



Council of the
European Union

Brussels, 14 April 2016
(OR. en)

7949/16
ADD 1

DRS 6
COMPET 156
ECOFIN 289
FISC 53
CODEC 461

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 12 April 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: SWD(2016) 117 final

Subject: COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT
assessing the potential for further transparency on income tax information
Accompanying the document Proposal for a Directive of the European
Parliament and of the Council amending Directive 2013/34/EU as regards
disclosure of income tax information by certain undertakings and branches

Delegations will find attached document SWD(2016) 117 final.

Encl.: SWD(2016) 117 final



Strasbourg, 12.4.2016
SWD(2016) 117 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

assessing the potential for further transparency on income tax information

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council

**amending Directive 2013/34/EU as regards disclosure of income tax information by
certain undertakings and branches**

{ COM(2016) 198 final }
{ SWD(2016) 118 final }

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1 INTRODUCTION

This impact assessment explores the case for further transparency vis-à-vis the public with respect to the way companies manage taxable profits per jurisdiction and the related amounts of corporate income tax paid. Corporate income tax revenue for each of the 28 Member States of the Union amounted to an average of 2.6% of GDP in 2012¹. According to a study by the European Parliament² the EU loses EUR 50-70 billion in revenues each year due to corporate tax avoidance.

The fact that certain multinational enterprises (MNEs) appear to pay little tax in relation to their income and profits, while many citizens have been heavily impacted by fiscal adjustments has been met with public criticism. Some of the criticism concerns also tax rulings, as well as the extent of competition among States which translate into specific features of tax laws.

The Commission's analysis shows that pricing of intra-firm transactions and strategic IP location could explain about 70% of profit shifting³. That said, there is no conclusive evidence that this has led to the prevalence of low effective CIT rates. For instance, the overall effective tax rates of the largest 100 MNEs based in the United States has been found to average 30% between 2001-2010, and approximately 34% for the largest MNEs based in the EU⁴. This is in spite of the fact that the United States' statutory rate is more than ten percentage points higher than the EU average. Various sources point to average effective CIT rates in the EU of about 20%⁵, however with significant differences between Member States.

The European Commission, the European Parliament, the Council, the OECD, the G20 and many governmental organisations are committed to the fight against tax evasion and tax avoidance⁶. The work in this document takes as given the fact that while MNEs' profits are managed globally, their taxation is local. Under this premise, only a number of combined measures could put an end to base erosion and profit shifting (BEPS), many of which lie in the field of taxation rules, international treaties, intra-EU co-operation and transparency, some

¹ Eurostat - [Taxation trends in the European Union](#), 2014

² "Bringing transparency, coordination and convergence to corporate tax policies in the European Union, I - Assessment of the magnitude of aggressive corporate tax planning" prepared by Robert Dover, Dr Benjamin Ferrett, Daniel Gravino, Professor Erik Jones and Silvia Merler, September 2015, a study referred to in the European Parliament "Draft Report with recommendations to the Commission on Bringing transparency, coordination and convergence to Corporate Tax policies in the Union" (2015/2010(INL)), Committee on Economic and Monetary Affairs, Rapporteurs: Anneliese Dodds, Luděk Niedermayer

³ Commission Staff Working Document, [Corporate Income Taxation in the European Union](#), 2015

⁴ University of Michigan Law School, Avi-Yonah & Lahav, [The Effective Tax Rate of the Largest US and EU Multinationals](#), 2011

⁵ The Effective Average Tax Rate was 20.9% in the EU in 2012, according to European Commission's [Taxation Trends in the European Union, 2013 edition](#). See also analysis made by John Vella for Committees of the European Parliament, [Nominal vs. Effective Corporate Tax Rates Applied by MNEs and an Overview of Aggressive Tax Planning Tools, Instruments and Methods](#), 2015

⁶ Tax evasion is defined as illegal arrangements where the liability to tax is hidden or ignored. Tax avoidance is defined as the arrangement of a taxpayer's affairs in a way that is intended to reduce his or her tax liability and that although the arrangement may be strictly legal is usually in contradiction with the intent of the law it purports to follow. See also the Glossary.

of which may interplay with this impact assessment. In 2011, for instance, the European Commission proposed a Common Consolidated Corporate Tax Base (CCCTB) as a framework for ensuring effective taxation where profits are generated⁷, which is being relaunched. On 28 January 2016, The Commission also published the Anti-Tax Avoidance Package (ATAP)⁸.

The Commission wants to ensure that the country in which a business' profits are generated is also the country of taxation⁹. This impact assessment examines different options for further corporate tax transparency under the umbrella of the Commission's work program.

2 POLICY CONTEXT, PROBLEM DEFINITION AND SUBSIDIARITY

2.1 The OECD BEPS: A multilateral approach endorsed by the G20

MNEs' taxation is a global issue. The G20 calls for a global solution to fight tax evasion and avoidance on corporate income taxes by multinational enterprises. According to the G20 international cooperation and integrity of national tax systems are key. The G20 shaped its tax agenda around three main elements¹⁰: 1) Base erosion and profit shifting (BEPS), 2) Automatic exchange of tax information (AEOI) and 3) Tax and development.

The G20 leaders and the OECD have put substantial hope into the efficiency of the OECD BEPS Action Plan developed by the OECD. The Plan was endorsed by the G20 leaders at the Antalya summit in November 2015. Leaders said: "To reach a globally fair and modern international tax system, we endorse the package of measures developed under the ambitious G20/OECD Base Erosion and Profit Shifting (BEPS) project. Widespread and consistent implementation will be critical to the effectiveness of the project".

The BEPS initiative includes 15 proposals for action, a number of which are designed to enhance transparency – in the sense of transparency towards and between tax authorities by exchange of information. BEPS Action 13¹¹ is particularly relevant from the angle of corporate transparency, as it contains features of country-by-country reporting even if the disclosure will be done on a confidentiality basis to tax administrations. BEPS Action 13 includes guidance on Transfer Pricing Documentation and CBCR, a model legislation, and proposes a Multilateral Competent Authority Agreement (MCAA) on the Exchange of CBCR.

⁷ [Common Consolidated Corporate Tax Base \(CCCTB\)](#), European Commission, Directorate General Taxation and Customs Union, 2011

⁸ European Commission, [Anti-Tax Avoidance Package](#), January 2016. This package proposes inter alia to revise the Directive on Administrative Cooperation to include a country-by-country reporting to be exchanged between Member States' tax authorities on key tax-related information submitted by MNEs.

⁹ [A New Start: The 2015 Commission Work Program](#): "While recognising the competence of Member States for their taxation systems, the Commission will step up efforts to combat tax evasion and tax fraud and respond to our societies' call for fairness and tax transparency. Starting from the work done on base erosion and profit shifting at OECD and G20 levels, the Commission will set out an Action Plan including measures at EU level in order to move to a system on the basis of which the country where profits are generated is also the country of taxation."

¹⁰ [G20 Response to 2014 Reports on Base Erosion and Profit Shifting and Automatic Exchange of Tax Information for Developing Economies](#)

¹¹ OECD BEPS Action 13 – [Transfer Pricing Documentation and Country-By-Country Reporting](#), 2015

In addition, BEPS Action 11¹² seeks to address weaknesses in the existing data, as well as establish methodologies to collect and analyse data on BEPS in the future, which could provide indications of the scale and economic impact of BEPS.

2.2 The US model

In the US, disclosure by companies is regulated at Federal level mainly for issuers of securities on capital markets. The geographical breakdown of information to be given by these issuers is structured in terms of US versus non-US activities. It is limited to a few key items: revenues, long-lived assets and corporate income tax expense. Per US GAAP, issuers must provide a breakdown of their revenues (and certain long-lived assets) on a geographical basis showing separately the revenues in the country of domicile and, as the case may be, in material countries. A total figure must be given for revenues in the remnant countries. In addition, the Securities and Exchange Commission requires the disclosure by the issuers of their corporate income tax expense (current and deferred) on a geographical basis as follows: domestic (US State level and Federal level), and foreign (total figure for other countries).

2.3 State of play in the EU

The Commission has tabled comprehensive and ambitious packages in the course of 2015 and 2016 to tackle tax evasion¹³. The Anti-Tax Avoidance Package (ATAP) proposed on 28 January 2016 is particularly relevant in that it addresses the submission of a CBCR by certain MNEs to their tax authorities, as well as the exchange of that information between tax authorities, as described in the baseline scenario.

Particularly relevant as well in the frame of this impact assessment is the CCCTB. The legislative process on the proposal made by the Commission back in 2011 has stalled largely because of its scale. The CCCTB aims to allow businesses to compute their tax base according to a set of common rules, which would replace the current setting of different rules in each Member State where they operate. An important advantage of the CCCTB is the fact that within the Union, tax consolidation makes transfer pricing largely obsolete and discourages profit shifting for MNEs within the consolidated group. This should render tax competition more transparent in the EU because, the tax base being the same across the group, differences in tax rates become evident. In defending the internal market against aggressive tax planning, the CCCTB will also allow Member States to implement a common approach vis-à-vis third countries. Clearly, with the CCCTB, there will be less room for tax planning. The re-launch of the CCCTB has been announced by the Commission in the fourth quarter of 2016, in two stages. This would reduce the added value of a CBCR to a certain extent, whether submitted to tax authorities or public. However, CBCR would continue to have added value in terms of tax competition within the EU (tax rates) and as regards the EU vis-à-vis third countries.

Under EU law, limited liability companies established in the EU are required to publish their financial statements. Their content is driven by Generally Accepted Accounting Principles

¹² OECD BEPS Action 11 – [Measuring and Monitoring](#), 2015

¹³ See Annex D: Background and context: overview of legislative and non-legislative framework

(GAAP)¹⁴ and other rules adopted by the EU (Accounting Directive, IFRS, Transparency Directive...)¹⁵. This information is mainly designed to inform and protect shareholders, investors and other stakeholders.

As per the relevant GAAP, the financial statements disclose information on CIT with varying degrees of details. For instance, the IFRS require disclosures and reconciliation on the effective tax rate. In the EU, large companies must in addition disclose the average number of employees, net assets, stated capital, accumulated earnings and a complete list of companies consolidated in the financial statements. However, GAAP applied in the EU require no geographical breakdown of tax-related information per country¹⁶.

Given that companies in the EU publish their individual financial statements, it should be possible in theory for any stakeholder to reconstruct, for a given EU MNE group, the breakdown on a country-by-country basis of information such as the profit before tax, tax expense, headcount and assets. However, this ability is hampered by the limited availability of information (generally observed in third countries) and the resources necessary to engage in such exercise, even as regards information publically available in the EU. Consequently, a detailed geographical breakdown of information is not carried out, except for companies that have volunteered to disclose the information¹⁷.

On several occasions, the European Parliament recommended corporate transparency by ways of a CBCR by all industry sectors¹⁸. This call follows that of many civil society organizations campaigning for country-by-country reporting. Among others, these include Tax Justice Network, Transparency International, Financial Transparency Coalition, Eurodad, Christian Aid and Oxfam International. These organizations pursue a number of different goals: to increase governments' accountability, to flag up corruption risks, to aid developing countries, to help tax authorities, concerned citizens and journalist in their investigation, to ensure fair amounts of taxes paid...¹⁹ Eurosif, a pan-European sustainable and responsible investment (SRI) organisation whose mission is to promote sustainability through European financial markets, also supports a public CBCR in order to arrive at an effective tax system²⁰. Investigations conducted in the French Parliament in 2013 have led the rapporteurs to recommend expanding CBCR to all industry sectors²¹. However in 2015, the French

¹⁴ Accounting Directive, Transparency Directive, and/or IFRS as adopted in the EU either stand alone or in combination depending on the situation of each firm.

¹⁵ See Annex D: Background and context: overview of legislative and non-legislative framework

¹⁶ See Annex D,

¹⁷ See Annexes D and O

¹⁸ In July 2015, the European Parliament adopted an amendment to the Commission's proposal for a Directive on shareholders' rights promoting a CBCR by EU large companies, as a way to promote corporate trust and facilitate the engagement of shareholders and citizens in companies. Support for a CBCR was reiterated in motions adopted by the EP in November and December 2015, upon proposals made by respectively the TAXE and ECON Committees.

¹⁹ [Why Public country-by-country reporting for large Multinationals is a Must](#), coalition of NGO, July 2015; [Exposing the lost billions](#), Eurodad, November 2011

²⁰ Eurosif - [Country-by-country Reporting: Eurosif's position](#), 2015

²¹ See Annex H

Parliament decided to not introduce a public CBCR²². Further to investigations made in 2012 and 2013, select committees of the UK Parliament supported greater transparency by companies, but did not include a public CBCR in their recommendations.

The demand for more detailed information on corporate tax generally hinges on the assumption that it would assist any stakeholder to assess whether MNEs have paid their fair share of taxes. Neither international standard setters nor Member States have thus far catered to this demand. The demand is not regarded as something to be addressed in the financial statements, given that the objectives of the former (tax oriented) do not fit with those of the latter (investor protection). Some private initiative have nevertheless flourished such as fair trade & transparency labels (Fair Tax Mark in the UK, Taxparency in the Czech Republic) and a few companies in the EU volunteer to publish a CBCR²³. However, the scale and scope of these initiatives have thus far remained limited²⁴.

Transparency on taxes paid, in the form of country-by-country reporting, is already in place for certain sectors and industries. From 2015 onwards, credit institutions and investment firms (hereafter referred to under the generic term "banks") established in the EU must publish their CBCR reports. The aim of the reporting requirement is to regain (public) trust in the financial sector²⁵. Large extractive and logging industries will also be obliged to publish their payments to governments on a country-by-country basis from 2017 onwards. In this regard, the CBCR aims to empower local communities of resource-rich countries through disclosing information about the payments made to their governments²⁶.

In a review clause relating to the possible extension of the CBCR in the Accounting Directive, the Commission has been requested to consider any extension of the current CBCR regimes, "taking into account developments in the OECD and the results of related European initiatives²⁷".

Two years after this request was formulated, the world has been moving fast towards improving tax schemes and multilateral cooperation, under the aegis of the G20.

Besides, a few lessons can be drawn on the basis of CBCR published by banks in the EU since 2015. The measure was not intended to be a tax measure, but a tool '*essential for regaining the trust of citizens of the Union in the financial sector*'. The financial sector is reported to be a significant contributor by way of corporate income tax²⁸. In 2014 the

²² See Annex D

²³ Examples: Legal & General (<http://reports.legalandgeneralgroup.com/2013/ara/strategic-report/our-progress/delivering-our-social-purpose/tax-matters/country-by-country-reporting.html>), SSE (http://sse.com/media/270586/Improving-Tax-Transparency_2.pdf), Vodafone (https://www.vodafone.com/content/sustainability/operating_responsibly/tax/our_contribution_country_by_country.html), Telefonica (http://www.crandsustainability.telefonica.com/responsible-management/taxes/#.VidAL_7smUk). Further examples of company disclosure in taxes are provided by the PRI organisation in their report: [Engagement Guidance on Corporate Responsibility](#), 2015 (page 27)

²⁴ See Annex D

²⁵ Capital Requirement Directive, Recital 52 and Article 89

²⁶ Accounting Directive, Recitals 45 to 54 and Chapter 10 / Transparency Directive, Recital 7 and Article 6.

²⁷ Accounting Directive, Article 48

²⁸ [PWC Study](#), 2014, page 95: Prior to the recent financial crisis, the financial services sector contributed a significant amount of corporate taxes, accounting for around 18% of total corporation taxes paid in the G20

Commission reported that CBCR was not expected to have significant negative impacts economically, in particular on competitiveness, investment, credit availability or the stability of the financial system. It could even result in a slight positive impact by lowering the cost of capital. Costs relating to a CBCR did not appear to be a key factor²⁹.

Building on the limited experience gained in 2015 with banks' CBCR, civil society sees CBCR as a useful tool to assess the alignment of profits with places of actual business activity, thus enabling e.g. NGOs to ask targeted questions to banks³⁰. Banks have confirmed that CBCR is indeed used as a tool by civil society, including NGOs, researchers and journalists. Even though disclosing 'commercially sensitive' information is a problem for businesses, banks tend to be less concerned by this than other industries³¹. Nevertheless, a number of banks are anxious of the risks of tax disputes arising from CBCR and urge for more to be done to improve dispute resolution mechanisms³². Banks report that the first year of public CBCR (2015) entailed no noticeable effect in terms of tax planning, investment or strategies³³. A survey commissioned by Members of the European Parliament on the basis of the 2015 CBCR of 26 banks points to indicators of artificial profit shifting in the banking sector³⁴. A key assumption of this analysis is to determine which countries are tax havens and in doing so better track any profit-shifting behaviour. The financial statements of the 26 banks surveyed yet show tax rates in the region of 30% overall, and no significant variation overall in that rate from 2013 to 2014³⁵. Banks, and surveys³⁶ all point to technical difficulties leading to inconsistent implementation of CBCR by banks, despite the constructive work done

economies. However, extensive tax losses and declining profitability will place downward pressure on the level of taxes paid for some years to come."

²⁹ See Section 5.4.1

³⁰ A non-Member State member of the European Commission's [Platform for Tax Good Governance](#), Sept 2015

³¹ Based on consultation activities of the European Commission. Other evidence includes: Barclays bank and HSBC confirmed that they could cope with the CBCR at a hearing before the Special Committee on Tax Rulings and other Measures similar in Nature or Effect (TAXE), European Parliament, 16 November 2015. Likewise, the [PwC report](#) reads (p. 137): "Only one bank expressed concerns around the confidential nature of some of the data to be made public, particularly with regard to the disclosure of profit or loss before tax and of public subsidies received ". In contrast, businesses in other sectors have constantly expressed concerns to divulging commercially sensitive information. A non-Member State member of the European Commission's [Platform for Tax Good Governance](#), Sept 2015, summarised the view that banks may more easily cope with the disclosure due to their specific business model. Indeed, financial institutions compete in a market with a "safety net" (Deposit guarantee scheme, lender of last resort liquidity from central banks, etc.). Non- financial companies do not benefit from equivalent safety nets and implicit subsidies, hence their operations are less prone to public disclosure. Due to their value chains, CBCR can divulge more commercially sensitive information to competitors about products, pricing policies and process innovations of industries other than credit institutions; the latter have less to lose on this account as they tend to be shaped by similar prudential rules, processes and financial infrastructure in many jurisdictions.

³² This was highlighted by Barclays bank and HSBC at a hearing before the Special Committee on Tax Rulings and other Measures similar in Nature or Effect (TAXE), European Parliament, 16 November 2015

³³ European Banking Federation, as part of consultation activities

³⁴ Tax Research LLP / Murphy, R., [European Banks' Country-by-Country Reporting: A review of CRD IV data](#), 2015

³⁵ See Annex C

³⁶ As reported by the European Banking Federation, Tax Research LLP / Murphy, R.

by the European Banking Authority and the European Commission to overcome these difficulties³⁷.

2.4 Problem definition

2.4.1 Drivers

Taxation is at the core of countries' sovereignty, yet it is becoming increasingly difficult for Member States to protect their tax base. Domestic rules cannot be fully effective given the cross-border dimension of many tax planning structures and the use of arrangements which enable the relocation of tax base to another jurisdiction within or outside the Union. In addition, relying on unilateral and domestic measures may fragment the Single Market. The interaction of 28 national corporate tax systems offers, by their very heterogeneity, opportunities for aggressive tax planning.

On the other hand, tax competition exists to encourage the inflow of productive resources and to prevent capital flight.

Moreover, the globalisation of the economy has made the corporate structure of multinational companies more complex and more difficult to understand given the number of entities and ownerships in different countries. Globalisation and the digitalization of the economy pose specific challenges for ensuring taxes are paid where economic activity actually takes place. Some companies exploit the fact that corporate tax rules have not kept up with our globalised and digital economy. Companies are incentivized by their shareholders to reduce costs where this includes the taxes paid by companies.

2.4.2 The problem identified

An environment of complex tax rules, fiscal secrecy and non-cooperation between Member States in the context of globalisation and fast evolving business models allows MNEs to exploit legal loopholes in tax systems and discrepancies between national rules to reduce the amount of their corporate income tax. These shortcomings are exploited to a varying extent by a number of MNEs in a non-transparent manner. Although limited liability companies established or listed in the EEA³⁸ must disclose information on CIT in their publically available financial statements, it is difficult³⁹ for the public to obtain a full picture of companies' tax strategies in this area.

The international community strives to improve the current setting through consensus. The OECD/BEPS initiative endorsed by the G20 (and implemented in the EU by the ATAP) proposes the disclosure of CBCR information. It is however limited towards tax authorities, recognising at the same time the need to maintain appropriate safeguards and to protect the confidentiality of taxpayer information. The CBCR requirements proposed in the ATAP is a tool that is expected to trigger more and better tax audits with the effect of ensuring further compliance of MNEs with national tax laws, depending on each tax authority. However tax

³⁷ The European Banking Authority published 6 Q&As aiming for the consistent and effective application of the policy [Single Rulebook Q&A](#), including on the CBCR

³⁸ See Annex D

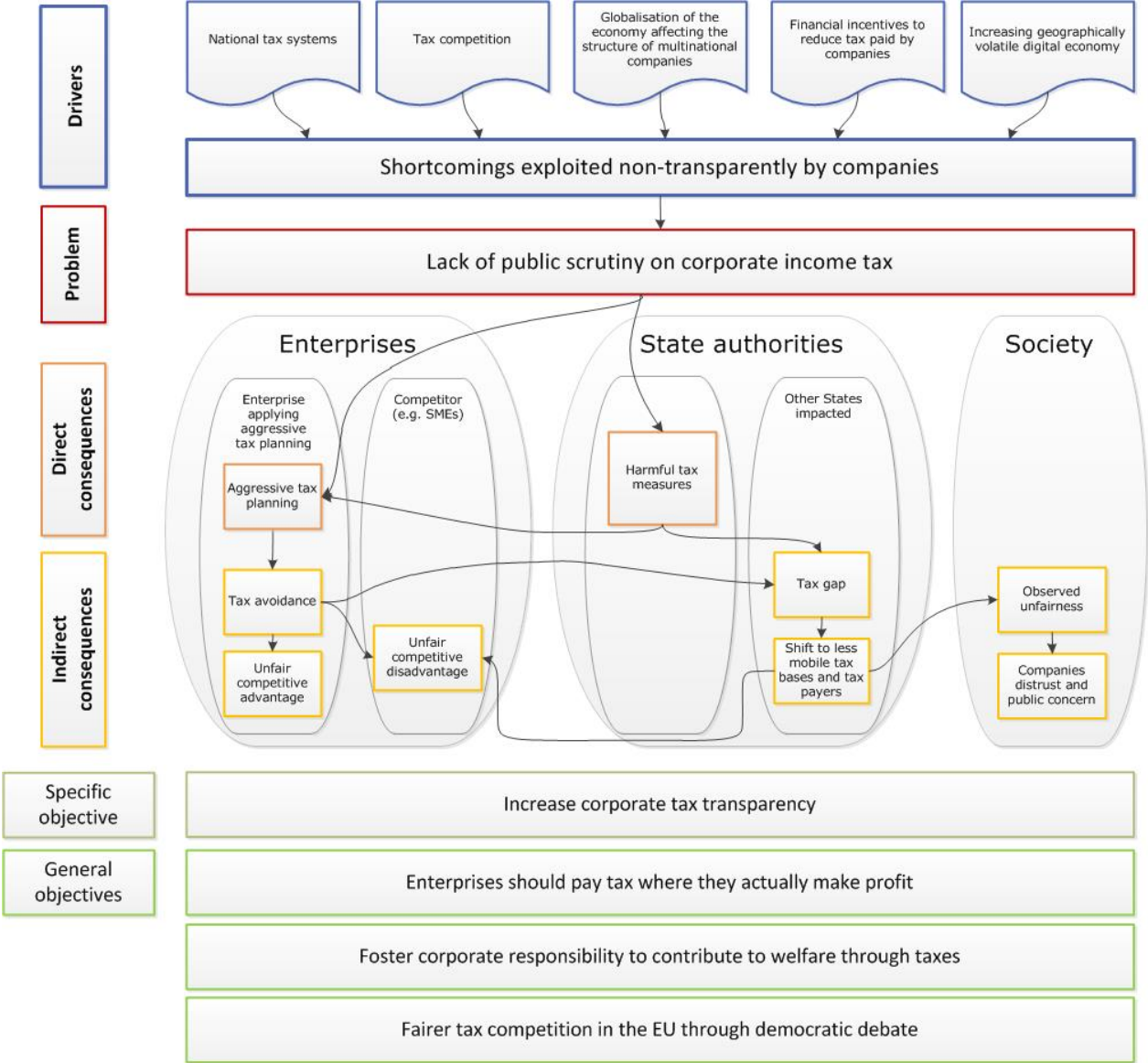
³⁹ See Annex D and Section 5.1.4

authorities may face some limits given that MNEs can afford an array of non-abusive tax avoidance practices which are not illegal, yet are questionable.

This non-transparency will allow some companies to engage in tax planning strategies which are not in line with their corporate responsibilities and which, if they were known by the public (consumer, investor, civil society...), would often not be accepted. Furthermore, this opacity does not allow for a proper assessment of the roots and consequences of this situation which therefore provides little room for informed democratic debates on how to prevent mismatches, loopholes and harmful tax measures upon which such strategies can flourish.

The problem identified is the lack of public scrutiny on Member States and MNEs as regards corporate income tax, due to the absence of broadly accessible information. Public scrutiny could be an additional tool enabling to fight base erosion and profit shifting, building on reputational effects and democratic debates.

Figure 1: Problem definition



2.4.3 Direct consequences

Aggressive tax planning by enterprises is a direct consequence. It is defined⁴⁰ as taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability. Aggressive tax planning can take a multitude of forms. Its consequences include double deductions (e.g. the same loss is deducted both in the state of source and residence) and double non-taxation (e.g. income which is not taxed in the source state is exempt in the state of residence). Aggressive tax planning is a major concern in the EU as it leads to lost tax revenues for countries. It is facilitated by a lack of transparency and public scrutiny, where in conjunction with harmful tax competition, this creates incentives for multi-national taxpayers to set up structures that channel taxable profits from high tax countries (where profits are originally generated) to low tax countries.

Taking into account a number of caveats⁴¹, a study by the European Parliament Research Service (2015)⁴² estimates revenue losses at the EU level to be EUR 50-70 billion. A short overview on the estimation of corporate income tax gap is presented in Annex L, which explains the drawbacks and limitations of current estimations and methods used.

According to a recent study⁴³, 70% of profit shifting is carried out through transfer pricing between different parts of a company and the intellectual property located in low tax countries.

A recent study on aggressive tax planning⁴⁴ identifies the seven most commonly used structures of aggressive tax planning and a series of tax provisions (or lack thereof) necessary for these structures to work. They include structures that rely on debt shifting, exploiting hybrid mismatches, location of intangible assets and IP, and partly strategic transfer pricing. Further explanations on profit shifting are provided in Annex U.

Potentially harmful tax measures⁴⁵: Certain measures are targeted by Member States towards non-residents and provide them with more favourable tax treatment than what is generally

⁴⁰ The definition is provided in the Commission Recommendation on aggressive tax planning (C(2012) 8806 final).

⁴¹ Recent academic literature includes attempts to estimate a corporate income tax gap. The availability and reliability of the corporate tax gap estimates depend significantly on the quality of data, assumptions made and methodology applied. Despite incomplete data, there are a few estimates in the public domain. However, these estimates should be read with caution and considered only as an indication that corporate tax shifting activities appear to exist⁴¹. None of the estimates should be regarded as a precise or accurate measure of revenue lost from profit shifting. See also Annex L

⁴² Dr Robert Dover, Dr Benjamin Ferrett, Daniel Gravino, Professor Erik Jones and Silvia Merler,(2015) 'Bringing

transparency, coordination and convergence to corporate tax policies in the European Union; Part I: Assessment

of the magnitude of aggressive corporate tax planning, EPRS | European Parliamentary Research Service

⁴³ European Commission, Staff Working Document, [Corporate Income Taxation in the European Union](#), 2015

⁴⁴ Ramboll Management Consulting and Corit Advisory (2016), Study on Structures of Aggressive Tax Planning and Indicators, European Commission Taxation Paper, p61

⁴⁵ This concept is defined in the Glossary

available in the Member State concerned in order to attract investments. This may unduly distort the internal market.

2.4.4 *Indirect consequences*

Public concern: Honest taxpayers (individuals and companies) have to shoulder a disproportionate amount of the tax burden. Because of this, they might lose trust in the tax system and become less inclined to abide by the rules. Recent reports on the past and present use of aggressive tax planning structures by certain multinational enterprises have led to public criticism and public dissatisfaction. Both NGOs and Member States have urged the European Institutions to reform the system governing corporate tax avoidance⁴⁶. There is a perception of unfairness, i.e. that companies, and particularly multinationals, avoid contributing their fair share to the funding of public goods by artificially lowering their taxable income⁴⁷. According to a 2012 Eurobarometer⁴⁸, 88% of the EU population support tighter measures against tax avoidance and tax havens.

Recent press reports on the current use of aggressive tax planning structures have also led to growing discontent. The widespread view that companies may not be paying their fair share of taxes is nurtured by the lack of public transparency on tax issues. Negative sentiment has been exacerbated in particular in countries that have had to achieve fiscal consolidation. Many citizens resent that companies avoid taxes while themselves are faced with higher tax burdens. Indeed, data shows that implicit tax rate on labour rose from 35% to 36% between 2009 and 2012 and the average standard VAT rate increased from 19.3% to 21.5% between 2000 and 2012. Citizens compare the mandatory increases in their taxes payments with allegations that some multinationals have managed to drastically reduce their effective tax rate⁴⁹.

Lack of a level playing field for businesses: While some businesses engage in aggressive tax planning, others do not. This is particularly true of small and medium-sized enterprises (SMEs), both listed and non-listed. Companies with no cross-border activities (including SMEs) have often neither the means nor the possibilities to develop a tax optimization strategy at the international level. The consequence is a distortion of competition. According to various studies⁵⁰, a company with cross-border operations in the EU pays on average 30% less tax than a similar firm active in the same country with high CIT rate. Studies show that the level of internationalisation is correlated with the size of the firm⁵¹. Because SMEs are

⁴⁶ See for example the letter by European non-governmental organisations written in December 2014 to the members of the European Parliament, or the letter drafted by the Finance Ministers of France, Germany and Italy of November 2014

⁴⁷ See for instance European Parliament resolution of 25 November 2015, [Tax rulings and other measures similar in nature or effect](#), paragraph AA; UK House of Lords, [Select Committee on Economic Affairs, Tackling corporate tax avoidance in a global economy: is a new approach needed?](#), July 2013

⁴⁸ Eurobarometer 78, Autumn 2012, [Europeans, the European Union and the Crisis](#), p 36

⁴⁹ Commission Staff Working Document on technical analysis of focus and scope of the legal proposal accompanying the Proposal for a Council Directive amending 2011/16/EU as regards exchange of information in the field of taxation of 18 March 2015, (SWD (2015) 60 final)

⁵⁰ See Annex L

⁵¹ European Commission, Study on the [level of internationalisation of European SMEs](#), 2009

more domestically-based relative to large companies, their aggressive tax planning possibilities are fewer.

The comparable disadvantage of competitors is further worsened when Member States impacted by aggressive tax planning are forced to shift to less mobile tax bases which affect national businesses, including SMEs. A lack of transparency exacerbates this as it increases the challenges Member States' face in re-establishing a level playing field.

Tax base erosion: The result of aggressive tax planning and harmful tax practices is that some countries' tax bases are expanded at the expense of others who might lose part of their tax bases. Similarly, at EU level, there will be a loss when such third countries are involved, and the tax base will shift outside the EU. From an EU point of view this jeopardizes the functioning of the Internal Market as well as the application of growth-friendly tax policies at the national level.

2.4.5 *Affected stakeholders*

Member States/Tax administrations: Before the implementation of the BEPS 13 initiative, Member States' tax administrations had insufficient information on companies' tax strategies. This lack of information has put them in a position where they are less able to defend their tax base. Attempts by tax administrations to improve tax collection resulted in higher administrative costs and the design of complex counter-measures (e.g. introduction of complex anti-abuse measures, or special tax regimes to incentivise firms to shift profits to their jurisdictions)

Businesses not applying aggressive tax planning techniques: The current system induces market distortion as the lack of transparency allows some multinational companies to reduce the amount of tax paid thanks to complex and non-transparent structures. This results in a competitive disadvantage for companies unwilling or unable to engage in aggressive tax planning. This is the case for the vast majority of companies (including SMEs) which may not have the means to engage in international tax planning techniques.

Citizens: Individual taxpayers are indirectly affected. Where a multinational enterprise that uses aggressive tax planning structures does not pay a proportionate share of taxes in the Member States where they are based, this affects the tax revenues of these Member States. In the context of tight fiscal policy and budget deficits, reduced taxes on companies forces governments to raise taxes on the least mobile tax bases, such as labour income.

Third countries: Third countries (except tax havens) are affected in a similar way to Member States. According to the International Monetary Fund (IMF)⁵², tax base spill-overs are particularly marked when it comes to developing countries.

