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ET DE DÉVELOPPEMENT ÉCONOMIQUES

# The Case for Making Country-by-Country Reporting Public

Paris, 27 June 2016[1]

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## Executive summary

This paper takes a closer look at the OECD's BEPS Action 13 C-b-C reporting standard, lists both sides of the argument on whether it should be made public or not, compares the BEPS framework with existing C-b-C reporting regimes that have been deemed fit for public disclosure in a majority of OECD jurisdictions, and concludes that the benefits of public C-b-C reporting far surpass any potential risks.

BEPS Action 13 requires all multinational enterprises (MNEs) with annual consolidated group revenue equal to or exceeding EUR€750 million to provide "*annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their number of employees, stated capital, retained earnings and tangible assets in each tax jurisdiction. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in*".

The new C-b-C reporting standard is rightly considered to be a game changer on the anti-tax avoidance front, but it is far from perfect, and its final version has been considerably watered down from the initial 2014 draft proposal:

- the reporting requirements could have gone further, as proposed in the OECD's 2014 public consultation discussion draft, which also included employee remuneration costs, related-party royalty payments, related-party interest payments, related-party service fees, and total withholding taxes paid.

[1] Amended version 25 July 2016

- though the EUR€750 million threshold represents roughly 90% of all corporate revenues, it covers only around 10-15% of all MNE groups
- there remains uncertainty about the scope of application for private investment funds, particularly for private equity groups;
- because the standard is to be submitted to the parent entity's tax administration and disseminated from there through established government-to-government mechanisms, concerns have been raised about timely access to the data by developing countries that need it the most;
- the use of the C-b-C reports is explicitly restricted to "risk assessment", precluding them from serving as a sole basis for transfer pricing adjustments by tax authorities; and
- Finally but most importantly, with the need for transparency apparently ending behind the doors of tax administrations, the BEPS C-b-C reporting standard will not be available to the public.

Yet, the advantages of public C-b-C reporting far surpass any potential disadvantages:

- Making C-b-C reporting public would considerably improve the capacity of tax administrations and other supervisors to monitor MNE transfer pricing;
- Private corporations are already subject to numerous public reporting requirements precisely to observe public accountability to society. Public C-b-C reporting would be in line with this well established principle, the data enabling a better assessment of a company's footprint in a context of increasingly complex global value chain business models;
- Workers' have a right to information about the company that employs them, including its business plan, strategy, and any associated foreseeable risk factors. The information contained in the C-b-C reports is critical for this right to be fulfilled; and
- Public availability of data would also enable better informed investment decisions based on more accurate risk profiles of companies, and contribute to level playing field with competitors and with domestic companies.

Arguments against making C-b-C reporting public usually boil down to concerns over the loss of competitiveness of the affected MNEs due to a variety of factors like potential disclosure of trade secrets and the associated risk of reputational damage. Allegedly, public C-b-C reporting could reveal trade secrets or other commercially sensitive information to competitors. On the face of it, this would appear to be an important and valid argument, but when subjected to closer scrutiny, it becomes highly questionable.

Public C-b-C reporting has become a standard for a majority of OECD members in the extractive industries sector and the financial services sector. The first mover was the USA with the 2010 passing of the Dodd-Frank Act. The first and so far only public C-b-C reporting standard in the financial services sector can be found in Article 89 of the EU's Capital Requirements Directive IV, introduced in June 2013.

In April 2016, the European Commission began the implementation process of the OECD BEPS Action 13 with a proposal to amend Chapter 10 of the EU Accounting Directive. Unfortunately, the European Commission decided that the data would be compiled and submitted on a country basis for EU Member States, but could be aggregated together into lump sums for non-EU operations. The only exceptions to this would be non-EU tax havens, the list for which is being drafted

## I. Introduction

1. In 2013, the G20 adopted the OECD's 15-point Action Plan on Base Erosion and Profit Shifting (BEPS), the most far reaching attempt in modern history to reform the international tax system since its creation in the late 1920s. Finalised in October 2015, the BEPS project is certainly an improvement over the status quo, but it shied away from a more ambitious reform of the international tax system, was conceived at the price of increased complexity, and its effectiveness was curtailed by a rather strict adherence to business confidentiality.[i]

