



Trade Union
Advisory Committee
to the OECD
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syndicale consultative
auprès de l'OCDE*

OECD public consultation on a review of country-by-country reporting (BEPS Action 13)

TUAC contribution

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Key messages

- Considering the impact of corporate tax strategies on workers, taxpayers and investors, accessible country-by-country reporting (CBCR) is a priority for the trade union movement.
- The public consultation document does not offer any opportunity for stakeholders to make their opinions known about the merits of a public reporting system. This is a missed opportunity. Additional steps are required so that an open debate can take place on the fundamental objectives of CBCR.
- The scope of CBCR should be as large and flexible as possible. The threshold needs to be substantially lowered. Broken down information on employment and effective place of management would be most useful.
- In light of upcoming new rules to address the tax challenges of digitalisation, the use of CBCR for unitary taxation purposes seems unavoidable. The introduction of a minimum tax rate also entails additional specific reporting on global profits.
- TUAC therefore encourages the OECD to examine in a follow-up consultation how Action 13 will be adjusted to upcoming new rules. This consultation needs to be inclusive of all stakeholders' interests.

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On 6 February 2020, the OECD launched a one-month public consultation on the [review of country-by-country reporting](#), as part of its review of this OECD standard. The following includes TUAC’s reaction to this consultation. TUAC agrees to the publication of this response.

General comments

Omitting the much needed discussion on public reporting

Country-by-country reporting is a vital element of the fight against tax avoidance. Multinational enterprises (‘MNEs’) are required to report annually and for each jurisdiction in which they do business essential information on their activities, their structure, their profits and the income tax paid and accrued. Without such reporting, potential risks of profit-shifting would be impossible to assess.

This consultation is therefore a high priority for TUAC affiliates.

Tax transparency is a key concern for the trade union movement. Even a perfect template for CBCR is of little use for transparency if key stakeholders do not have access to it. Yet, the OECD has since 2015 been imposing a confidentiality requirement on CBCR. The information provided by MNEs is only available to some tax administrations. From the beginning, TUAC has been objecting to this excessive confidentiality requirement, as *the advantages of a public CbC report far surpass any potential disadvantages, and if put into practice, these positive effects would soon be felt throughout the economy and indeed society*ⁱ.

TUAC notes with serious concern that, whilst the 2020 public consultation addresses technical issues on the implementation and design of the template, there is no consideration for the fundamental question of public access to CBCR information. This is a clear indication that the OECD has no intention of opening up a debate on tax transparency.

This omission is even more regrettable because, to our knowledge, the OECD has never held a discussion on the pros and cons of public reporting. There may be grounds to oppose public reporting particularly for some parties who believe confidentiality matters more than trust and transparency. There are no grounds to deliberately skew a discussion on the topic in one direction.

The possibility that some member states might oppose such discussion on public reporting does not mean the OECD Secretariat should not take the initiative on its own.

Furthermore, the consultation document is very technical. Several questions require actual access to CBCR data and trends in order to be satisfactorily addressed. In other words, the consultation mostly addresses MNEs and tax consultants, de facto excluding civil society.

For these reasons, the public relevance of this consultation is questionable and additional steps are required.

For the past two years, the OECD Inclusive Framework has been intensively discussing the tax challenges of digitalisation. The proposed new rules under the so-called pillar 1 and pillar 2 will most certainly require fundamental CBCR adjustments. A revision of Action 13 should therefore be expected. In this context, the OECD must open a follow-up public consultation, more inclusive of all stakeholders' interests and opening up the debate on the fundamental objectives pursued by CBCR.

TUAC position on CBCR

Transparency

The consultation document seeks input on how to reconcile tax authorities' interests in obtaining information on the one hand with minimal compliance costs for MNEs on the other hand. No other stakeholder's point of view is considered. This narrow approach displays a worrying ignorance of the societal impact of tax avoidance.

Aggressive tax planning is the signal of short-term corporate vision, maximising shareholders' value to the detriment of stakeholders. Tax avoidance has an adverse impact on the sustainability of public budgets, entailing an increase in regressive taxation as the tax burden is being shifted to consumers and workers.

