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Sent via email to: taxpublicconsultation@oecd.org
6 March 2020

**RE: IA response to Public Consultation document: Review of Country-by-Country Reporting
(BEPS Action 13)**

We thank you for the opportunity to present the IA's response as part of the public consultation on the review of Country-by-Country Reporting ("CbCR") as part of BEPS Action 13.

Our detailed response is attached herewith. If you would like to discuss anything in this letter, I am available at anshita.joshi@theia.org and on +44 20 7269 4685.

Yours faithfully



Anshita Joshi
Head of Tax



Investment Association response to consultation document: **Review of Country-by-Country Reporting (BEPS Action 13)**

About the Investment Association

The Investment Association (IA) champions UK investment management, a world-leading industry which helps millions of households save for the future while supporting businesses and economic growth in the UK and abroad. Our 250 members range from smaller, specialist UK firms to European and global investment managers with a UK base. Collectively, they manage £7.7trillion for savers and institutions, such as pension schemes and insurance companies, in the UK and beyond. 40% of this is for overseas customers. The UK asset management industry is the largest in Europe and the second largest globally.

We thank you for the opportunity to present the IA's response as part of the public consultation on the review of Country-by-Country Reporting ("CbCR") as part of BEPS Action 13.

Executive summary

1. The overall focus of our response targets areas of inconsistency with the objective of CbCR to provide both a high-level risk review for international tax authorities and the option of top-down assessments for Multi-National Entities (MNEs). CbCR is in its relative infancy and as such any changes to CbCR particularly the threshold, the scope or the additional reporting requirements should focus on known issues supported by evidence rather than perceived issues or concerns. Key themes of our response are summarised below.

Threshold

2. As the consultation document mentions, over 90% of all corporate revenue is already covered by the existing €750m reporting threshold. We firmly believe that any lowering of this would limit would risk a considerable amount of entities immediately falling within scope of the rules, increasing the cost to these businesses, but also increasing the resources required by Tax Authorities to assess the volume of new reporting without any significant benefit.
3. Keeping the existing threshold in place will provide MNEs with a static target to plan around, many of which over the next decade will grow into the reporting threshold organically, thus allowing the scope of CbCR to expand over time without the need for any change to the regulations.

Control



4. The issue of 'control' as detailed in section 5 of the consultation is of particular concern to the investment management industry. Investment management is unique in the way products are structured and involve managers which are fiduciaries. Fiduciary responsibility requires being bound within a regulatory framework to act in the investors' best interests, while exercising investment decisions on the investment vehicles behalf. It is important to understand that fund management conveys no economic rights to the assets of a fund, the beneficial ownership resting completely with the investors. We do not believe 'control' within this context falls within the overall objective which the OECD is trying achieve as part of the consultation.
5. We welcome that the OECD has recognised that widely held collective investment schemes do not pose the transfer pricing risks that the introduction of a 'control' test beyond strict accounting consolidation,. However this principle equally applies to other investment vehicles and there is no apparent reason why the exclusion would not be applied to all such vehicles. Additionally, widely held collective investment vehicles is not a defined term adding to the lack of clarity. **We therefore strongly urge that OECD look at this exception more broadly and use internationally accepted and understood definition of investment vehicles for the purpose of the exclusion from 'control' rules.**
6. OECD's previous work on *Investment Entities*, defined as part of OECD's Common Reporting Standard (CRS), would be a very good starting point in that the definition is internationally accepted and well understood. This '*Investment Entity*' definition relates to 'Financial Assets', which for CRS purposes exclude direct interests in real property. For the purpose of the CbCR 'control' exclusion, we suggest that the definition of 'Financial Assets' is widened to include real estate investments.

Administrative Burden

7. Considerable cost has been absorbed by MNEs in scope of the CbCR rules since its introduction. That burden will only increase if changes are made or additional data items are added to the reporting requirements without considering the impact on costs of compliance.
8. This is especially true in the case of jurisdictional reporting which is often not readily available. MNE groups are generally split by region or business line for a variety of logistical reasons rather than by individual jurisdiction. In order to include this within CbCR it is likely that significant system upgrades and enhancements to data collection processes would be required.
9. **We urge the OECD to consider carefully any potential benefits of additional data and reporting against the likely cost of administration required to implement it.**

Deviation from the Top-Down Approach

10. Any additional complexity which threatens a top-down approach, whether it be via reporting of constituent entities or more detailed data reporting, would represent a step away from the OECD's commitment to offer both a top-down and bottom-up approach to CbCR as part of the 2015 review.