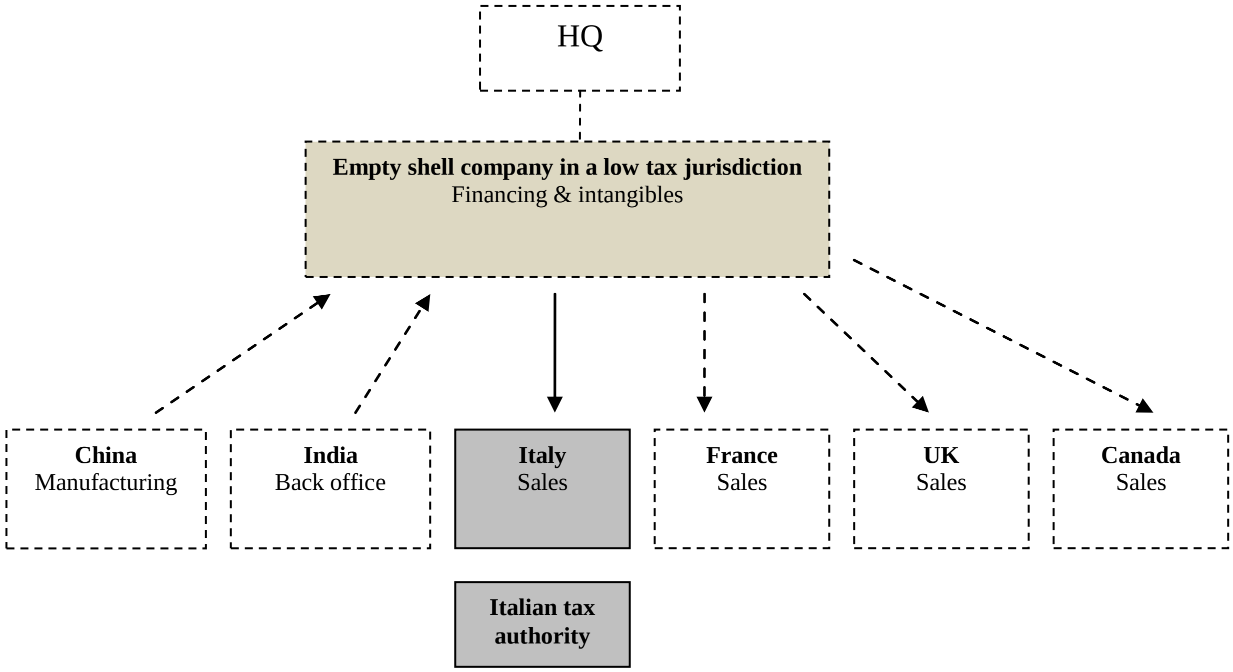
2. Strict confidentiality between tax administrations and MNE taxpayers that keeps the public in the dark is a costly trade-off that unfortunately runs throughout the package, but nowhere is this more pronounced than in what is possibly the most revolutionary aspect of the entire BEPS project - the new country-by-country (C-b-C) reporting standard.

3. This paper takes a closer look at the OECD's BEPS Action 13 C-b-C reporting standard, lists both sides of the argument on whether it should be made public or not, compares the BEPS framework with existing C-b-C reporting regimes that have been deemed fit for public disclosure in a *majority* of OECD jurisdictions, and concludes that the benefits of public C-b-C reporting far surpass any potential risks.

## II. The OECD BEPS Action 13

4. In the pre-BEPS legal landscape, with the exception of certain sectors, MNEs were normally obligated to provide a breakdown of basic financial and business information like revenues, expenses, taxable profits, and taxes paid only for the entity that resides in the jurisdiction of the given tax administration. When it came to the MNE group as a whole, the figures from each and every subsidiary could be aggregated into global or regional lump sums in their annual report. This sort of reporting essentially rendered any transparency vis-à-vis what activity takes place in individual countries impossible, and any profit shifting or tax haven use virtually undetectable, as tax administrations would only "see" local figures and the aggregated global ones. In the indicative example shown in Figure 1, the Italian tax authority only has access to documentation relevant to the Italian subsidiary of the MNE. It does not have information on either the parent empty shell company, or the rest of the group - a problem that is obviously exacerbated by the rising complexity of large businesses taking advantage of global value chains.

