

## Trade and Investment

### Commission on Taxation

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#### **ICC Comments on OECD public consultation document on the review of Country-by-Country Reporting (BEPS Action 13)**

The International Chamber of Commerce (ICC), as the world business organization speaking with authority on behalf of enterprises from all sectors in every part of the world, appreciates the opportunity to provide input on the OECD [public consultation document](#) on the review of Country-by-Country Reporting (BEPS Action 13), as part of the ongoing work of the OECD/G20 Inclusive Framework on BEPS (the Inclusive Framework). ICC advocates for a consistent global tax system, founded on the premise that stability, certainty and consistency in global tax principles are essential for business and will foster cross-border trade and investment.

#### **GENERAL COMMENTS**

ICC welcomes the opportunity to provide comments on the BEPS Action 13 Report which focuses on issues concerning the use of Country-by-Country (CbC) reports by tax administrations for the purposes of a high level transfer pricing risk assessment, the assessment of other BEPS-related risks and economic and statistical analysis. ICC believes that some valuable insight has been gained over the past three years on the implementation of the BEPS Action 13 minimum standard on CBC reporting.

Subsequent to the release of the 15 BEPS Actions in October 2015, Action 13 is one of the BEPS measures that resulted in a more direct impact on the obligations of multinational enterprises (MNEs), particularly, as it created a new reporting form that was rapidly incorporated in local legislations, with immediate effect.

Essentially, this has resulted in three CbC reports that have already been submitted by MNEs under scope within less than five years after the release of the BEPS Actions. In order to get to this point, the OECD, tax administrations and MNEs have made concerted efforts to clarify concepts and questions, implement the CbC report locally as well as set up the necessary systems or procedures to obtain the required information.

From a business perspective, ICC notes that preparation for appropriate completion of the CbC report has required internal investment by MNEs in terms of additional time, resources and systems, particularly, in view of the fact that part of the information requested is constructed by taking into account different criteria from that used for financial or tax reporting purposes. ICC understands that the OECD assessed the average cost to implement CbC reporting would be 5000 EUR per company. In reality, many MNEs have incurred costs amounting to millions rather than thousands, to set up appropriate reporting systems and to run them annually. It is ICC's respectful view that given the extent of investment and effort to understand and standardise the procedures for the CbC report requirements, it would be timely to make the best use of the results gained to provide standardised annual information as defined by the OECD. ICC members also believe that the current information provided is sufficient to serve the purposes of the CbC report. There is little direct evidence that the tax authorities have been able to process all the data collected and use it effectively as intended. Therefore, ICC holds that more time is needed to evaluate the usefulness of the current format.

ICC recommends that the balance be weighed between the additional compliance burden for taxpayers and the benefits achieved. Whilst the CbC report can currently be considered as a relevant tool for tax risk assessment purposes, or for identifying base erosion and profit shifting activities, attempts should not be made to use the CbC report for a broader purpose or be redefined periodically. An additional objective envisaged by the OECD for the CbC report is the statistical analysis of the reported data by tax

authorities. However, ICC notes that to date, only few tax administrations have effectively performed this exercise.

ICC suggests that any changes in definitions and scope should be carefully considered and justified, taking into account the additional costs imposed on compliant taxpayers. As the CbC reporting will require levels of additional information and often manual reconciliation, changes could lead to a repeat of the exercise many MNEs have been through to set up the process to derive CbC reporting in the first place. Changes to the quantitative requirements will generally not be a matter of minor adjustments to the system, but rather a redesign of the reporting process. In addition, ICC believes that changes in the CbC report governing rules or its definitions would undermine tax certainty which is essential for the business community in reducing complexity and cost, as well as increasing confidence in investments for economic growth. Tax certainty is also a central consideration in the work of the OECD.

ICC believes that specifically for tax authorities, further efforts should focus on providing clearer guidance on the existing definitions and information reported in order to ensure that consistent information is provided, as well as analysing the information gathered and determining which key performance indicators (KPIs) could be relevant to assess risks. It would also be important to enhance information exchange or mechanisms to obtain additional qualitative information from taxpayers in order to fully understand the CbC report, rather than redefining or broadening the scope.

