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Global Tax Alert

OECD holds public consultation on the 2020 review of country-by-country reporting

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Executive summary

On 12 and 13 May 2020, the Organisation for Economic Co-operation and Development (OECD) held a consultation with respect to its public consultation document: *Review of Country-by-Country Reporting (BEPS Action 13)*.[1] The consultation, which was held remotely through a videoconference, was an opportunity for stakeholders to engage directly with the OECD Secretariat and the country delegates of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) on this review of the country-by-country (CbC) reporting standard and the implementation experience to date. The OECD technical groups responsible for work on CbC reporting will discuss the perspectives shared at the consultation as they advance the review through virtual meetings and work toward agreement on any changes to be made to the existing CbC reporting standard.

Detailed discussion

Background

On 6 February 2020, the OECD released a public consultation document on the review of CbC reporting (the Consultation Document). The Consultation Document is based on the mandate that was set out in the 2015 BEPS Action 13 final report (*Transfer Pricing Documentation and Country-by-Country Reporting*) for a review of CbC reporting in 2020. The Consultation Document contains topics concerning the implementation and operation of BEPS Action 13, the scope of CbC reporting, the content of a CbC report, and other aspects of BEPS Action 13 (the master file and local file). The topics covered in the Consultation Document reflect issues where interpretative guidance has not resulted in a consistent approach to be applied by all jurisdictions and issues that can only be addressed through a change to the minimum standard, which would require agreement in the Inclusive Framework, which is the group of 137 jurisdictions participating in the development of standards on BEPS-related issues.

Interested parties were invited to submit their comments on the questions raised in the Consultation Document and on all aspects of the BEPS Action 13 report by 6 March 2020. The OECD received approximately 80 written comment submissions on the Consultation Document. Originally, a public consultation meeting on the 2020 review of BEPS Action 13 had been planned for 17 March 2020. That meeting was cancelled in light of the COVID-19 crisis. Subsequently, the OECD rescheduled the consultation, arranging for it to be held through a videoconference.

Opening of consultation

The virtual public consultation on 12 and 13 May 2020 had approximately 200 participants, including representatives from business and non-governmental organizations (NGOs), country tax officials, and the OECD Secretariat. The consultation was hosted by OECD Working Party No. 6, which is responsible for the OECD's work on transfer pricing matters, and OECD Working Party No. 10, which is responsible for the OECD's work on exchange of information. The consultation was chaired by the Indian and Japanese government officials who serve as co-chairs of the Joint Session of Working Party No. 6 and Working Party No. 10. EY submitted a comment letter and a global team from EY participated in the consultation.

A replay of the two half-day sessions and a copy of the presentations is are available on the OECD website.

The OECD Secretariat made introductory statements at the start of the session each day. They noted that the review of CbC reporting may seem early, given that only three years of CbC reports have been filed, but the mandate for this review in 2020 was agreed in the 2015 BEPS Action Report. The Secretariat stressed that no decision has been made on what changes to the CbC reporting standard may be made as a result of the review. The Consultation Document does not represent the consensus views of the Inclusive Framework, and they noted that on many of the topics referenced in it, there is no agreement among the country delegates at this point. They indicated that the Consultation Document was intended to provide stakeholders with the opportunity to express their views on a broad range of topics.

The discussion during the virtual consultation was organized around the questions contained in the Consultation Document and was divided into six segments. For each segment, the discussion began with a set of brief presentations from four individuals who had been invited to speak, reflecting a mix of business and NGO representatives. Following the presentations, the discussion was opened up to all the participants for a broader dialogue on the topics covered in the segment.

Implementation and operation of BEPS Action 13

The business speakers emphasized that CbC reporting is a high-level risk assessment tool, which was the product of a fragile consensus when it was introduced. They noted that it has been a significant burden for businesses to comply with this new reporting requirement, the cost of which was underestimated at the time the standard was developed. To date, tax authorities have had only limited experience receiving CbC reports and there is limited evidence of how the report information is being used by tax authorities. Therefore, the business speakers cautioned against making hasty changes to the rules that are in place now. They urged that a decision to make any changes to the Action 13 standard should take into account the balance of the compliance burden that would be imposed with such changes versus the benefits to be expected from changes, expressing the view that the bar for changes should be high. In addition, they noted that many of the changes reflected in the Consultation Document involve a level of granularity that would be inconsistent with the use of CbC reports as a high-level risk assessment tool only.

Business speakers also stressed that the review should focus on improving existing standards and their implementation, rather than on changing the standards. They asked that the review proactively address requirements for local filing of CbC reports that are inconsistent with the Action 13 standard. They also indicated that clarifying and expanding the potential use of surrogate parent entity filing would help relieve the administrative burden for businesses by reducing the number of necessary local filings. In addition, they singled out the notification obligation as source of significant compliance burden, in particular the requirement of notification for each individual constituent entity on an annual basis. Finally, they noted the connection between CbC reporting and the ongoing OECD project on addressing the tax challenges of the digitization of the economy, expressing the view that it would be premature to make changes to CbC reporting before the outcomes of that project are known.