*Figure 1: What a national tax authority "sees" in the absence of C-b-C reporting*




5. In the BEPS Action Plan, such "*asymmetry of information between taxpayers and tax administrations*" has been acknowledged as potentially enhancing "*opportunities for BEPS*", and the Action 13 C-b-C reporting standard offered as the primary tool to address it.[ii]

6. Once in force, it will require all MNEs with annual consolidated group revenue equal to or exceeding EUR€750 million to provide "*annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their number of employees, stated capital, retained earnings and tangible assets in each tax jurisdiction. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in*".[iii] The reporting template for this information can be found in Annex I. As of 12th May 2016, the standard for automatic exchange of information has been signed on to by 39 countries.[iv]

*Implementation of the reporting framework by current BEPS signatories*

| | |
|---|---|
| 2016 | EU member states, Australia, Brazil, Canada, Chile, China, India, Indonesia, Japan, Mexico, New Zealand, Norway, South Africa, Turkey, United States of America |
| 2017 | South Korea, Malaysia |
| 2018 | Hong Kong, Switzerland |
| Information not available | Argentina, Colombia, Iceland, Israel, Russia, Saudi Arabia, Singapore |

7. The OECD's BEPS Action 13 C-b-C reporting standard is rightly considered to be a game changer on the anti-tax avoidance front, but it is far from perfect, and its final version has been considerably watered down from the initial 2014 draft proposal:

- To start with, the reporting requirements could have gone further, as proposed in the OECD's 2014 public consultation discussion draft[v], which also included employee remuneration costs, related-party royalty payments, related-party interest payments, related-party service fees, and total withholding taxes paid (see Table 2 of Annex II).

- Secondly, though the EUR€750 million threshold represents roughly 90% of all corporate revenues, it covers only around 10-15% of all MNE groups, letting an overwhelming majority slide under the radar. Some 2000 MNEs headquartered in the EU should be affected, approximately 2000 in the US, 1000 in Japan, 300 in Brazil, 250 in China and Hong Kong, 200 in Switzerland, and 150 in Australia. The OECD's 2014 public consultation discussion draft went further in this instance as well, suggesting that SMEs "*should be required to provide the country-by-country reporting template*" upon a "*specific request*" by a tax administration.[vi]

- Thirdly, there remains uncertainty about the scope of application for private investment funds, particularly for private equity groups. Tax-exempted organisations, such as charities, other non-profit institutions and pension funds will also escape the reporting requirements. With specific OECD guidance lacking at this stage, the default rule that might apply is the accounting rule: entities would be required to comply with the C-b-C standard if the group reports its investments on a consolidated basis (be it IFRS or GAAP), not required if there is no such consolidation. Needless to say, if confirmed, such reliance on accounting reporting principles would create strong incentives for group re-structurings on a non-consolidated basis to avoid the C-b-C reporting requirements.

- Fourthly, because the standard is to be submitted to the parent entity's tax administration and disseminated from there through established government-to-government mechanisms, concerns have been raised about timely access to the data by developing countries that need it the most, but lack the necessary bilateral tax treaty and tax information exchange agreement networks.

- Fifthly, the use of the C-b-C reports is explicitly restricted to "risk assessment", precluding them from serving as a sole basis for transfer pricing adjustments by tax authorities. Behind this restriction lies the fear of the OECD that the reporting could be used for taxing MNEs on a unitary basis through an apportionment formula (which C-b-C reporting would facilitate) and thereby diverging from the OECD's favoured "independent entity" and "arm's length" principles.

- Finally but most importantly, with the need for transparency apparently ending behind the doors of tax administrations, the BEPS C-b-C reporting standard will not be available to the public.

8. Regarding public disclosure specifically, when the OECD presented the final BEPS package in October 2015, it argued that no government participating in the process expressed the need to make C-b-C reporting public.[vii] Public C-b-C reporting faces powerful opposition not only from the business sector[viii], but also from a number of major OECD member states, chief among them the USA[ix]. With resistance so widespread and determined, the issue was in fact

never properly discussed throughout the entire course of the BEPS project – no agenda item, no working paper, no consultation. The OECD thus settled on being strongly against public disclosure without ever having investigated its pros and cons in any meaningfully transparent or inclusive manner.

## III. The case for public country-by-country reporting

9. Given the severe financial and societal impacts of corporate tax avoidance, as covered at length in the TUAC Secretariat's BEPS Assessment[x], the position of trade unions and civil society organisations is that the advantages of public C-b-C reporting far surpass any potential disadvantages, and if put into practice, these positive effects would soon be felt throughout the economy and indeed society.[xi]

*Improving tax administration and supervision*

10. An overwhelming majority of the methods used for corporate tax avoidance relies on transfer pricing manipulation between related parties within a single MNE group for the purpose of shifting profits to low or no tax jurisdictions, and losses to regular tax jurisdictions. With C-b-C reporting, such machinations will become a lot more visible, and tax administrations considerably better placed to assess risks and effectively act to better protect their tax bases by ensuring that MNEs pay the right amount of tax in the right place at the right time. Unfortunately, tax administrations are often underfunded, understaffed, and sometimes even lack the necessary expertise to accurately assess the tax returns of large corporate taxpayers.[xii] Making C-b-C reporting public would considerably improve the capacity of tax administrations and other supervisors to monitor MNE transfer pricing, considerably improving the status quo, leading to better and more focused regulations produced at a lower cost.

