



March 6, 2020

The Inclusive Framework
taxpublicconsultation@oecd.org

Dear Sir or Madam,

USCIB appreciates the opportunity to comment on the Public Consultation Document: Review of Country-by-Country Reporting (BEPS Action 13) (hereinafter the consultation document). Please note that N/A denotes 'not addressed' in the following responses.

General Comments

USCIB believes that the current rules generally strike a good balance between the need to provide countries with information necessary to make high-level risk assessments and to use for statistical analysis, while balancing the burden necessarily imposed on MNEs to provide that information. It would be prudent at this time to delay making changes to the CbC reporting format. Tax authorities have had little chance to reflect on the information currently being collected and determine whether the information is necessary or useful in tax risk assessment. Furthermore, the OECD has released the "Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy" in May 2019, proposals on implementation of Pillar 1 and Pillar 2 under the workplan and [Statement of the Inclusive Framework](#). It is very likely that there will need to be changes made to the CbC report as a result of developments in addressing the tax challenges of the digitalizing economy. It would be counterproductive if CbC reporting were to be revised before the conclusion of the Pillar 1 and Pillar 2 discussions. Company resources for revising systems are limited. Requiring companies to make multiple changes to tax reporting systems deprives companies of the ability to use those resources for business projects. Therefore, any changes to the CbC report format should be made at a later date to include changes needed to address Pillar 1 and 2 recommendations.

The proposals in the consultation document seem to move away from the CbC reports intended limited purposes. The proposals would significantly increase the associated burden of data collection and reporting, which is already very labor and capital intensive. Any increased burden should be weighed against the potential additional value to countries for high-level risk assessment purposes and the likelihood that this additional information will be misused for audit or assessment purposes, which is not in line with the purposes of the CbC report. The more information that is included in the CbC report, the more likely tax authorities are to use it for audit and assessment. Further, changing the data reduces its usefulness for statistical analysis because the lack of consistency would disrupt long-term trend analysis.

Action 13 was premised on a trade-off: companies would provide better information to tax authorities and in exchange the burden of reporting would be reduced (because there would be more consistency) and tax certainty would be increased because better information upfront would improve transfer pricing outcomes. Certainly, tax authorities have better information as a result of Action 13, but it is not clear that the positive outcomes for taxpayers have been achieved due to localized requirements for master files and local files that require customization of these reports for certain tax jurisdictions.

One way to improve the positive outcomes for taxpayers would be to focus on "process" issues which are

not considered in the consultation document. These include the manner of submission, exchange and notification. Some of these issues are discussed in more detail below.

USCIB does not believe that it is appropriate to indiscriminately request more information on the CbC report. Any changes should be made carefully to directly address the stated objective of CbC as a tool for high level risk assessment while weighing the incremental administrative and resource burdens on taxpayers.

While the consultation document does not raise the issue of public CbC reporting, USCIB wishes to reiterate its strong support for keeping the CbC report confidential. The CbC report contains sensitive business information and should not be made public. If the information that is required is expanded, confidentiality would be even more important.

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

For companies with an Ultimate Parent Entity in the US, the biggest implementation challenge relates to filing the CbC reports. Some jurisdictions do not yet have bilateral arrangements with the US authorities. This has resulted in requests for multiple local country filings that create an excessive administrative burden on MNEs.

In year 1, many jurisdictions were still negotiating with the US and deferred the filing requirement pending the signed agreement. In year 2, more jurisdictions with no US exchange agreement implemented requirements, which meant US MNEs had to either file locally or through a surrogate. Currently, Germany and Australia are the only jurisdictions willing to act as a surrogate for filing purposes, but not all jurisdictions have exchange agreements with these two entities. US companies may, therefore, need to make multiple filings: in the US, in a surrogate jurisdiction, and in local countries. US companies would like to see the exchange process improved for US MNEs so that they do not have to prepare multiple filings. These multiple filings are in inconsistent formats, so that the burden associated with these filings is greatly increased.

We recommend that all members of the Inclusive Framework work to adopt one standardized format and secure arrangements for sharing of CbC reports. Alternatively, all member countries should accept the CbC report that has been filed with the UPE jurisdiction instead of requiring individualized local country filings.