Tax avoidance also affects workers in even more direct ways. When profits are shifted away from the workplace towards lower tax jurisdictions, workers' representatives are not in a position to negotiate wages and better employment conditions. Where there are

artificial group structures, workers also find it difficult to exercise their fundamental rights to information and consultation rights about the business strategy of their MNE. Several other workers' rights become ineffective where the board of the controlling company is no longer in the same country as the workforce.

Investors also face significant financial and reputational risks in case of hidden tax avoidance. In fact, the recent GRI 207 tax standard is meeting growing support among multiple sectors of the investment and business communitiesⁱⁱ. The GRI standard, however, remains voluntary, unlike the mandatory OECD CBCR.

Taxpayers, workers and investors all have a very legitimate interest in identifying and anticipating tax avoidance risks. CBCR is the best way to obtain complete and accurate information. The OECD should therefore end the silo thinking and adopt an integrated approach to its tax policy-making: stakeholders impacted by tax avoidance should have access to CBCR information as a general principle.

Tax administrations would certainly benefit from this extra layer of democratic oversight. This is especially true for workers' representatives who have an in-depth knowledge about their sector and the company in which they work.

TUAC recommends that the OECD engages in an honest discussion with all stakeholders on the modalities of disclosure of CBCR.

Thresholds

Considering the importance of CBCR for stakeholders, a EUR 750 million threshold is far too high. The consultation document recalls that whilst a few MNE groups are covered, 90% of corporate revenues are within the scope. However, aside from the perspectives of tax administrations, there are wider societal interests at stake. In particular, workers need to have access to key information on the structure, activities and profits of their company. Furthermore, there is the issue of a level playing field, because tax avoidance by MNEs continues to disadvantage companies that operate only domestically.

For this reason, the applicable thresholds should be lowered so that a greater number of MNEs are required to report annually. Inspiration could be found in the EU annual accounts Directive, which is applicable to MNE groups with an annual turnover of EUR 40 million and 250 employeesⁱⁱⁱ.

Topics to be included in the CBCR

Additional and more specific information would make CBCR an even more useful instrument for all stakeholders. In particular, detailed information on employment is warranted, as well as reporting on where management is effectively held. TUAC agrees with the consultation document that detailed reporting on related party transactions will help better assess transfer-pricing risks.

The use of CBCR for unitary taxation

The consultation document recalls that CBCR cannot be used by tax administrations to apply formula apportionment methods. This approach is about to become obsolete. Among the proposed new rules to address the tax challenges of digitalisation, pillar 1 would to some (limited) extent introduce unitary taxation as a portion of global profits would be reallocated to market countries^{iv}. CBCR will therefore need to be adapted to this new approach. Pillar 2, if adopted, would also entail very detailed reporting on the taxation of a multinational's profits.

In the light of these new rules, TUAC encourages the OECD to examine in a new public consultation how Action 13 should be able to accommodate formula apportionment methods.

Comments on the specific questions

Chapter 1. Implementation and operation of BEPS Action 13

Questions 1-3 seek feedback on the current implementation and operation of CBCR. Because of confidentiality restrictions, TUAC is unable to comment on this. Although trade secrets are rarely at stake, workers' representatives are generally not able to obtain from management copies of CBCR information. Regrettably, tax administrations do not reach out to workers' representatives either. Yet, when risks of tax avoidance are identified, workers' representatives are ideally placed to interpret their company's information.

Paragraph 4 of the consultation document recalls that CBCR is for assessing transfer-pricing risks and is not appropriate for income allocation formulas. This restriction is becoming problematic in the light of the parallel discussions of the Inclusive Framework on the tax challenges of the digitalisation of the economy. Upcoming new rules, which will include a form of unitary taxation, need to be better anticipated in the context of CBCR.

Chapter 2. Scope of CbC reporting

Considering the impact of tax avoidance on taxpayers, workers and investors, the scope of CBCR should be large and flexible in order to capture as many risks as possible.

Q4-5. TUAC very much agrees that an entity that conducts business in other jurisdictions through establishments rather than subsidiaries should also be covered by the scope of CBCR obligations.

Q 6-9. The proposal to extend the scope to groups under the common control of an individual is welcome. As TUAC already noted in 2016, there is in the current template of CBCR an uncertainty about scope of application for private investment funds, particularly for private equity groups^v. Some private equity funds are famous for their short-term strategy, cutting costs on tax bills and employment. It is particularly relevant for workers to be made aware of such beneficial ownership, as this can have an impact on business strategy and potential conflicts of interest.