11. But the benefits of making these reports public are not confined to improving supervision over corporate tax matters. As argued by Richard Murphy, the original author of the first C-b-C accounting standard[xiii], the information contained within is valuable and of legitimate interest to a wide range of actors in the global economy, ultimately benefiting not only the reporting MNEs themselves, but also the broader economic climate in which they operate and to which they contribute through their conduct.

*Public accountability*

12. Transparency would naturally lead to more democratic control and accountability, not only for governments, either with regards to their tax policies or any payments they may be receiving from MNEs that could constitute a conflict of interest or even corruption, but also for the MNEs themselves. As TUAC argued in 2005: "*The corporation is often viewed in public debate as a purely private association of owners (...). But it is more than a private association. The corporation is established as a matter of public policy to serve the public purpose of creating wealth to satisfy the needs of society. It is the public purpose of the corporation that legitimates government regulatory action.*"[xiv] Private corporations are already subject to numerous public reporting requirements precisely to observe public accountability to society. Public C-b-C reporting would be in line with this well established principle, the data enabling a

better assessment of a company's footprint in a context of increasingly complex global value chain business models.

13. Public reporting would also be of tremendous value to NGOs, journalists, and trade unions, which have produced some of the most impactful work on corporate tax avoidance to date, and are almost solely responsible for generating the political will to address the problem.[xv] Having this extra layer of oversight has thus proven to be immensely beneficial in the fight against corporate tax avoidance, and indeed for the proper functioning of corporate tax systems. With C-b-C reports public, this positive effect would only intensify.

*Workers' rights to information and consultation*

14. Workers' have a right to information about the company that employs them, including its business plan, strategy, and any associated foreseeable risk factors - as laid out in the OECD Guidelines for Multinational Enterprises (V.2.C, III.2.f & III.3.d)[xvi]. Information on corporate taxation therefore matters to workers and their representatives. They matter to trade unions which are engaged in a collective bargaining process and/or when seeking information on the future strategy and business plans of the MNE group and/or its subsidiaries. Access to C-b-C reports and transfer pricing documentation is essential for workers and their representatives in order to have a full and comprehensive picture of where the sources of profits and assets are located within their MNE group.

*Informed responsible investment practices*

15. Public availability of data would enable better informed investment decisions based on more accurate risk profiles of companies. A company engaging in aggressive tax planning could be subjected to unexpected future costs like penalties resulting from tax disputes, exclusion from public contracts, or reputational and brand damage. Enhanced governance and better management performance within the company would in turn naturally lead to reduced risk, greater stability of earnings, and consequently to increased profitability. As such, public disclosure would be the "acid test" for investors to gauge whether an MNE has a responsible and thus sustainable tax policy. If a company's tax policies are not objectionable to the public, why hide them? That is also the argument put forward by the UN Principles for Responsible Investment (representing over 1500 financial institutions with over USD$60 trillion under management) in its Engagement Guidance on Corporate Tax Responsibility: "*Although the OECD BEPS project proposes that CbCRs would be available only to tax authorities and should be kept confidential, many consider that their publication is inevitable. (…) Companies should be able to defend how they allocate profit to each country both to tax authorities and the general public to avoid reputational risk and investor backlash*".[xvii]

*Level playing field in the market place*

16. Annual reports of companies that operate only nationally (in a single country) are logically already country reports, and in most advanced economies are publically available in national registries. As such, public C-b-C reporting would actually make for a more level playing field, rectifying a status quo that provides unfair competitive advantages to MNEs at the expense of domestic businesses and other MNEs that refuse to engage in aggressive tax planning. Indeed,

according to the OECD, the effective tax rates paid by large MNE entities are estimated to be 4 to 8.5% lower than similar domestic-only enterprises.[xviii]

17. The value of public C-b-C reporting is increasingly being recognised even among some in the business community. In a recent PwC survey of CEOs, 59% out of the 1,344 surveyed agreed that MNEs should be required to publish revenue, profit and tax disclosures on a C-b-C basis, although 36% of US CEOs (compared with only 19% globally) disagreed.[xix]

## IV. Concerns about business confidentiality

18. Arguments against making C-b-C reporting public usually boil down to concerns over the loss of competitiveness of the affected MNEs due to a variety of factors like potential disclosure of trade secrets and the associated risk of reputational damage.

