

CBC reporting: Implementation challenges for developing countries as the 2020 review looms - is public CbC reporting the way to go?

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Make today matter



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INTRODUCTION

- Meaning of corporate transparency & importance in international tax
- OECD initiatives to foster international corporate transparency
 - 1998 report on *Harmful Tax Competition*
 - OECD Global Forum
 - Common reporting standard
 - Corporate transparency – a pillar in BEPS Action Plan
 - Action 13 – CbC Reporting - 2020 Peer Review
- Implementation challenges faced by developing countries
- Criticism of OECD's restricted approach to CbC reporting
- UN's earlier Initiatives on CbC reporting



UN INITIAL TAX POLICY PROPOSALS ON CBC REPORTING

- 1969 - UN Ad Hoc Group of Experts - stronger obligations to implement EOI
- 1972 - UN's Economic & Social Council Resolution - tax avoidance & banking secrecy
- 1975 - UN Commission for Transnational Corporations - group of accounting experts (GEISAR)
- 1977 - UN GEISAR - information to be furnished:
 - List of subsidiaries & percentage ownership by geographical area
 - identity of parent company in subsidiary reports
 - intercompany sales, interest, royalties, license fees, rentals; charges for R&D, advertising, management
 - intercompany loans, assets, risks, principal activities, capital investments, revenue, profit before tax
- 1980 UN GEISAR: public country level segmented data
 - UN's proposal supported by USA academics
- 1983 UN GEISAR - Draft "Code of Conduct Transnational Corporations"



UN INITIAL PROPOSALS ON CBC REPORTING CONT.

- Why UN initiatives never came to fruition
 - Pressure from MNE lobby groups
 - OECD members threatened to stop financial support
 - Majority voting replaced with consensus decision making
- Rise of IASC (successor – IASB)
 - business took over accounting regulation & standards setting
- 1984 - GEISAR group's mandate reduced; draft Code of conduct not completed
 - 1992 – GEISAR dissolved, UNCTC functions integrated into UNCTAD
 - 1990s - UN Tax Committee poorly resourced
- 2000s - Civil society organizations promoted erstwhile UN initiatives
- 2010 - OECD “Informal Task Force on Tax and Development”
 - Examined viability of CbC reporting
 - CBC reporting included in 2015 BEPS project



OECD'S APPROACH TO CBC REPORTING - BACKGROUND

- Action 13: Background - to ensure effective compliance with ALP
 - Taxpayer submit TP documentation
- Historically - no standardised international guidelines
 - 1995 OECD TP Guidelines
 - Diverging approaches to TP documentation
- BEPS Action Plan: ALP not effectively – if administration differs globally
 - Action 13 - global standardised TP documentation:
 - Master file - high-level overview of MNE group business
 - Local file - detailed transactional information of local taxpayer
 - CbC report - global allocation of MNE's income, business activities & taxes
- Three-tiered structure ensures:
 - Taxpayers articulate consistent TP positions
 - Tax admin understand group's overall structure
 - MNEs engaged in BEPS flagged for audits



CBC FILING; REQUIREMENTS TO EXCHANGE & RECEIVE CBC REPORTS; MONITORING IMPLEMENTATION

- MNE groups with annual consolidated turnover of EU750million
- Legality at domestic and international level
 - Domestic level – enact legislation & administrative framework:
 - Ultimate parent entity to file CbC report - automatic exchange
 - Confidentiality
 - Appropriate use
 - International level - party to international automatic EOI agreements
- CbC reporting: minimum standard
 - OECD Inclusive framework - monitoring BEPS implementation
 - Peer review: timely & consistent implementation of CbC reporting
 - Phased approach: 2018 – 2020
- Empowering measures:
 - OECD *Country-by-Country Reporting Handbook* (2017)
 - OECD CbC XML Schema



CHALLENGES OF IMPLEMENTING CBC REPORTING IN DEVELOPING COUNTRIES

- Cumbersome conditions
 - Technically onerous requirements
 - Lack of trust regarding confidentiality
- High reporting threshold
 - Excludes many MNEs in developing countries
 - Consolidated revenue - may exclude extractive sector
- Dilution of criteria for CbC reporting
 - Excludes royalties, interest & service fees
 - These were flagged in UN GEISAR reports



CHALLENGES OF IMPLEMENTING CBC REPORTING IN DEVELOPING COUNTRIES CONT.