2.5 **Baseline Scenario**

The OECD BEPS Action Plan released in October 2015 and adopted by G20 in November 2015 does not constitute a legal requirement for member jurisdictions to implement. The OECD BEPS Project includes Action 13 that would encompass, for the purpose of improving risk management in the area of transfer pricing, the reporting of certain obligations by

⁵² IMF (2014), Policy Paper, "Spillovers in International Corporate Taxation".

enterprises to tax authorities, including country-by-country reporting. However, not all EU Member States are members of the OECD⁵³. And due to national variations, consistent implementation within the EU may not be achieved. So far, a number of Member States have started to develop and adopt legislation in order to enable data collection and exchange within the time frame agreed at the OECD. The Commission is determined to facilitate the consistent implementation of BEPS 13 by all EU Member States. The recent Anti Avoidance Tax Package adopted on 27 January 2016 includes a legislative proposal for the implementation of BEPS 13 Action through an amendment of the Directive on Administrative Cooperation. In March 2016, the ECOFIN Council reached a political agreement on this proposal. As a result, MNE groups with a turnover above EUR 750 million will report to tax authorities on a country-by-country basis by 2017. Information reported to Member States' tax authorities will have to be exchanged between EU tax authorities, but should not be published.

BEPS Action 13 encompasses 2 elements: a) a filing obligation for companies of a defined set of information consisting of a master file, a local file and a country-by-country report to national tax administrations and b) an agreement between tax administrations to exchange the information (Multilateral Competent Authority Agreement (MCAA) on the exchange of country-by-country reports). The country-by-country reports shall be filed in the Member State of the tax residence of the ultimate parent entity and shared between Member States through the automatic exchange of information.

The ATAP provides tax authorities with data relating to transfer pricing risks and other BEPS related issues. The CBCR to be submitted to tax authorities by MNEs pursuant to the implementation of the ATAP, will assist them primarily in orienting their tax audits, and thus be instrumental in ensuring further compliance with their national tax legislation.

In the baseline scenario, there would be no specific initiative by the EU to introduce further public disclosure obligations for companies. The existing CBCR regimes in the Accounting Directive and the Capital Requirements Directive would remain in force so that public tax transparency would only be ensured for certain industries.

2.6 The EU's right to act, subsidiarity check

2.6.1 Subsidiarity

In an increasingly globally integrated economy, corporations have grown into entities that are freer from national contingencies and for which value chains are not necessarily regional matters. By contrast, tax policies and administration remain primarily a national responsibility. Due to the cross-border nature of many tax planning structures and transfer pricing arrangements, tax bases can be easily relocated by MNEs from one jurisdiction to another within or outside the Union. The international nature of tax planning suggests the need for multilateral and co-ordinated actions by countries hosting multinational firms. One of these actions, supported by the G20, consists of further transparency towards tax authorities.

⁵³ The following five EU Member States are not members of the OECD and do not participate directly in the BEPS project: Bulgaria, Cyprus, Malta, Romania and the Slovak Republic. Croatia is not an OECD member but does participate directly to the BEPS project through participation to the Committee on Fiscal Affairs and the Working Party meetings on the BEPS Project.

This global issue is also relevant within the Single Market. The EU Single Market has provided extensive opportunities for businesses to locate their activities according to their needs. This freedom may have, to an extent, given rise to mismatches that require counter-measures, one of which possibly consists of further corporate tax transparency. National provisions in this area cannot be fully effective, as Member States in isolation will be ill-equipped to address cross-border issues.

EU action is therefore justified on the grounds of subsidiarity.

2.6.2 *International dimension*

The G20 take up of this issue is a clear indication of a common international problem. As formulated in Article 21 of the Treaty on European Union⁵⁴, the EU should have regard to multilateral solutions. However, there is no international consensus on public corporate tax transparency.

2.6.3 *Legal base*

This work has been undertaken to contribute to the Commission's overall objective of ensuring that the country in which a business' profits are generated is also the country of taxation⁵⁵. However, measures on corporate transparency on payment of taxes would have no direct effect on the taxation of companies: transparency is expected to only indirectly contribute to this overall objective. For this reason, measures on corporate tax transparency cannot be regarded as relating to fiscal provisions affecting the establishment or functioning of the internal market in the sense of Article 115 TFEU. Therefore, there would be no need to have recourse to Article 115 TFEU as a legal basis.

Article 50, paragraph 1 TFEU, and paragraph 2, sub-paragraph (g) (ordinary legislative procedure) provides powers for adopting Directives in order to regulate the freedom of establishment, in particular by coordinating to the necessary extent the safeguards which, for the protection of interests of members and others, are required by Member States of companies and firms with a view to making such safeguards equivalent throughout the Union. According to case law (C-97/96), Article 50 TFEU has a broad application and may be applied not only for the protection of the creditors of the company but also in order to protect other interests. Therefore, Article 50 TFEU may serve as a legal basis for the initiative on tax transparency. It seems feasible to include ancillary reporting obligations for companies into the existing regimes on reporting in the Accounting Directive, an approach which would facilitate the implementation and application of the rules by the companies.

As an alternative, the adoption of measures on reporting on taxes may be based on Article 114, paragraph 1, TFEU (ordinary legislative procedure) concerning the functioning of the internal market. However, recourse to article 114 TFEU as a legal basis requires that the measures would harmonise existing national rules of the Member States in this field and that the reporting on taxes would have a direct effect on the functioning of the internal market.

⁵⁴ [Treaty on European Union](#) - Article 21 *General provisions on the union's external action*. This Article calls on the "Union's action on the international scene to be guided by [...] respect for the principles of the United Nations Charter and international law". In addition "the Union shall promote multilateral solutions to common problems".

⁵⁵ See [A New Start for Europe: Political Guidelines for the next European Commission - July 2014](#)

Article 50 TFEU and Article 114 TFEU are non-mutually exclusive legal bases and may therefore be combined.

A final assessment of the question of the legal basis should be decided on the basis of the objectives and content of a draft proposal.

3 OBJECTIVES

The issue identified is a lack of public scrutiny. The specific objective is therefore to increase corporate tax transparency, i.e. to make broadly accessible information on corporate income tax to the public including shareholders. If an option is effective in achieving this end, the behavioural responses of companies and Member States will contribute to meeting the broader objectives listed below:

1. To geographically align corporate income taxes paid by MNEs with actual profits. In summary, that: *enterprises should pay tax where they actually make profit*;
2. To enhance the responsibility perceived by corporates to contribute to local welfare by paying taxes, and thus spread responsible practices on tax as part of corporate social responsibility. In summary: *to foster corporate responsibility to contribute to welfare through taxes*;
3. Through an informed democratic debate, contribute to remedy the lack of level playing field between businesses⁵⁶ in the EU resulting from MNEs' comparative advantage in having the capacity to exploit tax regimes for the purpose of tax planning – building on a potentially harmful combination of those regimes. In summary: *fairer tax competition in the EU through democratic debate*.

4 POLICY OPTIONS

4.1 Preliminary approach on the definition of options

4.1.1 Content of the information that should be disclosed

The type of information to be disclosed should be related to corporate income taxes. This information should help demonstrate that the country in which profits are actually made corresponds to the country of taxation. Country-by-country reporting is therefore the most appropriate approach.

Basic information

The annual corporate income tax accrued is the key information. It corresponds to the amount of corporate income tax expense shown in the profit and loss statement. To build disclosure on tax accrued offers the following benefits: (i) it is easy for MNEs to obtain and compute this information internally as it already appears in the income statements of entities comprised in the consolidated financial statements; (ii) the amount of tax can be consistent with the state of affairs reported overall by the MNE in its financial statements; (iii) the amount of tax accrued

⁵⁶ See Section 0

is consistent across an MNE group if based on the group's GAAP, and therefore consistent on a country-by-country basis.

The amount of tax paid was reported by many during the consultation stage as equally necessary information enabling to ensure that income taxes accrued are actually paid by companies. Indeed, due to timing differences, a company may in some instances pay taxes only years after accrual in the financial statements, or even never at an extreme. Information on tax paid tends to be costlier to collect and more prone to misinterpretation than tax accrued. This is due to the following reasons: (i) tax payments depend heavily on local tax regulations, which vary from one jurisdiction to another; (ii) tax payments are often inconsistent with tax accruals in the financial statements; and (iii) as it is cash based (whereas financial statements are accruals based), the collection and preparation of information on taxes paid are generally less readily available in a company's systems.

Contextual information

As explained in Annex K, contextual information is useful for analysing more precisely the fundamental information (income tax). In combination, contextual information is useful for instance to apportion the total profits of a given MNE per geographic region, hence enabling a benchmark with which to compare profits actually reported per region in the CBCR. Likewise, the tax amounts can be reported to profits in order to establish a comparison per jurisdiction between the statutory tax rate and the effective tax rate.

Some of the contextual information may be considered by businesses to be commercially sensitive either in isolation, or because the combination of those can deliver information to any party for other purposes than assessing tax amounts. Moreover, certain contextual information may be prone to misinterpretation. For this reason, the case for disclosing information other than income tax accrued needs to be filtered against criteria relating to the relevance of the information to the objective, as well as its proportionality. These aspects have inter alia regards to information that very large MNEs worldwide will prepare in any event as a result of the international implementation of the OECD BEPS plan endorsed by the G20 and at EU level for the purpose of fighting tax avoidance⁵⁷. Other criteria have to do with the fact that information is made public, including the sensitivity of information as regards competitiveness, and risks associated with potential misinterpretation of the information by the readers. Table 1 below summarises findings based on the above approach.

Based on this exercise, the following information can reasonably be envisaged to be given per country: location (country name), description of the nature of activities per country, turnover (total including sales with related parties), profit or loss before tax, income tax accrued, income tax paid and the number of employees.

Two possibilities are envisaged: sub-Option (i) would require companies to report, besides the location (country) and a description of the nature of activities in that country, the income tax accrued and income tax paid (essential information). Sub-Option (ii) would require companies to report in addition to (i): Net turnover, Profit before tax, Number of employees.

⁵⁷ An amendment of the Council Directive as regards administrative cooperation in the field of taxation has been proposed by the Commission by the Adoption of the Commission of the Tax Avoidance Package on 27 January.

Table 1: Analysis of the information to be disclosed in a CBCR

Item	Availability			Relevance to the objectives	Competitiveness risks ⁵⁸	Mis-interpretation risks ⁵⁸	Overall assessment of risks of disclosure	Information retained disclosure
	BEPS 13	CRD4	GAAP consolidated					
Name	YES	"name(s)"	YES	HIGH	MEDIUM	LOW	MEDIUM	YES
Location (country)	YES	YES	YES	HIGH	LOW	LOW	LOW	YES
Nature of activities	YES	YES	YES	HIGH	LOW	LOW	LOW	YES
Net Turnover (total)	YES	"Turnover"	YES	HIGH	HIGH	LOW	MEDIUM	YES
Turnover solely with related parties	YES	-	NO	HIGH	HIGH	HIGH	HIGH	NO
Purchases	-	-	YES	LOW	HIGH	LOW	HIGH	NO
Number of employees	YES	YES	YES	HIGH	MEDIUM	MEDIUM	MEDIUM	YES
Profit or Loss Before Tax	YES	YES	YES	HIGH	HIGH	LOW	MEDIUM	YES
Income tax accrued (current)	YES	"Tax on P&L"	YES	HIGH	LOW	LOW	LOW	YES
Income tax accrued (deferred)	NO	"Tax on P&L"	YES (IFRS)	MEDIUM	LOW	HIGH	MEDIUM	NO
Income tax paid	YES	"Tax on P&L"	YES (IFRS)	HIGH	LOW	HIGH	MEDIUM	YES
Stated Capital	YES	-	YES	LOW	MEDIUM	HIGH	HIGH	NO
Accumulated earnings	YES	-	YES	LOW	MEDIUM	HIGH	HIGH	NO
Tangible assets	YES	-	YES	MEDIUM	HIGH	HIGH	HIGH	NO
List of subsidiaries of the parent enterprise operating in each country	YES	-	YES	MEDIUM	MEDIUM	LOW	MEDIUM	NO ⁵⁹
Public subsidies received	-	YES	-	LOW	MEDIUM	HIGH	HIGH	NO
Tax rulings	-	-	-	MEDIUM	HIGH	HIGH	HIGH	NO
Employees working through subcontractors	-	-	-	LOW	MEDIUM	HIGH	HIGH	NO
Pecuniary tax-related penalties administered by a country	-	-	-	LOW	MEDIUM	HIGH	HIGH	NO
Narratives explaining tax-related information	YES	-	-	HIGH	LOW	LOW	LOW	YES

4.1.2 Transparency: provided by whom?

In case of public disclosure, the information could be provided directly by either companies, tax administrations or both. Tax administrations are the primary recipients of corporate tax

⁵⁸ See Section 5.1.4 on competitiveness risks for EU companies and Section 5.1.5 on misinterpretation risks

⁵⁹ Further explanations in Annex K. The information should not be retained for disclosure in CBCR as it is already disclosed by medium-sized and large EU companies in their individual financial statements (or in a separate statement) as well as in the consolidated financial statements, pursuant to respectively Article 17(1)(g) and 28(2) of the Accounting Directive

information. However, the onus of preparation will in any case fall on companies, and tax administrations are bound by international treaties and conventions regarding the use and confidentiality of tax related information. There was limited support in the public consultation for a solution whereby tax authorities would deliver information to the public on taxes paid by companies. It should therefore be for companies to directly inform the public.

4.1.3 Which companies should be in the scope of a potential initiative

A first alternative is to build on the OECD approach to cover only very large MNE groups (with turnover >EUR 750 million), i.e. at least 6,500 MNE groups⁶⁰. About 1,900 (lower bound estimate) of these are EU MNE groups⁶¹. Table 2 provides a breakdown of MNE Groups for the largest economies/regions.

Table 2: Number of very large MNE groups

Country/Region	Total number of MNE groups
EU & EEA	1881
USA	1549
Japan	746
China	709

The OECD approach offers a number of benefits. First, the OECD threshold has been designed to capture 90% of the MNEs global revenues, whereas only 10-15% of those would be required to submit a CBCR⁶². Secondly, there would thus be no additional administrative burden

for those companies to comply with an EU obligation to publish a CBCR as it is assumed that they would already be submitting similar information to their respective tax authorities if, as recommended by the G20 and the OECD, countries do implement the BEPS actions. Thirdly, the EU initiative would remain consistent with the international approach. Finally, only top tier companies which, due to their size and complexity, are the best equipped to engage in tax planning, would be covered. It is worth noting for instance that the MNE groups testifying to the TAXE committee of the European Parliament in 2015 would all be included under this threshold.

A second alternative would be to capture the parent companies of 'large groups' as defined in the Accounting Directive (Article 3). Large groups exceed at least two of the following three criteria applied to the consolidated balance sheet of the parent entity: (a) balance sheet totalling EUR 20 million, (b) net turnover: EUR 40 million, (c) average number of employees during the financial year: 250. This would involve at least 20,000 EU groups⁶³. This threshold was in the CBCR amendment introduced in July 2015 by the European Parliament in its report on the Commission proposal for the revision of the Shareholder Rights Directive in July, building on existing definitions in EU acquis. Whereas this alternative would cover a significantly higher number of companies, the additional benefits may be more limited as this will have an impact on companies which may not have multinational operations, and are less able to engage in aggressive tax planning.

⁶⁰ Source: S&P Capital IQ; this figure can be considered a lower bound; there are important data gaps that imply that the actual figure could be substantially higher. See Annex M.

⁶¹ See Annex M

⁶² Source: OECD

⁶³ Source: ORBIS database and impact assessment accompanying a proposal for the Accounting Directive, 2011, p. 19. In the latter, large companies preparing consolidated financial statements in accordance with the 7th Directive and the IAS Regulation amount to 14,095 + 6,115 = 20,210. Out of these 20,000 companies, some may operate only in one Member State, i.e. not all are necessarily MNEs.

A third alternative would be to cover issuers of securities admitted to trading on a regulated market in the EU. This would cover around 8,500 companies, SMEs included⁶⁴, which have voluntarily decided to get public funding. However, such an approach would not be consistent with the objectives of the initiative as the problem defined is not one in connection with a funding decision of a company, but one in connection with the operations of companies in the EU single market. This alternative would also mean covering listed SMEs for which this transparency requirement would generate considerable administrative burden and discourage them from going public. This approach is therefore not considered.

A fourth alternative would be to cover large public-interest entities. Public interest entities are defined by the Accounting Directive⁶⁵ as undertakings which are (a) governed by the law of a Member State and whose transferable securities are admitted to trading on a regulated market of any Member State; (b) credit institutions as defined in Article 4 of Directive 2006/48/EC; (c) insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC; (d) designated by Member States as public-interest entities. For the purposes of non-financial reporting the additional criterion of more than 500 employees applies. Under this alternative, the measure would concern around at least 7,500 public-interest entities⁶⁶ in the EU. Despite the public-interest element, this alternative would not be appropriate if the objective is to ensure a cross-sectorial level playing field, i.e. not focused on specific sectors or sources of funding.

The first and second alternatives will therefore be considered in the design of options focusing on EU MNE groups. Sub-Option (a) would cover large EU MNE groups (at least 20,000 EU groups), sub-Option (b) would cover very large EU MNE groups (at least 1,900 EU groups). Should a global approach covering EU and non-EU MNE groups be retained, only the first alternative can be considered as proportionate and consistent on the global scene, building on a widespread implementation of the OECD BEPS actions by countries.

Establishment in the EU should be based on the EU approach defined by the EU legislation, in particular the Treaty on the Functioning of the EU, as opposed to concepts such as "permanent establishment" used for tax purposes. The policy should focus on establishments commonly used by MNEs, that is branches, subsidiaries, companies and firms.

The concept of "permanent establishment" would not be used to identify the reporting entities. This is a tax concept, which builds on international consensus, but which is not clearly defined in EU law. It is mainly enforced by national tax authorities. As a result, an entity may have no certainty whether it is a permanent establishment or not. This would imply significant issues on the scope of the CBCR as well on the enforcement of such policy. On the contrary, an approach based on company law would ensure legal certainty and clarity. In addition, the coverage of reporting entities based company law (targeting companies, subsidiaries and branches) can be functionality similar to a system building on the tax concept of a permanent establishment.

⁶⁴ ESMA [ESEF Consultation document](#), p.25 / World Bank, [Listed domestic companies, total](#), 2014

⁶⁵ Article 2 (1) of the Accounting Directive 2013/34/EU

⁶⁶ Approximately 6,000 large listed companies (source: impact assessment accompanying a proposal for the Accounting Directive, 2011) and an estimation of at least 1,500 large unlisted single entities credit institutions (source: S&P Capital IQ).

4.1.4 Labelling system

It is worth examining labelling systems as an option given the array of private initiatives that have flourished lately⁶⁷. The European Parliament has shown support for a voluntary European 'Fair Tax Payer' label, as a 'soft measure' to promote tax compliance⁶⁸.

A labelling system could offer benefits. Such a system could *prima facie* bring about similar benefits to current private initiatives with the benefits of harmonisation and greater trust at EU level. Companies wishing to indicate they are fully tax compliant would be encouraged to act accordingly⁶⁹. A through description of a possible EU labelling system is given in Annex R.

This option is however discarded for two main reasons: first, there are more chances to reach the objectives with a mandatory reporting regime than with a regime with which only willing companies will adhere to. For instance, after a few years of existence, the Fair Tax mark in the UK attracted 17 companies, of which one is in the FTSE 100 and one in the FTSE 250. Those figures might however increase due to further incentive that will arise with the implementation of the BEPS/ATAP initiative. Second, if used as a complement to an obligation to disclose publicly it would be pointless to require at the same time companies to provide a public CBCR and to promote a voluntary labelling system, should they have the same features. A differentiation may be relevant on the condition that each system pursues different objectives. This cannot be the case with this initiative which pursues a single specific objective.

The potential for added value of labelling systems based on market initiatives will remain however, especially for businesses outside the scope of an EU mandatory reporting regime, with a view to pursue additional objectives, or for other reasons determined by the markets.

4.1.5 Publication

A CBCR may be part of the management report, of the financial statements (a note), or be a separate report. Much would depend on the intended users as well as publication timeline and channels. As no clear driver has been identified to constrain those features, flexibility could be offered to companies to have a separate report or to accompany their financial / non-financial reporting. This model has been retained for the sectoral CBCRs⁷⁰. To ensure certainty and availability over time, the publication of tax-related information should be filed in a register managed by Member States⁷¹, as is currently the case for the sectoral CBCRs.

Digitalised reporting by companies could facilitate access and processing by any party (civil society, tax authorities; investors...). For this reason, it should be envisaged that CBCR be

⁶⁷ See Annex D

⁶⁸ European Parliament, [Report on Bringing transparency, coordination and convergence to Corporate Tax policies](#), 2015

⁶⁹ A description of a possible labelling system is described in annex R

⁷⁰ Article 89(4) CRD4 purports that the CBCR should be "published, where possible, as an annex to the financial statements of the banks. Chapter 10 of the Accounting Directive gives no indication on the place of the CBCR in relation to other reporting to be published by the extractive companies.

⁷¹ Central register, commercial register or companies register are established in each Member State pursuant to Directive [2009/101/EC](#)

published as well on each MNE's website, however not imposing a particular format or language.

4.1.6 Enforcement and Audit

There appears to be no need for deep enforcement measures as the aim is primarily to increase public awareness of an MNE's tax affairs, that is, for indicative purposes. For very large MNEs, a public CBCR will necessarily contain information that is consistent with their CBCR submitted to tax authorities. Even though the OECD model requires no specific reconciliation of the data with e.g. the financial statements, submission to tax authorities will offer guarantees on the enforcement, consistency and accuracy of data in a public CBCR. If, as proposed, CBCR are filed with business registers and on the MNE's web sites for the purpose of publication, this will enable further enforcement by competent authorities as well as enable the public at large to trace non-compliance cases. Finally, a system of appropriate penalties should be devised. For these reasons, it may not be commensurate to specifically require e.g. an audit, but it could be envisaged to have light-touch involvement of an MNE's auditor⁷².

4.1.7 Link with the existing CBCR requirements for banks and extractive industries⁷³

Based on an analysis in Annex P, it appears that the EU could mandate the publication of a CBCR by all industry sectors, including to extractive and logging industries. This is supported by the fact that the objectives, content and scope of this sectorial CBCR differ considerably from the general CBCR sought in this document, and hence the objectives would not be fulfilled by the sectorial CBCR. Part of these industries would be subject to both public CBCR regimes, but this would cause no major problems.

EU credit institutions and investment firms must publish as from 2015 a sectorial "bank" CBCR pursuant to Article 89 of the CRD4. There is an apparent similarity between that regime and a general regime in terms of data to be reported. However there are likely to be a few differences in the details. An important question is whether the existing "bank" CBCR should continue to apply or not following the adoption of the new "general" CBCR regime. As explained in Annex P, if the existing "bank" CBCR would cease to apply, significantly less banks would fall under the CBCR reporting requirement. Such limitation of the scope of application does not seem justified given the specific objective of the "bank" CBCR which is to regain trust in the financial sector. The "bank" CBCR regime should therefore remain in force. To avoid a possible double CBCR reporting obligation for those banks that fall within the scope of application of both regimes, it seems appropriate to exclude from the scope of application of the new regime EU banks that report CBCR on the basis of Article 89 of CRD4. In this setting, non-EU MNE banking groups should not be excluded from the new "general" regime given that under CRD4, they are only required to report CBCR for a small part of their group (namely for the EU controlled operations).

⁷² See for example Article 19a of the Accounting Directive: the statutory auditor should check whether a report has been provided.

⁷³ See Annex P for a complete analysis

4.2 Option 1 - Baseline Scenario

As mentioned in Section 2.4, the country-by-country reporting to tax authorities will be made compulsory for very large MNEs in the EU, in line with the BEPS 13 Action⁷⁴. The Anti-Tax Avoidance Package adopted by the Commission in January will provide the necessary framework for all EU Member States to implement the OECD requirements in the most consistent way. Ultimately this will drive the overall framework of transfer pricing documentation, of which CBCR is a key component.

4.3 Option 2 – Public CBCR on EU controlled operations

In this scenario, the ultimate parent of a MNE group, insofar that parent is established in the EU would have to publish tax-related information on a country-by-country basis on the operations it controls. Likewise, the reporting would have to be done by any intermediate parent(s) established in the EU that is ultimately controlled by a non-EU MNE group.

In order to avoid undue administrative burden, any undertaking in the EU could be exempted from such obligation where an intermediate or ultimate parent company would include its own information in a consolidated report. In order for subsidiaries/branches of non-EU MNEs to enter in the scope of a possible EU initiative, the defined scope would be preferably set by reference to the turnover determined at the level of ultimate parent companies, thus ensuring that subsidiaries and branches of any size have the reporting obligation in the first place, before any application of exemptions.

Two sub-Options are envisaged:

4.3.1 *Option 2A: Public CBCR on EU controlled operations broken down by EU Member State and aggregated for non-EU operations*

EU MNEs would have to report publicly the breakdown of tax related information on a country-by-country basis. The information would be itemised on a country-by-country basis as regards operations made in the Member States, and aggregated as regards activities outside the European Union. Aggregated means that for each caption (tax amount, turnover, number of employees, etc...), the MNE would add up the figures relating to its operations in each third country, thus publishing a single aggregated amount per caption relating to its non-EU operations.

4.3.2 *Option 2B: Public CBCR on EU controlled operations broken down by Member State and third country*

The EU would require EU MNE groups to publically disclose tax-related information on a country-by-country basis for all their operations.

4.4 Option 3 – Public CBCR on worldwide operations

In this scenario, the CBCR would be published by the ultimate parent of a EU MNE group, insofar that parent is established in the EU. The non-EU ultimate parent (established in a third country) of a non-EU MNE group would see the obligation fall on its subsidiaries/branches in

⁷⁴ Proposal by the EU Commission in January 2016 by means of a new amendment to the Directive 2011/16/EU for Administrative Cooperation

the EU to publish that ultimate parent's CBCR. On both accounts, the obligation would arise where the ultimate parent's turnover exceeds EUR 750 million. This would cover at least 6,500 MNE groups representing more than 90% of the MNEs' global turnover (EU and non-EU). It is estimated that a maximum of 10% (and probably even less) of the very large MNEs worldwide have no subsidiaries in the EU⁷⁵. This does not preclude that some of these may operate through branches in the EU, though, and option 3 would seek to capture them as well in order to avoid loopholes.

The Option would impose on the subsidiaries/branches in the EU of a non EU MNE a duty to publish the consolidated CBCR of their ultimate parent company. Certain mechanisms could be designed to mitigate or avoid the unnecessary duplication of requirements. For instance, to address branches tend to be necessary only in the cases where a non-EU MNE would operate solely through branches in the EU.

In order to avoid undue burden, yet remain effective, it should be envisaged that only medium-sized and large EU entities (subsidiaries and branches) of a non-EU MNE group have the above obligation.

This takes account of the current situation in the EU, as described in Annex D: small subsidiaries of a non-EU MNE group have currently no obligation to identify their ultimate parent, whereas medium-sized and large already have this obligation (Accounting Directive). The efficiency of this filter is ensured by the relative size of the turnover of MNEs covered (> EUR 750 million) which warrant that generally at least one subsidiary will exceed the thresholds to be regarded as medium-sized (EUR 8 million as per the Accounting Directive). A clause in the policy could be envisaged to avoid abuses of this setting. Besides, a branch opened in a Member State by a company which is not governed by the law of a Member State shall file the financial statements of that company in the relevant business register of a Member State⁷⁶. That branch is generally considered to be a permanent establishment for tax purposes in the country. Possible ways to address only branches of a comparable size could have regards to their turnover or the size of the company that opened the branch.

With this setting, in any event, the operations of all subsidiaries and branches, irrespective of their size, would be consolidated by the parent in its CBCR.

The enforcement of Option 3 on non-EU MNEs would undoubtedly be more challenging than on EU MNEs.

Two sub-Options are envisaged:

4.4.1 Option 3A: Public CBCR on worldwide operations broken down by EU Member State and aggregated for non-EU operations.

This scenario would require all very large ultimate parent MNE groups with a medium-sized or larger subsidiary/branch in the EU to disclose publicly tax-related information on a country-by-country basis on their EU operations. This information would be aggregated in third-countries.

⁷⁵ Analysis by the Commission staff of data from the *S&P Capital IQ* database.

⁷⁶ 11th Company Law Directive on branches (89/666/EEC)

4.4.2 Option 3B: Public CBCR on worldwide operations broken down by Member State and third country

It would require that all very large ultimate parent MNE groups with a medium-sized or larger subsidiary/branch in the EU disclose tax-related information on a country-by-country basis on all their operations (no aggregation).

4.5 Summary of the Options

Table 3: Summary of the Options

	OPTIONS	Type of transparency	Who should do it?	Information covered	Granularity of the reporting	Legal basis
	Option 1: Status quo: implementation of BEPS 13	Transparency towards tax administrations on a country-by-country basis	Very large companies of EU Member States + G20/OECD countries	BEPS 13 information	All countries covered	/
EU C O N T R O L L E D O P E R A T I O N S	Option 2A: Public CBCR on EU controlled operations broken down by EU Member State and aggregated for non-EU operations	Transparency towards the public on a country-by-country basis	Sub-Option (a): Large EU parent companies Sub-Option (b): Very large EU parent companies.	Sub-Option (i): - Income tax accrued - Income tax paid Sub-Option (ii): - Income tax accrued - Income tax paid - Turnover - Profit before tax - Number of employee	Split information on EU controlled operations by EU MS and report aggregated figure for the rest of the world.	Art 114/50 TFEU
	Option 2B: Public CBCR on EU controlled operations broken down by Member State and third country	Transparency towards the public on a country-by-country basis	Sub-Option (a): Large EU parent companies Sub-Option (b): Very large EU parent companies.	Sub-Option (i): - Income tax accrued - Income tax paid Sub-Option (ii): - Income tax accrued - Income tax paid - Turnover - Profit before tax - Number of employee	Split information by country on all operations controlled from the EU.	Art 114/50 TFEU
G L O B A L O P E R A T I O N S	Option 3A: Public CBCR on worldwide operations broken down by EU Member State and aggregated for non-EU operations	Transparency towards the public on a country-by-country basis	Very large parent companies with a subsidiary/branch in the EU.	Sub-Option (i): - Income tax accrued - Income tax paid Sub-Option (ii): - Income tax accrued - Income tax paid - Turnover - Profit before tax - Number of employee	Split information on all operations of the ultimate parent company by EU MS and report aggregated figure for the rest of the world.	Art 114/50 TFEU
	Option 3B: Public CBCR on worldwide operations broken down by Member State and third country	Transparency towards the public on a country-by-country basis	Very large parent companies with a subsidiary/branch in the EU.	Sub-Option (i): - Income tax accrued - Income tax paid Sub-Option (ii): - Income tax accrued - Income tax paid - Turnover - Profit before tax - Number of employee	Split information by country on all operations of the ultimate parent company	Art 114/50 TFEU

5 ANALYSIS OF IMPACTS

5.1 Economic impacts

5.1.1 Impact on Growth and Jobs⁷⁷

Regarding the impact of increased corporate tax transparency on productivity growth, the analysis is based on the assumption that further tax transparency will, on average, increase substantially corporate income tax revenue⁷⁸. If this is the case, the overall impact on productivity growth will depend on the use of the extra revenue. If the additional tax revenue were used to ensure and potentially increase the provision of public infrastructure and/or policies and institutions that increase the productivity of capital this would be expected to have a positive impact on growth and employment. Alternatively, those Member States facing an increase in corporate income tax revenue could apply a tax shift approach where the fiscal pressure on labour is reduced in a revenue-neutral manner.

Under *competitive* market conditions, increasing fiscal pressure at the level of the firm may impact investment decisions as, at least in the short run, a lower level of investment may be a feasible option for the firm to protect its profitability (share dividend). Alternatively, firms may choose to increase their financial leverage sufficiently as to restore the previously prevailing level of distributed profits. In the worst case, the economy goes to a new situation where firms have *reduced* their average investment spending and at the same time *increased* their financial leverage⁷⁹. Obviously, this scenario hinges on the assumption of a competitive market environment; it should not be taken for granted in the case of industries characterized by super-normal profits/economic rents, and/or high implicit subsidies (e.g. banking).

Otherwise, based on the findings in the economics and corporate finance literature, the impact of higher transparency on firms' behaviour seems to depend to a large degree on the power relations between firms' management and its shareholders, and there more precisely on shareholder structure. In principle, shareholders' bargaining power vis-à-vis the firm's management is presumed to increase with additional public transparency. However, according to the findings in the literature, the impact on firm behaviour of such a reduction in the informational asymmetry between management and shareholders is *ambiguous*. The academic literature has in particular identified two main channels: first, in firms where shareholders have strong influence on management decisions⁸⁰, there is statistical evidence that shareholders positively sanctioned additional effort on behalf of the management to lower the firm's fiscal pressure; the literature explains this with shareholders' expectation to capture a

⁷⁷ See Annex Q for details and references to sources

⁷⁸ Without this assumption there is not much to be said under this sub-heading; however, a working assumption to analyse and discuss possible impacts should not be confounded with an economic forecast of corporate tax revenues in the EU which would require a very different set of assumptions (e.g. about expected international developments) as well as analysis

⁷⁹ Currently ongoing committee work at the OECD suggests that in particular low productivity – low profitability firms will choose to increase further their (already high) financial leverage making them even less resilient

⁸⁰ The use of the term "corporate governance" in the referenced academic literature (see Annex L for details) refers indeed to the degree of control shareholders can exercise over managerial decision making; this is *not* synonymous and should not be confounded with terms such as "corporate social responsibility" or "responsible business conduct"

large part of the resulting increase in distributed profits. In contrast, in more opaque firms, no such positive sanctioning was identified. Second, in firms where the shareholder base is characterized by large (institutional) shareholders with (nominal) short-term revenue objectives, the firm may face higher pressure to “eat up” its capital stock in order to protect the level of distributed profits. In cases where both circumstances are united, and despite this pressure an increase in transparency that could motivate a continuation of aggressive tax planning behaviour of firms, as well as sub-optimal (from a growth and employment perspective) firm responses in terms of investment and financial leverage⁸¹. Nevertheless, an increased public scrutiny would make it less likely that in extremis this could then result in lower levels of investment, employment, and growth of the economies these firms are operating in. Where such circumstances do not apply, based on findings in the relevant literature, one would not expect significant and lasting changes in firm behaviour after the increased public transparency, while in the short run an increase in financial leverage could signal either strategic profit stabilization by the firm, or improved access to external funding, or both⁸².