*Disclosure of trade secrets and other commercially sensitive information*

19. Allegedly, public C-b-C reporting could reveal trade secrets or other commercially sensitive information to competitors. On the face of it, this would appear to be an important and valid argument, but when subjected to closer scrutiny, it becomes highly questionable.

20. According to the commentary on article 26 of the OECD Model Tax Convention, "*financial information, including books and records, does not by its nature constitute a trade, business or other secret.*" The only information items requested by the Action 13 C-b-C reports that go beyond this pertain to the number of employees and the nature of business activity pursued by a given entity, neither of which could reasonably be considered a trade, business, or other secret. On the off chance that any such disclosure might nevertheless reveal a trade, business or other secret, the OECD commentary allows for that particular information to be "*excised from the documents*", though it warns that such exceptions should be "*carefully weighed*", and "*should not be taken in too wide a sense*".[xx] While the model convention specifically pertains to information exchanges between tax administrations, the very same rules could easily be applied to public C-b-C reporting.

21. When it comes to the rather vague and arbitrary concept of "commercially sensitive information", the argument is just as hard to sustain. Some opponents of public C-b-C reporting argue that disclosure of "*strategic information on contracts, management, results, level of profitability, etc.*" would put MNEs "*at a competitive disadvantage as this would allow competitors to work out profit margins and other important business information*".[xxi] Yet, information that could lead to at least the first two cited examples would not be requested under the Action 13 C-b-C reporting standard, hence it could not be disclosed. Again, in the minority of cases in which a taxpayer can produce evidence that the reportable information could lead to revealing a genuine trade, business, or other secret, that particular information could be allowed excision from the public record.

*Reputational risk*

22. This concern pertains to the genuine complexity inherent to international corporate tax filing. Because accounting systems, standards, filing dates, and other elements differ among jurisdictions, and assessing annual reports of MNEs in a balanced way involves a complicated expert analysis that has to consider numerous data items across reporting periods spanning several years, publication of C-b-C reports could result in erroneous interpretations that might lead to reputation losses and double taxation, unfairly causing serious damage to MNEs.

23. This is another point that appears to be valid until it is considered more carefully. There is no denying that annual reports of large MNEs are complicated, and this can indeed lead to unfair misinterpretations. However, this danger is even higher without public C-b-C reporting, with journalists, NGOs, financial investigators and other stakeholders forced to rely on incomplete data, and having to engage in qualified guesswork to do their jobs.[xxii]

24. Tax affairs of MNEs are nowadays firmly at the centre of media attention, and this public interest is unlikely to subside anytime soon. According to a 2014 KPMG survey of business executives, 25% of the 220 surveyed reported that their company's tax profile has been the subject of media reports in the last 12 months, and this percentage rose to over 40% for companies with revenues in excess of USD$10 billion.[xxiii] The spotlight will be there either way, and with C-b-C reporting public and all the relevant information available for review, the likelihood of costly misunderstandings involving major newspapers or other influential entities would most probably be much lower.

## V. Existing public country-by-country reporting standards

25. Public C-b-C reporting has become a standard for a majority of OECD members in the extractive industries sector and the financial services sector, and in light of the recent developments in the European Union could even be constitutive of a trend.

*Extractive industries sector*

26. The push for tax transparency in the extractive industries sector began in 1999 with a scathing report about a high profile scandal that involved the global oil giant BP, the state-owned oil company of Angola, and the alleged embezzlement of state funds by the Angolan political elites.[xxiv] This led to the 2002 founding of the Publish What You Pay (PWYP) global network of civil society organisations that began lobbying for transparency in the extractive industries sector.[xxv] In September 2002, their activities resulted in the creation of the Extractive Industries Transparency Initiative (EITI).[xxvi] Under the regime, companies disclose all material payments including profit taxes, dividends, royalties, fees (license, rental, entry), bonuses (signature, discovery, production), production entitlements, and payments for infrastructure improvements to the applicable government, upon which the government discloses its extractive industries revenues, and once all the data is assessed by a third party, it is openly published. Today, EITI boasts a membership of 51 countries, out of which 31 are fully compliant, as well as support from over 90 of the world's largest oil, gas, and mining companies. Less than a decade since the creation of EITI, sustained pressure from civil society organisations began to pay off even more. Catalysed by the regulatory clampdown following the global financial crisis, what used to be

voluntary reporting requirements for the extractive industries sector were turning mandatory in a number of key jurisdictions.