Some countries continue to request CbC reports even though they are entitled to receive them under the automatic exchange of information process.

As more jurisdictions implement CbC reporting, most of them have also instituted notification requirements, and these local requirements are not at all uniform. While some jurisdictions have recently either implemented a one-time filing (e.g., Estonia) or stopped requiring notifications if the filer is not in that jurisdiction (e.g., France), there are still enough jurisdictions requiring notifications to make this burdensome on taxpayers. We recommend doing away with the notification requirement entirely or making it easier for the taxpayer to satisfy, such as adding it as a field in the tax return or creating a common form that can be submitted in all jurisdictions.

There are also definitional differences that should be addressed. For example, in Russia differences exist

in the definition of employees and Capital. There are also differences in Country Code between ISO and US Standard.

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?

It may not be clear what source of information has led to a query from a tax administration, so please base your answer on changes since the first CbC reports were filed and exchanged. excluding changes that can be explained by other factors, such as other changes to domestic tax information requirements.

In light of the numerous questions included in this discussion draft that address potential changes in the CbC report including additional data points and more granular CE-level data, we recommend that before large-scale changes to the CbC report are made, tax payers need to understand how these reports are being used to drive tax authorities' risk assessments and audit plans and whether the potential risks identified were actually validated through audit. Taxpayers have made significant investments of both time and money to file the CbC report under the current guidance, and we do not believe enough time has passed for tax authorities to process and use the data contained in these reports as intended. This is in part due to the staggered implementation of requirements globally as well as variation in quality of taxpayer data (which should improve as additional guidance is released by the OECD). Some companies believe that it will take another two to three years to understand the use of the CbC report.

Some members report seeing unilateral efforts by taxing authorities to gather transfer pricing information through separate mechanisms. For example, the United States IRS started implementing an independent form to solicit transfer pricing arrangement details from certain taxpayers. Based on conversations and interactions with the IRS, it is apparent that they are in fact using this new transfer pricing form as a tool for high level risk assessment instead of using the CbC report.

Some large MNEs have had very little direct evidence that tax authorities are actually using the CbC reports, either by asking the taxpayer about information in the report itself or by requesting the report where the exchange mechanism is not yet in place. This lack of evidence is further support for delaying any changes in reporting format until taxpayers have a better understanding of how this information is used.

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?

The additional local master file requirements USCIB members have encountered do not seem to add much to the substance of the master file but do cause significant additional burden to the taxpayer. Most notable is India, which requires several annexures containing information such as legal entity addresses and names and addresses of the top 10 unrelated lenders. There is also inconsistency in filing requirements for the master file. Some jurisdictions do require XML filing of this report, which could involve local advisors breaking the text report into relevant sections, converting to XML, and uploading onto the tax authority's portal. In many cases, the master file also has to be translated into the local language. Further, the time for filing the master file varies significantly and some jurisdictions do not provide adequate time for filing or take into consideration when the UPE and CE fiscal years differ.

4. 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?

N/A

5. 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?

N/A

6. 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?

N/A

7. 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?

N/A

8. 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?

N/A

9. 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?

N/A

10. Are there any benefits from reducing the consolidated group revenue threshold, in addition to those described in this document?

N/A

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

Given that tax authorities are still assessing the best ways to analyze this report and how to process the vast amount of data collected, it would be prudent to delay expansion of MNEs subject to this requirement until processes for assessing risk and otherwise using the data have been established and validated. The process of collecting all the information for the CbC report is quite time intensive, often involving

significant monetary investment in systems changes. For smaller companies, this could pose an excessive burden as noted in Paragraph 41 of the discussion draft. As CbC report data is incorporated into tax authorities' audit processes, the OECD can then consider lowering the threshold.

12. Are there any benefits from each of the options for re-basing a non-EUR denominated threshold, in addition to those in this document?

N/A

13. 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?

N/A

14. 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?

N/A

15. Are there any other options for re-basing a non-EUR denominated threshold that should be considered, in addition to those in this document?

N/A

16. 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?

N/A

17. 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?

N/A

18. 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?

N/A

19. Are there any benefits from including extraordinary income in consolidated group revenue, in addition to those in this document?