Whereas, based on this analysis overall outcome on growth and jobs is uncertain, a fairer distribution of fiscal pressure across the size spectrum could further SMEs' capacity to support growth and job creation, and could further market entry, competition, and innovation. It could for instance certainly be more rewarding and motivating for start-ups to no longer face the stark contrast in effective tax rates compared to well-established incumbents, and certainly corporate income taxation should not, as it seems to do currently, give incumbents further means to protect their market against new entrants.

5.1.2 Impact on Market efficiency⁸³

5.1.2.1 Threshold effects

For some of the large, or very large MNE groups that come just marginally under the scope of a public CBCR scheme there could emerge a trade-off between firm size and corporate disclosure, and for some firms facing this trade-off it may become more attractive to scale down sufficiently to remain outside the scope of the CBCR requirement⁸⁴. Given the high threshold defined by the OECD/BEPS initiative (EUR 750 million annual turnover), while the decision to remain below the threshold could be relevant from the firm's point of view, e.g. to avoid reputational risk attached to public CBCR, it is not expected to be harmful from the perspective of optimal firm size. However, this benign assessment cannot be made with the same level of reassurance in the case of the lower threshold that applies in the option of public CBCR for large MNEs. A *negative* (growth-adverse) threshold effect could potentially materialize were firms to limit their growth in order to remain outside of the public CBCR

⁸¹ Egger et al (2010a) find that MNEs increase financial leverage in response to an increase in fiscal pressure

⁸² We are not aware of empirical studies that would allow to disentangle the two possible effects with respect to financial leverage

⁸³ See Annex Q for details and references to sources

⁸⁴ Indeed Hasegawa et al (2013) find evidence for such effects based on experience with corporate transparency requirements in Japan

scope, and where such behaviour resulted in a sub-optimal firm size in a specific sector⁸⁵.

5.1.2.2 Impact on cost of capital

A traditional argument calling for more public transparency is that it helps firms gain access to sources of finance and as a consequence reduces firms' cost of capital⁸⁶. According to this line of reasoning firms could (i) benefit from more competition among potential lenders, (ii) broaden the investor base⁸⁷, (iii) lower the cost of credit and improve access to external finance more broadly. This can be expected to produce benefits in particular for private firms falling under the scope, i.e. private firms' access to finance could improve relative to public firms. However, given that public transparency will increase for all firms entering into the scope of the initiative simultaneously, the measure cannot be expected to improve any given firm's visibility *relative* to other firms entering the scope of the requirement.

5.1.2.3 Impact on market monitoring

Another possible consequence is the intensification of market monitoring. Indeed increased transparency about the geographical complexity of MNEs could expose managerial decisions to increased market scrutiny⁸⁸, e.g. on behalf of investment fund managers. This may incentivize managers to optimize the structure of their firms and better align the incentives of both managers and shareholders. However, in the case where shareholders have strong influence on management decisions, investors could exploit this additional monitoring power over managers. As a result depending on the investor interest it may increase or decrease incentive to reduce tax costs.

5.1.2.4 Impact on organisational efficiency

Increased transparency could help reduce costly and management failure-prone complexity especially in the case of very large MNEs. Long-term oriented shareholders are more likely to be critical about highly aggressive tax avoidance practices. To the extent that these practices require highly complex corporate structure; the latter could lead to excessive costs of complexity as well as additional reputational risks.

5.1.3 Impact in terms of level playing field

Impact in terms of level playing field could differ widely depending on the options analysed. Within the public consultation, the business respondents have emphasised the need to achieve a level playing field in terms of reporting requirement.

⁸⁵ The artificially constrained firm could forego economies of scale and scope that would be realized by firms in other jurisdictions; in this sense the threshold effect could also become relevant from a competitiveness/level-playing field perspective discussed below

⁸⁶ Ellul, Jappelli, Pagano and Panunzi (2013)

⁸⁷ This is different from the discussion of transparency and the structure of *existing* shareholders in a preceding Section

⁸⁸ See e.g. Boot, Gopalan and Thakor (2006)

5.1.3.1 Level playing field in terms of size – Implication for SMEs

Studies⁸⁹ have shown that in the case of high CIT jurisdictions a cross-border company pays on average 30% less tax than a company active in only one country⁹⁰. The additional transparency requirement would be imposed only on large or very large companies, and would therefore avoid administrative burden on smaller companies (SME). This difference is justified as smaller companies have typically less capabilities to shift profit and erode tax bases as they have less financial means and operate in fewer jurisdictions. Hence the disclosure would help to mitigate this issue. The MNEs that are not very large that will not have this disclosure obligation should potentially keep an advantage over the larger ones, at the expense of SMEs. This risk seems acceptable since they represent only 10% of the total activities of MNEs.

5.1.3.2 Level playing field between EU and third country companies

In combination with the existing geographical disclosure requirements in the financial statements of EU MNEs (IFRS 8), Option 2A and 3A with only essential tax information in CBCR (sub-option (i)) would put EU geographical reporting standards nearly on par with those required by the US from issuers of listed securities (10-K form). Sub-option (ii) on these options would require in addition the geographical break down of the number of employees and profit before tax, such breakdown not being required by US standards. This limited distortion of the level playing field for EU companies, mainly confined to Option 2A, is mitigated given the focus on EU activities. Option 3B goes similarly beyond US standards and despite high granularity, ensure an acceptable level playing field as EU and non-EU MNEs in the EU market would have similar reporting obligations.

Option 2B entails the highest risks of "un-levelling" the global playing field, including in comparison to US standards, as it would require EU MNE groups to disclose publicly their operations with the highest geographical granularity (within and outside the EU), whereas the disclosure would be confined to a (possibly tiny) portion of their EU operations for non-EU MNE groups. This could have far reaching impacts on EU MNE groups' global activities, as the playing field would be unlevelled even outside the EU (e.g. non-EU MNE group competing with an EU MNE group on the Brazilian market). Businesses consulted have constantly reported this as an acute risk.

Under Option 2A, the obligation would fall again primarily on EU MNE groups. However a fair level playing field would be ensured as under this Option, this information would be aggregated for operations located

Illustration: Scope of CBCR according to the different options illustrated in figure 2.

Option 3B: EU subsidiaries of XYX Inc (US) would have to report on a country-by-country basis all the group operations (within and outside the EU).

Option 3A: EU subsidiaries of XYX Inc (US) would have to report on a country-by-country basis all the group operations within the EU. In addition aggregated information would have to be provided on the non-EU operations

Option 2B: 'XYX LU' would have to report on all its controlled operations within the EU ('XYX BE', 'XYX FR', 'XYX PL'...) and outside the EU ('XYX ZW', 'XYX TU'). In addition, 'XYX UK', 'XYX FR Publishing' and 'XYX FR R&D' would each have to report on their operations.

Option 2 A: 'XYX LU' would have to report on all its controlled operations within the EU. In addition aggregated information would have to be provided on the non EU operations controlled from the EU. Furthermore, 'XYX UK', 'XYX FR Publishing' and 'XYX FR R&D' would each have to report on their operations.

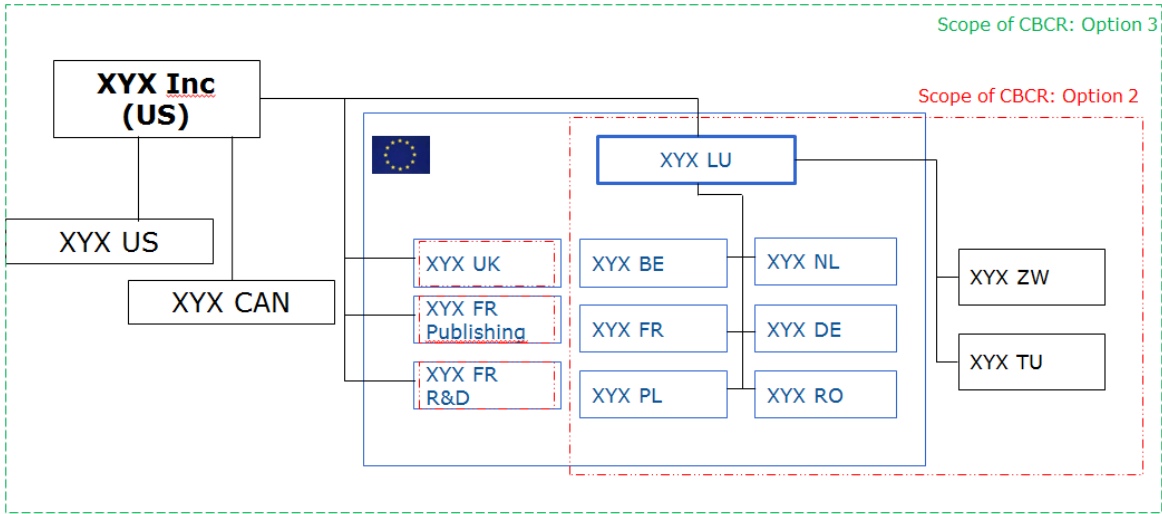
⁸⁹ See Annex L

⁹⁰ As a result of their (successful) profit shifting activities, the same group of MNEs pays *above* average corporate income tax in jurisdictions with low statutory CIT rates (Egger et al (2010))

outside the EU. Therefore, EU MNEs would not have to provide disaggregated information in markets where their competitors do not have to do so. Furthermore non-EU MNEs would neither have to provide aggregated information on their operations in third countries.

The level of consolidated reporting of non-EU MNE groups under Options 2A and 2B depend largely on the group structure. Figure 2 below shows that the information provided by a third country MNE group could be completely fragmented if it has no intermediate parent in the EU or partly fragmented if it has an intermediate parent in the EU. If there are several intermediate parents, each EU intermediate parent within an MNE group would have to provide a country-by-country report. This would have as a consequence that the information of a non-EU group would be disclosed in several reports (one for each intermediate EU parent company).

Figure 1: Scope of CBCR for a non-EU MNE group according to the different options



Number of EU subsidiaries controlled by non-EU groups:

It is currently difficult for the public to obtain details on subsidiaries of very large non-EU groups. Figures even on the number of subsidiaries are generally not available. In the U.S. for example, public companies have to provide information of their "significant" subsidiaries (see SEC rules in annex N). A group can have many more subsidiaries beyond the significant ones. General Electric for examples controls directly 40 subsidiaries in the EU out of the 120 significant subsidiaries declared. Oracle declares 9 significant subsidiaries, 6 of them are located in Ireland. PepsiCo declared 191 EU subsidiaries out of the 621 significant subsidiaries directly controlled.

At the extreme, should a non-EU MNE have no EU intermediate parent, the information would be very scattered in potentially hundreds of reports with option 2. A very large MNE may have numerous subsidiaries in the EU. They may be controlled by a few intermediate EU parent companies (see box on the left), or not. In the latter case, the group's structure may make the information difficult to obtain, read and interpret.

Option 3 would alleviate all those concerns and level the playing field as all MNE groups with a subsidiary / branch in the EU would be in the scope of the Option, and the consolidated reporting would be done exclusively at the level of the ultimate parent of each MNE group (EU and non-EU). Size-criteria could apply equally to EU and non-EU MNE groups. Indeed, EU MNEs operate on a global scale, including in non-EU markets. Certain MNEs operating in the EU without an EU branch or subsidiary, as made possible e.g. in the digital economy, may not be subject to a disclosure obligation.

Options 3 would ensure in addition a level-playing field because the consolidated CBCR prepared at the level of a non-EU MNE would have the same features and content as the CBCR prepared by an EU MNE.

5.1.4 Impact on the competitiveness of EU companies

The impact on companies in this area has mainly to do with information publically delivered by MNEs to their competitors with possible impact(s) on competitiveness where a competitor is not subject to the same disclosure requirement. Options 2B could heavily distort the competition to the detriment of EU MNEs, as could Option 2A, although to a much lesser extent.

This impact would depend on the type of information made available. Information on geographical location of 'revenue' and 'profit before tax' are considered by some companies as commercially sensitive information. According to companies, the publication of such information on a country-by-country basis would provide information on companies' business models, the value chain, operating strategy, contracts and geographical profit margins. This impact could be even more important in the case of companies active in a mono-activity as this disclosure requirement would give direct information on the profit margins of products and services.

Accounting information of a group's subsidiaries being publicly accessible only in Europe⁹¹, the impact is consequently more important regarding operations in third countries. The impact on the competitive advantage of European companies is therefore more important in Option 2B where the information has to be made available on third countries operations controlled from the EU. This is even more the case with sub-Option 2B(ii) with additional contextual information. The impact is less important in Option 2A and 3A as the information would only be disaggregated on EU operations. The impact of Option 3B would be similar to Option 2B but mitigated by the fact that all MNE groups operating in the EU (including third country MNEs) would be required to provide this information.

5.1.5 Impact in terms of misinterpretation risk.

When data is scrutinized, it may be difficult for non-professionals to evaluate it and be able to understand the sources of possible variability and legal deductions. Data on tax payments alone, without full contextual knowledge (i.e. knowledge of a firm's investment levels and profit record across Europe) can be challenging to decode by laymen. It requires well-trained analytical skills and background information on the history of the enterprise to decode this information. Typically tax administrators are experts in accounting or taxation with at least an advanced degree in the field, a level of expertise difficult to attain for individuals of the general public, and have the right to audit companies. Besides, national tax systems are diverse since each country has its own specific tax policies and rules. Moreover, accounting rules and definition differ from one country to another, and the concept of transfer pricing is highly technical and requires in-depth knowledge of tax laws.

The public consultation showed the fear from businesses that disclosed data may not be properly understood and could be misinterpreted by laymen due to its complexity. This could potentially lead to unjustified claims and accusation which could damage the reputation of

⁹¹ See annex D and O

companies. Furthermore, for some companies, especially those with direct dealings with consumers, this might entail greater damage than for others. Companies will be free to add narratives to explain the context of the data disclosed in the CBCR report and help reduce the risks involved of raw data being misinterpreted by the public. Furthermore, the different options have been designed in order to mitigate the misinterpretation risk.

Nevertheless, information could be used by investigative journalism or civil society organisation to spot severe tax avoiders⁹².

5.1.6 *Tax adjustments and disputes resulting in double taxation*

The OECD sees CBCR as a valuable component of the documentation on transfer pricing for the attention of tax authorities, and invites tax authorities to use this information solely for the purpose of orienting tax audits⁹³. To ensure proper use and to avoid disclosing trade secrets or other confidential information as well as to avoid unintended use of a CBCR⁹⁴, the OECD proposes that the CBCR submitted by MNEs to their respective tax authorities remain confidential, and that proper use be guaranteed prior to the exchange of the CBCR among tax authorities.

In January 2016, 31 countries have agreed to share with other tax authorities the CBCR submitted to the tax authorities by MNEs within their country, by signing up to the OECD MCAA for BEPS 13⁹⁵. Among these, 22 are EEA countries. Among the remaining 9 non-EEA countries, Japan's presence is noticeable for it representing a major economy. In these early days, not considering countries that may join in the future, tax authorities will soon exchange the CBCR of 47% of the very large MNEs groups worldwide, including 99% of the EU very large MNE groups and more than 25% of the non EU ones.

Tax authorities are expected to use these CBCR to orient tax audits, as this is the primary purpose of the CBCR inclusion by the OECD in the documentation on transfer pricing. MNEs reported during the consultation stage that this might trigger an increased number of tax audits. However, they expect their rights to a proper tax audit to be respected under the aegis of the international consensus that no improper use of a CBCR, such as formulary apportionment, is allowed.

With a public CBCR, businesses report much increased risks or even non-proportionate risks of tax adjustments, for three main reasons:

1. Access to CBCR would be widely expanded: a public CBCR would double the number of MNEs preparing a CBCR, from 47% up to more than 90%⁹⁶ of MNEs

⁹² Fengler and Ruß-Mohl 2008, Andersson and Wadbring 2015

⁹³ The OECD has designed inter alia the Multilateral Competent Authority Agreement on the Exchange of CBCR so as to avoid misuse of a CBCR by tax authorities of other countries than the country of residence of an MNE.

⁹⁴ OECD, [Discussion Draft On Transfer Pricing Documentation And Cbc Reporting](#), p9, 2014

⁹⁵ OECD, [A boost to transparency in international tax matters: 31 countries sign tax co-operation agreement to enable automatic sharing of country by country information](#), January 2016

⁹⁶ assuming 10% of those have no activities in the EU and no obligation under the OECD BEPS scheme (higher bound)

worldwide. In parallel, further details on their operations country would be made accessible to tax authorities of 164⁹⁷ countries which otherwise would not have had no access to this information.

The primary purpose of a CBCR is to assist tax authorities in orienting their tax audits. By expanding the number of recipient tax authorities and the amount of information, it is expected that public CBCR will entail more tax audits.

2. The public dimension of the CBCR would add pressure on tax authorities to audit certain MNEs for which CBCR will have shed light on apparently doubtful practices in the public's eyes. A tax audit is the best tool to determine whether practices are justified; and
3. Limits imposed by the OECD scheme on tax administrations for the use of CBCR would not apply to a public CBCR. Whereas the OECD limits their use to orienting tax audits, it will be up to each tax authority to determine how it reacts to a public CBCR.

CBCR is a new piece of information. Few tax authorities have had access to CBCR in the past. There is scarce information on how tax authorities would react. Some tax authorities might decide not to use the CBCR. Some might see the CBCR as an instrument fostering a sounder dialogue with MNEs on its affairs in their jurisdiction⁹⁸. A number may use the CBCR as expected, that is to orient their tax audits. Businesses assert that in addition, a number of tax authorities will in the long run directly assess and impose tax adjustments by ways of geographical formulary apportionment of profits, i.e. without the preliminary step of a proper risk assessment/audit required by the OECD scheme.

Further tax audits will naturally result in further tax adjustments⁹⁹. Some of those adjustments are in turn expected to further generate double taxation of the same profits by different jurisdictions¹⁰⁰. To avoid double taxation, an MNE has to typically challenge the tax authority's adjustments, i.e. to enter into a dispute with the latter, and to seek the activation of dispute resolution mechanisms between tax authorities, included in tax treaties. Tax disputes may not necessarily result in avoiding double (or multiple) taxation of the same profits as it depends on the outcome of the dispute. Besides, in any event, they entail administrative burden, and legal uncertainty which impacts businesses' investments and export decisions¹⁰¹. In the EU double taxation risks are lower, given the higher degree of common understanding

⁹⁷ That is all countries, less 31 countries which have signed up to the MCAA

⁹⁸ One MNE which already publish a CBCR confirmed that the CBCR assisted in having a better dialogue with the respective tax authorities in the countries in which it operates.

⁹⁹ See for instance Brian J. Arnold, Bulletin for International Taxation, 2014 (Volume 68), No 11: "this is frequent due to the inherent subjectivity of transfer pricing"

¹⁰⁰ Ibid: "this is due to differences in tax rules from one country to another"

¹⁰¹ See Annex E

and cooperation between authorities¹⁰². The EU has the most effective dispute resolution mechanisms in place and is seeking to improve them¹⁰³.

Outside the EU but still within the OECD, risks will be more acute than within the EU. The OECD¹⁰⁴ supports that all tax treaties include methods for elimination of double taxation and a Mutual Agreement Procedure (MAP) with arbitration mechanisms. These procedures and mechanisms are generally to be found in Double Tax Conventions (DTC) signed between countries. MAPs are not as widespread as the OECD would wish, and these procedures have proved so far to be insufficiently efficient. The stock of pending disputes is currently growing in the OECD¹⁰⁵. There are 5,423 unresolved MAP cases among OECD Member Countries as of the end of 2014, more than double the figure for 2006 due to the fact that new cases are increasing and their number exceeds the cases are resolved. This figure may not portray the situation exactly as the OECD recognises - that there are also obstacles to access to MAP by MNEs. It takes on average a little more than two years to resolve a dispute by ways of MAP. There is anecdotal evidence that on balance, MNEs often chose to settle cases and bear some of the double taxation (e.g. via transaction with tax authorities) in order to avoid administrative burden and uncertainty. This indicates that MAP procedures do not fully meet their objective of avoiding double taxation. To remedy this, the OECD has tabled the BEPS 14 Action. It will hopefully improve the system. But businesses tend to doubt this will be sufficient, absent further obligation in this Action for tax authorities to effectively and timely solve disputes, for instance by ways of mandatory arbitration.

Beyond the OECD and the EU, those risks are exacerbated given that existing DTCs and MAP are less likely to comply with the OECD standards, and that tax treaties are scarcer on average: out of 231 countries for which information is available on tax treaties¹⁰⁶, 27 countries have no tax treaty, and 95 have less than 10. There are 87 tax treaties per OECD member country on average, compared with 26 outside the OECD.

Double taxation risks are higher for MNEs with Options 2B and 3B given the extent and granularity of information disclosed on their worldwide operations, and especially where contextual information is provided. Such risks would be borne exclusively by EU MNEs in the case of Option 2B, and be shared also by non-EU MNEs with Option 3B. Risks will be exacerbated if public CBCR is applied to large MNEs, as many more companies would attract attention beyond very large MNEs currently in the scope of the MCAA. Options 2A and 3A infer much lower risks as the granularity of the CBCR would be confined to MNEs' operations in the EU, thus lowering the risk that third country tax authorities seek tax adjustments on third country operations.

5.1.7 Impact on tax revenues

To the extent that enhanced transparency, via the threat of potential public pressure, reduces the use of tax avoidance strategies a positive impact on corporate tax revenues can be expected. Evidence in this direction has been found in studies on transparency measures in the

¹⁰² European Commission, [Joint Transfer Pricing Forum](#)

¹⁰³ The [Arbitration Convention](#) in the EU deals exclusively with transfer pricing disputes

¹⁰⁴ OECD [model convention on taxes, Mutual Agreement Procedures](#)

¹⁰⁵ See Annex E

¹⁰⁶ Source: [IBDF](#)

UK and the US.¹⁰⁷ Both studies analyse effective taxation levels around changes in reporting regimes, either from voluntary reporting to compulsory reporting of tax information or vice versa. For those firms that do not report on a voluntary basis (the suspected tax avoiders) they find a positive impact of transparency measures on effective taxation levels. However, the results are not one-to-one transferable to the present case since the transparency measures differed in terms of their scope. There is also some supporting evidence in the area of personal income taxation, where transparency measures have led to increases in reported income¹⁰⁸. The extension to the corporate context is however not straightforward as account must be taken of the more complex decision-making process and cost-benefit analysis for a firm, including with respect to its various stakeholders.

A deeper understanding of MNE groups' activities and geographical location would place stakeholders in a stronger position to assess if taxes are being paid where business activity takes place. Asked whether transparency may indirectly result in reduced profit shifting, that is a better alignment of taxes with economic activity, the results of our public consultation suggest that there is widespread belief that further corporate tax transparency will result in an increase in taxes paid by MNEs. However, the responses to the public consultation give little indication of whether companies would pay more taxes in the EU simply due to country-by-country reporting. Many respondents believe however that public CBCR will result in a reallocation of tax bases within Europe as a result of the above mentioned re-alignment. Such re-alignment and increased tax revenues, should they actually materialise, may increase the tax receipts available for spending on public sector goods and services in a number of countries, including in certain Member States.

5.2 Social and societal impacts

Against the background of the recent focus on certain MNEs' tax practices, the public consultation has shown an increased demand for more transparency in the tax affairs of MNE groups. Indeed, recent reports on the low amount of taxes paid by multinationals¹⁰⁹ have led civil society to believe that a disclosure of tax information might be the only solution to maintain public trust in the efficiency and fairness of the tax system, as shown during the consultation stage. For these reasons, NGOs & the media, citizens as well as certain investors have advocated for CBCR to be made public. They argue that public disclosure would paint a more accurate description of a company's contribution to the society in which it operates, enabling stakeholders to make better informed economic decisions. They also argue that a public CBCR would contribute to maintaining public trust on the tax collection system and tax authorities.

During the consultation stage, civil society organisations also reported that a CBCR could be instrumental for promoting accountability – through its ability to identify corruption, tax agreements and illicit tax practices by shedding light on relevant information.

¹⁰⁷ Dyreng, Hoopes, Wilde (2015), 'Public Pressure and Corporate Tax Behaviour', Fisher College of Business Working Paper No. 2014-02-003; Hope, O.-K., M. (Shuai) Ma, and W. B. Thomas (2013) 'Tax avoidance and geographic earnings disclosure', *Journal of Accounting and Economics* 56 (2–3): 170–189.

¹⁰⁸ Bo, Slemrod, Thoresen (2015), 'Taxes on the Internet', *American Economic Journal: Economic Policy* 2015, 7(1): 36-62.

¹⁰⁹ For instance, a journalistic investigation conducted by the International Consortium of Investigative Journalists triggered in November 2014 international attention about tax schemes implemented by certain MNEs

Whereas the work undertaken in this document is not premised on the role which corporate tax transparency could play as an anti-corruption tool, it is undeniable that a CBCR brings about transparency. NGOs contend that this would assist in determining corrupt practices in certain circumstances. Whether a CBCR may have deterrent effects on certain corrupt practices is a possibility. However it is doubtful that a CBCR alone would help identify corruption. Given the size of MNEs, this would require that corrupt practices, if any, are of such scale and pervasiveness that they would become apparent, which is unlikely relative to the size of very large MNEs. In most cases a CBCR will not give enough evidence per se. Usually, only persons with forensic abilities and access to evidence such as bank accounts, tax rulings, contracts, tax returns, personal files, etc. would be able to determine corrupt practices. It is also important to remember that CBCR as envisaged would focus on the narrow area of corporate income tax, whereas corrupt practices may be much broader. As a result, for instance, the corruption of a civil servant would have little chance to be detected by a CBCR. Likewise, a CBCR may be used to identify offshore jurisdictions in which an MNE operates, and be thus of assistance to fight e.g. money-laundering, however only in conjunction with proper enquiries. Overall, labelling public CBCR as a functional stand-alone anti-corruption tool could be one step too far.

NGOs also contended during the consultation stage that monitoring by civil society could in addition help tax authorities in their daily affairs. The latter assertion however can be contested given the limited investigation powers of the public or shareholders in a company's affairs compared to those of a tax authority.

Mandatory reporting on CIT could also be seen as an important element underpinning the corporate responsibility of companies. Indeed, the contribution that businesses make in the form of taxation is increasingly seen as part of their corporate social responsibility¹¹⁰.

In the long run, CBCR could also help to drive a more informed democratic debate over corporate income tax. Concerned sectors of society, as well as governing or legislative institutions are in need of information to fuel this debate. Such debate may well help to increase the global fairness of tax systems altogether by addressing loopholes and unfair competition at MNE and State levels. This could in turn contribute to avoid shifting the tax burden towards ordinary workers and smaller firms that embody the least mobile tax bases.

Based on the above, all options would contribute positively to a varying degree to soothing societal dissatisfaction associated with the suspicion of unfair tax practices. This effect would increase in line with the granularity of information on non-EU operations (Option 2B) or with coverage extended to non-EU groups (Option 3A). With both features, Option 3B would have the most positive contribution to societal impacts.

5.3 Fundamental rights

The relevant fundamental rights include the right to the protection of personal data, the right to conduct a business and the right to property. When companies are obliged to publically disclose certain information, this may amount to a restriction of the above mentioned rights, which may however be justified by the EU co-legislators. The essential element is the level of detail of the information reported.

¹¹⁰ See for example OECD Observer, [Corporate responsibility and paying tax](#)

The compatibility of the present work with the Charter of Fundamental Rights of the European Union¹¹¹ (CFR) is examined in more detail in Annex I. The right to the respect for private and family life (Art. 7) of companies would generally not be affected by the present work. The right to the protection of personal data (Art. 8) might however be affected. Legal persons can claim the right to the protection of personal data together with Directive 95/46/EC when their official title identifies one or more natural persons. As it is proposed to limit the scope of transparency/reporting obligations to large or very large MNEs, and given that the information considered for inclusion in a CBCR draws upon information available in the financial statements of companies within a group, the risk that the obligations in question would trigger disclosure of personal data is very limited.

As regards the right to conduct a business and the right to property, the information retained for a CBCR in Section 4.1.1 may be seen to a certain extent as allowing the drawing of certain concrete conclusions on the companies' business strategies – however not on its R&D projects. Those risks are very limited with sub-Options (i), and limited with Option (ii), still proportionate with the objectives.

Overall, the extent of contextual and other information that has been examined is proportionate to the objectives of enhancing public transparency and scrutiny. This does not go beyond what is strictly necessary. In addition, most of the information is an aggregation of information published in the financial statements of most of a group's components, at least in the EU.

5.4 Compliance costs and other costs

5.4.1 Compliance costs

Businesses are wary of the administrative burden that would arise if they were being asked to prepare different types of CBCR. They call for consistent reporting requirements across the board, irrespective of the sector and the recipient. When asked whether the OECD type of CBCR may represent a sound basis for MNEs of all sectors to report publically, members of the Platform for Tax Good Governance¹¹² recognised that the OECD had developed its template conscious of the need of tax authorities, but at the same time expressed the view that unnecessary costs would arise for MNEs of any misalignment of reporting obligations, between an OECD type, a CRD4 type, and possibly other types of CBCR. Assuming a successful take up worldwide of the OECD BEPS action plan, the same would go for non-EU MNEs that may be affected by an EU policy towards public CBCR.

Considering the Anti-Avoidance Package proposed by the European Commission to implement BEPS Action 13 in the EU, the Options considered in this document for a public CBCR regime would only entail insignificant additional costs for very large EU MNEs given the similar scope and consistency of the content of a CBCR under both regimes. Indeed, information in a public CBCR as anticipated in those Options would be either similar, or a

¹¹¹ [Charter of Fundamental Rights](#)

¹¹² The [Platform for Tax Good Governance](#) is a working group of the Commission. Members of the Platform are the tax authorities of all Member States and 15 organisations representing business, civil society and tax practitioners. Representatives from accession countries and from the OECD may be invited to the Platform as observers. The Platform assists the Commission in developing initiatives to promote good governance in tax matters in third countries, to tackle aggressive tax planning and to identify and address double taxation.

subset, or an aggregation of the information to be reported in a BEPS 13 CBCR¹¹³. A worldwide implementation of the plan is expected, at the G20 and OECD level, and also beyond. With Options 3A and 3B, it is estimated therefore that costs would equally be minimal for non-EU MNE groups.

Should the CBCR requirement also be extended to large MNEs, there would be some additional costs for each large MNE group. The cost of a CBCR is estimated to be on average around EUR 100,000 for a large MNE group¹¹⁴. An extension to large groups would therefore require a further 7,200 to 18,000 large MNEs to publish a CBCR¹¹⁵, beyond the very large ones. Overall recurring costs imposed on EU companies would be in the range of EUR 720 to 1,800 million per year.

5.4.2 Other costs for companies

Costs incurred by MNEs with a public CBCR may also result from an increased level of press and NGOs questioning the disclosures they make, which could result in higher levels of spending on press and public relation activities as determined during consultations. This could lead to e.g. lower sales, higher cost of capital or higher communications costs for these MNEs. MNEs may also face an increased level of interaction with tax authorities – however it is estimated that this would be no higher than a situation where a CBCR would be for the eyes of tax authorities only. Those additional costs are difficult to estimate, as they depend heavily on circumstances. Overall, administrative costs are expected to be reasonable in relation to companies' size and could be handled through existing public relation or tax department functions within MNEs. Other costs resulting from damage to business due to reputational or other effects could be of a much higher magnitude. However these are mitigated by the fact that this impact assessment has sought to avoid cases where such costs could result from misinterpretation of the data disclosed publically or other unintended use. It leaves therefore the risks for MNEs to bear such costs only in justified cases.

As seen in Section 5.1.2.3, there may be some potential reduction in costs that could result from an increased awareness of organizational complexity especially of the largest MNEs.

5.4.3 Costs for authorities

For all options, the additional impact on Member States and EU tax administrations is assumed to be marginal. Tax authorities would indeed already have the CBCR of very large MNEs following the implementation of the BEPS 13 initiative, which is the baseline scenario.

5.5 Impacts on third countries

MNEs operate by definition internationally, i.e. potentially in any country worldwide. A transparency initiative in the EU addressing the operations of MNEs is bound to have ramifications beyond the EU. This section aims to examine the impacts of such ramifications

¹¹³ See Annex J for a comparison of the CBCR as required for banks in CRD4, extractive industries by Chapter 10 of the Accounting Directive, and very large MNEs by the OECD action BEPS 13.

¹¹⁴ See Annex S.