27. The first mover was the USA with the 2010 passing of the *Dodd-Frank Act*. Its *Section 1504* mandates all companies registered with the Securities and Exchange Commission (SEC) to annually disclose financial payments made to governments, state agencies and state-owned enterprises for the purpose of developing oil, gas, or mineral reserves, which will then be compiled and made available to the public.[xxvii] Applicable financial payments include profit taxes, dividends, royalties, fees (license, rental, entry), bonuses (signature, discovery, production), production entitlements, and payments for infrastructure improvements exceeding USD$100,000. The data is to be aggregated by country, by project, and by government as applicable. In September 2012, *Section 1504* briefly came into effect after the SEC adopted implementing rules for companies to comply with, but after a 2013 legal challenge by the American Petroleum Institute, the US Chamber of Commerce, and two other organisations representing the interests of the US extractive industry, the implementing rules were temporarily suspended.[xxviii] The plaintiffs specifically targeted the public disclosure provision of the rules, citing competitiveness concerns similar to the ones presented above. However, that part of their challenge was left unaddressed by the court, which opted to suspend the implementation rules only on procedural grounds. Since then, the SEC has been working on redrafting the rules in a way that would conform with the original intent of the law as well as the decision of the court.[xxix] In December 2015, the SEC released a draft proposal for new implementation rules, with the public disclosure provision fully intact.[xxx]

28. In the meantime, while initially following in the footsteps of *Section 1504* and in many ways being inspired by the US law, both the EU and Canada are now ahead in terms of implementation. The new EU Accounting Directive with its Chapter 10 public C-b-C reporting standard was passed in June 2013, and EU member states had until July 2015 to implement the changes into domestic legislation, so reporting could begin for financial years starting on or after January 2016.[xxxi] Canada's Extractive Sector Transparency Measures Act was enacted in December 2014 and came into force in June 2015.[xxxii] In an effort to ensure a level playing field, the US, EU, and Canadian public C-b-C reporting standards are essentially identical in all important respects, except that the EU's Chapter 10 goes further by also applying to the logging industry. For a more detailed outline and comparison of their reporting terms and requirements, see Annex II.

29. Admittedly, extensive experience with public C-b-C reporting standards from the extractive industries sector will take more time to be gathered and processed, and in any case will likely not lend itself to easy direct comparisons with the OECD's considerably more comprehensive standard. As shown in Annex II, while the differences in specific reporting requirements are generally quite notable, the most important difference is that under the extractive industries sector regimes, MNEs only report payments made to governments, state agencies, and state-owned enterprises, not to other private sector actors. Nevertheless, the broader conclusion that at least some limited form of public C-b-C reporting in this sector has since 2002 attracted so much support and traction from so many stakeholders is telling on its own.

*Financial services sector*

30. The first and so far only public C-b-C reporting standard in the financial services sector can be found in Article 89 of the EU's Capital Requirements Directive IV, introduced in June 2013. It requires all credit institutions (e.g. all banks) and investment firms to annually disclose the name and nature of activities undertaken by an entity, their turnover, number of full time employees, profit or loss before tax, tax on profit or loss, and any public subsidies received. The data is to be aggregated by country and by institution, and made available to the public.

31. Unlike in the extractive industries sector, where countries could draw on years of experience with some form of voluntary public C-b-C disclosures and a number of major jurisdictions were moving towards mandatory disclosures more or less at around the same time, mandatory public C-b-C reporting in the financial services sector was potentially a riskier move. As such, the EU did not take competitiveness concerns lightly, and a number of cautionary measures were built into Article 89. In an effort to facilitate a more seamless transition to the new reporting regime, by 1st July 2014, relevant reporting entities were only required to disclose their name and nature of activities undertaken, their turnover, and the number of full time employees. Too-big-to fail banks and other so called "global systemically important institutions" were required to disclose the remaining reporting items as well, but for the time being only on a confidential basis. After this initial disclosure round, EU authorities were to consult the appropriate regulatory supervisory bodies, and conduct a general impact assessment as regards any potential negative economic consequences of public disclosures. Should such negative effects be found, EU authorities could respond by deferring the reporting obligations, and extend that deferral on an annual basis indefinitely.[xxxiii]