N/A

20. Are there any practical challenges to MNE groups from excluding extraordinary income in consolidated group revenue, in addition to those in this document?

N/A

21. 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?

N/A

22. 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?

N/A

23. 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?

N/A

24. 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?

Gains from investment activities recorded in revenues would diverge so greatly from US GAAP that revenue would no longer tie to external financial statements or be easily reconciled.

25. Where the preceding fiscal year is less or more than 12 months, are there any benefits from a jurisdiction requiring an adjustment to (a) consolidated group revenue of the preceding fiscal year or (b) the consolidated group revenue threshold, in determining whether an MNE group is an excluded MNE group, in addition to those in this document? Otherwise, it would appear a jurisdiction could take either approach.

N/A

26. Are there any practical challenges to MNE groups in applying the consolidated group threshold as described in this document, in cases where the preceding fiscal year is less or more than 12 months, in addition to those in this document?

N/A

27. Are there any benefits from including constituent entity information in Table 1, in addition to those in this document?

We do not see any additional benefits from this requirement.

28. 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?

USCIB does not support including constituent entity reporting in Table 1.

Requiring reporting of Table 1 data for each constituent entity rather than aggregate tax jurisdiction-wide information would reverse the BEPS Action 13 decision that was made after carefully deliberation and balancing of the goals (high-level risk assessment) vs. the burdens on taxpayers. The burden on taxpayers would increase exponentially and the data provided to tax authorities would be excessive and perhaps unusable. Some members indicate that moving to entity-level data would result in a 4x fold increase in Table 1 burden.

The ongoing work on the taxation of the digital economy should also be taken into account here before the addition of entity level information is considered. Companies would like to avoid multiple rounds of change and investment in tax infrastructure.

Taxpayers have invested a significant amount of resources in building systems to comply with CbC reporting on a jurisdiction basis. Revising Table 1 for entity-level reporting would necessitate an extensive overhaul of taxpayers' CbC systems. As discussed above any additional information to be captured at the entity level in Table 1 would be redundant to the tax information that is already captured in local tax filings.

The overarching purpose of CbC reporting is to provide taxing authorities with data on the global allocation of income, profit, taxes paid and economic activity among the tax jurisdictions in which an MNE operates. It is meant to be used in conjunction with the local tax filings, and other information that impacted taxing authorities can solicit from taxpayers. CbC reporting is not meant to be a global information return for each individual entity in an MNE group. We believe the current CbC report format is aligned with the objectives of CbC reporting and this proposed change would place additional administrative burden on MNE taxpayers without materially advancing the objectives of CbC reporting.

For some jurisdictions that allow consolidated reporting, certain items are booked in one legal entity only, so adopting legal entity CbC reporting could require additional work.

For US parented entities, the constituent entity information would be provided in US GAAP, which might be quite different than the local statutory accounts, which would make the information unreliable for tax risk assessment purposes.

Added transparency without context could lead to inquiries (e.g., PE) that aren't valid. As Paragraph 90 of the consultation draft points out, the CbC is not meant to replace the full functional and economic analysis found in the local file.

Taxpayers have concerns about confidentiality in certain jurisdictions. Those concerns would be increased the more data is provided. Some jurisdictions are working to improve their confidentiality standards after

evaluation by the Global Forum found deficiencies.

29. Are there any benefits from requiring the use of consolidated data in Table 1, in addition to those in this document?

We do not see any additional benefits from this requirement; moreover, we believe the use of consolidated data in Table 1 will be more administratively burdensome to taxpayers than probative to taxing authorities.

30. 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?

Changing from aggregate data to consolidated data in preparing Table 1 would be extremely onerous for MNE groups to implement. Multinationals do not structure elimination ledgers for this type of exercise, and it would be excessively burdensome for MNEs to develop, especially given that much of the information that countries wish to obtain may already be available in the corporate income tax filing or Transfer Pricing Informational Returns, included in Local Financial Statements, the local file, or could be provided on request. Furthermore, since the CbC report data is prepared in US GAAP for US companies, it may not match local information.