¹¹⁵ According to the Orbis database, 7,168 large companies in the EU have subsidiaries in at least one other country; due to data gaps the actual figure of such companies can be considerably higher. The figure of 18,000 is in the higher range, considering 20,000 large EU groups in the EU less 1,900 very large ones.

stemming from the various options designed at the EU level to cater for the objectives defined in section 3.

It is anticipated that a purely EU-focused CBCR will raise no major concerns from an EU international and bilateral relationship perspective. EU third country partners will have no difficulty with the less granular CBCR published by EU MNEs, as envisaged in Option 2A. The same would go with a more granular CBCR as envisaged in Option 2B. It would require only EU MNE groups to report and, even if providing granular information on operations in third countries might be of certain sensitivity, the level of acceptance is expected to be fair given the fact that ultimately, EU persons are responsible for these operations. Should a global reporting model be retained as envisaged with Option 3A, no major concerns are expected either on the side of third countries given the clear focus on EU operations of the reporting. This could be seen by third country partners as a proportionate condition to access the EU market with CBCR focusing on EU preoccupations over taxes paid in the EU area as a result of these operations. By contrast, option 3B may impinge on EU international and bilateral relationships as it would require non-EU MNE groups to provide granular information on their operations worldwide, including where there is no link with the EU.

Developing countries tend to derive a greater proportion of their revenue from corporate tax than developed countries (in extreme cases, up to 90%). Consequently, the sums lost from corporate tax avoidance are proportionately larger for developing countries (relative to their overall revenues) than in developed countries¹¹⁶.

Developing countries are generally reported as being less effective than developed countries in recovering their fair share of taxes¹¹⁷. Weak administrative capacities to manage complex tax regimes and to deal with profit-shifting by MNEs can lead to huge revenue losses.

In the public consultation, many business respondents have indicated that CBCR is likely to increase taxes paid in 'source' countries (where the income is actually generated), at the expense of 'resident' countries (the country of residence of the recipient of the income). Developing countries, which are nowadays increasingly source countries, could well benefit by narrowing their tax revenue gap.

For developing countries, access to further information on corporate income tax by MNEs operating on their territory could assist tax authorities in these countries address their tax gap. For the tax authorities of these countries, getting access to information is reported by NGOs be the first challenge. However there are in principle no barriers to those tax administrations getting full access to the same complete country-by-country information as the one which is available to any other country. The G20 leaders have urged the timely implementation of the OECD BEPS plan and encouraged all countries and jurisdictions, including developing ones, to participate¹¹⁸. Barriers, if any, would be found on other accounts, such as lack of resources.

¹¹⁶ The IMF found in 2014 that base erosion due to profit shifting is 2-3 times larger for developing countries than for OECD countries, causing losses amounting to 1.75% of their GDP (IMF (2014), Policy Paper, "Spillovers in International Corporate Taxation". A newer estimate by the IMF in [May 2015](#) is 1.3% of GDP). UNCTAD finds that poor countries lose USD 100 billion each year, a figure exceeding the amount received in overseas development assistance (World Investment Report, 2015)

¹¹⁷ An IMF working paper estimates that average tax effort in developing countries is about 65% of tax capacity ([Fenochietto, R. and Pessino, C. \(2013\), *Understanding countries' tax effort*, IMF working paper \(WP/13/244\)](#))

¹¹⁸ [G20 Leaders' Communiqué](#), Antalya Summit, 15-16 November 2015

Public access to the information could compensate for this by enabling private initiatives to collect and digitalise information delivered by MNEs in order to give easier access to data to tax authorities of developing countries¹¹⁹. Whatever the option, that information would be less complete than the one accessible to tax authorities. It would be fairly granular under options 2B and 3B, and less granular with Options 2A and 3A. By all means, any further public transparency initiated by the EU could represent an additional assistance to developing countries.

Overall, public disclosure of country-by-country reporting could reinforce the EU's commitment to assisting developing countries raise additional tax revenues for development purposes – an aim outlined in the UN Financing for Development Conference in July 2015. Relations with developing countries would improve if the EU is perceived as a more credible partner.

5.6 Summary of the impacts

The following tables have been drawn up based on the analysis conducted in sections 5.1 to 5.5.

5.6.1 Comparison between Options by categories of impact

Table 4: Comparison by categories of impact

Impacts / Policy option	Growth and Jobs	Social	Tax conflicts and double taxation	Level playing field and competitiveness of EU companies	Administrative burden for EU companies
Option 1: No policy change	0	0	0	0	0
Option 2A: Public CBCR on EU controlled operations broken down by EU Member State and aggregated for non-EU operations	≈	+	≈	-	Large 2A(a): - Very large 2A(b): ≈
Option 2B: Public CBCR on EU controlled operations broken down by Member State and third country	≈	++	Basic info 2Bi: - Contextual info 2Bii: --	Basic info 2Bi: - Contextual info 2Bii: ---	Large 2B(a): - Very large 2B(b): ≈
Option 3A: Public CBCR on worldwide operations broken down by EU Member State and aggregated for non-EU operations	≈	++	≈	≈	≈
Option 3B: Public CBCR on worldwide operations broken down by Member State and third country	≈	+++	Basic info 3Bi: - Contextual info 3Bii: --	≈	≈

Magnitude of impact as compared with the baseline scenario: +++ strongly positive; ++ positive; + slightly positive; --- strongly negative; -- negative; - slightly negative ≈ marginal/neutral; ? uncertain; n.a. not applicable; +? uncertain but assumed to be positive
Sub-Option (a) covers large parent companies in the EU (at least 20,000 EU groups)

Sub-Option (b) covers very large parent companies in the EU (at least 1900 EU groups)
 Sub-Option (i) would require to disclose income tax paid and income tax accrued.
 Sub-Option (ii) would require disclosing income tax paid, income tax accrued, turnover, profit before tax paid and the number of employees.

5.6.2 Comparison between Options by affected stakeholder groups

Table 5: Comparison by affected stakeholders

Stakeholders / Policy Options	Member States / EU Tax administration	Citizens / civil society	EU Enterprises	Third countries
Option 1: No policy change	0	0	0	0
Option 2A: Public CBCR on EU controlled operations broken down by EU Member State and aggregated for non-EU operations	≈	+	Large 2A(a): -- Very large 2A(b): -	≈
Option 2B: Public CBCR on EU controlled operations broken down by Member State and third country	≈	++	Large 2B(a):--- Very large 2B(b): --	+
Option 3A: Public CBCR on worldwide operations broken down by EU Member State and aggregated for non-EU operations	≈	++	≈	-
Option 3B: Public CBCR on worldwide operations broken down by Member State and third country	≈	+++	--	--

Magnitude of impact as compared with the baseline scenario: +++ strongly positive; ++ positive; + slightly positive --- strongly negative; -- negative; - slightly negative ≈ marginal/neutral; ? uncertain; n.a. not applicable; +? Uncertain but assumed to be positive
 Sub-option (a) covers large parent companies in the EU (at least 20,000 EU groups)
 Sub-option (b) covers very large parent companies in the EU (at least 1900 EU groups)

6 COMPARING THE OPTIONS

6.1 Effectiveness of the options in the context of existing international and European initiatives on tax avoidance

The analysis below examines the additional results expected with enhanced corporate tax transparency, having regards to other tax avoidance initiatives at international and EU level. Namely, these are the G20/OECD multilateral approach, the ATAP and the re-launch of the CCCTB.

The implementation of the OECD BEPS plan has just begun internationally and at the EU level. The reach and concrete results of this initiative have yet to be substantiated and analysed in the coming years. With the ATAP, the European Commission has proposed

measures to endorse the plan at the EU level, including as regards a CBCR being part of the transfer pricing documentation for the attention of tax administrations by very large MNEs. It is expected that beyond the EU, there will be a general uptake of the multilateral BEPS Action plan by a fair proportion of the G20 and OECD member countries, sparking a new era in the fight against base erosion and profit shifting.

6.1.1 Potential impacts of further corporate tax transparency on the multilateral approach of the G20 and the OECD

Based on BEPS Action 13 on transfer pricing documentation, the OECD recommends that CBCR be mandatory only for MNEs with a turnover of, or which exceeds EUR 750 million. An EU approach to public CBCR building on this threshold would facilitate the swift and seamless implementation by MNEs, and ensure a more level playing field with non-EU MNEs since it is assumed that because most of them are established in a member country of the G20 or the OECD, most will be subject to the OECD type of obligation.

An EU transparency approach building on information to be disclosed in a BEPS 13 CBCR would also certainly be most helpful in ensuring a worldwide standardisation of the data (or of sources of data) which could benefit companies (overlapping/multiple CBCR obligations depending on country, size, sector...) as well as recipients of the information (easier analysis, trust, digitalisation). The public CBCR as examined under Options 2 and 3 would contain generally either the same information as a BEPS 13 CBCR, or a subset and/or an aggregation of it. The EU should therefore certainly have regard for the BEPS 13 template when and if it elaborates on a public CBCR in the follow up of this impact assessment. In addition, similar or consistent reporting standards would mean that any additional costs attached to these Options (for MNEs reporting under the OECD scheme) would not be significant.

The OECD expressed concerns that if the EU contributes to making all the information provided under the OECD BEPS 13 scheme public, some OECD members which have agreed to the compromise could withdraw their pledge to exchange information on a confidential and protected basis. Thus the effect that the Multilateral Competent Authority Agreement, which constitutes the basis for the exchange of information between OECD members' tax authorities, might be weakened¹²⁰ with Option 3B which purports that much of the information being exchanged between tax authorities under the OECD BEPS scheme would become public. This not the case with the other options examined here, as the public CBCR would be less complete than the BEPS 13 one, thus leaving much of its added value intact.

Overall, given their complementary purposes, the OECD BEPS 13 model and public reporting could well co-exist, so long as their purposes and features remain sufficiently differentiated.

6.1.2 Effectiveness in the context of the G20/OECD approach and the ATAP

In terms of purposes, section 2.4.2 explains why and how, in addition to compliance effects associated with the G20/OECD actions and the ATAP, public scrutiny in the EU would be a tool enabling to fight base erosion and profit shifting. This tool builds on reputational effects

¹²⁰ Hearing before the Economic and Monetary Affairs Committee of the European Parliament, the OECD Secretary General, [OECD: "Don't let legal dentists take the teeth from the transparency package"](#), March 2015

and democratic debates. How this tool could affect companies' behaviour and Member States is further analysed below.

6.1.2.1 Companies' behaviour

It is a well-established finding in experimental economics¹²¹ that even a slight indication of being observed increases positive social behaviours such as cooperation and trustworthiness. This would suggest that information provided to tax authorities (Coricelli et al. 2014) will contribute to the general objectives pursued, possibly by ensuring further compliance with tax laws. According to a Thomson Reuters-Euromoney survey of 180 tax professionals across 35 countries, to know that tax administration staff will look at the figures should increase businesses' tax perceived exposure and consequently compliance. Large companies are planning to overhaul their tax arrangements to comply with proposals for new global tax rules even before they become legally enforceable¹²². This may be why businesses largely believe that the EU need not go beyond the implementation of the OECD BEPS.

On the other hand, some promote public CBCR on the assumption that the OECD CBCR model may not achieved the intended objectives, or on the assumption that only public disclosure could contribute to them¹²³. For instance, the BEPS model may not put an end to special tax arrangements, if any, between companies and tax authorities since the OECD BEPS is not published. Besides, as tax administrations tend to focus on the cases they can most certainly win, one NGO opined in the public consultation that "CBCR for tax administrations will most likely only discourage the very worst practices, or lead companies to infuse a bit more substance in subsidiaries in low-tax jurisdictions, while not changing practice". That is, MNEs can "push the letter as far as it can go, and settle before it gets to court". By contrast, many believe that public CBCR, because of reputational damage risks, could achieve more than a CBCR for tax authorities only. Reputation is increasingly considered as an important asset in our economy. Today, intangible assets of a firm, including its brand, may account for up to 75% of a firm's market value¹²⁴. In a survey released jointly by the World Economic Forum and the Fleishman-Hillard public relations firm, three-fifths of chief executives said they believed corporate brand and reputation represented more than 40% of their company's market capitalization¹²⁵. Therefore a public CBCR could encourage MNEs to "comply with the spirit as well as letter of the law". For instance, public CBCR could shed light on special arrangements between companies and governments¹²⁶. The public consultation has shown that in addition to reducing harmful tax practices, almost three-quarters of NGOs and trade unions feel firms would opt under reputational risks pressure to also shift profits back to where they were generated. Such response may well go beyond the mere compliance with tax laws, a point where the OECD model would normally stop.

¹²¹ For example Andreoni and Petrie 2004; Milinski et al. 2002; Haley and Fessler 2005

¹²² Thomson Reuters – 2015 Global BEPS Readiness Survey report, a clear perspective, from every angle, 2015

¹²³ Eurodad - [An assessment of the G20/ OECD BEPS outcomes: Failing to reach its objectives](#), 2015

¹²⁴ Haigh, D. and Knowles, J., 2004. What's in a Brand? *Marketing Management* 13: 22

¹²⁵ <http://web.worldbank.org/archive/website00818/WEB/OTHER/CORPORAT.HTM>

¹²⁶ Transparency International coalition, [Why Public Country-By-Country Reporting for Large Multinationals is a Must](#), 2015

However such statements should certainly be nuanced:

- On the one hand, it has been found that the wide public knowledge of tactics implemented by MNEs to avoid or delay taxation does not necessarily result in tangible reputational costs¹²⁷. On the other hand, the Starbucks case in the UK tends to exemplify the contrary: in 2010¹²⁸, the public discussion of the tax affairs of this company increased its behavioural response (through reputational leverage).
- The effect on companies would differ greatly from one company to another, depending on circumstances:
 - As far as the type of industry is concerned, "B2C" companies usually attract more public scrutiny than "B2B" companies. The former will naturally have a higher reputational leverage as their end consumers are expected to be more demanding in terms of tax justice than businesses. Nevertheless, higher corporate responsibility standards may as well become increasingly pervasive for all types of very large businesses, including "B2B". For instance, given their size, MNEs are natural candidates to seek external funding, and there is growing investors' demand for fair tax planning. These increasingly see taxes as "a vital investment in the local infrastructure, employee-base and communities". They want to assess the risks associated with aggressive tax planning¹²⁹. Investors in this way may increasingly become agents of the public scrutiny.
 - Public reactions to information publically disclosed will differ from one country to another, depending on the public or democratic sensitivity to taxes as well as on historical or cultural reasons. This may entail varied responses by given MNEs from one country to another.

6.1.2.2 Effects on Member States

A public CBCR could undeniably nurture a sound democratic debate on corporate income tax including with regards to companies and States' policies – an area beyond the usual remit of tax authorities¹³⁰. The public at large lacks information. Bodies such as Parliaments have been able to get hold of limited information at a high cost (investigations, subpoenas, hearings, etc.). Public CBCR could be "the only option that would enable accountability of government

¹²⁷ Gallemore, Maydew and Thornock (Reputational Costs of Tax Avoidance, 2014)

¹²⁸ In the follow up of a hearing in 2012 before the House of Commons' public accounts committee and campaigns by civil society, the Starbucks company in the UK volunteered to pay £20m to the UK Treasury in 2013 and 2014 by not claiming tax deductions for royalties or payments even though the company would have had the right to do so if merely complying with tax laws. Starbucks elected then in 2015 to move its European headquarters from the Netherlands to London and to make Britain the base of its intellectual property rights, thus repatriating royalties from EU operations (France, Germany, ...). Starbucks is expected to pay corporation tax on profits in the UK on a regular basis in the future, after years of losses. Foreign sales represented around 31% of Starbuck Inc's net revenues from external customers for the fiscal year ended on 28 September 2014, whereas 12% of the total income tax expense of \$1.1 billion was due overseas. Revenues from countries other than the US consist primarily of revenues from Canada, the UK, and China, which together account for approximately 65% of net revenues outside the US for fiscal 2014. The operating income in Europe, Middle East, and Africa is relatively lower (9% of revenues) than in other areas (23% overall for the group).

¹²⁹ See for instance Change in Context, [Why investors are joining consumers and NGOs on tax evasion](#), 2016

¹³⁰ Friedrich Ebert Stiftung (FES), [Recasting the Die](#), 2015

policies, facilitate the assessment of their efficacy, and help to restore public trust in large companies" claimed a respondent to the public consultation.

Through a better informed democratic debate on the causes and consequences of tax avoidance, the initiative should contribute to promote fairer tax competition in the European Union. A public CBCR should enable a better evaluation of possible weaknesses in Member States' income tax policies. Public pressure will incentivize Member States to reduce mismatches and loopholes between tax systems, to promote less harmful tax measures and to increase the global fairness of tax systems.

6.2 Comparison of policy options against effectiveness and efficiency criteria

Table 6: Comparison against effectiveness and efficiency criteria

Objectives Policy Options	EFFECTIVENESS				EFFICIENCY (cost-effectiveness)
	Specific objective Increase corporate tax transparency	Objective 1 Enterprises should pay tax where they actually make profit	Objective 2 Foster corporate responsibility to contribute to welfare through taxes	Objective 3 Fairer tax competition in the EU through democratic debate	
Option 1: No policy change	0	0	0	0	0
Option 2A: Public CBCR on EU controlled operations broken down by EU Member State and aggregated for non-EU operations	+	+?	+	+	Large 2A(a): - Very large 2A(b): +
Option 2B: Public CBCR on EU controlled operations broken down by Member State and third country	++	+?	++	+	Large 2B(a): -- Very large 2B(b): -
Option 3A: Public CBCR on worldwide operations broken down by EU Member State and aggregated for non-EU operations	++	+?	++	++	++
Option 3B: Public CBCR on worldwide operations broken down by Member State and third country	+++	+?	++	++	+

Magnitude of effectiveness/efficiency as compared with the baseline scenario: +++ strongly positive; ++ positive; + slightly positive; ---strongly negative; -- negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable; +? Uncertain but assumed to be positive

Sub-Option (a) covers large parent companies in the EU (at least 20,000 EU groups); Sub-Option (b) covers very large parent companies in the EU (at least 1,900 EU groups)

6.2.1 Assessing the effectiveness and efficiency of Option 2A

This option would undoubtedly increase the level of information made publicly available by companies. The impact of public reporting on Objective 1 is uncertain but could deliver additional incentives compared to the BEPS initiative (baseline scenario) by which CBCR would be provided to only tax authorities, and would also increase the companies' sense of corporate social responsibility (CSR) in terms of tax practices. Impacts in terms of fair tax competition is slightly positive as the public would have access to the information of EU MNE groups on their EU operations and it could trigger a public debate and exert pressure in

favour of fairer tax competition. Applying Option 2A to large MNEs would result in cost estimated to EUR 100,000 per additional MNE¹³¹. Overall, the efficiency of option 2A(a) is therefore negative given that benefits in terms of effectiveness do not seem to be commensurate with imposing such additional burden on large companies. The efficiency of this measure is on the contrary slightly positive for Option 2A(b), as the narrower scope would prevent those caveats, yet ensure a fair level of information on a fairly high percentage of operations controlled from the EU.

6.2.2 Assessing the effectiveness and efficiency of Option 2B

Option 2B would have a positive impact in terms of corporate tax transparency as it would increase the information made publicly available by companies. As with Option 2A, it is expected – but not completely known – if the measure will incentivise companies to geographically align profits, this time with a wider geographical coverage. The effect of Option 2B is expected to be positive on companies as regards Objective 2 as the sense of corporate responsibility would be further fostered with a reporting including third-country operations. As regards Objective 3, its effectiveness would be similar to Option 2A. The efficiency of such Option is however assumed to be negative in the case of sub-Option 2B(b) because of the risks in terms of level playing field, competitiveness for EU companies, tax conflicts and double taxation especially in third countries that will not be part of the BEPS scheme. However, this would be mitigated if only essential information (income tax accrued/paid) be required as envisaged with sub-Option (i). These negative impacts would be more widespread with Option 2B(a), hence causing additional administrative burden for companies not covered by the BEPS scheme.

6.2.3 Assessing the effectiveness and efficiency of Option 3A

Option 3A would have a positive effectiveness in terms of corporate tax transparency as most very large MNE would have to report tax related information on EU operations. Similarly to Option 2 the impact on Objective 1 is uncertain but assumed to be positive. The information about the amount of tax paid being publicly available, this would have a positive impact in terms of the consistency with the corporate CSR communication. As regards Objective 3, the effectiveness of Option 3 is assessed as positive as all very large MNE group operating in Europe would have to publish a CBCR on their EU activities. This could trigger a democratic debate and favour fairer tax competition. The efficiency of Option 3A is assumed to be positive given the positive effectiveness and the absence of important risks.

6.2.4 Assessing the effectiveness and efficiency of Option 3B

Option 3B would have a strongly positive effectiveness in terms of corporate tax transparency as all very large MNE operating in the EU would have to publish a CBCR on all their operations. The effectiveness of this Option on Objectives 1, 2, and 3 is assessed to be similar than Option 3A. Indeed, a public CBCR as envisaged in Option 3B would foster democratic debate in the EU which could enable fairer tax competition in the EU in the same way that Option A (they have the same coverage when it comes to country-by-country reporting within the EU). Furthermore, this option could positively spread responsible communication and practices on tax as part of corporate social responsibility. Overall, the efficiency of Option 3B is assumed to be slightly positive, as the positive social impacts are heavily counter-balanced

¹³¹ See Annex S

by significant risks in terms of double taxation/tax conflicts for MNEs and potential downsides in relation with third country partners. The balance of this overall slightly positive assessment would remain even with less disclosure (sub-Option (i)) as risks associated to reduced transparency would be lower.

6.3 Preferred option

While there may be value to pursuing Option 3B (requiring all MNEs to publically disclose information regards their operations both within and outside of the EU) in terms of the social awareness/impact it may bring, this proposal runs the risk of subjecting companies to increased double/multiple taxation. In addition, the publication of extensive information stemming from a coverage of all multinational operations, both within and outside the EU (Option 3B) might depart considerably from the expectations of Europe's key third country partners. Requiring European firms operating in the EU to provide a public breakdown of tax-related information (Option 2A) would achieve the goals and objectives with some effectiveness, but focus only on EU MNEs and thus create an unlevelled playing field.

The more desired Option would be to require both EU and non-EU firms operating in the EU to comply with public CBCR. Therefore, **Option 3Aii** is the preferred Option. The latter would promote a more level playing field between all multinational firms – EU and global – active in the European Economic Area (EEA), building on a sub-set of the information required to be provided to tax authorities (by BEPS 13 and the Commission's proposed amendments to the Directive on Administrative Cooperation of 27 January 2016).

Option 3A with only essential tax information in CBCR would put the EU requirements reasonably on par with US standards. There would be few differences though. The CBCR prepared by MNEs in the EU would include the geographical breakdown of the turnover, number of employees, profit before tax, current tax expense and tax paid. As a point of comparison, per US standards¹³², the geographical analysis given by issuers focuses on the turnover, the current tax expense and the deferred tax expense¹³³. 10-K forms are US centric (domestic=Federal and united State level) whereas EU reports would be EU centric (Member State level).

Operationally, the objective is that in the future, any very large MNE group operating on the EU markets files annually a Country-By-Country Reporting with at least one business register in the EU, and publishes it as well on its web site. The report should comprise information relating to corporate income tax (Number of employees, Net turnover, Profit before tax, Current income tax accrued, Income tax paid) on the complete operations of an MNE group, consolidated at the level of the ultimate MNE parent. Each information disclosed should be broken down by Member State and aggregated as regards operations in third countries. Each MNE is expected to have the information already at hand on the basis of the CBCR submitted to tax authorities as a result of the G20/OECD plan. No specific audit would be required. This

¹³² Unless a US issuer decides to structure its segmental information on a geographical basis

¹³³ Deferred taxes and taxes paid both help determine the reality of taxes, although in different ways: deferred taxes apportioned in a given fiscal year enable a better vision of the actual tax expense relating to the profit in the P&L. In the long run, tax paid should equal tax expenses, including current and deferred. For this reason, it seems reasonable to disclose one or the other, but not necessarily both. The preferred option retains the approach of the OECD and the ATAP for consistency reasons, i.e. the disclosure of taxes paid, no disclosure of deferred taxes.

requirement would not apply to EU credit institutions and investment firms, which would continue to publish their specific CBCR pursuant to the CRD4.

A model based on recommendations does not seem to be a promising avenue. There is a high chance of uneven implementation in the EU, not only between Member States, but possibly also between companies or industry sectors. This would contradict the intended objectives and premises of this work.

Thus the preferred Option could be implemented by either a directive or a regulation¹³⁴. Both instruments have benefits. A regulation has the advantage that once adopted by the co-legislators, the reporting requirement would immediately be applicable and enforceable by law preventing a gap of several years between the adoption of a directive and the publication of the first report by companies. However, a directive would enable each Member State to devise its own laws on how to reach the reporting requirements. It would also foster democratic debate on corporate income tax and fairer tax competition in each Member State which is related to one of the above objectives¹³⁵.

6.4 Overall impacts of the package

There is without doubt that an EU approach to public CBCR would deliver greater transparency on corporate tax issues, compared to the baseline scenario. Enhanced transparency, in allowing public scrutiny to play a greater role in the monitoring and oversight of companies' tax practices, is likely to change firms' awareness of and behaviour in these areas, beyond improvements in compliance with tax laws expected with the EU's uptake of the OECD BEPS 13 Action. A logical conclusion to draw from this is that the obligation to report to the public will certainly raise companies' perception of their own commitment to corporate social responsibility (CSR).

More crucially, granting the public access to CBCR will serve to fuel public debate and strengthen the democratic process by deepening civic engagement. With the costs of publically disclosing CBCR expected to be insignificant for MNEs, NGOs, journalists and the wider public alike would welcome the opportunity to be able to better contribute to discussions on company tax, corporate behaviour and tax policies governing the decisions of multinational enterprises. Indeed, it has been suggested that a public disclosure of CBCR may be the only way to restore public faith in companies, some of which have suffered negative publicity in light of recent allegations.

Beyond providing society with information to carry out their own analysis of corporate behaviour, public CBCR will enable key legislative and governing bodies, such as Parliaments, to engage in a more robust/informed debate on tax issues. This would certainly

¹³⁴ A regulation shall be based only on article 114 TFEU

¹³⁵ In July 2015, the European Parliament adopted an amendment to the Commission's proposal for a Directive on shareholders' rights introducing, by way of amendment to the Accounting Directive, a requirement for EU large companies to provide country by country reporting as a way to promote corporate trust and facilitate the engagement of shareholders and citizens in companies. The shareholder rights directive is currently in trilogue negotiations. However, given the wider objectives of this initiative as well as the scope of the option chosen, it is considered that a specific legislation is the best instrument to achieve the desired goal.

strengthen democratic decision-making. Where the interaction of tax laws provides companies with opportunities for engaging in (possibly aggressive) tax planning, a set of country-by-country indicators serves as an important benchmark for assessing if profit allocation is truly aligned with the actual creation of value.

Since the debate on public CBCR cannot be confined to the national level, discussions taking place at the EU level are already a positive step towards achieving greater coordination. It can be said that while public disclosure of CBCR may not guarantee an overhaul or significant reform of tax practices, it will be key to nurturing a democratic debate, promoting public participation in the wider discussions on corporate governance and how to address tax avoidance. While this impact assessment suggests that a (positive) change in corporate attitudes and behaviour towards tax is likely, it will be more difficult to determine the magnitude of specific impacts i.e. on companies' geographic allocation of profits and on the tax revenues of each Member State. These may, however, be affected.

7 MONITORING AND EVALUATION

The Commission will monitor the implementation of the policy in cooperation with the Member States. In compliance with the principle of subsidiarity, the relevant information should be gathered primarily by the Member States, possibly with the assistance of the Accounting Directive Committee. It is expected that the costs of such activity would be met from existing operational budgets, and would not be significant.

An evaluation of whether the report on income tax information delivers appropriate and proportionate results should be made, taking into account the need to ensure a sufficient level of transparency and the need for a competitive environment for undertakings. The evaluation should examine the effectiveness, efficiency, relevance, coherence and EU added value. The evaluation of effects of the preferred policy should consider the extent to which the anticipated objectives have been met (i.e. to enhance public scrutiny), and measure if possible the expected impacts on: companies' competitiveness, whether or not the risks of double taxation and tax disputes have materialised, as well as possibly whether there were any effect on third countries, including developing countries, and costs. The evaluation should also consider international multilateral developments in the intervening period, and consider broadly the overall scope of CBCR. It should determine whether companies are reporting in a consistent manner and in compliance with EU standards, including where non-EU MNEs are involved. It should also determine the compliance level, especially as regards non-EU MNEs, as well as the effectiveness of enforcement measures. Finally, the evaluation should consider the objectives of MNEs to pay their tax in countries where they make their profits, fostering corporate responsibility and fairer competition of MNEs versus other companies.

Sample reviews could be based on CBCR published by EU and non-EU MNEs on the internet. A survey of MNEs, including their management and auditors, as well as Member States' administrations, representatives of civil society, third country administrations and other stakeholders would represent an additional useful source of data and information. Data retrieved from business registers and other sources of subsidiaries or branches in the EU of non-EU MNEs could assist in determining the completeness of reporting.

In order to ensure effective measures, the evaluation should be carried out a few years after companies have started to publish information. It could form the basis of a report to the EP and Council.

8 GLOSSARY

Accounting Directive	Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings
APA / Advance pricing arrangements	Means any agreement, communication or any other instrument or action with similar effects, including one issued in the context of a tax audit, given by, or on behalf of, the government or the tax authority of one or more Member States, including any territorial or administrative subdivision thereof, to any person that determines in advance of cross-border transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment.
ATAP	Anti-Tax Avoidance Package, proposed by the European Commission on 28 January 2016
B2C / B2B	Business to Consumer / Business to Business
BEPS	Base Erosion and Profit Shifting. This acronym refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially erode the taxable base and/or shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid
CBCR	Country-By-Country Reporting For a given MNE, a CBCR will typically break down certain consolidated information relating to the the MNE group (such as taxes paid, turnover, ...) into geographical areas the granularity of which is based on existing countries.
CIT	Corporate Income Tax Taxes levied on the net profits (gross income minus allowable tax reliefs) of enterprises. It also covers taxes levied on the capital gains of enterprises (source: OECD).
Company, corporation,	enterprise, undertaking, Refers to an economic entity doing business

entity, business, firm

CRD4 / Capital Requirements Directive Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms

DAC / Directive on Administrative Cooperation (DAC) Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation

DTC / Double Tax Convention A bilateral agreement between two countries under that regulates each countries rights to taxation on the income generated within their territory. The main objective of a DTC is to avoid the double taxation of persons who have income in both countries.

EBIT / EBITDA Earnings Before Interest & Taxes / & Depreciation & Amortisation

EEA European Economic Area (including the EU Member States, Iceland, Liechtenstein and Norway)

EITI Extractive Industries Transparency Initiative

ETR / Effective tax rate There is no worldwide generally accepted formula to calculate this rate. The effective corporate tax rate (ETR) measures the taxes a corporation pays as a percentage of its economic profit. This rate may differ from the Statutory tax rate for various reasons (temporary or permanent differences between accounting and taxable profit, specific tax regimes, tax credits, etc.). For corporations, the effective tax rate may be calculated by dividing total tax expenses by the company's profit before taxes.

The IBFD tax research platform defines the Effective Tax Rate as follows: 'The taxpayer's actual tax liability (or a reasonable estimate thereof) expressed as a percentage of a pre-tax income base rather than as a percentage of taxable income, i.e. tax rates that take into account not only the statutory tax rate, but other aspects of the tax system that determine the amount of tax paid. It is calculated by dividing the taxpayer's total tax liability by his taxable income and multiplying by 100.

EU European Union

FDI Foreign Direct Investment

G20 Group of twenty

GAAP Generally Accepted Accounting Principles

GDP Gross Domestic Product

Harmful tax practices The Code of Conduct Group (Business Taxation) defined in 1999 in its report to the ECOFIN Council (SN 4901/99) harmful tax competition and harmful tax measures as follows:

"(...) tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code. Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor. When assessing whether such measures are harmful, account should be taken of, inter alia:

1. whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents, or
2. whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base, or
3. whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages, or
4. whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD, or
5. whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way."