NGO representatives stated that CbC reporting is a transparency tool that should be available not only to tax authorities but also to a wider group of stakeholders, including investors, workers and the public. They called for public disclosure of the information, both to make CbC reports accessible to the wider group of stakeholders and to make the reports accessible to tax authorities that do not currently have access under the existing dissemination process through exchange of information agreements. They expressed the view that the information in CbC reports is not confidential commercial information and that dissemination of such information publicly should be a requirement of corporate formation and the associated limited liability. They also argued that the need for accountability on taxes is more important than ever in light of the current crisis. Note that public disclosure of CbC reports is not a topic that was addressed in the Consultation Document.

NGO representatives and some business representatives expressed support for aligning the CbC reporting requirement with the tax reporting standard developed by the Global Reporting Initiative (GRI). GRI 207 was released in late 2019 and includes disclosures on how an organization manages tax, as well as a topic-specific disclosure on country-by-country reporting of financial, economic and tax data. The standard requires public reporting of tax information, based on consolidated rather than aggregated data, together with a reconciliation of the data in the report with the data in the financial statements and an explanation of the difference between the tax base in the tax returns and the profit in the financial statements.

With respect to the Master File, which is a component of the three-tier documentation approach under Action 13, both business speakers and NGO representatives supported greater standardization of the Master File. This would allow companies to be able to prepare one Master File globally.

Scope of CbC reporting

The discussion on the scope of CbC reporting centered around the current reporting requirement threshold of €750 million. Business speakers generally were of the view that the current threshold strikes the right balance, by covering the vast majority of the profits of multinational entity (MNE) groups globally while limiting the number of MNE groups that are required to prepare CbC reports. Lowering the threshold would require reporting by relatively more MNE groups that account for relatively less economic activity than those currently covered. They argued that it would not be appropriate to impose this significant compliance cost on smaller businesses

NGO representatives and several delegates from developing countries advocated lowering the CbC reporting threshold, with suggestions including €40 million based on the European Union (EU) definition of large undertakings and US$100 million based on United States (US) Securities and Exchange Commission reduced reporting standards. They claimed that the compliance costs for CbC reporting would be proportionately smaller for smaller businesses. They also argued that a lower threshold is needed so that developing countries have access to information from smaller businesses that are significant contributors to their smaller economies.

One business speaker addressed the question whether the threshold should be adjusted for currency fluctuations. The speaker stressed that any such adjustments should occur as infrequently as possible. Therefore, any rebasing of the threshold should only relate to extraordinary currency fluctuations, should only relate to the currency of the ultimate parent entity, and should be applied neutrally without regard to whether the effect would be to raise or lower the threshold in local currency.

Content of a CbC report

This segment focused on whether information should be presented on an entity-by-entity basis rather than on a country-by-country basis, whether the information should be presented on a consolidated basis rather than an aggregated basis, and whether additional columns of information should be added to table 1 of the CbC report.

NGO representatives generally were of the view that consolidated data on a country level should be required, rather than entity-by-entity data or aggregated data.

Business speakers noted that consolidated data on a country basis often is not prepared currently and that developing new systems to prepare and present consolidated data at that level would be costly. Some business speakers indicated that consolidated data may provide better information than aggregated data, but they cautioned that the benefit of such a change should carefully be weighed against the burden.

Some country delegates also expressed the view that the current aggregation requirement should be maintained.

One business speaker suggested a hybrid approach, in which data would be aggregated, but intercompany transactions would be eliminated. This would avoid some of the burden and practical challenges of a full consolidation at the country level. The OECD Secretariat expressed interest in this idea.

Little to no support was expressed for moving to an entity-by-entity based approach.

With respect to the potential inclusion of additional columns of information to table 1, most business speakers stressed the additional burden this would impose on businesses and tax authorities in terms of systems changes. NGO representatives called for additional information on tangible assets, research and development expenses, labor costs and deferred taxes. The addition of information on deferred taxes also was supported by some business speakers.

Technical matters relating to scope of CbC reporting

On the second day of the consultation, there were three discussion segments focused on specific technical questions relating to the scope of CbC reporting.

The first of these segments focused on whether a single enterprise with one or more permanent establishments (PEs) should be considered a group for CbC reporting purposes and whether groups that are under common control (but are not required to prepare consolidated statements) would be required to prepare CbC reports.

Most of the speakers who commented were of the view that a single entity with one or more PEs should fall within the definition of a group for CbC reporting purposes, in the interests of neutrality with entities that have subsidiaries and of consistency with the general principles. It was noted, however, that these entities will not have consolidated accounts, that requiring reporting from such groups would require changes in domestic law, and that implementing such a change likely would not result in a significant number of additional filings because this circumstance is not likely to be common.