ICC suggests that changes to the CbC report should be deferred pending the outcome of the negotiations on the tax challenges of the digitalised economy. The final outcome of these negotiations may require significant changes to the CbC report, so amendments to the CbC report now might entail substantial expenditures of employee time and capital only to be superseded in the short-term by changes necessitated by a substantial revamping of the international tax system.

Furthermore, ICC believes that CBCR reports should remain confidential and not made public.

In the short term, it is possible that the analysis of the CbC report could be a source of disputes. It is therefore imperative that tax authorities should focus on developing agile, flexible and efficient mechanisms to solve potential tax disputes in this context. To this end, ICC believes that existing tools such as multilateral advance pricing agreements (APAs) and joint audits could be useful in this regard.

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## **SPECIFIC COMMENTS**

### **1. What comments do you have regarding the general status of implementation of CbC reporting by members of the Inclusive Framework?**

Most countries have adequately implemented the minimum standard, however, consistent adoption is key to ensure effective implementation, as well as to minimise compliance burdens. Furthermore, unilateral measures should be avoided, for example, instances where taxpayers are required to file their CbC reports without the basic requirements in place such as effective information exchange mechanisms.

### **2. What comments do you have with respect to the use of CbC reports by tax administrations? To date, what impact has this had on the number and nature of requests for additional information?**

ICC believes that it is still too early to provide an accurate assessment of the impact of CbC report filing in the requests received from tax authorities. An additional two or three years would be helpful in providing a more informative evaluation. From a business perspective, the analysis of the CbC report has not been as timely as the requirement for tax payers to provide the information.

Whilst the OECD has clearly indicated the use of the CbC report as a tool for risk assessment, there is a

risk that tax authorities could use the report to directly extract conclusions (including tax adjustments). In the context of the OECD's work to address the tax challenges of digitalisation, in the event that the current proposed Pillar One measures are approved with respect to the reallocation of profits (particularly Amount A), it could be supposed that precipitated conclusions could be drawn from the CbC report.

As noted above, only few tax administrations have effectively performed the statistical analysis of the reported data. In most cases, the nature and level of aggregation of the information currently included in the CbC report does not sufficiently provide for accurate conclusions to be drawn without the need for additional qualitative explanations. In this case, simple interpretations should be avoided.

In certain cases, the CbC report has been useful in the context of the OECD International Compliance Assurance Programme (ICAP). This initiative leveraged any analysis of the CbC report as the starting point for a high level risk assessment of the MNE, giving the taxpayer the opportunity to provide explanations on the reported data, which provided further insight and understanding for an accurate analysis of the data. It emphasised the use of the report as a starting point for high level risk assessment, whilst making clear that conclusions can generally not be extracted from the report as such.

Given the difficulty of extracting conclusions from the data provided, ICC believes that ideally, the analysis of the CbC report should be accompanied by additional explanations. Therefore, additional initiatives, aiming to cover a larger number of MNEs, should seek to encourage dialogue between tax administrations and taxpayers regarding the CbC report, which would in turn lead to better understanding and minimise disputes.

### **3. What comments do you have 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?**

ICC believes that unilateral and/or inconsistent adoption of the OECD BEPS Action 13 documentation requirements should be avoided at all costs, as it would infringe upon internationally agreed standards, as well as present additional compliance burdens. Where there are local requirements in place, taxpayers do not readily see the benefits from this additional information.

From a business perspective, obtaining a standardised set of transfer pricing documentation is a relevant achievement which provides for a more efficient and targeted effort for dealing with transfer pricing documentation on a global basis. ICC holds that the requirements of Action 13 are broad enough to cover all relevant topics and sufficiently assess transfer pricing risks. Therefore, no additional information should be required locally as part of the annual set of documentation.