IFRS	International Financial Reporting Standards
IGO	Inter-Governmental Organisation
IMF	International Monetary Fund
IP	Intellectual Property
KPI	Key Performance Indicator
MAP	Mutual Agreement Procedure
MCAA	Multilateral Competent Authority Agreement developed by the OECD for the automatic exchange of Country-by-Country reports
MNE	<p>Stands for Multinational Enterprise. In this document, the MNE is deemed to be the ultimate parent company of an MNE group.</p> <p>An EU MNE is an MNE established in the EU. A non-EU MNE is an MNE established in a third country.</p>
MNE group	<p>Companies / entities / undertakings comprised in a group controlled by an MNE, which altogether form an MNE group</p> <p>An EU MNE group is a group whose ultimate MNE parent is established in the EU. A non-EU MNE group is a group whose ultimate MNE parent is established in a third country.</p>

NGO	Non-Government Organisation
OECD	Organisation for Economic Co-operation and Development
PE /Permanent establishment	A fixed place of business through which the business of an enterprise is wholly or partly carried on (Article 5, OECD Model Convention on Income and on Capital). This definition is used for tax purposes.
R&D	Research and development
SME	Small and Medium-sized Enterprises
SPE	Special Purpose Entity
STR / Statutory Tax Rate	The nominal tax rate imposed by law. Different statutory rates may apply for different income levels.
Tax avoidance	According to the OECD glossary of tax terms, tax avoidance is defined as the arrangement of a taxpayer's affairs in a way that is intended to reduce his or her tax liability and that although the arrangement may be strictly legal is usually in contradiction with the intent of the law it purports to follow
Tax competition	Refers to a form of regulatory competition between States aiming to attract foreign direct or indirect investments, skilled labour, or other assets by ways of low taxation level and/or special tax preferences. See also Harmful tax practices.
Tax evasion	According to the OECD glossary of tax terms, tax evasion is defined as illegal arrangements where the liability to tax is hidden or ignored. This implies that the taxpayer pays less tax than he or she is legally obligated to pay by hiding income or information from the tax authorities
Tax Gap	The difference between total amounts of taxes owed to the government versus the amount they actually receive.
Tax planning (aggressive)	In the Commission Recommendation on aggressive tax planning (C(2012) 8806 final), aggressive tax planning is defined as "taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability. Its consequences include double deductions (e.g. the same loss is deducted both in the state of source and residence) and double non-taxation (e.g. income which is not taxed in the source state is exempt in the state of residence)". Tax planning can become "aggressive" in a multitude of forms and extent.
Tax ruling	A document which entails any communication or any other instrument or action with similar effects, by or on behalf of the Member State regarding the interpretation or application of tax

laws

Transfer pricing

Transfer pricing refers to the terms and conditions surrounding transactions within a multi-national company. It concerns the prices charged between associated enterprises established in different countries for their inter-company transactions, i.e. transfer of goods and services. Since the prices are set by non-independent associates within the multi-national, it may be the prices do not reflect an independent market price. This is a major concern for tax authorities who worry that multi-national entities may set transfer prices on cross-border transactions to reduce taxable profits in their jurisdiction.

Transparency Directive

Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC

UNCTAD

United Nations Conference on Trade and Development

US SEC

Securities and Exchange Commission of the United States

VAT

Value Added Tax

WTO

World Trade Organisation

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ANNEX A: PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

Procedural issues

The European Commission set up an Inter-Service Steering Group (ISSG) to assist Directorate General Financial Services, Financial Stability and Capital Markets Union (DG FISMA), Directorate General Economic and Financial Affairs (DG ECFIN), Directorate General Taxation and Customs Union (DG TAXUD) in preparing this document. Directorates General which participated in this group consisted of the Secretariat General, the Legal Service, Directorate General Competition, Directorate General Justice, Consumers and Gender Equality, Directorate General Trade, Directorate General Internal Market, Industry, Entrepreneurship and SMEs, Directorate General Digital Economy and Society. The Joint Research Centre of the European Commission also contributed. Over the course of the initiative the Group convened five times.

The Regulatory Scrutiny Board was consulted on 17 February 2016. The present document has been amended based on the Board's recommendations. This report has been improved with regards to (1) the complementarity and additionally of the envisaged measures with regards to other relevant corporate tax avoidance measures such as the BEPS/ATAP and the announced relaunch of the Common Consolidated Corporate Tax Base (CCCTB); (2) the voluntary disclosure option; (3) the assessment of impacts with regards to other tax avoidance measures included in the baseline scenario.

External expertise and consultation of interested parties

The Commission Services have built a robust expertise on two EU policies on Country-By-Country Reporting¹³⁶. It also called for external expertise in the area of CBCR for credit institutions through a study carried out by PwC¹³⁷ in 2014 (commissioned by the EC). Considering the extensive literature, documents, debates and hearings that are publicly available, the Commission Services felt that limited additional expertise from external sources was needed.

The Commission Services undertook the following consultation activities:

- A public consultation (17 June – 9 September 2015)¹³⁸.
- An exchange of views at the Platform for Tax Good Governance¹³⁹ on a number of technical issues (24 September 2015)¹⁴⁰.

¹³⁶ Report on Payments to Governments, Accounting Directive 2013/34/EU, Chapter 10 – Country-by-country reporting, Capital Requirement Directive 2013/36/EU, Article 89.

¹³⁷ Study "[General assessment of potential economic consequences of country-by-country reporting under CRD IV](#)", PWC, 2014

¹³⁸ European Commission, [Public consultation on further corporate tax transparency](#) – June 2015

¹³⁹ European Commission, [Platform for Tax Good Governance](#)

¹⁴⁰ See in particular a [Discussion Paper on Tax Transparency](#) and the [Summary Record](#) of the meeting.

- Ad hoc exchanges with a limited number of relevant parties on certain topics, such as the costs, or the follow up of existing CBCR practices. In this regard, the Commission services had contacts with representatives from an array of MNEs, credit institutions' representatives, and NGOs between June and December 2015.
- A Roundtable where Commissioners Dombrovskis, Hill and Moscovici met with an array of stakeholders (1 October 2015), including representatives of the business community, intergovernmental organisations, academics and civil society.

ANNEX B: SYNOPSIS REPORT ON THE CONSULTATION ACTIVITIES UNDERTAKEN BY THE EUROPEAN COMMISSION TO ASSESS THE POTENTIAL FOR FURTHER TRANSPARENCY ON CORPORATE INCOME TAXES

The Commission services consulted widely the opinions of stakeholders between June and December 2015. This report summarises the contributions shared with the Commission through ad hoc exchanges, meetings (list of stakeholders given below), and the public consultation which took place over summer 2015. The latter garnered the views of over four hundred respondents representing firms, industry associations, NGOs, citizens and think tanks¹⁴¹. All inputs received during the consultation have been carefully considered and taken into account. None have been discarded or neglected, but due to the wide array of views voiced by different stakeholders, the policy options explored in the Impact Assessment may not necessarily reflect the views of all parties.

General Views

1. In terms of possible corporate transparency initiatives, how should the EU position itself in relation to its international partners such as the OECD/G20?

Virtually all NGOs & trade unions and the vast majority of private individuals who participated in the public consultation believe that the EU should be at the forefront and possibly go beyond the multilateral approach supported by the G20. In their view, this can be achieved on the basis of the OECD BEPS Action Plan by furthering public disclosure. This is supported by a view that emerged from discussions at the Platform for Tax Good Governance, which cited the purpose of country-by-country reporting (CBCR) as being larger than tax issues – that its broader objective is to give people a better understanding of MNEs' contribution to society, in terms of growth, jobs and investment.

The business community (firms and industry associations) are generally less keen on public disclosure, concerned that this approach would place European companies at a competitive disadvantage relative to their non-EU counterparts. While 45% of business respondents in the public consultation believe that the EU should implement international initiatives at the same pace as global partners – to ensure a level the playing field – a third deem current reporting requirements to be sufficient.

2. What objectives, if any, should a new EU initiative on corporate tax transparency aim to achieve?

Almost all individuals and civil society organisations believe that a new EU initiative should aim to achieve the following objectives: ensure firms pay tax where profits are made, help tax

¹⁴¹ The Commission Services: 1) undertook a public consultation that garnered the views of over four hundred stakeholders, launched June 2015; 2) participated in a Roundtable with Commissioners Dombrovskis, Hill and Moscovici, which convened Members of the Commission, representatives of the business community, an intergovernmental organisation (IGO) and civil society, held October 2015; 3) engaged in an exchange of views on technical issues at the Platform for Good Tax Governance in September 2015; and 4) held bilateral ad hoc discussions with companies, NGOs and other stakeholders.

authorities orient their audits on firms, ensure firms invest based on economic merit, and promote fairer competition between multinationals and SMEs. Three-quarters of these groups agree that a new initiative should aim to: stop harmful tax competition between Member States and that firms should act as they say in terms of aligning corporate tax planning with contribution to welfare.

Approximately a third of business respondents agree with all of the above objectives, even though almost half do not support the aim that firms should pay taxes where profits are made. Only a quarter of firms believe a new initiative should ensure taxes are paid where profits are generated. Roughly a third of companies disagreed with the objectives proposed in the public consultation.

3. Which options would be most effective in achieving the stated objectives?

Most businesses and industry associations do not believe that implementing BEPS 13 at the EU level would achieve the stated objectives, let alone public transparency. A considerable number nevertheless believe it would be effective for 1) ensuring firms pay taxes where profit is made, 2) stopping harmful tax competition between Member States and 3) helping tax authorities orientate their audits on firms. There is virtually no support for disclosure requirements beyond BEPS 13 as firms argue that public CBCR would distort competition between very large multinationals & smaller enterprises and be counterproductive to the aim of aligning profits with economic activity.

On the contrary, there is unanimous agreement from individuals, NGOs and trade unions that "No EU Action" would be counterproductive towards achieving the objectives. Three quarters of NGOs and trade unions insist that the most appropriate course of action would be a full public disclosure of tax information. These respondents believe this would be the most effective way for achieving all the objectives. While a non-Member State participant at the Platform for Tax Good Governance suggested that public CBCR is useful for detecting base erosion and profit shifting, another wondered whether public disclosure was necessary at all for meeting the objectives.

Transparency towards Tax Authorities

4. What effect would a BEPS-like initiative have on companies' tax practices?

Very few in the private sector agree that more transparency towards tax authorities would encourage businesses to widespread compliance with tax rules and end the use of tax gaps, mismatches and loopholes etc.

Unlike the business community, 80% of NGOs & trade union and over half of private individuals in the public consultation argue that greater transparency towards authorities would increase tax compliance and reduce the exploitation of tax gaps, mismatches and loopholes designed to minimise payments. A large proportion of business respondents suggest that a) impact on tax behaviour will depend on the individual company and b) the few groups with the most aggressive tax practices are more likely to re-evaluate their tax-planning strategies.

5. What would be the impacts of having a BEPS-like initiative? Is there likely to be any effect on public finance?

Impact on competitiveness and level playing field

Reference was made at the Platform for Tax Good Governance to a letter sent by members of the US Congress to the US Treasury, challenging the Federal government's right to implement CBCR. The member argued that if the US does not comply with CBCR it would result in asymmetric information between EU and US firms. More information on the part of US companies would tilt the playing field in their favour i.e against EU companies. The implications of this could be profound as the US is regarded as by far the EU's largest competitor.

Impact on public finance

Half of all businesses that responded to the public consultation believe this would lead to a relocation of tax bases between Member States. Two-thirds of private individuals and a quarter of NGOs and trade unions argue that further transparency would lead to an increase in tax paid in Europe (against 15% individuals and just one NGO who believe European tax receipts will fall). However, many business respondents have indicated that the full BEPS package is likely to increase taxes paid in 'source' (mostly non-EU) states and decrease taxes paid in 'resident' (mostly EU) states.

Impact on costs

A coalition of NGOs brings to attention an estimate by the UK Treasury that one-off costs would be negligible and that costs to affected businesses would be £200,000 a year. An individual commented in the public consultation that costs will be minute if existing resources are simply reshuffled or reorganised. Non-profit organisations conclude that the small or negligible costs of CBCR would be far outweighed by the wider benefits to society of cracking down on base erosion and profit shifting.

An individual respondent remarked: "firms will claim that the costs of preparing a consolidated CBCR are considerable but I doubt whether they will exceed the costs of the complicated structures presently employed to escape tax!".

Impact on business-friendliness and attractiveness to invest

Virtually all NGOs and trade unions believe that transparency under BEPS 13 would foster a pro-growth environment, and interestingly, half of all SMEs and microenterprises agree. Not a single one of these feels that BEPS would have a negative impact on the business environment. In contrast, however, only a few firms and industry associations reaffirm this view. The vast majority of the firms and industry associations in the public consultation believe that there is not likely to be significant change to firms' willingness to invest in the EU.

Transparency towards the Public

6. What would be the advantages/benefits of a public disclosure of CBCR compared to a disclosure to tax authorities only? Would a public disclosure of CBCR be more effective in meeting the objectives than a disclosure to tax authorities only?

According to some NGOs and tax justice campaigners, the importance of information being made public is grounded in the fact that one should not have to rely on information leaks and the work of whistleblowers to tackle the issues presented by BEPS: “without leaks and whistleblowers, even governments see only a little into the inner workings of companies”.

NGOs and trade unions see largely only benefits to having public transparency. To illustrate, one said: “We see only potential benefits. If the public sees the tax contribution of MNEs to society, the revenue from income tax will increase – levelling the playing field between MNEs and SMEs”. In their opinion, public CBCR would provide information to a wide range of stakeholders, thereby strengthening efforts to monitor governance, corporate social responsibility, tax payments, and potentially corrupt practices. NGOs also claim that there is strong interest from investors wishing to gain more insight into the geographical location of business activities and risks arising from aggressive tax planning.

Furthermore, a public CBCR would allow public interest groups and investigative journalists to verify whether companies are paying their share of tax in the countries where they conduct business, especially where tax authorities lack the capacity. This would enable third parties to support the monitoring and analysis that will be carried out by the tax authorities participating in BEPS. Civil society organisations highlight that perhaps more importantly than anything else, public disclosure of tax-related information is the only option that would promote accountability and restore public trust in large companies.

A commonly held view is the ability of public CBCR to help tackle the pervasive tax arrangements made between large multinationals and tax authorities. One individual opined: “Tax authorities in numerous countries have been known to make secret deals with large organisations. This is inherently undemocratic and unjust. Only by exposing data to the public (citizens, NGOs & the media etc.) will businesses be forced to act”.

Businesses on the other hand, are not so convinced and fear the consequences of publicised tax information (see question 8). One view which reflects the general sentiment of firms and industry associations is that the EU should focus on ensuring that the corresponding legislative implementation of BEPS will be coordinated and not lead to further unilateral differentiation amongst its Member States: “working towards a greater degree of harmonisation and producing practical guidance and tools to enable implementation would be far more effective than reporting CBCR information to the public. There is no need for the EU to introduce additional transparency requirements that go beyond BEPS as this would not combat aggressive tax planning, harmful tax regimes and tax fraud but will indeed harm the competitiveness of the EU as a region”.

7. What could be the social impacts? (increases transparency/accountability & public trust in firms, CSR)

NGOs and trade unions have advocated for public CBCR on the grounds that it may be the most effective option for enabling the public to make informed judgements about a company's contribution to the society in which it operates. They reason that a better understanding of groups' activities and geographical location, public CBCR would place stakeholders in a stronger position to assess if taxes are being paid where business activity takes place, and possibly serve as a tool for identifying the risk of tax avoidance and tax evasion.

Public disclosure of tax-related information, they argue, is also instrumental for promoting their own awareness of the need to pay taxes – through its ability to identify corruption, tax agreements and illicit tax practices by shedding light on relevant information. The increased means through which civil society are able to help authorities in monitoring improves regulatory oversight and provides valuable information to lawmakers regarding if and how laws should be changed to reduce exploitative tax practices and secretive tax arrangements.

Business leaders expressed concerns of misinterpretation of the information disclosed in a CBCR, due to limited understanding of technicalities by the public. This, they argue, would cause undue and unfair damage to firms' reputations. Some industry representatives were emphatic in their view that pressure groups might well leverage this to bring law-abiding firms to disrepute – with negative consequences on corporate image and business profitability.

8. What could be the impacts for companies in term of Competitiveness, Level playing field (impact on attractiveness to do business/invest in EU?) and costs?

Impact on business-friendliness and attractiveness to invest

There is unanimous agreement (93%) among NGOs and trade unions who participated in the public consultation that the impact on business-friendliness from tax information made public would be positive. Roughly three-quarters of private individuals share this view, with opinion divided between the remaining respondents. Almost three-quarters (72%) of firms and industry associations, however, assert that a public disclosure would hamper the business environment, scaring off foreign direct investment. The EU would become a less attractive place to invest.

Impact on competitiveness & level playing field

At the Roundtable on Corporate Transparency business leaders argued that public transparency runs the very real risk of exposing trade secrets: one firm claimed it was expropriated after investment plans were exposed in the media. Among the risks highlighted include: a) the exposure of business strategies of EU firms; b) distorted competition undermining the success of European multinationals, especially vis-à-vis US firms; c) double taxation and increased opportunity for tax disputes.

In a letter to the Commissioner (also submitted as feedback to the public consultation), one business association stressed the need to ensure that any additional transparency initiatives are taken and implemented at the global level, and that country-by country reporting be primarily a risk assessment tool for tax administrations to better understand the global context of an MNE group and improve their tax audits process.

Impact of costs arising from public CBCR

The costs of dealing with a greater number of tax disputes could also place firms at a competitive disadvantage vis-à-vis those that are not subject to reporting obligations, businesses asserted.

Moreover, they point out that governments participating in the OECD process have agreed to allow flexibility over where the data can be gathered from to mitigate some of the additional costs: “Any requirement to provide more granular data over the OECD’s proposals, or to publically disclose the information will likely substantially increase the cost of reporting”.

9. What other impacts can one expect with public disclosure?

Developing Countries

Comments put forward by NGOs and individuals generally suggest a positive impact on relations with developing countries. These would improve if the EU would be seen as a more credible partner. A key idea reiterated in the feedback was that clamping down on harmful tax practices via enhanced transparency would help free up resources for development purposes – infrastructure, health, education and financing of SMEs to name a few.

One think tank pointed out that: “A recent IMF report estimates the impact of multinationals’ profit reallocation on developing countries to be over \$200 billion a year, three times as high as on OECD countries in terms of GDP”. Firms and business associations, however, are less certain of the benefits.

Impacts on BEPS

An IGO called for the swift implementation of the OECD BEPS Action Plan by the EU and pointed out the risks a unilateral measure could have on the multilateral approach, for example that it could remove the incentive for non-EU states to report tax information.

List of stakeholders with whom the Commission services had ad hoc exchanges

Firms

Amazon
Fortum
General Electric (GE)
Repsol
Legal and General
SSE Corp

Industry Associations

Association Française des Entreprises Privées (AFEP)
BDI/BDA, the German Business Representation
Business Europe
Confederation of Finnish Industries
European Association of Tax Law Professors (EALTP)
European Banking Federation (EBF)
European Issuers
Federation of European Accountants
International Regulatory Strategy Group (IRSG)

Commission Expert Groups

Platform for Tax Good Governance (see below)

Intergovernmental Organisations

Organisation for Economic Cooperation & Development (OECD)

NGOs, Trade Unions and Think Tanks

ActionAid
Cologne Institute for Economic Research
Eurodad
Friedrich-Ebert-Stiftung
International Regulatory Strategy Group
One Campaign
Oxfam
Transparency International

Members of the Platform for Tax Good Governance

The Platform consists of the tax authorities of each of the 28 EU Member States and 15 organisations representing business, civil society and tax practitioners listed here:

American Chamber of Commerce
Association of Chartered Certified Accountants
Business Europe
Bund Deutscher Unternehmen
Christian Aid
CIDSE
Confédération Européenne des Syndicats Indépendants
Confédération Fiscale Européenne
Dutch Association of Tax Advisors
European Association of Tax Law Professors
European Federation of Public Service Unions
Federation of European Accountants
International Chamber of Commerce
Mouvement des Entreprises de France
Oxfam International

ANNEX C: FEATURES OF A COUNTRY-BY-COUNTRY REPORTING ACCORDING TO OECD BEPS ACTION 13

A typical OECD CBCR is a stand-alone document, prepared by an MNE (ultimate parent of an MNE group) with a consolidated turnover of over EUR 750 million. It is submitted to the relevant tax authority by that parent MNE as part of the documentation on transfer pricing. The CBCR provides aggregate jurisdiction-wide information relating to the global allocation of corporate income, taxes paid and other indicators relating to an MNE in a fairly standardised way. Confidentiality (no public disclosure) and appropriate use of the information will be guaranteed by each jurisdiction under the MCAA or other bilateral agreements or conventions. No independent audit is required, as well as no reconciliation with an MNE's consolidated financial statements. In cases where a jurisdiction fails to collect and share the information, a secondary mechanism will be accepted (for example by moving requirement to next tier parent country or local filing).

The OECD supports a swift implementation of BEPS 13 beginning on or after 1 January 2016. This would imply that MNEs would have to submit the first CBCR in 2017. Exchange of information would reach full speed in 2018.

The OECD members came to the consensus that it is necessary to guarantee confidentiality and deter the inappropriate use of potentially sensitive information exchanged between tax authorities. The OECD explains that this is consistent with the treatment other taxpayers' information¹⁴².

The Multilateral Competent Authority Agreement ("CbC MCAA") is a key proposal for the exchange of CBCR among tax authorities in participating countries. Non-participating countries would not be provided with such information. A forthcoming OECD standard facilitating the electronic exchange of CBCR is expected in 2016. The instrument will be open for signature to all interested countries in 2016 – including countries that are currently neither a member of the G20 nor the OECD.

Economic coverage of the G20 and OECD

The G20 and OECD combined account for most of the world's economic output.

The G20 consists of 19 countries and the European Union, accounting for about two-thirds of the world's population, 85 per cent of global gross domestic product and over 75 per cent of global trade.

The OECD has 34 Member countries from across the world, from North and South America to Europe and Asia-Pacific. The OECD works closely with emerging economies like the Brazil, Russia India & China and developing economies in Africa, Asia, Latin America and the Caribbean. Together with key partners (Brazil, India and the People's Republic of China, Indonesia and South Africa), the OECD brings around its table 39 countries that account for 80% of world trade and investment.

The following six EU Member States are not members of the OECD: Bulgaria, Croatia, Cyprus, Malta, Romania and the Slovak Republic.

¹⁴² OECD – [BEPS - Frequently Asked Questions #80](#), 2015

G20 Leaders at the November 2015 Antalya Summit underscored the importance of coherent and timely implementation within and beyond the G20 and OECD. In October in Lima, Peru, Chinese Finance Minister Lou Jiwei said China seeks to actively promote the implementation of the plan. US Treasury Secretary Jacob J. Lew acknowledged the "wide agreement that these recommendations should be successful when implemented in cooperation", and asserted that the US is "already engaged in the process of BEPS implementation". Commissioner Moscovici underlined progress made in the EU on the automatic exchange of information on tax rulings and reiterated the European Commission's support for the BEPS actions.

Further OECD BEPS actions may be relevant to furthering transparency, but these fall outside of the scope of this Impact Assessment: BEPS 5 – Counter harmful tax practices more effectively, taking into account transparency and substance; BEPS 11 – Establish methodologies to collect and analyse data on BEPS and the actions to address it; BEPS 12 – Require taxpayers to disclose their aggressive tax planning arrangements.

The main features of a typical OECD CBCR are as follows:

- ✓ Stand-alone document: distinct from master or local transfer pricing documentation
- ✓ Prepared by an MNE (ultimate parent of an MNE group). According to the OECD, an MNE usually comprises companies or other entities established in more than one country. As these are linked they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, public or a combination of both.
- ✓ All industries covered: no exemption based on structure, ownership or funding structure. The OECD recommends however that MNEs with an annual consolidated turnover of less than EUR 750 million or equivalent be exempt from reporting. Even if just 10 to 15% of MNEs are covered, these would account for around 90% of the total global revenue.
- ✓ Standardised /consistent report: the OECD provides a template, materiality principle, language features (under local laws – but use of commonly used language is encouraged), list of information, etc. Companies are given leeway in certain aspects.
- ✓ Annual report: covers a fiscal year (financial statements) of the reporting MNE
- ✓ Confidential report: should be guaranteed by legal protection, public disclosure of sensitive information not allowed
- ✓ Appropriate use only by authorities: the CBCR should be used by authorities only for the appropriate enforcement of transfer pricing rules or other BEPS related risks, economic/statistical analysis. It should not be used e.g. as a substitute for a detailed transfer pricing analysis by an authority as it is deemed not to constitute conclusive evidence.
- ✓ Provides jurisdiction-wide aggregate tax information relating to the global allocation of income, taxes paid and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates
- ✓ Provides information on the global operations of an MNE possibly headquartered elsewhere
- ✓ Considers that the permanent establishment data should be reported by reference to the tax jurisdiction in which an entity is situated and not be reference to the tax jurisdiction of residence of the business unit of which the permanent establishment is part.
- ✓ No audit by an independent party

- ✓ No reconciliation with figures of MNE's consolidated financial statements is to be made.

According to the OECD, a typical CBCR would comprise the following information:

- ✓ An overview (table) of allocation of income, taxes and business activities by tax jurisdictions in the following template:

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group: Fiscal year concerned:										
Tax Jurisdiction	Revenues			Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

GUIDANCE ON TRANSFER PRICING DOCUMENTATION AND COUNTRY-BY-COUNTRY REPORTING © OECD 2014

In the sixth column of the template, the Reporting MNE should state the total amount of income tax actually paid during the relevant fiscal year. In the seventh column of the template, the MNE should report the accrued tax expense recorded on taxable profits or losses for the reporting year – excluding the effect of deferred taxes or provisions for uncertain tax liabilities. It is not necessary to reconcile the revenue, profit and tax to the consolidated financial statements.

- ✓ A list of all entities of an MNE for which financial information is reported, using the following template:

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:													
Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity(ies)										
			Research and Development	Holding or Managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments
	1.												
	2.												
	3.												
	1.												
	2.												
	3.												

² Please specify the nature of the activity of the Constituent Entity in the “Additional Information” section.

- ✓ Additional information, if deemed necessary by a reporting MNE
- ✓ A brief description of sources of data used

ANNEX D: BACKGROUND AND CONTEXT: OVERVIEW OF LEGISLATIVE AND NON-LEGISLATIVE FRAMEWORK

D.1 International context (other than G20/OECD BEPS initiative)

D.1.1 United Nations

On 27 July 2015, the General Assembly of the United Nations endorsed the solutions of the Addis Ababa Action Agenda of the Third International Conference on Financing for Development¹⁴³. Among other pledges outlined in point 27 of the Agenda, participating States commit to scaling up international tax cooperation and strengthening transparency by way of country-by-country reporting to tax authorities where MNEs operate.

D.1.2 G20

The action plan endorsed by the G20 at a Leaders Summit in Saint Petersburg in September 2013 aimed to ensure profits are taxed where value is created.

1. **Base erosion and profit shifting (BEPS)**—addressing international tax avoidance and reforming the international tax system, by working through its finance track with the Organisation for Economic Co-operation and Development (OECD) in 2014 and 2015 to deliver a 15-point BEPS Action Plan.
2. **Automatic exchange of tax information (AEOI)**—promoting international tax transparency, by working through its finance track with the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) to develop a Common Reporting Standard (CRS) for automatically exchanging taxpayer information between jurisdictions.
3. **Tax and development**—supporting effective domestic resource mobilisation (DRM) within developing economies by working through its Development Working Group (DWG) to ensure developing economies can fully and effectively participate in, and benefit from, the G20 international tax agenda. This includes working with the finance track on the implementation of BEPS and AEOI reforms in developing economies.

At the Antalya Summit in November 2015, the G20 endorsed the full set of actions recommended by the OECD Base Erosion and Profit Shifting (BEPS), as defined by the Organisation for Economic Co-operation and Development (OECD). The BEPS initiative includes 15 proposals for action, a number of which are designed to enhance transparency – in the sense of transparency towards and among solely tax authorities by ways of exchange of information.

¹⁴³ [Resolution adopted by the General Assembly](#) on 27 July 2015, A/RES/69/313. The process is supported by the [Financing for Development Office](#) (FfDO) established within the Department of Economic and Social Affairs (DESA) of the United Nations Secretariat.

D.1.3 Extractive Industries Transparency Initiative (EITI)

The EITI is a voluntary private initiative with the objective of improving the transparency and accountability of companies in countries rich in oil, gas, and mineral resources¹⁴⁴. The EITI standard mandates the disclosure of various types of payments to governments, including corporate income taxes.

As of mid-2015, 31 countries are complying with the EITI requirements and 15 other countries have candidate status. Most countries are developing countries rich in resources, but the standard is gaining momentum in developed countries with Norway's membership and the application of the United Kingdom, the US and others under consideration (France, Germany, Australia).

The Country-By-Country reporting introduced by the EU for extractive and logging industries in 2013 aimed inter-alia to support the initiative, with requirements that are broadly consistent with the EITI standard. In doing so, the EU hopes that this will serve to help governments of resource-rich countries to implement the EITI. Some major jurisdictions such as Brazil, Russia, India and China are not yet involved.

D.1.4 Third countries

Other than CBCR for extractive industries in a few jurisdictions, no major third-country is currently contemplating further corporate tax transparency for other industries. The U.S.A. nevertheless intends to ensure that listed companies disclose slightly more information than what is required in the EU.

D.1.4.1 US

In the US, the federal securities laws require listed companies to disclose an annual report, known as "Form 10-K". The completion of this form is mandatory for US issuers as well as foreign issuers if over 50% of their shares are traded on a US exchange. Typically, this form provides much more details than the annual report and gives a comprehensive overview of the company's business and financial condition. Companies have to file the form within 90 days of the end of their fiscal year.

The 10-K form contains (a) the business summary describing the business' operations with inter alia the total number of employees; (b) a management discussion and analysis; (c) the annual audited US GAAP financial statements; and (d) other information. Item (c) must contain the breakdown of certain information on a segmental basis (not necessarily geographically based) and the breakdown of revenues on a geographical basis showing separately at least revenues in the country of domicile and in material countries. A total figure must be given for revenues in remnant countries¹⁴⁵. The same goes with long-lived assets in order to provide information on risks and uncertainties in certain geographic areas. It is worth

¹⁴⁴ <https://eiti.org/>

¹⁴⁵ US Financial Accounting Standards Board (FASB), Accounting Standards Codification Topic 280, Segment Reporting. In order to ensure minimum comparability of the financial information, the standard requires disclosure of an MNE's revenues from external customers attributed to the listed entity's country of domicile (most likely the US) and revenues attributed to all foreign countries in total from which the listed entity derives revenues by certain countries.

noting that IFRS 8, which has been adopted by the EU, was converged with these US GAAP requirements in 2006.

A reconciliation of the actual tax charge to the theoretical amount based on U.S Federal tax rate (currently 35%) is also given, part of which may be due to foreign tax rates differences, as well as a reconciliation and disclosure of an issuer's effective tax rate. The latter reconciliation is also provided by foreign private issuers where less than 50% of their shares are traded on a US exchange (form 20-F instead of 10-K). It is worth noting that IFRS 12, which has been adopted by the EU, includes similar reconciliation obligations.

Due to an additional SEC disclosure obligation¹⁴⁶, corporate income tax amounts must be disclosed on a geographical basis, i.e. tax incurred (i.e. current and deferred) in the US (Federal, States altogether) vs non-US countries (international altogether). The geographical breakdown of taxes is not provided by foreign private issuers if less than 50% of their shares are traded on a US exchange (form 20-F instead of 10-K).

Illustrative examples of the geographical information and the tax reconciliation to be provided by a US issuer of listed securities are provided in Annex G.

In July 2010, the U.S. Congress passed Section 1504 of the Dodd-Frank Act, a measure requiring companies registered with the US Securities and Exchange Commission (SEC) to report how much they pay governments for access to oil, gas and minerals. A final SEC rule to implement the reporting is pending.

D.4.1.2 Other third countries

Information on corporate income tax is generally available based on GAAP in the financial statements of companies, where these are available to the public. Beyond the EU, approximately 90 countries and reporting jurisdictions permit or require IFRS (or IFRS like GAAP) for domestically listed companies. These include large economies such as China, Brazil or Russia.

Canada also permits the use of IFRS. In addition, Canada has adopted a law requiring extractive industries to publish a country-by-country report on payments to governments starting in 2016. In June 2013, Australia introduced legislation designed to improve tax transparency requiring e.g. the publication of tax payable by large corporations subject to natural resource rent tax. In Japan, public disclosure of individual and corporate tax return data was mandatory from 1950-2004, but this has since been dropped¹⁴⁷.

D.2 EU context

In the EU, many enterprises' tax disclosures are those made in the annual financial statements, the content of which is driven by accounting principles or standards adopted by the EU. As explained above, CBCR has been required very recently from banks and extractive/logging enterprises. Market led initiatives remain shy, whilst leaks in the press and public dismay are abundant, fuelling Parliamentary enquiries.

¹⁴⁶ Code of Federal Regulations of the United States of America, [§210.4-08](#)

¹⁴⁷ ZEW Discussion Papers - [Transparency in Financial Reporting: Is Country-by-Country Reporting Suitable to Combat International Profit Shifting?](#), 2014

D.2.1 National GAAP, Accounting Directive and IFRS

Under EU law¹⁴⁸, the information disclosed on corporate income tax in the financial statements remains limited. There is no requirement to break down the tax expenses or paid geographically.

Each limited liability company (whether a parent or subsidiary) established or listed in the EEA must disclose in its annual or consolidated financial statements at least (a) the tax expense, (b) amount payable or recoverable at year end (at least an aggregated amount), and (c) information on deferred taxes where appropriate (Accounting Directive). These companies are also required to disclose figures for the average number of employees¹⁴⁹, net assets, stated capital, accumulated earnings¹⁵⁰, and for larger companies, a complete list of companies included in the consolidation as well as information on participating interests¹⁵¹, a breakdown of net turnover by activity and into geographical markets where those differ substantially and insofar as the information disclosed is not biased¹⁵².

The financial statements are to be filed with the relevant national public register, and/or with the nationally-appointed mechanism attached to regulated capital markets where an enterprise may have securities listed. Registers and mechanisms ensure public access to the information, usually for a small fee.

Likewise, a branch opened in a Member State by a company which is not governed by the law of a Member State shall file documents with the relevant business register of a Member State, including the accounting documents of the company managing the branch, which have to equivalent to EU company law¹⁵³.

