to Table 1? Items identified in this regard are: related-party interest, royalty, and service income; related-party interest, royalty, and service expense; total related-party expenses; R&D expenditure; and deferred taxes.
- 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?

Adding more information such as entity-level financials and additional columns might facilitate high-level risk assessments of MNE groups by the relevant tax authorities. However, it may also increase compliance burdens on taxpayers and create a potential for false positives from using the new information.

The Inclusive Framework provides several alternative approaches to reporting information for stateless entities. They generally involve identifying the jurisdiction (if any) in which the profits of the stateless entity are subject to tax. On one hand, such changes might be welcomed by MNEs who have operating entities that are liable to tax but are classified as stateless under the current CbC rules. On the other hand, any of the proposed approaches would involve an incremental increase in the amount of information that must be collected and submitted.

Topics that may impact only a subset of MNEs

Many of the discussion topics relate to potential revisions to the CbC reporting annual revenue threshold, which is currently set at EUR 750 million, or a near equivalent amount in domestic currency as of January 2015, for the immediately preceding fiscal year. This relates to qualification as an "Excluded MNE group" for purposes of exemption from the CBC filing requirements. Discussion topics in connection with the threshold include the following:

- Should separate CbC reports be prepared by MNE groups that are under common control and which in the aggregate have consolidated group revenue above the CbC reporting threshold?
- Should the consolidated group revenue threshold be reduced?
- Should a jurisdiction with a consolidated group revenue threshold denominated in a currency other than the euro be required or permitted to refresh that amount periodically?
- Should the revenue threshold for Excluded MNE Groups take into account more than one year of consolidated group revenue?

Another discussion topic involves whether certain fields required in the XML schema (for example, constituent entity tax identification number and address) that are not specifically identified in the CbC reporting template per the BEPS Action 13 report, should be incorporated into the template. Most US MNEs file their CbC reports in electronic format; therefore, they would not be affected if this suggestion were adopted.

Topics to monitor

Several other topics may lead to additional compliance burdens or complexities for MNEs, although the potential changes are not as fundamental as those described in the first subsection. For example, the Inclusive Framework asks for comments on whether consolidated data rather than aggregate data should be used in Table 1, whether standardized industry codes should be included in Table 2, and whether certain mandatory predetermined fields, such as sources of data and applicable accounting standards used, should be added to Table 3.

Topics already addressed in US regulations

Some topics in the consultation document involve matters that have already been clarified in US CbC regulations in Treas. Reg. §1.6038-4. For example:

- Should a single enterprise with one or more foreign permanent establishments be classified as a group for purposes of CbC reporting?
- Should extraordinary income be included in consolidated group revenue?
- Should gains from investment activity be included in consolidated group revenue?
- When the previous fiscal year of an MNE group consists 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?

Most of the potential amendments covered by these topics are consistent with the contents of the US CbC regulations.

Other items to note

The consultation document states that the OECD is currently developing a CbC reporting Tax Risk Evaluation & Assessment Tool (TREAT). This tool is intended to support tax administrations, including those in developing countries, in performing review and interpretation of CbC reports. The tool will rely on risk factors identified in the OECD publication, *CbC Reporting: Handbook on the Effective Use of CbC Reporting Information in Tax Risk Assessment* (September 2017). In addition, MNEs can conduct their own CbC risk assessments using potential risk factors indicated in the handbook, as a means of preparing for CbC-related queries.

The Inclusive Framework also requested public comments on “the use of CbC reports by tax administrations” and “the number and nature of requests for additional information” from tax authorities. Since all comments on this public consultation document will be made publicly available, interested parties may be able to obtain information concerning the approaches taken by specific tax authorities on their use of CbC reporting data.

Finally, the consultation document fails to address some common issues that MNEs have faced since the introduction of CbC rules. Most notably, some jurisdictions have enacted legislation that requires local filing of CbC reports, although the jurisdiction has no international agreement with the MNE’s home jurisdiction. Such local filing requirements are generally acknowledged to conflict with the consensus reached during BEPS Action Item 13 negotiations. Also of concern are repetitive annual notification requirements and local filing requirements that are consistent with the OECD model CbC legislation but nevertheless still bring compliance burdens and information security concerns to MNEs. That said, the Inclusive Framework did seek comments regarding the general status of CbC reporting implementation by local countries. Taxpayers may use this opportunity to raise these and other related concerns.

Next steps

Comments are invited by March 6. A public consultation meeting in Paris will follow on March 17, 2020.

It is anticipated that the Inclusive Framework’s review will be completed by the end of 2020.

Contacts

[John Breen](#) (Washington DC)

[Kaidi Liu](#) (Washington DC)

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