ICC also recommends that the automatic exchange of the Master file among tax authorities should be considered by the OECD Inclusive Framework, similarly as the CbC report. Otherwise, local filing could become burdensome for taxpayers. For large MNEs, current local filing requirements are not consistent and often require deconstructing the Master file into XML components and submitting through a portal, often requiring assistance from local advisors.

### **4-5. Are there any benefits from clarifying the definition of a Group to include a single entity that conducts business through one or more permanent establishments, in other jurisdictions in addition to those described in this document? Are there any practical challenges to MNE groups resulting from clarifying the definition of a Group to include a single entity that conducts business through one or more permanent establishments in other jurisdictions, in addition to those described in this document?**

ICC believes that careful consideration should be given to any modifications of the CbC report governing rules aimed at broadening the scope of covered entities. Furthermore, an accurate analysis should be conducted to weigh the additional costs for new companies vis-à-vis the benefits expected from such

measures.

**6-9 Are there any benefits from requiring a CbC report to be filed by groups under the common control of an individual or individuals acting together, in addition to those described in this document? Are there any practical challenges to MNE groups from requiring a CbC report to be filed by groups under the common control of an individual or individuals acting together, in addition to those described in this document? From the perspective of groups, what definition of control should be used to determine whether groups are under common control that would balance the dual aims of providing useful information to tax administrations while not placing an excessive burden on groups? From the perspective of groups, what proportion (e.g. one quarter, one third etc.) of the CbC reporting threshold could be used as a threshold, to require a CbC report to be prepared by groups under the common control of an individual or individuals acting together, that would balance the dual aims of providing useful information to tax administrations while not placing an excessive burden on smaller groups?**

ICC reiterates the points mentioned in the response to 4-5 above. Whatever final solution is determined, clear guidance should be provided and consistent enforcement ensured in order to minimise uncertainty.

**10-11 Are there any benefits from reducing the consolidated group revenue threshold, in addition to those described in this document? Are there any practical challenges to MNE groups resulting from reducing the consolidated group revenue threshold, in addition to those described in this document?**

As indicated above, it is important to weigh the pros and cons of this new definition. The CbC report provides a EUR750million threshold, which is being used as a reference for the application of other rules (e.g. the new rules for the taxation of the digitalised economy). In this regard, consistency is desirable. In addition, reasons supporting the decision taken in 2015 for setting up the CbC report threshold should remain valid. Lowering the threshold will increase the amount of data the tax authorities have to process; as noted above, it may be better to delay lowering the threshold until the tax authorities can effectively analyze all the data they have already received.

**12 -15 Are there any benefits from each of the options for re-basing a non-EUR denominated threshold, in addition to those in this document? Are there any practical challenges to MNE groups from each of the options for rebasing a non-EUR denominated threshold, in addition to those in this document? Option 3 and Option 4 refer to an agreed percentage movement in the value of a jurisdiction's consolidated group revenue threshold that would trigger a requirement to re-base the threshold. From the perspective of MNE groups, at what level should this percentage be agreed (e.g. 5%; 10%) in order to balance the goals of consistency and comparability? Are there any other options for re-basing a non-EUR denominated threshold that should be considered, in addition to those in this document?**

ICC believes that in general, consistency is imperative. Countries within the IF should aim for a common approach which is easy to implement and practicable for MNEs and tax authorities (cost-efficient and avoiding domestic regulatory changes).

At the same time, the option taken should not discriminate taxpayers' reporting data in EUR, as there would be no fluctuation for these taxpayers. This implies that the fairest solution would likely be one which equalises the non-EUR threshold with the EUR one on an annual basis.

**16 - 18. For each of the options for applying a threshold that takes into account consolidated group revenue of more than one fiscal year described in this note, are there any benefits, in addition to those in this document? For each of the options for applying a threshold that takes into account consolidated group revenue of more than one fiscal year, are there any practical challenges to MNE groups, in addition to those in this document? Are there any other changes**

**to the operation of the consolidated group revenue threshold which should be considered, in addition to those in this document?**

ICC notes that the solution reached should be easy to apply and practical. In this regard, options 1 and 2 seem preferable. The option chosen should seek to carve out from the scope of the CbC report those MNEs that only met the EUR750million for a given year.