The International Accounting Standards Board (IASB) is an independent standard-setting body located in London, and is responsible for the development and publication of the International Financial Reporting Standards (IFRS). The IFRS are developed with a view to bring transparency, accountability and efficiency to financial markets around the world. There are currently 116 jurisdictions which require IFRS for all or most domestically listed companies in their capital markets, including the EU Member States, Australia, Russia, Hong-Kong, New Zealand, Singapore, South Africa and Brazil¹⁵⁴. The consolidated accounts of listed EU companies have to be prepared in accordance with IFRS issued by the IASB, and

¹⁴⁸ GAAP in the EU are shaped mainly by the Accounting Directive, Transparency Directive, and the IFRS as adopted in the EU, either stand alone or in combination depending on the situation of each enterprise

¹⁴⁹ Accounting Directive, Article 16(1)(h)

¹⁵⁰ Accounting Directive, Annex III and IV

¹⁵¹ Accounting Directive, Article 17(1)(g), 17(1)(k), 28(2)

¹⁵² Accounting Directive, Article 18(1)(a)

¹⁵³ Section II of the 11th Company Law Directive on branches (89/666/EEC)

¹⁵⁴ Some countries such as Canada or China are converging domestic accounting standards towards the IFRS. The US SEC accepts IFRS financial statements filed by foreign private issuers. Japan permits, rather than require IFRS. See also the IFRS Foundation/IASB's web site: [Analysis of the IFRS jurisdiction profiles](#)

adopted by the EU¹⁵⁵. Beyond this, the IFRS are required or permitted for certain enterprises in the EU depending on Member States' approach¹⁵⁶.

Two IFRS are relevant in the context of corporate tax transparency: IFRS 8 *Operating Segments*, and IAS 12 *Income taxes*.

IFRS 8 *Operating Segments* requires the breakdown of certain information by segment. The IASB issued IFRS 8 *Operating Segments* on 30 November 2006 (adopted by the EU in November 2007 and effective from 1 January 2009). Based on input by a coalition of over 300 organisations from more than 50 countries (a Publish What You Pay campaign), the IASB considered whether CBCR could be useful in the financial statements of the oil, gas and mining industries, but rebuffed such reporting at the time. The IASB clearly intended to converge IFRS 8 with segment disclosure required by the US GAAP (then SFAS 131, now ASC 280)

The final standard requires information on revenues and taxes paid by segment. An operating segment is often not a function of geographical area, as it should be based on an entity's business activities whose operating results are regularly reviewed by the entity's management and for which discrete financial information is available. It may be for instance a product line. Information is sought as well as regarding an entity's functions, products and services, the identification of geographical areas in which it operates and of key customers. Required disclosures include, inter alia:

- how the entity identified its functions, products and services by function;
- information about the profit or loss per function/segment of activity, including certain specified revenues and expenses such as revenue from external customers and from transactions with other segments, interest revenue and expense, depreciation and amortisation, income tax expense or income and material non-cash items;
- a measure of total assets and total liabilities per segment, as well as capital expenditure;
- reconciliations with the entity's financial statements.

Limited geographical analysis is required, quite similarly to the US GAAP:

- revenues from external customers and certain non-current assets attributed to the country of domicile, and to all foreign countries in total. There is an expanded requirement to disclose revenues/assets by individual foreign country, if material¹⁵⁷.

IFRS 8 as it currently stands cannot be seen as a proper proxy for a CBCR. This is because (i) a geographical approach may not constitute a proper reflection of a company's operating

¹⁵⁵ Regulation (EC) No 1606/2002/EC, Article 4

¹⁵⁶ Regulation (EC) No 1606/2002/EC, Article 5. See also [Commission Staff Working Document, Evaluation of Regulation \(EC\) N° 1606/2002 of 19 July 2002 on the application of International Accounting Standards, 2015, page 23](#)

¹⁵⁷ See illustrative example in Annex F

segments¹⁵⁸; (ii) only revenues and certain assets are to be disclosed mandatorily on a geographical basis, and (iii) country reporting is limited to the country of domicile and material countries.

In July 2013, the IASB carried out a post implementation review of IFRS 8. It did not find any need to revise the standard, including for example, more disclosures on geographical information, as the Standard was believed to be functioning as anticipated¹⁵⁹.

Additional disclosures required under IAS 12 *Income taxes* include e.g. a breakdown of the key components of tax expense, details on deferred taxes, numerical reconciliation between actual tax expense and expected expense or between the effective tax rates and the applicable tax rates, an explanation of changes in the tax rates, as well as a number of other items. To illustrate, an example is provided in Annex F. The IFRS approach may be seen to a certain extent as comparable to the US model. However unlike the US SEC model, the IFRS does not require a geographical breakdown of the income tax charge.

In 2011-13, the EFRAG¹⁶⁰ explored ways to improve the information given to investors under IAS 12 with e.g. additional disclosures related to income tax including by ways of disclosure (e.g. forward looking and sensitive information, uncertain tax positions, ...). This did not include a geographical breakdown of information. The EFRAG did not pursue this project based on a public consultation showing little support for a change¹⁶¹. The IASB is currently looking into whether to review IAS 12 as regards the decision-usefulness of some of the information provided by this standard and hopes to consider the findings of the research late in 2015¹⁶². It is not anticipated that a geographical breakdown of tax information would be considered under this exercise.

In practice, the IASB is the only body that can deliver a coercive instrument dealing with the disclosure of financial information whilst maintaining a level playing field. However, no developments from the IASB are expected in the short to medium term. Given that CBCR is not on the IASB's current work programme, any IASB initiative is likely to require several years to reach a final standard. There would be, in addition, a further implementation period of at least two years. While the Commission supports worldwide harmonisation, there is no certainty that a global consensus will be found. Indeed, the expected timeframe for any such action is long.

Beyond the above considerations, the table below illustrates the kind of disclosures that can be (legitimately) conceived to enhance corporate transparency via CBCR. Such information is usually provided in a company's financial statements.

¹⁵⁸ [Commission analysis of potential effects – IFRS 8](#) – Sept. 2007, page 14

¹⁵⁹ IASB, [Post-implementation Review of IFRS 8 Operating Segments](#), 2013

¹⁶⁰ [European Financial Reporting Advisory Group](#). The group provides input into the development of IFRS issued by the IASB and provides the European Commission with technical expertise and advice on accounting matters.

¹⁶¹ [EFRAG Proactive - Financial Reporting for Corporate Income Taxes](#), 2011-13

¹⁶² IASB, [Request for Views, 2015 Agenda Consultation](#), 2015

Table 7: Contemplated CBCR information vs information required by GAAP or otherwise

GAAP / LEGAL REQUIREMENT		
Item	National GAAP / Accounting Directive (large companies)	IFRS
Name	Yes Identification of the financial statements Article 5	Yes Identification of the financial statements IAS 1.49
Nature of activities	Yes Management Report Article 19	Yes Notes IAS 1.138.b
Location	Yes Identification of the financial statements	Yes Notes IAS 1.138.a
Revenue	Yes P&L Statement	Yes P&L Statement
Revenue with related parties only***	Yes** Notes Article 17(1)(r)	Yes Notes IAS 24.17 and 20
Number of employees	Yes Notes	Yes (by application of EU law, as the disclosure is not required by IFRS) Notes
Profit or Loss Before Tax	Yes P&L Statement	Yes P&L Statement
Income tax accrued / charge / expense for the reporting year (current)	Yes P&L Statement	Yes P&L Statement
Income tax accrued / charge / expense for the reporting year (deferred)	Permitted (Member State option)	Yes P&L Statement
Income tax paid	No	Yes Cash Flow statement IAS 7.35
Stated Capital	Yes B/S Statement Annex III and IV	Yes B/S Statement IAS 1.54
Accumulated earnings	Yes B/S Statement Annex III and IV	Yes B/S Statement IAS 1.54
Tangible assets	Yes B/S Statement Annex III and IV	Yes B/S Statement IAS 1.54

Item	National GAAP / Accounting Directive (large companies)	IFRS
List of subsidiaries of the parent enterprise operating in each country	Yes Notes or separate statement Article 17(1)(g) Article 28(2)	Yes (by application of EU law, as the disclosure is not required by IFRS) Notes
Public subsidies received	No	Yes Notes IAS 20.39
Tax rulings	No	No
Employees working through subcontractors	No	No
Pecuniary tax-related penalties administered by a country	No unless exceptional (notes) Article 16(1)(f)	No unless material (notes) IAS 1.29
Narratives explaining certain key features of the tax-related information	No unless necessary to give a true and fair view	Partly covered by explanation to be disclosed in the notes IAS 12.81 - 85

P&L: Profit and Loss

B/S: Balance Sheet

(*): Business registers are regulated by Directive 2009/101/EC

(**): Member States may permit or require that only transactions with related parties that have not been concluded under normal market conditions be disclosed. Member States may in addition permit that transactions entered into between one or more members of a group be not disclosed, provided that subsidiaries which are party to the transaction are wholly owned by such a member.

(***): Revenues with related parties are eliminated in consolidated financial statements

In light of the information to be published by companies, at least in the EU, it should be possible for any stakeholder to reconstruct, the breakdown on a country-by-country basis of the profit before tax, tax expense, headcount, assets, etc. for a given EU MNE group. The possibility of constructing these figures, hypothetically-speaking, however, is severely hampered by the following limitations:

- Search costs: the time and resources necessary to obtain, gather and compile the information can be daunting. Some MNE groups might comprise thousands of entities. Accessing information in national business registers in the EU, on the internet, through other means or other parties (databases, ...) can prove costly (fees to be paid) and time consuming (registration, itemised search, etc.);
- Limited or no available information: the identification of a group's structure can be a deterrent to gathering information. This is outlined by NGOs, who generally praise the increased transparency of EU MNEs compared to non-EU MNEs. Moreover, the individual financial statements of a group's entities located outside the EU are generally not publically available as seen in Annex O. Neither are tax returns submitted by companies to their tax authorities generally in the public domain. Finally, companies of the unlimited liability type are not obliged by EU law to publish their

financial statements¹⁶³. It has been reported in the press that the taking on of this status is used within some MNE groups¹⁶⁴;

- Inconsistency of information from one country to another (different GAAP in individual financial statements¹⁶⁵) can prevent obtaining the exact picture on a country-by-country basis. Figures in a subsidiary's financial statements will generally include intra-group transactions which are not eliminated at this stage, but are eliminated in an MNE group's consolidated financial statements;
- Language barriers: the individual financial statements of a company are generally prepared in the language of the country of establishment.

De facto, the wider public has only limited access to information concerning corporate structures / geographical breakdown of financial information for which transfer pricing laws apply in the first place, and to determine the extent to which transfer pricing corresponds to economic reality.

The EU is currently working on several strands in order to improve public access to company information in the EU. A database integrating registers of Member States, a central European platform and the European e-Justice portal will ensure the interconnection of central, commercial and company information, serving as a central European access point. This will be operational by mid-2017 when Directive 2012/17/EU is implemented.

This Directive provides for the interconnection of business registers in the EU as regards the company types and documents covered by Directive 2009/101/E, including accounting documents, and for the functionalities provided for under BRIS, in particular search of company information. Under the Transparency Directive, the European Securities and Markets Authority (ESMA) has undertaken two complementary actions regarding the electronic filing by listed companies, including their financial statements: the European Electronic Access Point (EEAP), and the European Single Electronic Format (ESEF). In particular, ESMA will set technical requirements regarding the access to regulated information at the EU level. With effect from 1 January 2020, the annual financial reports of issuers will be prepared in a single electronic reporting format.

It may be sought to further address the above listed shortcomings by ways of publishing further details in order to help any stakeholder wishing to prepare itself e.g. a CBCR. However this does not seem to be a proper route. First, this would mean either imposing a systematic publication of financial statements on companies established in third countries, or to have the

¹⁶³ The obligation for limited liability companies to publish annually their financial statements is set by the Accounting Directive (Article 30). The limited liability types of companies are listed in Annex I of the Accounting Directive. Annex II lists in addition certain types of companies with unlimited liability which might be in the scope of the Directive if certain conditions are met.

¹⁶⁴ Alex Barinka and Jesse Drucker - [Etsy Taps Secret Irish Tax Haven and Brags About Transparency at Home](#), 2015

¹⁶⁵ This barrier is overcome at group level as generally, the parent company requires each subsidiary to prepare a set of financial statements ('a consolidation package') in accordance with the group GAAP. The package comes in addition to the individual financial statements/tax returns that subsidiaries may prepare pursuant to their local fiduciary duties, usually in compliance with local GAAP and rules. Third parties are generally not in a position to restate a subsidiary's financial statements in accordance with group GAAP, given the amount of insider information required.

detailed individual financial statements of a group's components published by an MNE. The former would not seem realistic due to the extraterritorial reach implied, let alone the language barrier, whereas the latter would involve a disproportionate inflation of documents to be published by an MNE. Second, to require more information on an MNE's group's structure would amount to producing detailed information that would not necessarily be readily usable by stakeholders to compute financial information on this basis, absent details on each individual component of a group. Overall, this route would be costlier for stakeholders and companies, compared to a CBCR directly computed and published by a company.

D.2.2 Civil society

Stakeholders have sought to gather data on corporate and other information that is publically available. Below is an overview of some of the findings of select NGOs:

- *Transparency in corporate reporting*, Transparency International, 2014¹⁶⁶.

The report assesses the disclosure practices of companies with respect to their anti-corruption programmes, company holdings and the disclosure of key financial information on a country-by-country basis. It reports that 7 of the top 10 best performing companies in terms of transparency are from Europe. EU companies score highest in organisational transparency. This is mainly explained by the differences in GAAP requirements between the EU and other jurisdictions. The EU disclosure obligations as regards group structure (list of subsidiaries and other entities) are comprehensive in the EU, due to the EU Accounting Directive and the IFRS. By contrast, and for instance, the US GAAP require the disclosure of only material subsidiaries. Transparency International highlights weaknesses in general on the reporting of geographical breakdown (which garners an average score of 6% for CBCR).

- *Aux paradis des impôts perdus*, ccf-d-terre solidaire, 2013¹⁶⁷.

The focus of the survey is on the presence of subsidiaries of EU MNEs in tax heavens. It points to a general lack of available geographical information given by companies, as none of the surveyed MNEs provided a CBCR. In addition, ccf-d-terre solidaire criticises the sometimes incomplete list of subsidiaries, as MNEs sometimes provide only a partial list, or a list with partial information on each subsidiary, or a list with both issues. In many instance, the information was available at a cost (request to a company's seat, search in public registers, ...)

- *FTSEcrecy: the culture of concealment throughout the FTSE*, Christian Aid, May 2014¹⁶⁸.

In its report, Christian Aid deplores generally weak corporate transparency. For instance, data on turnover, assets, employees or shareholders' funds could be accessed

¹⁶⁶ Transparency International, [Transparency in corporate reporting: assessing the world's largest companies](#), 2014

¹⁶⁷ <http://www.christianaid.org.uk/images/FTSEcrecy-report.pdf>

¹⁶⁸ <http://www.christianaid.org.uk/images/FTSEcrecy-report.pdf>

at no cost for 26% of all FTSE subsidiaries. For the remaining 74%, either data was not available, or limited data was available but could only be accessed after payment of a fee.

- *Hidden profits: the EU's role in supporting an unjust global tax system*, Eurodad, 2014¹⁶⁹.

The report reviews national policies as regards financial and corporate transparency. This includes information on whether countries publish information about the real – or beneficial – owners of companies and trusts, and whether they support increased transparency around the economic activity and tax payments of transnational corporations. Eurodad recommends that EU Member States and EU institutions adopt full country-by-country-reporting for all large companies and ensure that this information is publicly available.

- *Offshore Shell Games*, Citizens for Tax Justice, 2015¹⁷⁰.

The report examines the use of tax havens by U.S.-based multinationals. Most of America's largest corporations maintain subsidiaries in offshore tax havens. As of the end of 2014, at least 358 companies, nearly 72 percent of the Fortune 500, had subsidiaries located in tax haven jurisdictions.. It claims that Fortune 500 companies are holding more than \$2.1 trillion in accumulated profits in offshore accounts for tax purposes. The organisation calls on the U.S. Congress to take strong action to prevent corporations from using tax havens, as this would restore basic fairness to the tax system, reduce the deficit and improve market efficiency.

Many civil society organizations are campaigning for a country-by-country reporting requirement. These include Tax Justice Network, Transparency international, Financial Transparency Coalition, Eurodad, Christian Aid and Oxfam international, among others. These argue that enhancing transparency in the way transnational companies report and publish their accounts would help tackle tax avoidance, and other issues.

According to NGOs and other civil society organisations it is difficult to establish an overview of what is happening within a transnational group since each business entity reports and is taxed individually. They argue it would be different if reporting was carried out on a 'country-by-country' basis as it would shed light on MNEs' tax strategies and strengthen efforts by tax authorities, investors, journalists and citizens around the world to better assess the risks related to tax payments, world trade flows, corporate governance, and corrupt practices.

Civil society organizations believe that it would be a cost effective solution to induce significant change in global corporate transparency - for the benefit of citizens, tax authorities, investors, economists, and many others. Doing so would provide benefits well beyond the arena of tax.

¹⁶⁹ <http://www.eurodad.org/hiddenprofits>

¹⁷⁰ http://ctj.org/ctjreports/2015/10/offshore_shell_games_2015.php

Some however question the overall concept of CBCR: one think tank comments that "expected costs for CBCR would exceed expected benefits and therefore [...] CBCR cannot be regarded as a convincing measure to combat international profit shifting"¹⁷¹.

D.2.3 Country-By-Country Reporting in the EU

D.2.3.1 State of play

Transparency on taxes paid to governments, in the form of country by country reporting, already exists for financial institutions established in the EU under the Capital Requirement Directive with a view to regaining trust in the financial sector¹⁷². Large extractive and logging industries also have the obligation to report their payments to governments on a country-by-country basis as a result of the implementation of the Accounting Directive and the Transparency Directive by the Member States. The CBCR aims to empower local communities of resource-rich countries via transparency on payments made to their governments¹⁷³.

During the legislative adoption process of these Directives, the question arose as to whether to extend the CBCR requirement to enterprises of all sectors. The question remained unanswered at the time (2013), and the Commission was asked to consider the extension of the CBCR to other sectors before 2018, with additional contextual disclosure that could assist analysing the geographical breakdown of payments to governments such as the average number of employees, the use of subcontractors, pecuniary penalties administered by a country, profits made, taxes paid on profits and public subsidies received. The Commission was asked to take into account developments in the OECD and the results of related European initiatives¹⁷⁴. There is a "boomerang" clause¹⁷⁵ in the CRD4 to cater for such extension, if any.

Whereas extractive and forestry industries do not yet have the obligation to publish their CBCR, banks established in the EU have on the contrary generally started to publish their CBCR in 2015, based on fiscal year 2014.

D.2.3.2 Preliminary assessment of extent CBCR in the EU

This preliminary assessment focuses on CBCR published by banks since 2015. In the extractive sector, the CBCR has not yet produced full effects in the EU as the first reports are expected in 2016.

As regards banks (i.e. "credit institutions"), the Commission undertook in October 2014 a general assessment of economic consequences of country-by-country disclosure

¹⁷¹ ZEW Discussion Papers - [Transparency in Financial Reporting: Is Country-by-Country Reporting Suitable to Combat International Profit Shifting?](#), 2014

¹⁷² Capital Requirement Directive, Recital 52 and Article 89

¹⁷³ Recitals 44 and 45, Accounting Directive

¹⁷⁴ Accounting Directive, Art. 48

¹⁷⁵ See discussion in Annex P. Art. 89(5) CRD4 on CBCR reads: "To the extent that future Union legislative acts for disclosure obligations go beyond those laid down in this Article, this Article shall cease to apply and shall be deleted accordingly."

requirements¹⁷⁶. It was based on a public consultation, a study¹⁷⁷, and preliminary limited reports submitted by certain banks at the time privately to the European Commission¹⁷⁸. The Commission opined that "the public country-by-country reporting of information [by credit institutions] is not expected to have a significant negative economic impact, in particular on competitiveness, investment, credit availability or the stability of the financial system. On the contrary, it seems that there could be some positive impact". It was also observed at this early stage that banks' CBCR could be increased by addressing some elements related to the implementation of that provision. The European Banking Authority and the European Commission have thereafter played a constructive role in this by publishing Q&As aimed at the consistent and effective application of the policy¹⁷⁹.

The Commission noted in its report that "CBCR should help understanding of whether taxes are being paid where the actual business activity takes place". It reported that independently from the financial crisis, there are increasing calls on companies to take responsibility for their impact on society and the contribution businesses make in the form of taxation is increasingly seen as part of corporate social responsibility: "this has increased demand for more transparency in the tax affairs of large enterprises in particular where they have significant cross-border activities.

While the Commission noted that some stakeholders expect CBCR obligations to affect the effective tax rate of banks, it insisted that a bank's "CBCR in itself is not a tax measure but a tool for assessing transparency and corporate responsibility. It will have no direct effect on the tax rate imposed on reporting institutions. Any increase in effective taxation would only be an indirect result. It is very difficult to predict the likelihood of a possible increase of (effective) tax rates indirectly resulting from CBCR. This would depend on various factors such as the institution's current approach to tax matters, the response by authorities to the disclosure of the information on all the tax payments on a country-by-country basis and the public response to the published CBCR data. Even if a reporting institution should change its tax approach, it would still be difficult to determine whether this was an indirect effect of CBCR, or rather the result from other developments in the area".

The external contractor, PWC, also recognised that the probability and magnitude of any such change are impossible to predict at the time its report was drafted. It continued to explain that the financial services sector contributed a significant amount of corporate taxes, accounting for around 18% of total corporation taxes paid in the G20. In addition, it points out that corporate income taxes paid by banks represent only a portion of the overall taxes borne by them and the taxes they collect.

In August 2015, a survey from Tax Research UK commissioned by the Green group in the European Parliament concluded, based on the CBCR published by 26 EU banks in 2015, that

¹⁷⁶ Commission's Report "[General assessment of economic consequences of country-by-country disclosure requirements set out in Article 89 of Directive 2013/36/EU](#)", 2014

¹⁷⁷ All documents available on the Commission web site - [Corporate Governance in financial institutions](#)

¹⁷⁸ As per Article 89 of the CRD4, global systemically important institutions had to submit to the Commission by 1 July 2014, on a confidential basis, a CBCR limited to profit before tax, tax amount, and public subsidies.

¹⁷⁹ [Single Rulebook Q&A](#), European Banking Authority's web site

despite certain limitations, the banks' CBCR provide useful information¹⁸⁰. Inter alia, the information allowed the author to propose a ranking of each bank surveyed along with the potential risk of base erosion and profits shifting. The contextual information provided in CBCR (revenues, number of employees, etc.) proved useful in determining such ranking, with the use of e.g. ratio such as turnover per employee or profit per employee. The author also felt necessary to identify low-tax jurisdictions or potential havens.

The report highlights that the 26 banks surveyed may have been systematically over-reporting their profits in some low tax jurisdictions or places identifiable as tax havens, whilst appearing to under-report them in those places where they have major centres of operation. – one of the main points of the report is that turnover and profits per employee in certain offshore jurisdictions are higher than those in onshore jurisdictions which backs up a possible claim that turnover/profits do not follow real economic activity when using employee numbers as a proxy.

A widespread absence of CBCR reporting by banks over the 2013 fiscal year means that the allocation of profits per country could not be surveyed over time. This is however key as profit shifting can only be tracked over a number of years. Surveys of this nature will certainly gain additional clout over the next years. As seen in table 6, there were no significant variations overall in tax rates observed on the basis of the consolidated financial statements of the same 26 banks surveyed in the Tax Research UK report. Apparent tax rates increased from 2013 to 2014 across 13 banks and decreased in 12. The overall tax rate fell by 2% from 33% to 31%.

¹⁸⁰ [European Banks' Country-by-Country Reporting, a Review of CRD IV data](#), Tax Research UK

Table 8 Apparent tax rate in 2014 compared to 2013 for the 26 EU banks surveyed

	Profit before tax		Corporate Tax Paid		% tax rate		Country of main residence
	€'000	2014	2013	2014	2013	2014	
ABN AMRO	1,198,000	1,279,000	65,000	117,000	5%	9%	Netherlands
Banco Bilbao Vizcaya Argentaria	3,980,276	954,262	898,493	-15,945	23%	-2%	Spain
Bankia SA	912,132	131,437	226,172	-156,833	25%	-119%	Spain
Banque Fédérative du Crédit Mutuel	2,525,000	2,295,000	824,000	811,000	33%	35%	France
Barclays	2,799,684	3,378,498	1,751,043	1,850,635	63%	55%	UK
BNP Paribas	3,149,000	8,101,000	2,642,000	2,680,000	84%	33%	France
BPCE	5,279,000	4,878,000	1,913,000	1,892,000	36%	39%	France
Caixabank SA	202,173	-979,753	-417,752	-1,288,358	-207%	131%	Spain
Commerzbank AG	623,000	238,000	253,000	66,000	41%	28%	Germany
Credit Agricole	3,235,000	2,927,000	470,000	98,000	15%	3%	France
Dekabank	871,700	517,600	265,500	173,600	30%	34%	Germany
Deutschebank	3,116,000	1,457,000	1,425,000	775,000	46%	53%	Germany
DZ Bank AG	2,867,000	2,221,000	710,000	754,000	25%	34%	Germany
Helaba Landesbank Hessen-Thuringen	607,000	483,000	210,000	148,000	35%	31%	Germany
HSBC Holding plc	14,084,097	16,997,895	2,997,018	3,589,407	21%	21%	UK
ING	3,707,000	4,107,000	971,000	1,013,000	26%	25%	Netherlands
KBC Bank	2,420,000	1,708,000	657,000	678,000	27%	40%	Belgium
KfW	1,609,000	1,336,000	95,000	63,000	6%	5%	Germany
LBBW Landesbank Baden-Wuerttemberg	477,000	473,000	43,000	134,000	9%	28%	Germany
Lloyd Banking Group plc	2,186,633	488,869	326,382	1,433,624	15%	293%	UK
NIBC Bank	30,000	28,000	6,000	6,000	20%	21%	Netherlands
Rabobank	1,681,000	430,000	-161,000	88,000	-10%	20%	Netherlands
Royal Bank of Scotland	3,279,949	-10,424,105	2,369,059	219,108	72%	-2%	UK
Santander	10,679,907	7,377,505	3,718,355	2,033,712	35%	28%	Spain
Société Générale	4,354,000	2,922,000	1,376,000	528,000	32%	18%	France
Standard Chartered	3,193,049	4,567,925	1,153,569	1,404,125	36%	31%	UK
TOTAL	79,066,600	57,893,133	24,786,839	19,094,075	31%	33%	

Source: SNL Financial

Source for BNP Paribas 2014 figures: https://invest.bnpparibas.com/sites/default/files/documents/2014-audited_financial_statements.pdf

This table indicates that the CBCR may have entailed no clear "crowd" behavioural changes, if any, at least to the effect of banks paying more or less taxes in total. Many factors can influence the effective tax rate of a bank over time, including changes in tax statutory rates, non-deductible expenses, business restructuring, and other factors. The table above therefore provides insufficient evidence for firm conclusions.

The Commission services asked the Platform for Tax Good Governance at a meeting on 24 September 2015¹⁸¹ for views on, or experience with CBCR published by banks in 2015. According to a non-Member State member, public CBCR is very useful for detecting BEPS: by analysing information disclosed in CBCR for banks – such analysis would be facilitated with a common electronic reporting format – some issues have been detected and have triggered their direct dialogue with banks. The view was also expressed by a non-Member State member that for banks, disclosing geographical location does not say much about the bank's strategy, while for other types of companies, disclosing this type of information might give an advantage to competitors that are not submitted to CBCR. There was no indication from Member States members as to whether tax authorities had yet made use of such information.

Asked by the European Banking Federation about the consequences of a public CBCR, banks generally take the view that there have been no unintended consequences, but that there may

¹⁸¹ European Commission, [Platform for Tax Good Governance](#)

still be some room for misinterpretation. Neither was there any noticeable effect in terms of their tax planning, investment or strategies. Banks report that their CBCR had been used in some countries by researchers and journalists, with questions and clarifications being asked mainly by NGOs. Banks believe that the obligation was disproportionate in scope (small banks) and repetitive (subsidiaries and parent basically report the same information). They draw attention to the risks of inconsistent implementation due to the CRD4's lack of clarity.

The CRD4 includes a provision that stipulates the CBCR provisions will cease to apply for banks, should future Union legislative acts for disclosure go beyond those in the CRD4. It is unclear for banks whether and how this 'boomerang' clause would apply if the EU extends CBCR to all sectors, but calls on the need to ensure the consistency of reporting between sectors to avoid costly and even confusing measures (several sets of overlapping disclosure).

D.2.4 Relevant Actions under the current Commission Action plans

On 18 March 2015, the Commission presented a package of measures to boost tax transparency¹⁸². This included a proposal for the automatic exchange of information on cross-border tax rulings between Member States. In the package, the Commission also proposed reviewing the Code of Conduct on Business Taxation to make its work more effective and assessing possible (new) transparency requirements for multinationals. This Impact Assessment addresses the latter.

On 17 June 2015, the Commission adopted in the follow-up of the package an Action Plan for Fair and Efficient Corporate Taxation in the EU¹⁸³. The Action Plan seeks to reform the corporate tax framework in the EU, tackle tax avoidance, ensure sustainable revenues and support a better business environment in the Single Market. Collectively, the series of initiatives announced in the Action Plan should significantly improve the corporate tax environment in the EU, making it fairer, more efficient and growth-friendly. Key actions include a strategy to re-launch the Common Consolidated Corporate Tax Base and a framework to ensure effective taxation where profits are generated.

The Commission also published the Anti-Tax Avoidance Package (ATAP) on 28 January 2016. One of the objectives of the package is to transpose into EU law, the G20/ OECD BEPS Action 13 in order to boost transparency on the taxes that companies are paying. This will be done through a revision of the Administrative Cooperation Directive. Under the proposed rules, national authorities will exchange tax-related information on multinational companies' activities, on a country-by-country basis. As such, all Member States (however not the public) will have crucial information to identify risks of tax avoidance and to better target their tax audits.

In 2011, the Commission tabled a proposal for a Common Consolidated Corporate Tax Base (CCCTB), a single set of rules that companies operating within the EU could use to calculate

¹⁸² European Commission, [Communication From The Commission To The European Parliament And The Council on tax transparency to fight tax evasion and avoidance, Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation](#), March 2015

¹⁸³ [Action Plan on Corporate Taxation](#), Commission Action Plan, June 2015

their taxable profits in each Member State¹⁸⁴. The legislative process has been stalled and the Commission is set to re-launch the proposal with a staged approach consisting of 2 steps. The aim is to first focus on agreeing common rules for computing the tax base (taxable profit) without taking yet consolidation into account. This should make the proposal easier for Member States to agree. Once the common base is secured, Member States will start debating consolidation. The CCCTB does not touch upon statutory tax rates, meaning that Member States would be allowed to tax their share of the base at their own corporate tax rate.

The re-launch of the CCCTB scheme in 2015, which is planned on a two-step approach - first harmonisation of the tax base and then the element of consolidation - is of particular relevance to the objectives pursued in this impact assessment. In particular, the introduction of a CCCTB would provide a solution to many cases of base erosion and profit shifting as well as to aggressive tax planning in general in the Union.

Finally, following the adoption of the fourth Anti-Money Laundering Directive¹⁸⁵, Member States will be obliged to ensure that certain information on businesses, legal entities and legal arrangements such as trusts are held in a central register at the national level. This includes adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. This register will be accessible to relevant authorities and financial intelligence units without restriction, "obliged entities" which need to apply customer due diligence and other persons that can demonstrate a legitimate interest. This information can be stored for example in a commercial register, company register or a public register. The Commission will also assess the possibility for a safe and efficient interconnection of the central registers via the European central platform¹⁸⁶.

D.2.5 European Parliament

In July 2015, the European Parliament flagged support for transparency by way of a CBCR by adopting an amendment to the Commission's proposal for a Directive on Shareholders' Rights¹⁸⁷. The amendment requires a CBCR by large EU companies and all issuers of securities in an EU regulated market. The work undertaken in this document has strong connections with this amendment, as it is believed that the amendment is reflected in Option 2B. In an accompanying Recital, the Parliament explains that this is essential for promoting trust in companies and facilitating the engagement of shareholders and other Union citizens, and that mandatory reporting can be seen as an important element of the responsibility of companies to their shareholders and society.

¹⁸⁴ With the CCCTB, a company would have to comply with just one EU system for computing its taxable income, rather than different rules in each Member State in which they operate. In addition, groups using the CCCTB would be able to file a single consolidated tax return for the whole of their activity in the EU. The consolidated taxable profits of the group would be shared out to the individual companies by a simple formula. That way, each Member State can then tax the profits of the companies in its state at their own national tax.

¹⁸⁵ Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. See in particular articles 30 and 31.

¹⁸⁶ By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring such interconnection of the central registers via the European central platform. See Article 4a(1) of Directive 2009/101/EC.

¹⁸⁷ Proposal for a [Corporate governance: long-term shareholder engagement; corporate governance statement, 2014/0121\(COD\)](#)

The European Parliament also set up an ad hoc Committee, TAXE¹⁸⁸ in February 2015 to examine tax ruling practices in Member States. In November 2015, TAXE recommended that Parliament¹⁸⁹ reiterate its view that MNEs should publish a CBCR, possibly via a central EU register.