Many taxing jurisdictions do not permit or require affiliated taxpayers to report their tax or financial information at the consolidated level by country. As a result, taxpayers' systems are not set up to capture the consolidated information at the country level. In order to present this consolidated information on a CbC report, companies would need to analyze transactions individually to segregate transactions into unrelated party and related party activities, and then segregate related party transactions into transactions with related parties in the same jurisdiction and with related parties outside the jurisdiction, and then ascertain the appropriate treatment under consolidation.

Furthermore, there is no commonly accepted framework for consolidation, and as a result, individual jurisdictions that do allow for tax consolidation have adopted their own rules for consolidation. To the extent that CbC reporting will need to adopt its own framework for consolidation, even taxpayers reporting on a consolidated basis may need to manually adjust their local country consolidation reports to the CbC framework.

It is not clear how consolidation can be restricted to related party revenue. There may be an impact on PBIT, accumulated earnings and stated capital. Any consolidation rules would need to address these topics.

The OECD and the IF should be aware that the proposed consolidation approach would effectively create an extra set of books.

This proposed change would require a significant incremental investment of resources accounting and finance (well beyond tax reporting) to perform the additional adjustments and analyses required. Further, since these additional consolidations would not be covered in audited financial accounts, we question their reliability and usefulness for tax authorities.

The work on the taxation of the digitalizing economy is explicitly considering methods for determining income starting from financial statements (Pillar 2) and how to determine Amount A based on global

profits (Pillar 1). Any solutions proposed under Pillars 1 and 2 would likely require a substantial reworking of any consolidation rules that might be adopted before solutions are reached under Pillars 1 and 2.

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?

No. As the CbC report is only intended to facilitate risk assessment at a high level, this level of detail can be asked during audit. Adding the additional data proposed in this section is burdensome and unnecessary.

We believe that the current CbC report template is aligned with the stated objectives of CbC reporting, and taxing authorities should reflect on the copious amount of information currently being collected and determine whether all of that information is necessary or useful in tax risk assessment. Substantially all of the information mentioned here is already otherwise provided in local tax filings and the transfer pricing documents currently filed in response to the requirements of BEPS Action 13.

For example, a taxpayer's IP structure, R&D services arrangements and R&D spends in country would already be addressed in the master file and local file under BEPS Action 13, as well as the local tax and financial filings. A taxing authority also has the option of soliciting additional information to develop a comprehensive picture of the taxpayer's global value chain, including IP holding, IP creation, manufacturing and sales activities for any transfer pricing audit. Given that the stated purpose of CbC reporting is to aid taxing authorities in high level risk assessment and not for purposes of directly facilitating transfer pricing adjustments, the R&D expenditures information proposed in Topic 14.3 would appear to be less supportive of the CbC reporting objective and more likely to be misinterpreted and misused by taxing authorities in rushing through a transfer pricing audit.

32. 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?

Increasing the items of information considered for the CbC report template will add cost and workload to MNE groups and tax administrations. Frequent changes to Table 1 categories add complexity to creating efficient procedures for taxpayers and tax administrations, leading to increased costs for businesses and tax administrations. The cost of compliance will not be commensurate with the anticipated benefits to tax authorities.

It is important to note that providing additional information does not necessarily lead to a more accurate economic picture of a company. The amount of data currently required under BEPS Action 13 is significant, not only for taxpayers to gather, but also for tax authorities to analyze and understand. Tax authorities have not yet appropriately analyzed the available data, so asking for more data is inappropriate at this stage. More information on the CbC report, therefore, would not necessarily lead to a more clear or concise understanding of the company. Again, we believe current CbC report template is aligned with the stated objectives of CbC reporting and any changes should be made carefully to avoid incremental administrative and resource burdens on taxpayers and tax authorities.

For some companies, this information may be similar to what is in their tax returns. However, some of the proposed items that companies report on their returns (e.g., research and development expenditures)

are not prepared on the basis of financial statement information. Therefore, companies would bear additional burdens to convert this information from tax to financial statement numbers for the CbC report.

Not all companies are required to report deferred taxes for financial accounting purposes, therefore, this information may not be available.

33. 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?

N/A

34. For each of the possible approaches considered in this section, are there any benefits in addition to those in this document?

N/A

35. For each of the possible approaches considered in this section, are there any practical challenges or other concerns to MNE groups in addition to those in this document?