32. The tender for the independent general impact assessment was won by PricewaterhouseCoopers, whose analysis consisted of a robust academic literature review, an econometric study, a stakeholder survey, an evaluation of legal implementation, and a review of the available disclosures. The assessors concluded "*that Article 89 was unlikely to have a significant negative economic impact, and could have a small positive economic impact*" on all four key issue areas considered, i.e. competitiveness, credit availability, investment, and stability of the financial system.[xxxiv] With public C-b-C reporting thus upheld as reasonably safe for the relevant reporting institutions as well as overall financial stability, the first full item disclosures were allowed to go ahead as scheduled, due by 31st December 2015. Given the relatively minor differences between Article 89 and the OECD's BEPS Action 13 C-b-C reporting standard as seen in Annex II, the implications of these findings are highly relevant to the broader discussion about the feasibility and desirability of moving towards public disclosures across all sectors.

## VI. Implementation of the reporting framework in the EU

33. The rationale for making C-b-C reports available to the public appears to be gaining ground fast, with the EU leading the charge. In July 2015, the European Parliament adopted an amendment to the Shareholder Rights Directive that included public C-b-C reporting, support for which was reiterated in subsequent votes in November and December 2015. While the amendment to the Shareholder Rights Directive is currently lost in the limbo of the legislative process, in April 2016, the European Commission released a proposal to amend Chapter 10 of

the EU Accounting Directive. The proposal's provisions are nearly identical to the OECD blueprint, with the noticeable exception that at least some of the data would be made available to the public. Unfortunately, the European Commission decided that the data would be compiled and submitted on a country basis for EU Member States, but could be aggregated together into lump sums for non-EU operations. The only exceptions to this would be non-EU tax havens, the list for which is being drafted.[xxxv]

34. This setback undermines the very point of C-b-C reporting, and appears to result from a fear of possible US repercussions.[xxxvi] Overall, despite the massive loophole left open by the amendment, the very fact that it was proposed is already historic, and should it be passed even in its current form, it is a step in the right direction, one that appears to be representative of a broader shift in mindsets.

**About this paper**

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## Annex I: The OECD BEPS Action 13 country-by-country reporting template

*Table 1: Overview of allocation of income, taxes and business activities by tax jurisdiction*

| Name of the MNE group:<br>Fiscal year concerned: | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Tax Jurisdiction | Revenues | | | Profit (Loss) Before Income Tax | Income Tax Paid (on cash basis) | Income Tax Accrued – Current Year | Stated capital | Accumulated earnings | Number of Employees | Tangible Assets other than Cash and Cash Equivalents |
| | Unrelated Party | Related Party | Total | | | | | | | |
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*Table 2: List of all the constituent entities of the MNE group included in each aggregation per tax jurisdiction*

| Name of the MNE group:<br>Fiscal year concerned: | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Tax Jurisdiction | Constituent Entities resident in the Tax Jurisdiction | Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence | Main business activity(ies) | | | | | | | | | | | | | |
| | | | Research and Development | Holding or Managing intellectual property | Purchasing or Procurement | Manufacturing or Production | Sales, Marketing or Distribution | Administrative, Management or Support Services | Provision of Services to unrelated parties | Internal Group Finance | Regulated Financial Services | Insurance | Holding shares or other equity instruments | Dormant | Other[1] |
| | 1. | | | | | | | | | | | | | | | |
| | 2. | | | | | | | | | | | | | | | |
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[1] Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

*Table 3: Additional information*

| Name of the MNE group:<br>Fiscal year concerned: |
|---|
| *Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report.* |