The Economic and Monetary Affairs Committee of the European Parliament also supports enhanced transparency predominantly in the form of country-by-country reporting based on OECD guidelines. It also recommends a CBCR for all sectors, which may be made public. Further, it calls on the European Commission to bring forward a proposal as soon as possible on a voluntary European 'Fair Tax Payer' label, as a 'soft measure' to promote tax compliance by companies.

D.3 Member States' national context

D.3.1 National Parliaments

The national parliaments of the United Kingdom and France (see Annex H), among others, have examined how multinationals behave in relation to taxes. All support further corporate tax transparency at least to tax authorities, possibly in the form of a CBCR submitted to tax authorities. No Committee however, has called for a public CBCR. The UK Committee sees merit in further public disclosure regard tax affairs and/or tax returns in the UK. The French Parliament has made recent calls for the introduction of CBCR¹⁹⁰.

D.3.2 National practices on corporate income taxes

Enterprises are used to regularly (usually: annually) filing tax returns with the relevant tax authority in the jurisdiction in which it is located (usually: the national tax authority). This is done for the calculation and payment of corporate income taxes. A few Member States seek increased transparency in corporate taxes at national level as current reporting requirements are generally limited in scope and reach.

Since 1998 Member States have worked in the Code of Conduct Group to combat harmful tax competition. The Group relies on established criteria for identifying potentially harmful tax measures – lack of transparency is one of them. In 1999 the Group's report to ECOFIN identified 66 tax measures with harmful features (40 in EU Member States, 3 in Gibraltar and 23 in dependent or associated territories). Member States and their dependent and associated territories subsequently amended or abolished these harmful practices. Since then Member States have been obliged to refrain from introducing new tax measures which may be harmful and to improve cooperation and transparency (e.g. through the Directive for an automatic exchange of information regarding tax rulings to which the Council agreed in October 2015).

Finland, Sweden and Norway require individual and/or tax returns to be publicly disclosed. Transparency on tax information is generally limited to the information found in a company's financial statements, where these are publically available. In Finland and Norway, a few

¹⁸⁸ European Parliament, [Special committee of the European Parliament on tax rulings and other measures similar in nature or effect](#), TAXE.

¹⁸⁹ European Parliament resolution of 25 November 2015 on [tax rulings and other measures similar in nature or effect](#)

¹⁹⁰ Boursorama: [Optimisation fiscale: l'Assemblée vote la publication du "reporting" pays par pays](#), 2015

additional items (outstanding tax payment or refund owed to the company...) are made available by tax authorities linked to a company's affairs in their jurisdiction. Since 2012, the Danish tax authority has publically disclosed on its website additional tax information on corporate income tax calculation and liability for the year submitted by companies in their jurisdiction¹⁹¹. In Sweden, the public has a general right of access, upon request, to tax related documents filed with the tax authorities, including tax rulings. This transparency no doubt contributes to overall corporate transparency. However, it would not represent an appropriate route to follow as far as the objective of this work is concerned. This is because, (i) the information would remain scattered throughout countries, i.e. not accessible centrally and easily; and (ii) the information would be limited to Europe, i.e. taxes paid by an EU MNE's subsidiaries in third countries would not be captured.

In November 2014, the International Consortium of Investigative Journalists (ICIJ) revealed information on tax rulings. These have become known as the 'LuxLeaks'. Confidential documents released set out more than 500 private tax arrangements between the Luxemburg tax administration and more than 300 MNE between 2002 and 2010, revealing the extent of secret deals featuring complex financial structures designed to obtain tax reductions.

The use of tax rulings is by no ways confined to Luxemburg. Tax rulings themselves are not considered to be a problem and many Member States issue them. A tax ruling is a confirmation or assurance that tax authorities give to tax-payers on how their tax will be calculated. Tax rulings are typically issued to provide legal certainty for taxpayers, often by confirming the tax treatment of a large or complex commercial transaction. Moreover, they are mostly given in advance of the transaction taking place or a tax return being filed. In practice, however, there is little exchange of information between Member States on tax rulings or transfer pricing arrangements even when these impact other countries.

D.4 Market led initiatives

Though very vivid, market led initiatives tend to be fragmented and limited in scope and reach, as demonstrated below.

D.4.1 Investors

Investors who aim for sustainable and responsible investments are calling for enhanced corporate tax transparency, insofar as they are pushing for companies to pay their fair share of taxes by making this a criterion of their investment decision. However, these represent only a small portion of the investment community and their impact remains extremely limited.

Eurosif supports a mandatory, annual CBCR for listed companies with data made public to stakeholders, including investors and shareholders¹⁹². Triodos Bank¹⁹³ aims to fund only

¹⁹¹ PriceWaterhouseCoopers, [Tax transparency and country-by-country reporting - An ever changing landscape](#), Oct. 2013

¹⁹² Eurosif, [Country-by-country Reporting: Eurosif's position](#), 2015. Eurosif is a non-for-profit pan-European partnership of several Europe-based national [Sustainable Investment Forums \(SIFs\)](#) whose mission is to promote sustainability through European financial markets.

¹⁹³ Triodos, [How much tax should companies pay?](#), 2013

organisations and enterprises that have respect for human rights and the environment. It believes that companies have a responsibility to pay their fair share of taxes. It has taken to questioning investee companies using a questionnaire on tax transparency to all 125 of its investees. The response rate to the questionnaire was high but results showed that tax transparency is still not high on the public agenda for the majority of companies. Only four companies responded to have a publicly available tax policy, namely Johnson Matthey, Novo Nordisk, Reed Elsevier and WPP. As regards CBCR, several companies commented that they do not disclose country-by-country information for competitiveness reasons and associated costs.

D.4.2 Enterprises

Some MNE have volunteered to report on their overall taxation policies and on the taxes they pay on a country-by-country basis. These enterprises generally see themselves as committed to meeting legal requirements and are aware of the need to maintain a good reputation and corporate image. By demonstrating the contributions made to public finances in the countries where they operate around the globe, including by ways of a CBCR, they also recognise that their operations rely on functioning local infrastructures. As such, these MNEs tend to disclose taxes borne in total, including VAT, payroll taxes, taxes on profits etc. Beyond this breakdown, companies may provide additional indicators such as the number of employees per country – but reports are not comparable as to the extent and design of indicators given. Some may also provide contextual information. A vast majority of these multinationals feel the need to design and publish internal tax codes of conduct. Some of these also provide information on their tax strategies and other aspects beyond what is legally required.

For instance, British insurer Legal & General is committed to tax transparency. For a number of years in its annual report, the group has disclosed in a dedicated section its strategy and governance towards taxation, reconciles its tax charge to tax paid and provides a CBCR on all taxes borne¹⁹⁴. British telecommunications company Vodafone has also for a few years been reporting its taxes via its Sustainability Report. This report includes complete narratives as well as a CBCR on total economic contribution¹⁹⁵. SSE plc, a FTSE 100 enterprise in the energy business, publishes a Group Tax policy and a specific transparency report that includes a CBCR, reconciliation of tax charges and other explanatory material¹⁹⁶. Assurance and tax service providers might join this endeavour.¹⁹⁷

D.4.3 Labelling system

Non-governmental initiatives such as the Fair Tax Mark in the UK have also appeared recently. The Fair Tax Mark is the label for good taxpayers. It is a non-profit organisation that brings together ethical consumers and businesses. So far, around ten UK companies have earned the label including SSE plc.

¹⁹⁴ [Legal & General Group Plc | Annual Report And Accounts 2014](#), page 37

¹⁹⁵ Vodafone: [Tax and total economic contribution](#) / [Contribution, country by country](#)

¹⁹⁶ [SSE plc Group Tax Policy, Improving Tax Transparency](#), 2015

¹⁹⁷ Ernst & Young, [Tax transparency, seizing the initiative](#), 2013

The Taxparency initiative in the Czech Republic is also worth mentioning¹⁹⁸. Under this system, a company is granted a taxparency label which it can put on its website and in its shops, with a logo displaying a company's global effective corporate tax rate and amount of stars according to how much corporate tax the company has paid in the EU. This organisation proposes a model EU legislative instrument on corporate transparency aimed at the disclosure of corporate structure as well as the calculation of the global effective corporate tax rate and provisions regarding a Taxparency mark.

¹⁹⁸ [taxparency EU](#)

ANNEX E: TAX ADJUSTMENTS, TAX DISPUTES AND RESOLUTION MECHANISMS

BEPS Action 14: Making Dispute Resolution Mechanisms More Effective

As the need for more effective dispute resolution increase as a result of the enhanced risk assessment capability given by CBCR to tax authorities, the OECD proposed a BEPS Action to make dispute resolution mechanisms more effective: BEPS Action 14¹⁹⁹.

The OECD said: "The measures developed under Action 14 of the BEPS Project and contained in this report aim to minimize the risks of uncertainty and unintended double taxation. They do so by ensuring the consistent and proper implementation of tax treaties, including the effective and timely resolution of disputes regarding their interpretation or application through the mutual agreement procedure. Countries have agreed to important changes in their approach to dispute resolution, such as a minimum standard with respect to the resolution of treaty-related disputes. They have committed to its rapid implementation and agreed to ensure its effective implementation through the establishment of a robust peer-based monitoring mechanism. A large group of countries has also committed to provide for mandatory binding arbitration in their bilateral tax treaties as a mechanism to guarantee that treaty-related disputes will be resolved within a specified timeframe."

The Action recommends that countries implement a series of minimum standards to ensure the timely, effective and efficient resolution of treaty-related disputes. A list of best practices is provided in this regard.

The Action contemplates in addition a framework for a peer monitoring mechanism in order to ensure that the commitments embodied in the minimum standard are effectively satisfied.

Risks facing MNEs

With a public CBCR, EU MNEs may be faced with a higher number of tax audit adjustments being made by tax authorities of EU or third-countries on the basis of the CBCR. Tax authorities can for instance apply "formulary apportionment", i.e. calculate a theoretical taxable profit on the basis of general allocation criteria such as people employed, turnover or assets for a given subsidiary in their jurisdiction, by comparison to other components of the group shown on the CBCR. The additional share of profit claimed by a third country will often already have been taxed in other countries, including in Member States. This triggers risks of double taxation.

This issue of double taxation and tax disputes has traditionally been addressed by bilateral Double Tax Conventions (DTCs) which States negotiate amongst themselves based on certain international model agreements. The OECD Model Tax Convention on Income and on Capital (the OECD Model) is the most frequent reference in this field²⁰⁰. In a total of 378 bilateral relations in the EU, there are currently 365 DTCs. DTCs distribute taxing rights

¹⁹⁹ OECD, [BEPS 14](#), 2015

²⁰⁰ The Council of the OECD adopted in 1963 its Draft Model DTC, revised in 1977 and transformed into an ambulatory text providing periodic and timelier updates since 1991. Thus, Member States (MS) have agreed DTC between them in almost all their bilateral relations with the exception of the multilateral treaty between the Nordic States (Denmark, Faeroe Islands, Iceland, Norway, Finland and Sweden).

between the residence State and the source State. Where both States maintain a taxing right, the Residence State is meant to eliminate double taxation. For this purpose, it either exempts the income or taxes it while allowing a deduction for the tax already paid in the source State (the credit method). DTCs provide for a mutual agreement procedure (MAP) to solve differences in their application whereby the corresponding competent authorities shall discuss the issue to solve it but are not bound to reach a solution. The OECD²⁰¹ supports that all tax treaties include methods for elimination of double taxation and a MAP. The EU has also adopted some legislation (including e.g. the Parent/Subsidiary Directive²⁰², Interest and Royalty Payments Directive²⁰³) which addresses double taxation by exempting dividend, interest and royalty payments between associated companies from source taxation. In addition, the Member States have agreed a multilateral convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises: the EU Arbitration Convention²⁰⁴ signed on 23 July 1990. This multilateral agreement (applicable to all EU Member States) is limited to transfer pricing and profit allocation to permanent establishments. It provides binding arbitration if a case is not settled through mutual agreement within 2 years. Where there is no applicable DTC or EU legislation, domestic law may provide for the elimination of double taxation by the exemption or credit method.

Tax adjustments can be covered by the dispute resolution mechanisms currently in place in the existing DTCs. To avoid double taxation due to tax adjustments with overseas reach claimed in a given country, an EU MNE will typically activate the mechanisms in the DTC in order to try to recover from other countries any corporate income tax overpayment resulting from those tax adjustments. To achieve this, the MNE needs to trigger with the authorities of the country where the tax adjustment was initiated the mechanism, i.e. either a MAP or mechanisms based on the EU AC.

However dispute resolution mechanisms are reported to be effective only to a varying degree. According to the OECD, there are 5,423 unresolved MAP cases among OECD Member Countries as of the end of 2014, more than double the figure for 2006²⁰⁵. The number of new MAP cases is constantly increasing (2,266 in 2014 vs 1,036 in 2006). This may be an indicator of higher use of MAP to solve tax disputes, but also of increasing tax disputes. A few extra cases are reported by the OECD with partner countries, mainly in China (55 cases). Finally, it takes around two years on average to bring a dispute to an end, under either a MAP or an AC scheme.

Some statistics are available on the resolution of cases²⁰⁶: there have been 1,910 new MAP cases in 2013, but only 197 cases completed in the same year. This is a reduction of approximately 30% from the 279 cases reported completed in 2012. While many of the 197 closed cases will have been initiated before 2013, the closure rate represents just 10.3% of the

²⁰¹ OECD [model convention on taxes](#)

²⁰² Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (recast), O.J. L 345/8, 29.12.2011

²⁰³ Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (O.J. L 157, 26.6.2.3).

²⁰⁴ [90/436/EEC](#): Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (AC)

²⁰⁵ OECD [MAP statistics 2014](#)

²⁰⁶ Source: analysis of the OECD figures by Ernst and Young

2013 case initiation rate and only 4.3% of the total stock of open MAP cases. The five countries completing the most MAP cases in 2013 were Luxembourg (27), Belgium (25), Netherlands (23), Sweden (23), and Switzerland (23). The United States did not report how many cases were closed in 2013.

Around two-thirds of the OECD MAP cases are with EU Member States. Around a third of those cases only are reported in turn in the activation of the Arbitration Convention, i.e. for cases strictly within the EU²⁰⁷. This may be an indicator that the EU is currently the best equipped economic area as regards the prevention and resolution mechanisms when Member States only are involved. Nevertheless, the EU is considering improvements to its current scheme, the operational objective of which is to offer efficient legal remedies to the unresolved cases of double taxation which are caused by a disagreement between Member States on the application of their DTCs.²⁰⁸²⁰⁹ At the OECD level, it is recognised that, the adoption of MAP arbitration has not been as broad as expected and that the absence of arbitration provisions in most treaties and the fact that access to arbitration may be denied in certain cases are obstacles that prevent countries from resolving disputes through the MAP. It is also recognised that there is no consensus on moving towards universal mandatory binding arbitration mechanism in the frame of MAPs. Besides, in spite of several attempts to make dispute resolution mechanisms work better, further progress remains to be achieved in certain compartments ranging from the implementation of MAP by countries to obstacles to access to MAP for MNEs and the lack of resolution when MAP is activated²¹⁰. Only 12 DTCs between EU Member States have introduced the arbitration clause, despite the 2008 revision of the OECD Model introducing an arbitration system to solve cases where authorities cannot agree in the context of a MAP²¹¹. With BEPS Action 14, the OECD proposes measures to strengthen the effectiveness and efficiency of the MAP process. The aim is to minimise the risks of uncertainty and unintended double taxation by ensuring the consistent and proper implementation of tax treaties, including the effective and timely resolution of disputes regarding their interpretation or application through the mutual agreement procedure. Some stakeholders have reported that BEPS 14 may still not offer enough binding measures to ensure that mandatory resolution of disputes between tax authorities effectively take place, and if so in a reasonable period of time. States are nevertheless invited to subscribe to implement the necessary changes to tax treaties in these areas, including ways of a multilateral instrument (BEPS 15). It is not possible at this juncture to predict how much countries will be willing to move in the OECD direction.

²⁰⁷ European Commission, Joint Transfer Pricing Forum, [JTPF statistics on MAP](#), 2013

²⁰⁸ European Commission, Joint Transfer Pricing Forum, [Report on Improving the Functioning of the Arbitration Convention](#), 2015

²⁰⁹ Communication: [A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action](#), 2015

²¹⁰ Source: OECD BEPS Action 14, *Make dispute resolution mechanisms more effective*, [public discussion draft](#) 18 December 2014 – 16 January 2015, page 4, 20

²¹¹ This initiative was the result of an OECD report, [Improving the resolution tax treaty disputes](#), February 2007.

Based on anecdotal evidence offered by a public consultation conducted by the Commission in 2010²¹² and a study commissioned to Ernst & Young in 2013, the following features of double taxation within the EU have been identified:

- Very large companies seem to be the most affected by double taxation (respondents and surveyed companies had over 5 000 employees and a turnover of over EUR 1 billion);
- In the EY study over 57% (12 out of 21) of the reporting companies paid a total corporate tax of over of the income due to double taxation, i.e. their effective tax rate was over 30% while the average effective tax rate for corporations in the EU was 20.9 % in 2012²¹³. This could suggest that double taxation increases the tax burden as compared to that which domestic income and foreign income not subject to international double taxation are subject to;
- The cases involving taxes above EUR 1 million amounted to over 20% (16 out of 77) of the companies in the public consultation and over 46% of the total in the EY study.
- According to the public consultation, the legal and administrative costs involved in the elimination of double taxation for companies amounted to over EUR 10 000 in more than 46 % (6 out of 13) of the cases. In addition in 2 cases, the consultancy costs reached more than EUR 150 000, 9 cases involved amounts between EUR 25 000 and EUR 150 000 and 8 cases below EUR 25 000;

The EY study shows that the client applied a remedy in only 41% of the cases and even less, a supranational remedy was only used in 14% of the cases. According to the public consultation, 14.5% of the responding companies have not tried a legal remedy: reasons for renouncing the use of legal remedies was in most cases that there was no expectation of successful results (over 19%). Secondly, the expected time for a decision was too long (over 9%). Other reasons were the lack of sufficient information or expertise, and the costs involved.

²¹² Commission's consultation on [Double taxation conventions and the internal market: factual cases of double taxation](#), 2010

²¹³ *Taxation Trends in the European Union, 2013 edition*, DG TAXUD, European Commission. Table on effective average tax rate on the non-financial sector. In 2011, it was 21 % and in 2010 it was 21.1 %.

**ANNEX F: IFRS NOTES: GEOGRAPHICAL INFORMATION AND CORPORATE INCOME TAX
– ILLUSTRATIVE EXAMPLE (ABSTRACT, SOURCE: DELOITTE)**

F.1 REVENUES AND NON-CURRENT ASSETS

Source	International GAAP Holdings Limited				
	<p>Notes to the consolidated financial statements for the year ended 31 December 2014 – continued</p> <p>6.6 Geographical information</p> <p>The Group operates in three principal geographical areas – A Land (country of domicile), B Land and C Land.</p> <p>The Group's revenue from continuing operations from external customers by location of operations and information about its non-current assets* by location of assets are detailed below.</p>				
IFRS 8.33(a),(b)		Revenue from external customers		Non-current assets*	
		Year ended	Year ended		
		31/12/14	31/12/13	31/12/14	31/12/13
		CU'000	CU'000	CU'000	CU'000
	A Land	84,202	73,971	94,085	84,675
	B Land	25,898	43,562	21,411	25,745
	C Land	25,485	25,687	19,085	22,341
	Other	5,349	8,855	5,826	8,809
		<u>140,934</u>	<u>152,075</u>	<u>140,407</u>	<u>141,570</u>
	<p>* Non-current assets exclude those relating to toy and bicycle operations and non-current assets classified as held for sale, and exclude financial instruments, deferred tax assets, post-employment benefit assets, and assets arising from insurance contracts</p>				

F.2 CORPORATE INCOME TAX

Source	International GAAP Holdings Limited	
	Notes to the consolidated financial statements for the year ended 31 December 2014 – continued	
	10. Income taxes relating to continuing operations	
	10.1 Income tax recognised in profit or loss	
		Year ended 31/12/14
		Year ended 31/12/13
		CU'000
		CU'000
IAS 12.79	Current tax	
	In respect of the current year	10,241
	In respect of prior years	–
	Others [describe]	–
		<u>10,241</u>
		<u>11,454</u>
IAS 12.80	Deferred tax	
	In respect of the current year	1,394
	Deferred tax reclassified from equity to profit or loss	(150)
	Adjustments to deferred tax attributable to changes in tax rates and laws	–
	Write-downs (reversals of previous write-downs) of deferred tax assets	–
	Others [describe]	–
		<u>1,244</u>
		<u>214</u>
	Total income tax expense recognised in the current year relating to continuing operations	<u>11,485</u>
		<u>11,668</u>
IAS 12.81(c)	The income tax expense for the year can be reconciled to the accounting profit as follows:	
		Year ended 31/12/14
		Year ended 31/12/13
		CU'000
		CU'000
	Profit before tax from continuing operations	<u>30,317</u>
		<u>32,257</u>
	Income tax expense calculated at 30% (2013: 30%)	9,095
	Effect of income that is exempt from taxation	(39)
	Effect of expenses that are not deductible in determining taxable profit	2,488
	Effect of concessions (research and development and other allowances)	(75)
	Impairment losses on goodwill that are not deductible	5
	Effect of unused tax losses and tax offsets not recognised as deferred tax assets	–
	Effect of previously unrecognised and unused tax losses and deductible temporary differences now recognised as deferred tax assets	–
	Effect of different tax rates of subsidiaries operating in other jurisdictions	11
IAS 12.81(d)	Effect on deferred tax balances due to the change in income tax rate from xx% to xx% (effective [insert date])	–
	Others [describe]	–
		<u>11,485</u>
		<u>11,668</u>
	Adjustments recognised in the current year in relation to the current tax of prior years	–
		<u>–</u>
	Income tax expense recognised in profit or loss (relating to continuing operations)	<u>11,485</u>
		<u>11,668</u>
IAS 12.81(c)	The tax rate used for the 2014 and 2013 reconciliations above is the corporate tax rate of 30% payable by corporate entities in A Land on taxable profits under tax law in that jurisdiction.	

ANNEX G: FORM 10-K: ILLUSTRATIVE EXAMPLES OF GEOGRAPHIC INFORMATION

G.1 REVENUES AND LONG-LIVED ASSETS

The following illustrates the geographic information required by paragraph 280-10-50-41 of US GAAP standard ASC 280. In this illustrative example, because Diversified Company's segments are based on differences in products and services, no additional disclosures of revenue information about products and services are required.

Geographic Information		
	Revenues^(a)	Long-Lived Assets
United States	\$ 19,000	\$ 11,000
Canada	4,200	-
Taiwan	3,400	6,500
Japan	2,900	3,500
Other foreign countries	6,000	3,000
Total	\$ 31,000	\$ 24,000
(a) Revenues are attributed to countries based on location of customer.		

Source: US Financial Accounting Standards Board (FASB), Accounting Standards Codification Topic 280, Segment Reporting

G.2 CORPORATE INCOME TAX

Google Inc, fiscal year 2014 (abstract)

Note 14. Income Taxes

Income from continuing operations before income taxes included income from domestic operations of \$6,447 million, \$7,044 million, and \$7,936 million for the years ended December 31, 2012, 2013, and 2014, and \$9,323 million for the years ended December 31, 2012, 2013, and 2014.

The provision for income taxes consists of the following (in millions):

	2012	
Current:		
Federal	\$ 2,484	\$
State	169	
Foreign	312	
Total	2,965	
Deferred:		
Federal	(109)	
State	5	
Foreign	55	
Total	(49)	
Provision for income taxes	\$ 2,916	\$

The reconciliation of federal statutory income tax rate to our effective income tax rate is as follows (in millions):

	2012	
Expected provision at federal statutory tax rate (35%)	\$ 5,064	\$
State taxes, net of federal benefit	114	
Change in valuation allowance	1,921	
Foreign rate differential	(2,208)	
Federal research credit	0	
Basis difference in investment of Arris	(1,960)	
Other adjustments	(15)	
Provision for income taxes	\$ 2,916	\$

A one-year retroactive extension of the research credit from January 1, 2014, through December 31, 2014, was signed into law on December 19, 2014 in accordance with the Tax Increase Prevention Act of 2014.

A retroactive extension of the 2012 federal research and development credit was signed into law on January 2, 2013 in accordance with The American Taxpayer Act of 2012. The benefit of \$189 million related to this credit was recognized in the year ended December 31, 2013.

We have not provided U.S. income taxes and foreign withholding taxes on the undistributed earnings of foreign subsidiaries as of December 31, 2014 because we intend to permanently reinvest such earnings in the future, the related U.S. tax liability may be reduced by any foreign income taxes previously paid on these earnings. As of December 31, 2014, the cumulative amount of earnings upon

ANNEX H: PARLIAMENT'S INQUIRIES

French Parliament

The Financial Committee of the French Parliament investigated corporate income tax planning in 2013. In its report²¹⁴, the Committee notes that the “*differences in legislation between States are the main driver of tax planning strategies implemented by transnational corporations. [...] Companies that best succeed in tax planning are logically large transnational companies who can afford to use fine-tuned fiscal and financial engineering - playing with differences in legislation among States, and where the group structures can benefit from favourable regimes*”. [...] This is exacerbated “*in the context of increased value created on the basis of intellectual capital*” [...] “*Transfer prices are most likely the main avenue for tax optimization*”. [...] Recent feedback indicates that it is difficult for citizens to accept that the largest multinationals are avoiding taxes amidst an ongoing economic crisis”.

The Committee also refers to (but does not endorse) an estimate of “losses in tax revenues” for France based on a survey conducted by Greenwich Consulting in 2013. The survey contends that had they been subject to French regulation without recourse to optimization, certain MNEs would have paid an additional EUR 800 million to the French Treasury in 2011, and extra VAT of EUR 400 to EUR 700 million. This is shown below:

€million	Turnover declared in France	Estimate of the “real” turnover in France	Corporate tax paid in France	Corporate tax that should have been paid in France	Average growth of the global multinational’s turnover
Google	138	1 400	5,5	162	42 %
Apple	257	3 200	6,7	317,5	38 %
Facebook	Not available	140	0,05	21,2	123 %
Amazon	110	890	3,3	10,9	32 %
Microsoft	584	2 500	22	317	8 %
Total	1 009	8 130	37,5	828,7	

In their report, the rapporteurs recommend (Proposal n°19) that “country-by-country transparency” be expanded within the EU to all industry sectors in order to reinforce the information gathered by tax authorities. In addition, the EU encourages third countries to also adopt this rule.

The French Parliament attempted in December 2015 to introduce a requirement on large companies to publish a CBCR, based on a model close to CRD4²¹⁵, but this was rejected

²¹⁴ Commission des finances, de l’économie générale et du contrôle budgétaire - [Rapport d’information de l’Assemblée nationale française en conclusion des travaux d’une mission d’information sur l’optimisation fiscale des entreprises dans un contexte international](#), 2013

²¹⁵ Boursorama: [Optimisation fiscale: l’Assemblée rejette le “reporting” pays par pays après un deuxième vote](#), 2015

following the negative opinion of the French government on the grounds of competitiveness risks for French companies and the need to wait for results on work undertaken at EU level.

UK Parliament

Committees at the UK Parliaments investigated the issue of corporate income tax.

The Lords Select Committee on Economic Affairs launched the inquiry *Taxing corporations in a global economy: is a new approach needed?* on 9 July 2012. A Call for Evidence was issued with a deadline for submissions by 14 May 2013. The Report was published on 31 July 2013, the Government Response on 14 October 2013 and the report was debated on 30 October 2013.

The Commons Select Committee on Public Accounts heard evidence from Google in November 2012 regarding how it manages its financial arrangements in the UK. Representatives of Starbucks and Amazon were also invited to the hearing to give evidence. The Committee hoped to gain a better understanding of the broader issues connected with tax avoidance, but not to single out these companies.

Some recommendations made by these Committees based on their findings are summarised below:

UK House of Lords²¹⁶: *“The present international corporation tax system offers great scope for multinational companies to shift their profits between countries to reduce their tax liabilities and creates an uneven playing field” (Paragraph 37) “But while companies are required to comply with tax laws in the UK and elsewhere, ways are open, especially for multinationals, to shift profits between countries so as to reduce their overall tax liabilities, and to make UK corporation tax to a considerable extent voluntary for multinationals. This severely undermines public trust in the tax system, is clearly inequitable and threatens a serious loss of much-needed tax revenue.” (Paragraph 55).*

As regards transparency in particular, the Select Committee recommends the following: *“We recommend that the Government should actively promote implementation of the G8 proposals for improving the flow of information between tax authorities”. This would seemingly include “a common template for country-by-country reporting to tax authorities by major multinational enterprises”. In addition, “As regards public disclosure, we recommend that large companies operating in the UK should **make public (disclosure of) their UK corporation tax returns**. We also recommend that the Treasury review should look at practical ways to require companies with large operations in the UK to **publish a pro-forma summary of their UK corporation tax returns**. This would help enable Parliament and the public to see if a fair level of corporation tax was being paid and when action against avoidance was needed. It might also act as a deterrent to aggressive tax avoidance by companies.”*

UK House of Commons²¹⁷: *“To avoid UK corporation tax, Google relies on the deeply unconvincing argument that its sales to UK clients take place in Ireland, despite clear*

²¹⁶ [Select Committee on Economic Affairs, Tackling corporate tax avoidance in a global economy: is a new approach needed?](#), July 2013

²¹⁷ [House of Commons, Committee of Public Accounts, Tax Avoidance–Google](#), June 2013

evidence that the vast majority of sales activity takes place in the UK. The big accountancy firms sell tax advice which promotes artificial tax structures, such as that used by Google and other multinationals, which serve to avoid UK taxes rather than to reflect the substance of the way business is actually conducted. HM Revenue & Customs (HMRC) is hampered by the complexity of existing laws, which leave so much scope for aggressive exploitation of loopholes, but it has not been sufficiently challenging of the manifestly artificial tax arrangements of multinationals. HM Treasury needs to take a leading role in driving international action to update tax laws and combat tax avoidance."

In terms of transparency, the Committee recommends the following: *"HMRC and HM Treasury should push for an international commitment to **improve tax transparency, including by developing specific proposals to improve the quality and credibility of public information about companies' tax affairs, and use that information to collect a fair share of tax from profits generated in each country. This data should include full information from companies based in tax havens.**"*

U.S. Senate

For a number of years, the Permanent Subcommittee on Investigations of the U.S. Senate Homeland Security and Government Affairs Committee has reviewed how U.S. citizens and multinational corporations have exploited and, at times, abused or violated U.S. tax statutes, regulations and accounting rules to shift profits and valuable assets offshore to avoid U.S. taxes.

From 2012 till 2014, the Subcommittee's reviews have focused on how multinational corporations have employed various complex structures and transactions to exploit loopholes to shift large portions of their profits offshore and dodge U.S. taxes.

Companies under scrutiny included Apple, Caterpillar, Walmart, Microsoft and Hewlett-Packard²¹⁸. The Subcommittee inquiries have led to a series of hearings and reports highlighting offshore tax strategies, while considerable and sustained efforts have been devoted to investigations. Based on the Subcommittee's investigation, recommendations were made to amend the U.S. tax laws, properly enforce certain provisions, etc.

Parliament of Australia

The Australian Senate Inquiry into corporate tax avoidance and aggressive minimisation, after holding five public hearings and receiving more than one hundred submissions, submitted an interim report in August 2015²¹⁹. This interim report makes 17 recommendations over four areas. The committee recommends inter alia that the Australian government consider publishing excerpts from the Country-by-Country reports prepared by companies and for the report to be based closely on the European Union's standards.

²¹⁸ The Apple and Caterpillar hearing were held during the 113th [Congress](#), while the hearing on Microsoft and Hewlett-Packard took place during the 112th Congress.

²¹⁹ Executive summary of the [Interim report of the Committee](#), 2015

ANNEX I: COMPATIBILITY WITH THE CHARTER OF FUNDAMENTAL RIGHTS²²⁰ - DETAILED ANALYSIS

As far as data protection is concerned, any transparency measure must comply with the Charter and the right to the protection of personal data as set out in Article 16 TFEU. The fundamental rights which may be affected under the first approach include the following:

- Article 7 - Respect for private and family life
- Article 8 - Protection of personal data
- Article 16 - Freedom to conduct a business
- Article 17 – Right to property

The right to the respect for private and family life (Art. 7), does not appear to be *prima facie* affected by the present work, which has been undertaken mainly with a view to addressing transparency by large multinational enterprises only. Given the scale of their business, companies and their owners are generally exposed to public scrutiny e.g. by ways of advertising, press articles, etc.

The right to the protection of personal data (Art. 8) may be affected by the present work. Any transparency measure resulting from this work would have to comply with the right to the protection of personal data. Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data is the main instrument which specifies the principles for any processing activity. Personal data is defined in Article 2 of the Directive as any information relating to an identified or identifiable natural person. This right is not an absolute right, in that it may be subject to limitations stated in paragraph 2 of Article 8 of the Charter: *Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.* Because it is not an absolute right, interference, i.e. in the form of public disclosure of personal data, is possible. However, such interference in the form of data disclosed about natural persons would not be foreseen as a result of this work. Data on corporate taxes, including e.g. a list of subsidiaries, would for instance belong to the sphere of the legal person.