**19-21 Are there any benefits from including extraordinary income in consolidated group revenue, in addition to those in this document? Are there any practical challenges to MNE groups from excluding extraordinary income in consolidated group revenue, in addition to those in this document? From the perspective of MNE groups, which approach to this issue (e.g. including extraordinary income in consolidated group revenue if these items are separately presented in the consolidated group statements; excluding extraordinary income from consolidated group revenue if these items are separately presented in the consolidated group statements; or some other approach) would balance the dual aims of relative simplicity and a consistent outcome for MNE groups preparing consolidated financial statements under different accounting standards?**

Companies have already adjusted their systems in order to report the information as currently requested. The consideration of income as extraordinary may vary from one jurisdiction to the other, which may lead to inconsistent or non-equal treatment among MNEs.

According to the questions raised in the previous section (questions 16-18), if appropriate rules are implemented to avoid that MNEs fall within the scope of the CbC report solely because they had an irregular result in a certain year; including the extraordinary income in the consolidated group revenue should not be problematic.

**22-24. Are there any benefits from including gains from investment activity in an MNE group's consolidated financial statements, in addition to those in this document? Are there any practical challenges to MNE groups from including gains from investment activity in an MNE group's consolidated group revenue, in addition to those in this document? From the perspective of MNE groups, which approach to this issue (e.g. including gains from investment activity in consolidated group revenue if these items are separately presented in the consolidated group statements; excluding gains from investment activity from consolidated group revenue if these items are separately presented in the consolidated group statements; or some other approach) would balance the dual aims of relative simplicity and a consistent treatment of MNE groups preparing consolidated financial statements under different accounting standards?**

As noted above, companies have already adjusted their systems in order to report the information as currently requested.

**27-28. Are there any benefits from including constituent entity information in Table 1, in addition to those in this document? Are there any practical challenges or other concerns to MNE groups from including constituent entity information in Table 1, in addition to those in this document?**

As companies have already adjusted their systems accordingly to comply with current requirements, any change in the information reported would be burdensome for taxpayers. ICC opposes such changes at this time.

A constituent entity is not a standard reporting unit but a CbC report driven concept used for qualitative purposes. Accounting systems are not producing data required to be reported in the CbC with reference to a constituent entity and neither are most statutory accounts. Hence requiring the information per constituent entity will require manual conversions which will be problematic and costly. Entity data may also add confusion and additional effort in order for all parties to appropriately understand the data. Further, given that CbC is a tool to conduct high level risk assessment, there is a risk that tax authorities could use entity by entity information as an easy way to impose tax without detailed transfer pricing

analysis.

It will require MNEs to set up a different CbC reporting system rather than adapt existing systems, at least repeating the initial costs made to set up its current systems which for many MNEs have amounted to millions of EUR. As larger MNEs can have hundreds of constituent entities and will require additional manual conversions for all of them, the costs for setting up these different reporting systems could be higher than the initial costs.

For complex MNEs with multiple business lines within its larger constituent entities, such an approach will unlikely provide the desired additional benefit.

**29-30. Are there any benefits from requiring the use of consolidated data in Table 1, in addition to those in this document? Are there any practical challenges or other concerns to MNE groups from requiring the use of consolidated data in Table 1, in addition to those in this document?**

As companies have adapted their systems to comply with current requirements, any changes in information reported should be justified considering the additional burden on taxpayers. Changing requirements as described in questions 29-30 would require CbC reporting systems to be set up differently, giving rise to costs similar to the ones made to set up current CbC reporting systems.

Furthermore, the stakeholder concerns raised during the 2014 public consultation and highlighted under point 103 of the current Public Consultation still apply. "An approach that required an MNE group to distinguish between related party revenues and third party revenues should be possible, but to require related party revenues to be treated differently depending upon whether they were received from a constituent entity in the same jurisdiction or in a different jurisdiction could prove excessively burdensome on MNE groups."