Consultation Response

We have provided responses to key questions relevant for our members.

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

- 11.1 A lack of a consistent approach to the CbCR notification requirements creates significant administration burden and complication for businesses. This includes differences in the form of the notifications, some reported via tax returns while others through separate notification processes. This gets further complicated due to timing issues, frequently as a result of differences between the end of entities financial accounting years and other reporting deadlines.
- 11.2 The notification requirements are a significant administrative burden for what we believe is little additional value for tax authorities where there has been no / minimal change to group structure. We therefore recommend that after an initial notification for an entity, no further notifications should be required unless there is a change to the information provided such as the group structure.
- 11.3 In addition we recommend that the notification deadline is consistent with either tax return submissions or CbCR deadlines.

12. Question 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?

- 12.1 CbCR is still relatively new and therefore is in its early stages. As such we believe it would be premature to make a judgement of the success of the CbCR at this stage. Amendments to the CbCR regime should focus on known issues supported by evidence rather than perceived issues or concerns.

13. Question 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?

- 13.1 Most MNE groups attempt to standardise elements of local files to ease the burden of collation however inconsistencies between jurisdictions remain a feature of CbCR. This lack of commonality between local files can increase the administrative cost to business given the need to ensure compliance with each jurisdictions requirements, which can change regularly. A greater degree of standardisation on the local file requirements and tighter guidance may help alleviate divergence in local files.
- 13.2 While we are still at an early stage to assess the success of guidance on the master file, it appears to strike a balance between ensuring overall standardisation and giving MNE groups enough flexibility to adjust for the specifics of their business, as such we do not see a need for further standardisation at this time.

14. Question 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?



- 14.1 While we understand the OECD and Tax Authorities' concerns that are specific to wealthy individuals and families utilising local non-corporate vehicles to report, any policy change should be specifically targeted to address these specific concerns. This requires a suitably well-defined definition of 'Control'. If the OECD move beyond a strict accounting consolidation to any objective or subjective control test then extreme care will have to be taken to minimise the new scope of that test.
- 14.2 The issue of 'control' as detailed in section 5 of the consultation is of particular concern to the investment management industry. Investment management is unique in the way products are structured and involve managers which are fiduciaries. Fiduciary responsibility requires being bound within a regulatory framework to act in the investors' best interests, while exercising investment decisions on the investment vehicles behalf. We do not believe 'control' within this context falls within the overall objective which the OECD is trying achieve as part of the consultation.
- 14.3 We welcome that the OECD have specifically mentioned collective investment schemes as part of paragraph 26, but the inclusion of a widely held test represents too narrow a carve out and we request that the OECD extend this to other types of investment structures.
- 14.4 The OECD's previous work on Investment Entities, defined as part of the Common Reporting Standard, would be a welcome starting point. The definition is contained in part (b) of section VIII A(6) of the Common Reporting Standard¹ :

The term "Investment Entity" means any Entity:

a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

- i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;*
- ii) individual and collective portfolio management; or*
- iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or*

b) The gross income of which is primarily attributable to investing reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

- 14.5 We also note that the This 'Investment Entity' definition relates to 'Financial Assets', which for CRS purposes excludes direct interests in real property. For the purpose of the CbCR 'control' exclusion, we suggest that the definition of 'Financial Assets' is widened to include real estate investments.
- 15. Question 10: Are there any benefits from reducing the consolidated group revenue threshold, in addition to those described in this document?**

¹ <https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/common-reporting-standard-and-related-commentaries/>



- 15.1 We strongly urge that time is given to allow for the existing CbCR reporting to bed in before any assessment of the thresholds are made.
- 15.2 Keeping the existing threshold in place will provide MNEs with a static target to plan around, many of which over the next decade will grow into the reporting threshold organically, thus allowing the scope of CbCR to expand over time without the need for any change to the regulations.

16 Question 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?

- 16.1 Any reduction of the consolidated group revenue threshold would only impact smaller groups who are currently outside of the reporting requirements. By keeping the current threshold it is likely that many smaller group structures will organically grow into the CbCR regime over the next decade.
- 16.2 We believe that the additional compliance costs related to lowering the reporting thresholds appear disproportionate compared to potential benefits which tax authorities may enjoy given that the groups currently above the threshold already account for 90% of corporate revenues, as reference in paragraph 37 in the consultation document.