The definition of control should be as flexible as possible so as to cover every case of an individual or individuals exercising a dominant influence.

Q 10-11. The trade union movement is strongly in favour of lowering the threshold. For the reasons explained in the above general comments, aggressive tax planning has an adverse impact not only on tax revenues, but also create risks for employment and investment. The fact that the current scope covers 90% of global corporate revenues is not enough. Less than 10% of MNEs have to report on their tax practices. Considering the risks that corporate tax strategies may be posing to stakeholders, it is essential to capture significantly more companies.

The EU Directive on annual financial statements is an interesting precedent. The threshold for large groups is set at EUR40 million turnover and 250 average number of employees^{vi}.

Q16-18. Introducing a two years or more qualification period to determine whether or not an MNE should file information is likely to narrow down the scope of CbCR. TUAC therefore does not favour this proposal. On the contrary, as suggested in our response to questions 10-11, thresholds should be substantially reduced so that more MNEs are covered by CbCR obligations.

Q 19-24. Every income and gains should be declared by MNEs in their CbCR. Extraordinary income and gains from investment activity can constitute an important source of revenue. Reporting can give precious indications about the activities of an MNE and possible conflicts of interest.

Chapter 3. Topics of a CbC report

The topics to be included in CbCR should include every information that can help stakeholders evaluate all the impacts of a company's tax strategy. Some improvements to the current template are therefore necessary.

Q27-28. If CbCR should be presented by entity, it should be in addition to the current reporting by jurisdiction, but not as a replacement. As illustrated under our response to questions 29-30, there can be good reasons to have a detailed idea of the structure of a group of company. At the same time, information at jurisdiction level remains necessary for the purpose of determining effective tax rates.

Again, the CbCR review should be adjusted to upcoming reform. Under pillar 1, a lot more granular information will probably be necessary to assess business lines and in-scope revenues. Under pillar 2, a jurisdictional approach will be required.

Q29-30. In order to decide whether data should be presented in a consolidated or aggregate manner, particular attention should be paid to potential incentives for corporate fragmentation and impact on employment. As an illustration, a company may within the same country split its holding and operational activities. The operating entity, employing the bulk of the workforce, would pay high fees and rent to the holding. At first

sight, tax administrations may not lose much tax revenues, but the workers are deeply penalised as there is no profits left in the operating entity for wages and employment.

Q31-33. The trade union movement strongly supports more ambitious reporting requirements. In 2014, TUAC already underlined the importance of more detailed information on employment^{vii}. Employee expenses should be reported; not just overall numbers. Furthermore, employment reporting should be broken down, not only geographically, but also by employment type and contractual relationship, and by function. The idea is that an MNE should report not only its own direct employees, but also workers who are acting under its supervision (e.g. subcontracting, outsourcing). The distinction by economic function would help identifying the distribution of income generation (location of marketing and sales staff) and that of value creation (production and back office).

In addition, the place of effective management is crucial information as a number of substantial workers' rights are attached to it.

Finally, more detailed information on related party transactions as described in the consultation document would be useful, not only from a tax administration point of view, but also for workers, as profit-shifting does impact labour income share.

Q34-35. Information on transparent entities should be reported in more details in CBCR. Such information is particularly relevant in context of the digitalisation of the economy, as profits are increasingly being made without actual physical presence. It is also very relevant for the application of controlled foreign company rules, especially if these rules are strengthened in the context of the current GLoBE proposal (pillar 2).

ⁱ [The case for making country-by-country reporting public](#), (27 June 2016), TUAC

ⁱⁱ See for instance Financial Times, 'Investment groups want companies to disclose global taxes' at <https://www.ft.com/content/d84eeafc-16c6-11ea-9ee4-11f260415385>

ⁱⁱⁱ Article 3.7 of EU Directive 2006/43/EC

^{iv} TUAC has in several contributions to other OECD public consultations criticised the complexity of the new rules. www.tuac.org

^v Paragraph 7, [The case for making country-by-country reporting public](#), (27 June 2016), TUAC

^{vi} Article 3.7 of EU Directive 2006/43/EC

^{vii} [TUAC comments to Draft revised guidance on Transfer pricing documentation and country-by-country reporting](#) (21 February 2014)