**31. For each of the possible new items of information considered in this section, are there any benefits from including an additional column in Table 1 of the CbC report template, in addition to those in this document? For each of the possible new items of information considered in this section, are there any practical challenges or other concerns to MNE groups from including an additional column in Table 1 of the CbC report template, in addition to those in this document? If any of the possible new items considered in this section were added to Table 1 of the CbC report template, what additional instructions or guidance would be helpful to MNE groups?**

ICC notes that in particular, the information described in paragraph 109 of the consultation document would broadly exceed the current *status quo* and would require substantial efforts to provide the required details. Most of the information required (related party flows) is already being reported in the local files (the other items mentioned in paragraph 109 are already reported in the CIT returns).

Action 13 established a three-tiered standardised approach for transfer pricing documentation that already ensures that sufficient information is provided to the tax authorities. Therefore, no additional burdens should be imposed to taxpayers referring to information already reported. This report is intended for a high-level risk assessment; any additional, more detailed information can be requested on audit.

ICC suggests that the only additional column that would be potentially useful is the deferred taxes data. In this sense, in order to properly calculate the effective tax rate (a practice that is already being performed by tax authorities when assessing the tax risks and performing statistical analysis), using the required income tax accrued data (current year), creates a mismatch with the profit before income tax reported. As a consequence, an MNE group or a specific jurisdiction may appear to have a high or low effective tax rate based on a timing issue by not taking into account the deferred taxes. ICC would suggest amending the definition of income tax accrued (current year), so as to also include the movements in deferred tax. This way, the data reported would be the total income tax accrued and accurate calculation of the effective tax rate could be done.

**36-37. Are there any benefits from including additional information required in the CbCR XML schema in the CbC report template, in addition to those in this document? 37. Are there any practical challenges or other concerns to MNE groups from including additional information required in the CbCR XML schema in the CbC report template, in addition to those in this document?**

Same as noted above regarding the adjustment of companies' systems. However, in order to successfully file the CbC report, this information is already required. ICC believes that a standardised approach would be advisable.

**38-40 Are there any benefits from including standardised industry codes in the CbC report template, in addition to those in this document? Are there any practical challenges or other concerns to MNE groups from including standardised industry codes in the CbC report template, in addition to those in this document? From the perspective of MNE groups which of the existing industry code standards is most likely to be the least burdensome and most useful in providing information on the activities of constituent entities?**

MNEs have already prepared their systems to report the information as currently required by BEPS Action 13. The existing categories in Table 2 already provide a reasonable broad range of activities under which the business of each constituent company can be classified, including an "Others" category for which additional information is provided on the specific activity of the companies grouped under it. Taxpayers have already invested a considerable amount of time classifying each CE. Standardised industry codes are not uniform, so getting to agreement on which code system to use is an added challenge, and the codes may not accurately represent the intercompany activity.

**41. Are there any benefits from including predetermined fields in Table 3 of the CbC report template, in addition to those in this document? 42. Are there any practical challenges or other concerns to MNE groups from including predetermined fields in Table 3 of the CbC report template, in addition to those in this document? 43. From the perspective of MNE groups, what predetermined fields could be included in Table 3 that would provide useful information to a tax administration in interpreting a CbC report, while not being burdensome for an MNE group?**

Additional compliance burden is borne by the taxpayers and only in the case where it is considered essential should the amount of information be broadened. It should be considered that the essential purpose of the CbC report is to assess BEPS risk.

ICC is of the view that there is no "one-size-fits-all" solution, as the necessary information to clarify the content of the information of the CbC report varies depending on the industry, business model and many other factors. In light of this, qualitative explanations would be preferable. [ICC believes that these fields can save time to the extent they represent information that has to be disclosed in Table 3 and can be worded in a clear manner. ICC also supports leaving a free text option.]

### **About The International Chamber of Commerce (ICC)**

The International Chamber of Commerce (ICC) is the world's largest business organization representing more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.

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