For the most part, this level of granularity by individual entities is not captured in current reporting requirements. Therefore, taxpayers would need to invest in extensive manual efforts to separate the constituent entities into the various subcategories and create the systems infrastructure to capture the necessary data at a subcategory or entity level. USCIB, therefore, does not support any of the proposed approaches.

For entities that lack clear tax residence for CbC reporting, an alternative to the four proposed approaches would be to narrow the definition of stateless entities to reduce auditing and compliance costs. Stateless entities would only include partnerships, transparent entities, or stateless entities not directly or indirectly owned by constituent entities within the jurisdiction.

The Inclusive Framework might also wish to consider whether the income earned by a stateless entity was deductible. If no deduction was allowed, then even though the entity might be stateless, the income earned by the entity would not reflect base eroding payments and therefore might lead to false positives.

Of the proposals put forth by the consultation document, Approach 1 appears to be the most practical.

36. 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?

No.

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?

The US form does require additional information including tax IDs. Even when the UPE is preparing the CbC report, tax ID information has proven to be challenging. Entities in jurisdictions with no corporate tax do not have tax IDs. So, the practical challenge is that the address and TIN are frequently not known by the UPE persons responsible for filing the CbC report. Thus, requiring this data will require that additional

processes be put in place to collect it and it is not clear what the value-add is for high-level risk assessment. Further, taxpayers are concerned that tax authorities might send inquiries to the local address, which may not have systems in place to deal with those inquiries and might cause unnecessary delays (which could incur penalties) in the taxpayer's ability to respond.

38. Are there any benefits from including standardised industry codes in the CbC report template, in addition to those in this document?

No.

39. 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?

Collecting and incorporating all the additional information required by the CbC report XML schema and standardized industry codes in the CbC report template will create additional workloads for businesses in MNE groups. MNE groups are already working to overcome data gaps for reporting purposes.

As the discussion draft points out, there is no single industry code system used globally, and there is not clear mapping between SIC and NACE for all codes. Additionally, the SIC code system has not been updated in many years. Therefore, it will be difficult to reach agreement on the use of one set of industry codes.

Notwithstanding limitations of the code systems themselves, applying an industry code to every legal entity in addition to classifying the main business activity is exceedingly burdensome for a UPE with many subsidiaries that acquire companies regularly. Adding this to the CbC report requirements may result in taxpayers taking a practical approach, perhaps applying the most common code in cases where they don't have enough information about the CE or the CE is engaged in multiple activities, which would reduce the effectiveness of this requirement.

Table 2 provides information on activities of constituent entities and the main role of each entity. The information in Table 2 is generally a good fit, and MNEs spend a great deal of time ensuring the accuracy of this table, so there does not seem to be a significant benefit to industry classification codes.

40. 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?

NACE is probably most useful in providing CE activity information, but for US taxpayers, the corporate tax team is likely most comfortable with SIC codes. Therefore, NACE is likely to be more burdensome as well.

MNE groups will use appropriate SIC/NAICS/NACE codes when conducting benchmarking studies that are usually disclosed in the relevant TP documentation studies. The use of the codes in a TP study provides a more accurate picture of the underlying company activity being analyzed than an overall comparison of a constituent entity with other entities that have the same SIC, for example, but that look very different when comparing functions, assets and risks.

41. Are there any benefits from including predetermined fields in Table 3 of the CbC report template, in addition to those in this document?

Having predetermined fields and boxes to check will save time for the taxpayer and make the responses more consistent for the tax authority. It will also ensure that the taxpayer does not miss any new requirements for inclusion of information in Table 3.

These fields should only represent information already required to be noted in Table 3.

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?

N/A

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?

N/A

Sincerely,

William J. Sample
Chair, Taxation Committee
United States Council for International Business (USCIB)

Washington Office

1400 K Street, N.W., Suite 525
Washington, DC 20005
202.371.1316 tel
202.371.8249 fax
www.uscib.org

Global Business Leadership as the U.S. Affiliate of:
International Chamber of Commerce (ICC)
International Organization of Employers (IOE)
Business and Industry Advisory Committee (BIAC) to the OECD
ATA Carnet System