17 Question 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?

Inclusion of jurisdictional information in Table 1 is likely to be fraught with challenges and contrary to the aim of a top-down approach for the reasons outlined below:

- 17.1 Inclusion of constituent entity information negates the benefit of adopting a top-down approach to Table 1, which is an allowed methodology and generally eases the compliance burden on business while providing sufficient reporting to tax authorities.
- 17.2 It is common for MNEs to aggregate data based on business unit/territory but having to splice this data down to its constituent parts could potentially require significant system changes.
- 17.3 This approach would prove to be particularly burdensome where fund vehicles, dormant and smaller entities are held by the MNE. In extreme cases this could lead to over 1,000 lines being produced in Table 1 – which would not support a high-level Transfer Pricing risk review.
- 17.4 Any CbCR disclosures may differ from positions in both tax filings and statutory accounts due to a myriad of different reporting requirements. The most obvious of these are differences when comparing data prepared under local GAAP against reporting made under IFRS.
- 17.5 Constituent entity data may be subject to additional legal requirements before being included within an MNE's tax return. This presents the possibility of delays to the



point which CbC reporting can begin to be prepared, adding significantly to the administrative burden.

18 Question 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?

18.1 Depending on how MNEs are structured, consolidated jurisdictions level data may not be readily available or easy to extract and enrich. Such data will only be available in this format if the MNE has a specific business or regulatory reason for producing it. Production of such granular reporting may require extensive upgrades to IT and data systems and may provide no or little additional value to businesses and tax authorities.

18.2 Tax authorities already have a range of tools at their disposal to obtain data regarding revenue and capital flows, including tax compliance and audit reviews, and it is not clear how including consolidated data within CbCR, and thus increasing the overall compliance burden for all reporting MNE groups, provides significant additional value to the high level risk review process.

18.3 As a more general issue on group consolidation, where any adjustments to the reporting are required, these carry a risk of significant additional administrative work.

19 Question 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?

19.1 It is not immediately obvious how the new items of information will assist tax authorities in performing a high level risk review. As mentioned elsewhere in our response any additional reporting needs to be assessed and the benefit clearly understood before changes to CbCR are made, especially as some of the additional items proposed may not easily accessible for MNE to report.

19.2 In addition the specific requirements will need to be clearly defined due to the lack of harmonised definitions across jurisdictions.

20 Question 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?

20.1 Please see our responses to question 32 and the need for consistent, well defined requirements.

21 Question 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?

21.1 Identifying only a single specific code referenceable to an entity which carries out multiple activities may prove difficult for some businesses.



- 21.2 It is not clear where an entity has branches, if these would have to be separately identified or if they would follow the code of the umbrella entity.
- 21.3 It is important to choose a classification mechanism which remains relevant in the near future and has the flexibility to cope with the ever changing commercial landscape.
- 21.4 This should replace the current 'business activity' categorisation, rather than be an additional requirement.

22 Question 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?

- 22.1 As mentioned earlier in this response, more time should be given to information already collected under the existing CbCR regime to be utilised effectively before adding additional information, unless there is an obvious benefit of such information. Any additional data will come with a corresponding compliance cost and should only be included if there is certainty that this will substantially aid tax authorities in performing a high level risk assessment.

23 General Points

- 23.1 Included below are a number of general points which either straddle multiple questions in the consultation or are not directly attributable to any of the questions raised.

Dormant entities

- 23.2 We request exclusion for dormant entities from CbCR. It is not clear how such reporting benefits tax authorities and the high level risk review as a whole. Data on dormant entities may not be readily available and collation is often unnecessary for the MNE group other than for CbCR purposes.

Complexities of reconciliation

- 23.3 With the recent December 2019 update to the OECD guidance on the implementation of the CbCR², paragraph 25 contains a section on sources of data. The requirement to source and reference each item of data which differs from the main source of data within the CbCR is likely to be highly onerous for MNE groups.
- 23.4 MNEs often use multiple data sources in their day to day operations and we question the usefulness of having to detail out each and every exception. A main data source should provide sufficient detail for tax authorities to perform a high level risk assessment.
- 23.5 MNE group reporting is defined by differences in GAAPs applied by branches and business headquarter locations. This divergence can result in a number of variations

² <https://www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf>



between how items are reflected within reports produced under CbCR. Examples include dormant entities (expanded upon above), partially owned entities, information not available via an MNE's primary accounting platform and a variety of manual adjustments required outside of standard IT systems.