## Annex II: Comparing BEPS Action 13 with other country-by-country reporting standards[xxxvii]

*Table 1: Comparison by reporting terms*

| **Reporting Terms** | **European Union – 2016 Public C-b-C Reporting Proposal** | **OECD BEPS Action 13 Country-by-Country Reporting Final Version** | **European Union – Capital Requirements Directive IV: Article 89** | **Canada – Extractive Sector Transparency Measures Act** | **European Union – Accounting Directive: Chapter 10** | **USA – Dodd-Frank Act: Section 1504** |
|---|---|---|---|---|---|---|
| Affected parties | All MNEs with a taxable presence in the European Union meeting the threshold. | All MNEs with a taxable presence in an implementing country meeting the threshold. | All credit institutions (e.g. all banks) and investment firms operating in the EU. | Any entity engaged in the commercial development of oil, gas, or minerals that is listed on a stock exchange in Canada, has a place of business in Canada, does business in Canada, or has assets in Canada. | Any public-interest entities and non-public large undertakings engaged in commercial development of oil, gas, minerals, or logging. | Any SEC registered company engaged in commercial development of oil, gas, or minerals. |
| Reporting deadline | TBD | Reporting begins for accounting periods on or after 1st January 2016. | Partial reporting was due by 1st July 2014, full reporting by 31st December 2015 (full reporting for GSIIs by 1st July 2014). | The first reports are due by 27th November 2016 for payments falling under any financial year ending after 1st June 2015. | Reporting begins for financial years starting on or after 1st January 2016. | Briefly in effect since September 2012, but suspended and subject to redrafting following a successful legal challenge. |
| Threshold | MNEs with annual consolidated group turnover equal to or exceeding EUR€750 million. | MNEs with annual consolidated group revenue equal to or exceeding EUR€750 million. | No threshold (all credit institutions and investment firms operating in the EU). | Entities that have at least two of the following: a) CAD$20 million in assets; b) CAD$40 million in revenue; c) an average of 250 employees.<br>Payments exceeding CAD$100,000. | Payments exceeding EUR€100,000. | Payments exceeding USD$100,000. |
| Data aggregation | By EU Member State, but data for non-EU operations (except tax havens) can be compiled together. | By country<br>(**No public disclosure**) | By country<br>By institution | By country<br>By project<br>By government (including aboriginal authorities) | By country<br>By project<br>By government | By country<br>By project<br>By government |
| Reporting format | TBD, but should have regard for the OECD set template format. | A set template format for all reporting entities. | Reporting template not included in the Directive. | Reporting template not included in the Act. | Depends on laws of individual member states. | A set template, but still under review by the SEC. |

*Table 2: Comparison by data requirements*

| Reporting Requirements | European Union – 2016 Public C-b-C Reporting Proposal | OECD BEPS Action 13 Country-by-Country Reporting Final Version | OECD BEPS Action 13 Country-by-Country Reporting 2014 Draft | European Union – Capital Requirements Directive IV: Article 89 | Canada – Extractive Sector Transparency Measures Act | European Union – Accounting Directive: Chapter 10 | USA – Dodd-Frank Act: Section 1504 |
|---|---|---|---|---|---|---|---|
| Tax jurisdiction | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Entity name | ✓ | ✓ | ✓ | ✓ | | | |
| Main business activities | ✓ | ✓ | ✓ | ✓ | | | |
| Revenues | ✓ | ✓* | ✓ | ✓ | | | |
| Profit (loss) before income tax | ✓ | ✓ | ✓ | ✓ | | | |
| Income tax paid (on cash basis) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Income tax accrued – current year | ✓ | ✓ | ✓ | ✓ | | | |
| Stated capital | | ✓ | ✓ | | | | |
| Accumulated earnings | | ✓ | ✓ | | | | |
| Number of employees | ✓ | ✓ | ✓ | ✓ | | | |
| Tangible assets other than cash and cash equivalents | | ✓ | ✓ | | | | |
| Public subsidies received | | | | ✓ | | | |
| Dividends | | | | | ✓ | ✓ | ✓ |
| Royalties | | | | | ✓ | ✓ | ✓ |
| License fees, rental fees, entry fees | | | | | ✓ | ✓ | ✓ |
| Signature, discovery and production bonuses | | | | | ✓ | ✓ | ✓ |
| Production entitlements | | | | | ✓ | ✓ | ✓ |
| Payments for infrastructure improvements | | | | | ✓ | ✓ | ✓ |
| Total withholding tax paid | | | ✓ | | | | |
| Total employee expense | | | ✓ | | | | |
| Royalties paid to and received from related entities | | | ✓ | | | | |
| Interest paid to and received from related entities | | | ✓ | | | | |
| Service fees paid to and received from related entities | | | ✓ | | | | |

*The final version of the OECD's BEPS Action 13 C-b-C standard goes further by requiring revenues to be split between "related party", "unrelated party", and "total".

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[xvi] According to V.2.C, MNEs should: "Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole". Commentary of the section further specifies that: "Information provided by companies to their workers and their representatives is expected to provide a "true and fair view" of performance. It relates to the following: the structure of the enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality. Considerations of business confidentiality may mean that information on certain points may not be provided, or may not be provided without safeguards." According to III.2.f: "Disclosure policies of enterprises should include, but not be limited to, material information on (...) foreseeable risk factors", and according to III.3.d: "Enterprises are encouraged to communicate additional information that could include (...) information on internal audit, risk management and legal compliance systems." OECD. (2011) *OECD Guidelines for Multinational Enterprises: 2011 Edition*. OECD Publishing. https://www.oecd.org/corporate/mne/48004323.pdf

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