- Volume of CbC information to be processed
 - manual processes
 - varying times for submitting CbC reports
- Currency fluctuations
 - thresholds in local currencies - conversion rate differences
 - risks small MNEs being required to comply
- Whether taxes paid should be reported on a cash or accrual basis
 - OECD: tax paid in cash - accrued tax excludes deferred tax
 - mining sector - accrual basis – deferred tax accounting distortions



CHALLENGES OF IMPLEMENTING CBC REPORTING IN DEVELOPING COUNTRIES CONT.

- Lack of clear & uniform penalties for non-compliance
 - OECD: apply domestic civil/administrative penalties
 - Abuse of varying penalty regimes
- Inconsistent application of rules
 - OECD: flexibility - size & nature of local economy
 - proliferation of inconsistent reporting requirements
- Tax authorities can't ask for CbC reports from MNE group members
 - No public disclosure of confidential information
 - Public CbC reporting not allowed



OECD RESTRICTED APPROACH Vs UN PUBLIC CBCR POLICY INITIATIVE

- UN GEISAR: Public CbC reporting - effective
 - CbC reports published, available for public scrutiny
- Public CbC reporting tabled in BEPS debates
 - opposed by business & OECD member states
 - not in final Action 13 report - pros & cons not investigated
 - OECD: October 2015 - launch of BEPS package
 - no government wanted public CbC reporting
- Calls for public CbC are not dying down



THE CASE AGAINST PUBLIC CBC REPORTING

- Concerns: disclosure of trade secrets to competitors
- Similar concerns for EOI in treaty context - art 26(2) OECD MTC
- Para 19(2): most EOI cases - no trade secret
 - considerable economic importance – if exploited - serious damage
 - Information exchanged:
 - used for assessment/collection of taxes - not serious damage
 - financial information - not trade secret
 - CBC Info – no. of employees; nature of business – not trade secret
 - Limited cases that may reveal trade secret:
 - purchase records with proprietary formula
 - information held by banks
 - Trade secret should be deducted
 - Trade secret not to be widely interpreted - EOI should not be rendered ineffective



THE CASE AGAINST PUBLIC CBC REPORTING

- Misunderstandings of business accounts - risks reputational damage
- International corporate tax filing inherently complex
 - Jurisdictional variations: accounting systems, standards & filing dates
 - Requires complicated expert analysis
- Erroneous interpretations - double taxation & reputation damage
 - Valid concerns – however
 - Tax affairs of MNEs at the centre of media attention
 - Public disclosure antidote for unverifiable data



THE GROWING INTERNATIONAL SUPPORT FOR CBC REPORTING

- 2000s - Publish What You Pay
- 2002 - Extractive Industries Transparency Initiative
- 2006 – UN Principles of Responsible Investment
- 2012 - Transparency International
- 2015 - African Union High-Level Panel on Illicit Financial Flows
- 2016 - ICJI Panama Papers - 2016 London anti-corruption summit
- Countries/bodies that have adopted public reporting
 - 2010 USA – s 1504 of Dodd-Frank Act – stalled by court battle
 - 2014 Canada - Extractive Sector Transparency Measures Act
 - 2017 EU - Directive on public CbC reporting
 - 2018 European Network on Debt and Development
 - 2019 GRI standard - Global Sustainability Standards Board



REASONS FOR GROWING SUPPORT OF PUBLIC CBC REPORTING

- Tax professionals: game changer for corporate transparency
- Level playing ground
- Improve capacity of tax administrations to monitor BEPS
- Enhance corporate governance
- Ensure public accountability
- Improve research on BEPS & political support for tax reforms
- Ensure informed investment decisions - accurate risk profiles
- UN 2030 SDG - indicator for profit misalignment by MNEs



CONCLUSION

- CbC reporting - potential to enhance TP risk assessment
- Onerous requirements - hamper benefits for developing countries
- OECD's restricted approach undermines transparency
- Pressure for public CbC reporting is mounting
 - Forces against UN's initial proposals still alive today
 - If not addressed, OECD CbC reporting praises may be short lived

Thank You



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