With respect to the question about introduction of a common control standard for filing, speakers raised several practical considerations, including the fact that information might not be available, that there might not be a legal basis for a group member to obtain the information, and that defining common control could be complex. It was noted that the level of any transfer pricing and BEPS risk in structures involving common control but no common parent typically would be lower than in a situation with a common corporate parent. It also was noted that this information alternatively could be obtained during a tax audit.

Some speakers were of the view that collective investment structures should not be brought under the scope of CbC reporting, while other speakers expressed the view that this would create neutrality.

The next discussion segment focused on whether the reporting threshold should take into account multiple years of revenue, whether extraordinary income and income from investment activities should be taken into account in applying the threshold, and how to apply the threshold in the case of fiscal years shorter than 12 months.

The comments expressed generally favored applying a multi-year average to determine the revenue to be tested against the threshold, with reference made to a three-year average in particular. On the inclusion of extraordinary income and investment income, differing views were expressed. Points made in favor of inclusion included consistency with the income reported in table 1 and increased comparability among MNE groups. Points made in favor of exclusion included the fact that such amounts do not reflect recurring trading income and may cause an MNE group to incidentally exceed the threshold, and the fact that these items are not necessarily an indicator of the potential for profit shifting. Similarly, on the question regarding how to apply the threshold when the preceding fiscal year is longer or shorter than 12 months, there was no consensus among the speakers who commented.

The final discussion segment focused on the inclusion of information on entities that are not resident anywhere, inclusion of tax identification numbers, inclusion of standard industry codes, and standardization of table 3.

With respect to the treatment of entities that are not resident anywhere, many business speakers indicated that they do not have such entities. Some of the other business speakers explained the reasons why MNE groups may include such entities, indicating that such status does not necessarily mean that no tax is being paid with respect to the entity. It was suggested that only those entities that are resident nowhere and that do not pay taxes anywhere should be required to be reported separately, which was supported by NGO speakers.

There were no specific concerns expressed regarding the inclusion of tax identification numbers, which is currently required by some countries. Business speakers generally were opposed to the inclusion of standard industry codes, expressing concern that they could be misleading and that the benefit of including such codes would not outweigh the burdens. With respect to the potential for modifying table 3, which currently allows for free text, speakers stressed the importance of maintaining a place in the report for narrative explanations.

Throughout the consultation, business and NGO representatives and some country delegates reiterated that there is limited information on how the CbC report is used by tax administrations. The view was expressed that publication of additional information by the OECD on how the data is being used would be useful. The OECD Secretariat commented that they have been working closely with the tax authorities in the various countries on how they use the reports and that the experiences so far have been mixed. Some tax authorities have made significant progress with tax risk assessment frameworks. Others have progressed more slowly. Many tax authorities have noted that there are some issues in the data. The Secretariat is working to distill these experiences and share them among tax authorities. The Secretariat also indicating that the OECD has been providing tools and additional guidance in response to issues raised.

Closing and next steps

At the close of the first day of the consultation, the OECD Secretariat stated that they take the concerns about additional burden seriously. They also noted that they would consider seriously the suggestion made by some NGO representatives that the Consultation Document does not seem to have been drafted with all the interests of the wide group of stakeholders in mind.

In response to comments made by business speakers over the two days, the OECD Secretariat provided assurances that if any changes to the existing CbC report standard are to be made, sufficient time will be provided for businesses and tax administrations to make preparations for the revised requirements. The Secretariat also noted that the work on CbC reporting will be aligned with the ongoing work on the digitalization of the economy. It was further noted that the focus of the Joint Session for now is on the 2020 review of CbC report for purposes of risk assessment. Finally, it was noted that perspectives shared during the consultation will be discussed during the next virtual meeting of the Joint Session.

Implications

It is important for companies to follow developments with respect to potential changes to CbC reporting closely as they unfold in the coming months. In this regard, it should be noted that one of the changes under discussion is the proposal to lower the reporting threshold for CbC reporting. This threshold is being discussed in the digitalization of the economy project as a possible threshold for application of new rules under both Pillar 1 and Pillar 2 of that project. Therefore, any change to the reporting threshold that results from the 2020 CbC reporting review could have significant implications for businesses that extend well beyond CbC reporting.

In addition, although the issue of public disclosure of CbC reports is not covered in the Consultation Document, the comments made by NGO representatives during the virtual consultation were largely focused on calling for requiring such public disclosure. It is important for companies to follow potential developments in this area as well, including potential activity in the EU related to public CbC reporting.

Endnote

1. See EY Global Tax Alert, *OECD releases Consultation Document on the review of Country-by-Country Reporting*, dated 11 February 2020.

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