Legal persons can claim the protection under Art 7 and 8 of the Charter and under the Directive 95/46/EC only in certain limited circumstances, i.e. when their official title identifies one or more natural persons. Any proposals limiting the scope of transparency/reporting obligations to large companies as defined in the Accounting Directive or to MNEs under OECD BEPS Action 13 limit the risk that the obligations in question would trigger disclosure of personal data in this sense.

According to the case law of the court, moreover, the legally mandated systematic public disclosure of information on legal persons even if such persons may invoke the data protection rights, is not precluded. However, as disclosure in such cases might still result in the interference into the right to the protection of the personal data, the objectives for such interference should be clearly defined and the disclosure should be limited to what is

²²⁰ Analysis made in accordance with the [Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments](#) of the European Commission, 2011

necessary to attain such objectives. This would be done at the time of a Commission proposal, if any.

Other rights could also be relevant, in particular Article 16 and 17 of the EU Charter of Fundamental Rights, i.e. the right to conduct a business and the right to property. This becomes pertinent where any of the envisaged measures affect business secrets or other confidential business documents. The proportionality of measures has therefore to be assessed.

Regarding the freedom to conduct business (as guaranteed under Article 16), three aspects could be affected:

- the financial/administrative burden created by companies' reporting obligations,
- interference with business secrets and;
- freedom to conduct business in so far as the companies' freedom to develop tax strategies is affected.

While these interferences may be justified as long as the conditions of Article 52 CFR are met, their assessment should be included in any future legislative measures that may be selected.

Article 16 protects the economic right of natural and legal persons alike. In this context, it is mainly legal persons who would be affected as the options focus on very large enterprises. The scope of this right encompasses a freedom to carry out any economic and business practice, including specific business strategies, which include tax strategies. Hence any (legislative) measures adversely affecting those practices would amount to interference. Notwithstanding, such interference may be justified if necessary in order to genuinely meet objectives of general interest recognised by the Union (Article 52 (1) CFR). Furthermore, the essence of the right would need to remain untouched and the limitation be proportional to the aim.

While Options 2 and 3 may have an adverse impact on the freedom to exercise business activities, it has been pointed out that the compliance costs attached are relatively low given the very large size of the companies affected. In view of the aim of improving tax transparency as recognised by the EU this burden is very likely to be proportional. A more detailed assessment would however have to be carried out in view of the concrete selected legislative measure.

One could argue that the use tax strategies that exploit different tax rates across Member reflects part of the freedom to conduct business without hindrance. One limitation of this aspect of the right to conduct a business would be justified in view of the aim of the measure, namely to create tax transparency, with a view to ultimately creating a more just application of tax law across all members of society.

Finally, none of the above limitations affect the essence of the right under Article 16, as undertakings will still be able to enjoy the freedom to exercise their economic right (including the freedom to conclude contracts and exercise business practices in general).

A Directive proposed by the Commission on Trade Secrets may establish further rights for companies. To take account of legislative developments, the rapporteur in the European Parliament proposes to clarify that information covered by a disclosure obligation cannot be

considered a trade secret²²¹. In this way, this proposal interferes in no way with policy options examined in this document.

²²¹ In 2013, the Commission tabled a [proposal for a Directive on the Protection of undisclosed know-how and business information \(trade secrets\) against their unlawful acquisition, use and disclosure](#). The definition of 'trade secret' contains three elements: (i) the information must be confidential; (ii) it should have commercial value because of its confidentiality; and (iii) the trade secret holder should have made reasonable efforts to keep it confidential. This definition follows the definition of 'undisclosed information' in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Legal Affairs Committee of the European Parliament suggested in its report on the proposal to clarify, as was intended by the Commission with its proposal, that there should be no entitlement to any remedy when the alleged acquisition, use or disclosure of the trade secret is carried out in the case where disclosure is made for the purpose of protecting the interest of the general public or any other legitimate interest, recognised by the Union or national law and through judicial practice.

ANNEX J: COMPARISON OF EXTANT COUNTRY-BY-COUNTRY MODELS

Table 9: CBCR Models

	EU Accounting Directive 2013/34 – Chapter 10	EU Capital Requirements Directive (CRD4) 2013/36 – Article 89	OECD CBCR recommendation – BEPS Action 13
Who needs to report	<p>Large EU companies active in the extractive industry or the logging of primary forests which are either listed on EU regulated markets or are large non listed companies.</p> <p>Large is defined as a company which exceeds two of the three following criteria: turnover EUR 40 million; total assets EUR 20 million and employees 250.</p>	<p>EU institutions as defined in the associated Capital Requirements Regulations. Broadly these are banks, building societies and other credit institutions, as well as investment firms defined in the Markets and Financial Instruments Directive (subject to certain exclusions).</p> <p>Institutions are required to report on their establishments.</p>	<p>Ultimate parent companies of MNE's groups of all industries with annual consolidated group revenue in the preceding year of more than 750 million Euros.</p> <p>All countries are invited to implement the reporting, in particular G20 and OECD member countries.</p>
What needs to be reported	<p>Companies are required to report all payments to each government within a financial year.</p> <p>A payment (or a series of related payments) is to be reported as soon as it exceeds EUR 100 000. Payments in kind should also be reported.</p> <p>Payments should be reported per government, per type and where relevant, per project. Breakdown per type is as follows:</p> <ul style="list-style-type: none"> a) production entitlements b) taxes levied on the income, production or profits; c) royalties; d) dividends; e) signature, discovery and production bonuses; f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and g) payments for infrastructure improvements. 	<p>Institutions as defined by the directive report for each jurisdiction on a yearly and consolidated basis</p> <ul style="list-style-type: none"> a) name nature of activities and location b) turnover c) number of employees d) profit and loss before tax e) tax on profit or loss f) <u>public subsidies received</u> <p>The "consolidated basis" is defined in CRR in a 'prudential' way. Some member states have nevertheless used an accounting scope of consolidation.</p> <p>In the banks' CBCR, some countries, such as the United Kingdom, require that the reported tax figure be corporation tax paid. Whilst in some other jurisdictions it appears that accounting data for the reporting period is disclosed. Deferred tax provisions may be included depending on the jurisdiction.</p> <p>A few Q&As were also provided on the European Banking Authority's web site with a view to facilitate and streamline bank's reporting.</p>	<p>A template has been designed to report the following:</p> <ul style="list-style-type: none"> a) location, name of entity and activity b) revenues, total, related and unrelated c) number of employees d) profit and losses before tax e) income tax paid and accrued f) stated capital g) accumulated earnings h) tangible assets <p>All sources of data are acceptable as long as the company provides a brief description of the sources of data. Reporting should be done consistently over the years. Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.</p>
Who to report to	To the public at large, by ways of filing with the relevant business register	To the public at large, by ways of filing with the relevant business register	To the relevant tax authority of the country where the MNE is incorporated
When to report	<p>From 1 January 2017, for fiscal year 2016, at the latest.</p> <p>Earlier application possible.</p>	<ul style="list-style-type: none"> a) b) c) from 1. July 2014 d) e) f) from 1. January 2015 (for all) 	In 2017, for fiscal year 2016
How to exchange information	Public disclosure	Public disclosure	Government to government exchange of information (treaty EOI, TIEA, Competent Authority Agreement, MCAA)
Additional aspects/issues	The EU can determine equivalence with third countries. Review in 2018	Q&As available on the web site of the European Banking Authority	Review in 2020

ANNEX K: ANALYSIS OF INFORMATION TO BE DISCLOSED IN A CBCR

Table 1 in Section 4.1.1 outlines possible information to be disclosed in a public CBCR. Sources are the CRD4, OECD BEPS 13, as well as information foreseen in the review clause of the Accounting Directive (Art. 48) and information proposed in resolutions of the European Parliament. The public consultation has been considered as well.

Nature of information

A portion of the information is for identification purposes: the names, nature of activities and location of entities that are included in the CBCR. The income tax accrued (whether deferred taxes are included or not) and/or paid represent fundamental information. Other information is contextual, i.e. provides measures or information that will provide tools to the reader to better evaluate and analyse the geographical spread of profits and income tax.

How was information filtered?

Table 1 analyses the overall relevance for inclusion in a CBCR for tax transparency, depending on whether this information is already publicly accessible in financial or other statements, which impinges on costs associated with the preparation and disclosure of information; whether the information could contribute to the objectives; and whether disclosing the information could entail risks in terms of competitiveness and misinterpretation.

All information enabling third parties or competitors to have access to sensitive information not available otherwise (in particular in the case of third countries operations) has been assessed with a high risk in terms of competitive advantage, such as: 'revenue', 'revenue with related parties', 'profit or loss before tax'. In combination, information that would otherwise be less sensitive standing alone can become of higher sensitivity. For instance, turnover, profit before tax and number of employees are useful comparisons to tax amounts, but can also serve as commercial benchmarks for analysing the performance of a company in a given market (turnover per employee, profit per employee, profit to turnover ratio, etc).

Information that was not directly relevant for the objective or would appear difficult to interpret by the public at large has been assessed as irrelevant, or entailing high misinterpretation risks, or both. This is the case for indicators such as 'revenue with related parties', 'purchases', 'deferred taxes', 'stated capital', 'accumulated earnings', 'tangible assets', 'public subsidies received', 'tax rulings', 'employee working through subcontractors', as well as 'Pecuniary tax-related penalties administered by a country'. In particular, some of this information is sought by the OECD in their model: even though it might be useful to further refine the orientation of tax audits, this does not necessarily mean that the information should be published, if it is not directly relevant for public scrutiny.

Possible use of the information retained

There may be as many ways to analyse the data as there are recipients of this information. For instance, a investor taking into account non-financial information may analyse data in a different way than a tax authority. Some of the data may be more relevant for e.g. tax authorities, such as stated capital, accumulated earnings or intra-group sales /purchases. Contextual information in a CBCR typically allows the apportionment by country of an MNE's profits before tax (as mentioned in Section 5.1.6). Formulas based on the contextual

information provided can be devised by any one, based on its own needs. With "formulary apportionment", it is possible to set benchmarks on the allocation of profits per country against which one can then challenge the amount of profits before tax actually reported. For instance, profits could be apportioned per country as a percentage of turnover; or using other formulas based on the number of employees, assets, etc.

For all users, the description of the nature of activities and contextual information will be useful for determining reasonableness. Civil society is expected for example in this way to want to analyse, at a given date and over time, whether profits reported in certain jurisdictions are reasonable. Tax authorities are expected to use CBCR to orient their tax audits and dig into transfer pricing or other issues, as this is the primary purpose of e.g. the OECD BEPS 13/CBCR. Competitors of a given MNE may use contextual information to support strategic decisions such as investments in a given market, pricing policy, commercial negotiations, etc. Indicators on turnover per region or market, and profits per employee, turnover per employee, margins etc. would represent precious information in this way.

Turnover

Transfer pricing techniques often rely on transactions made between affiliated entities within a group. In this way, the turnover with related parties can represent an indication of profit shifting, which is why it has high relevance to the objective. However, the existence of turnover with related parties does not mean that there is profit shifting. It can be expected that huge amounts of turnover with related parties exist within most groups, both within and cross borders. For instance, products can be sold by factories incorporated in one country to distribution companies located in the same country or elsewhere. In addition, it has been determined in Table 1 that disclosing separately the turnover with non-related parties convey high competitiveness and misinterpretation risks as this would uncover to e.g. competitors information inherently connected to a group's structures and affairs, whilst the public at large might not understand the concept and even be misled by the complexity of different types of turnover. Beside, to analyse correctly those figures, one needs typically to determine which entities of a group did business among themselves, something that only an authority with forensic capabilities, such as a tax administration, would be able to perform. For these reasons, whereas the OECD BEPS 13 model requires the confidential submission to tax authorities of the turnover with related parties, turnover with third parties, and the total, only the total turnover of a group should be retained for disclosure in a public CBCR. Furthermore, Intra-group turnover is not a mandatory disclosure in the financial statements, contrary to all other information to be disclosed in a BEPS CBCR. Disclosing the split turnover may be seen by many (OECD, third countries, and companies) as a breach of the G20 consensus on confidentiality.

Besides, intra-group sales are to be eliminated in the consolidated financial statements. Absent clear indications, MNE groups might allocate their total turnover per country on the basis of sales after elimination of intra-group sales in their CBCR. This would not be correct in the sense that turnover made with any party, including with related parties, is part of the taxable income of a company in the country where that company is established. In order to provide sensible contextual information to the reader of a CBCR, yet mitigate competitiveness and misinterpretation risks, it is envisaged to require the disclosure of the total turnover of a group on a country-by-country basis including with related parties before the elimination of intra-group turnover. In this way, the information would not be given separately, yet be factored in the turnover reported. Nevertheless, this information cannot match the turnover in a group's consolidated financial statements.

Deferred taxes

A deferred tax expense or credit is sometimes included by companies in the profit and loss account, in addition to the current tax expense or credit (based on tax returns).

Not all GAAP require that deferred taxes be shown. Deferred tax entries are mandatory under both the US GAAP and the IFRS, i.e. in GAAP that are expected to be commonly used by very large companies. The Accounting Directive, on the contrary, does not mandate deferred tax entries but allows a Member State to retain deferred taxes in the national GAAP.

Deferred taxes aim to eliminate the unnecessary effects arising because of differences that exist between GAAP and tax rules on the computation of the taxable result. Due to these differences, the amount of the taxable result shown in a given company's tax return often differs, sometimes significantly, from the amount of the profit before tax shown in its individual Profit & Loss account. As a result, the current tax expense shown in the P&L can be seemingly at odds with the reported profit by reference to the statutory tax rate. Some of these differences may be permanent. For instance, a fine may not be tax deductible. Such differences do not trigger deferred tax entries. Other differences may be temporary. For instance, tax rule may offer or require shorter amortisation periods than the actual useful life of an asset to be retained under GAAP, distorting tax amounts from an accounting perspective with less taxes paid than expected in the first years of use of the asset, and more taxes in the last years. In addition, a company may build rights to, or use tax credits over the years. Whereas in the long run profit before tax and taxable income are likely to get close, they can be very different in any given period, and so would be the related tax accrued and tax paid for that period. Deferred tax entries have the effect of reapportioning into the current fiscal year amounts of past (or future) tax paid (to be paid) to tax authorities, so that the total tax expense in the Profit & Loss account reflects the actual tax expense in relation to the profit before tax reported therein.

It may be envisaged to retain deferred taxes in a public CBCR for all sectors, subject to these being already computed and disclosed by an MNE under GAAP, and depending on the source of information used to complete a CBCR. But despite the intended purpose of clarifying the tax expense of a given year, deferred taxes is a concept that some see as technically complex and difficult to understand. Risks of misinterpretation are higher than with the current tax expense and tax paid concepts. In a Q&A, the EBA discards the disclosure of deferred taxes on a country-by-country basis²²². So does the OECD in the BEPS 13/CBCR. In addition, if taxes actually paid are disclosed in a CBCR, this would compensate to a large extent for the missing information on deferred taxes, as in the long run, tax paid should equal tax expenses, including current and deferred.

For these reasons, it seems appropriate not to mandate the disclosure of deferred taxes within the tax accrued captions in a public CBCR. It would be up to each MNE to include that information in addition to the legal requirement, as they see fit. In that case, the current and deferred tax should be clearly distinct in order to ensure the comparability and clarity of the CBCR for the public.

²²² European Banking Authority, Single Rulebook Q&A 2014_1043,

Tax rulings

In addition to information on country-by-country reporting, the publication of tax rulings may enrich the contextual information. However this would not necessarily be more informative for the public for the following reasons: (i) it would provide only limited and partial information on a company's tax strategy; (ii) it would depend on whether a company has a tax ruling on a particular issue. Companies with aggressive tax strategies may rely on existing rulings asked by others without asking a ruling themselves and would be left out of any disclosure. Disclosure would therefore introduce an unhealthy distortion between companies; (iii) as tax rulings reflect an exchange between a company and a tax authority on specific issues inherent to the company, the publication would pose challenges for fundamental right to privacy, data protection, dissemination of sensitive commercial information; and (iv) businesses would lose the current anonymity of their requests for tax rulings and hence might be deterred from using these tools that are useful to give stability to investments. The disclosure of this information would shed light exclusively on tax rulings involving the tax administration of a Member State under any of the options considered, thus leaving rulings outside the EU in the dark: this is because tax rulings will generally be considered as confidential by third countries' tax administrations. In this setting, the recent EU consensus is for an automatic exchange of information on tax rulings between tax authorities, as agreed in October 2015²²³. It is worth noting that some tax authorities in the EU already publish relevant tax rulings²²⁴ in an anonymised way. With a low "relevance to risks" ratio, the added value of tax rulings disclosure in this context might not be realised.

List of the subsidiaries within a group

In Table 1, the 'list of subsidiaries' item was not retained in a CBCR despite medium relevance to the objectives, and medium competitiveness risks attaching to a public CBCR. Medium relevance is due to the fact that, where a group would provide the breakdown of its operations on a country-by-country basis, the list of companies included will not add much valuable information for the public needs which are scaled at the country level. Tax authorities would by contrast need that information to get to know after which companies in its jurisdiction it may decide to go after with an audit. Besides, in any case, medium-sized and large companies, in the EU must already provide this list in the notes to their individual and consolidated financial statements as per to 17(1)(g) and 28(2) of the Accounting Directive. To require the information in a CBCR would merely duplicate the reporting requirement for the ease of structuring the list on a country-by-country basis, which seems not proportionate in this case to achieve the desired goal. Recognising the risks attaching to the disclosure, the Accounting Directive specifies that information can be avoided to the extent it is seriously prejudicial to a company. Overall, it does not seem necessary to modify the existing approach.

Narratives

With high relevance and low risks, narratives (i.e. explanatory material) could be seen as valuable by any stakeholder. Narratives are therefore retained as a possible element of a CBCR in Table 1. Given the variety of situations and needs, there is no reason to impose a

²²³ Amendment to the Council Directive [2011/16/EU](#) on administrative cooperation between Member States in the field of taxation

²²⁴ E.g. Luxemburg, where according to the [Grand-Ducal Regulation of 23 December 2014](#), an anonymized summary of the advance decisions will be published in the annual activity report of the tax administration.

format structure to such narratives. It should therefore remain a choice for MNEs whether to provide further explanations, and in which areas. As a result, it does not seem necessary to impose the disclosure of narrative in either option examined in this document.

Value of assets / tangible assets / maintenance costs

In Table 1, the disclosure of assets has medium relevance to the objectives, but could entail high competitiveness and misinterpretation risks. The OECD retained the disclosure of tangible fixed assets in the BEPS 13 type of CBCR, i.e. a subset of the assets on an MNE's balance sheet. Relevance to the objectives is medium as the breakdown of fixed assets can indeed assist in determining where e.g. production facilities of an MNE are actually located. However, this appears to be redundant to a large extent with information on the number of employees in the light of the objectives pursued. Besides, not all businesses need capitalistic investments. The breakdown of assets per country is largely irrelevant for e.g. services industries. Intangible assets, including goodwill, are a subset of fixed assets. The OECD did not retain such information in the BEPS13/CBCR. Indeed a country-by-country breakdown of goodwill, which most often represents a major portion of intangible assets in an MNE's balance sheet and arise as a reason of formal acquisitions, would provide no clear indication as to the operations of an MNE. The disclosure of assets poses nevertheless high risks to competitiveness. Combined with other information (such as the number of employees), the amount of assets can provide competitors with key information on strategic decisions pertaining to investment and the profitability of MNEs. For these reasons, the value of assets is not retained for a public CBCR.

Purchases

In Table 1, the disclosure of purchases has low relevance to the objectives, and could entail high competitiveness risks. Relevance is low since purchases are not necessary to assess the intensity of an MNE's activities in a given country if the turnover of that MNE is already disclosed in the CBCR. To disclose purchases could heavily jeopardise the competitiveness of MNEs by providing competitors with information on gross margins per market (possibly per product in certain circumstance) that could deliver key information on strategic decisions. Combined with other information retained (number of employees, profit before tax, etc), purchases would in addition provide unintended additional elements on an MNE's cost structure, added value, profitability, obsolescence of assets, etc., whereas these are not necessarily uses intended with a public CBCR. For these reasons, no disclosure of purchases should be sought in a public CBCR.

Public subsidies

In Table 1, the disclosure of public subsidies is not retained due to low relevance to the objectives combined with high misinterpretation risks. This disclosure is required in the banks' CBCR, pursuant to the CRD 4. The objective of a bank's CBCR is regaining the trust of citizens of the Union in the financial sector. This CBCR was crafted at a time when the banking sector was under heavy scrutiny in the wake of the financial crisis, with huge amounts of public subsidies involved to rescue that sector. What may be seen as having relevance given the "public scrutiny angle" for banks may have less relevance for other sectors, especially where the objectives pursued tend to focus more on tax matters, and where subsidies are expected to be scarcer and of a reduced magnitude than with banks. Noticeably, this disclosure is not required by the OECD standards on CBCR. Besides, such disclosure could imply misinterpretation risks by making a parallel between the amount of public

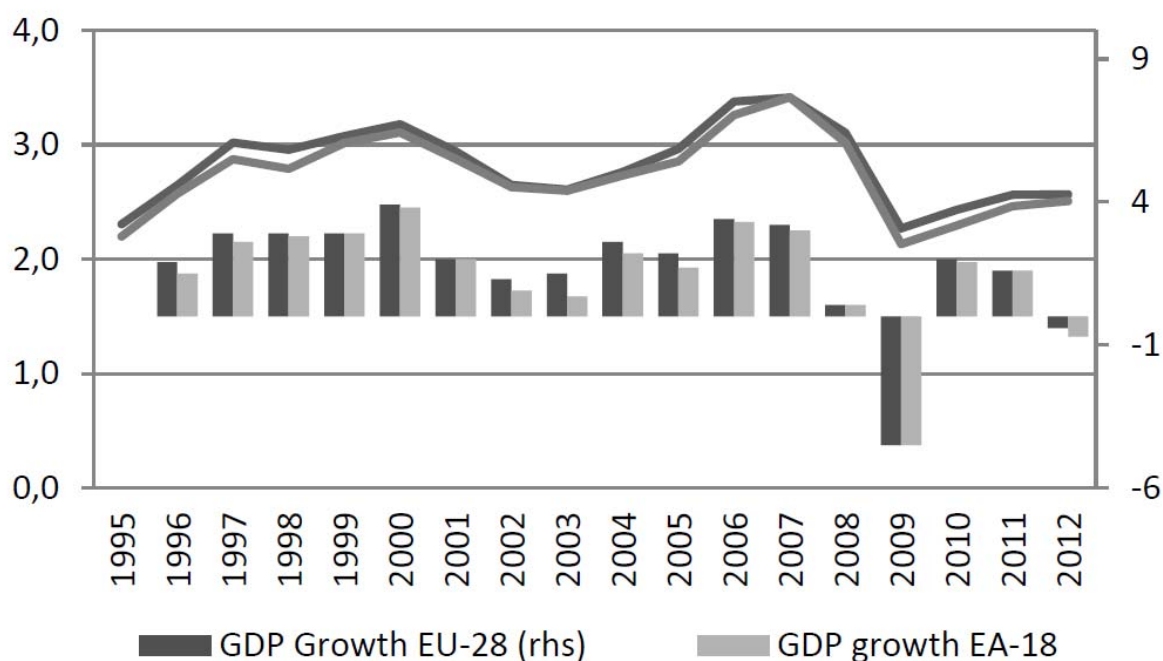
subsidies received and the amount of corporate income tax paid. The latter however represents only a fraction of the overall contributions made through taxes (and possibly certain social welfare contributions) by MNEs to countries where they operate. Finally, the amount of public subsidies granted to companies may be regarded as highly sensitive information in certain third countries. For these reasons, the disclosure of public subsidies is not retained.

ANNEX L: ANALYSIS OF THE CORPORATE INCOME TAX GAP

This section gives a brief overview of the estimates of the corporate income tax gap. The drawbacks, limitations of the methods and resulting unreliability of the estimations are discussed.

The revenue contribution of CIT at the aggregate level has not changed significantly in recent years, while year-on-year changes reflect changes in overall economic activity (Chart L.1.). In 2012, an average of 6.5% of tax revenue was collected from corporations in the EU-27 (2.6% of GDP)²²⁵.

Chart L.1.: CIT revenues to GDP, GDP growth, EU-27, EU-18, 1995-2012



Source: Taxation Trends in the European Union (2014)

The few attempts to estimate a corporate income tax gap have used both direct and indirect methods. Direct methods²²⁶ are based on micro level data, whereas indirect methods²²⁷ are using aggregate level data and approaches. The availability and reliability of the corporate tax gap estimates depends heavily on the quality of the underlying data, assumptions made by authors and the methodology applied. Despite deficient data, there are a few estimates in the public domain. However, these estimates should be taken with caution and should be considered only as an indication of the existence of the corporate tax shifting activities²²⁸.

²²⁵ European Commission, staff working document, [Corporate Income Taxation in the European Union](#), p.19.

²²⁶ Direct methods are sometimes referred also as micro method or bottom-up method.

²²⁷ Indirect methods are sometimes referred also as macro or top-down method.

²²⁸ The existence of profit shifting activities via transfer pricing, location of intellectual property or via inta-firm debt is studied in a number of studies. Overview of the studies can be found in Commission Staff Working Document: Corporate Income Taxation in the European Union, June 2015.

None of the estimates should be considered a precise measure of the amount of revenue lost from profit shifting.

Direct methods such as random audits have been used for example by the United Kingdom²²⁹, Denmark²³⁰, the Netherlands²³¹ and Sweden.²³² However, these rely heavily on the quality of the random audits and the scope of the audits enables to detect tax evasion but not tax avoidance activities by the companies. In order to extrapolate the results of random audits, the sample must be sufficiently large. However, the sample of random audits is often limited due to their high costs and a lack of funds.

In the UK the corporate tax gap is estimated separately for SMEs and large businesses²³³. Random audit is used only for SME groups. The estimates for large businesses are based on operational data and illustrative methodology; therefore figures should be interpreted carefully. The overall corporation tax gap between 2012-2013 in the UK was estimated to be nine percent (£ 3.9 billion) of estimated liabilities. The corporate tax gap was greater for SME's than large businesses (11 percent of the corporate tax liabilities compared to seven percent). One third (£ 1.3 billion) of the overall corporation tax gap (£ 3.9 billion) was estimated to finance tax avoidance activities. However, alternative estimates on expectation gap made by Murphy (2008)²³⁴ indicate that the tax avoidance gap for 700 large companies in UK between 2006-07 amounted to £ 11.8 billion. The methodology for both estimates are imperfect, so should be interpreted with caution.

Lee et.al. (2015)²³⁵ calculated the corporate tax gap based on the data of 1612 companies in the MSCI World Index. The tax gap for each company was calculated as a difference between actual tax rate paid (based on the reported tax payments between 2009 and 2013) and the average corporate tax rate of the countries in which the company generated revenues. From a sample of 1612 index companies, the companies generating a loss during this period, real estate investment trusts (REITs), and mining companies were filtered out to arrive at a relevant sample of 1093 companies. The results show that 22% of companies (243 out of 1093 companies) had a high tax gap (rate gap greater than 10 percentage points between the actual rate paid and expected tax rate). The absolute tax gap for these 243 companies was estimated at USD 82 billion per year and 26% out of 243 companies have a majority-owned subsidiary or is domiciled in a known tax haven compared to 16% in the general sample.

The comparison of tax payments of domestic companies and multinationals has been used to estimate the size of tax avoidance activities. However, as domestic and multinational companies are different, it is uncertain whether differences in tax payments are solely due to

²²⁹ HMRC - Her Majesty's Revenues and Customs administration, Measuring tax gap 2014 edition, 2014

²³⁰ Pedersen, S, Random Audits in Denmark, Danish Tax and Customs Administration (SKAT), [Nordic workshop on tax evasion](#), Stockholm, March 6, 2013

²³¹ As in several Member States the results of tax gap estimations are not publicly available but use of random audits is indicated in Skatteverket (2014).

²³² Skatteverket (2014), [The development of the tax gap in Sweden 2007-12](#). Report 1(91) Date 08/01/2014,

²³³ HMRC - Her Majesty's Revenues and Customs administration, Measuring tax gap 2014 edition, 2014

²³⁴ Murphy, R., [The Missing Billions, the UK Tax Gap](#).

²³⁵ Lee, L.-E., Moscardi, M., Trivedi, G., and Shakhwapee, M. (2015), [Re-examining the tax Gap, the Tax Gap in the MSCI world](#), MSCI ESG Research ESG Issue Brief, December 2013.

profit-shifting activities. From a methodological point of view, it would be more accurate to compare a multinational with profit-shifting activity and a multinational without (as a control).

Egger et al. (2010)²³⁶ selected companies by using propensity score matching to compare the tax payments of multinational and domestic companies. Based on data for 1999 – 2004 in the AMADEUS database, they demonstrate that foreign owned affiliates located in Europe with above average tax rates (39% or more) pay on average 32% less each year (EUR 1.3 million) compared to domestically owned companies. To the contrary, these companies pay above average taxes in low CIT rate countries.

Similarly, Finke (not officially published, 2013)²³⁷ calculates the tax gap for multinational companies in Germany, which are able to reduce tax payments thanks to intra-group transaction, by comparing their tax payments with purely domestically invested companies. The calculation uses propensity score matching based on a detailed breakdown of data at the company-level from DAFNE databased for years 2007 – 2009. Finke (2013) found that in 2007, German multinational companies paid about 27% less in taxes compared to the control group of domestic companies. The extrapolation of all German multinationals resulted in an estimated tax gap of a total of EUR 10.2 billion in 2007.

Indirect methods allow broader geographical coverage but the resulting estimates are often based on several assumptions. Therefore their interpretation should be made with vigilance. The economic literature has developed several indirect approaches for estimating the effect of tax evasion and avoidance.

Value of assets held in tax havens

Value of assets held in tax havens is estimated by Zucman (2013)²³⁸ based on the data of international reporting on assets and liabilities. Zucman (2013) estimates first how much money is held in tax havens and second, the tax gap based on this. Zucman (2013) estimates the amount of money held in tax havens by using international reporting on assets and liabilities. He calculates the difference between assets and liabilities to arrive at the amount held in tax havens, expected to be EUR 5 800 billion. Based on a historical real return of 5%, he estimates that lost tax revenues amount to EUR 130 billion worldwide and about EUR 50 billion for Europe.

Besides low tax rates, there may be several other (economic) reasons as to why multinationals have a presence in low-tax jurisdictions.. It therefore cannot be concluded that all of these assets are the result of tax avoidance activities.

Comparison of pre-tax profits of low-tax and high-tax affiliates

Companies engaged in the profit-shifting activities try to reduce the pre-tax profits in high-tax jurisdictions and increase them in low-tax jurisdictions. The empirical studies have estimated

²³⁶ Egger, P., W. Eggert and H. Winner (2010), "Saving Taxes through Foreign Plant Ownership", *Journal of International Economics* 81: 99–108.

²³⁷ Finke, K. (2013), *Tax Avoidance of German Multinationals and Implications for Tax Revenue Evidence from a Propensity Score Matching Approach*, mimeo.

²³⁸ Zucman, G. (2013) *La Richesse cachée des nations Enquête sur les paradis fiscaux*. November 2013

the size of the tax shifting by comparing the pre-tax profits in the two types of jurisdictions. The studies have confirmed that pre-tax profits are reported to be higher in low-tax jurisdictions (see Sullivan (2004)²³⁹ and Clausing (2011)²⁴⁰ in Riedel (2014)). However, Riedel (2014) points out that pre-tax profitability may also be influenced by factors independent of low-tax rates, paper shifting activities such as differences in worker productivity, the availability of public good provisions or market competition. A high level of taxes does not necessarily mean a high level of public goods and services are needed for a project to be profitable.. In addition, low-tax countries may have less competition in particular markets, translating into higher profitability compared to high tax countries with higher competition.

Change in the pre-tax profits in response to corporate income tax reforms

Studies analysing the impact of corporate income tax reforms on the pre-tax profitability of affiliates confirm that increases in tax would lead to higher profit shift. A meta-analysis conducted by Heckemeyer and Overesch (2013)²⁴¹ concluded based on 25 empirical studies that an increase in the host country corporate income tax rate by ten percentage points would lower affiliates' pre-tax profits in that country by eight percentage. However, the interpretation of these results must be made with caution as the tax avoidance via profit shifting is not the only factor determining the correlation (negative or positive) between pre-tax profitability and the level of corporate income tax.

Negative correlation can be driven by the fact that multinationals may decide to launch all profitable projects in a country with low corporate income tax (Riedel, 2014).²⁴² A higher taxation in a country may also demotivate managers to generate high profits as the proportion of after-tax profit is reduced. This might be one reason for a negative correlation between corporate income tax rate and pre-tax profits. On the other hand, there can be factors for a positive correlation between corporate tax rate and pre-tax profits. In terms of profitability, for example, it would only make sense to launch highly profitable businesses project in a country that charges a high rate of corporate income tax Riedel (2014).

'CIT-efficiency' and 'revenue without profit shifting'

To explore spillovers in international corporate taxation, the IMF (2014)²⁴³ has developed a country level indicator of 'CIT-efficiency'²⁴⁴ and an indicator of 'revenue without profit shifting'.

²³⁹ Sullivan, M. (2004), Data Show Dramatic Shift Of Profits to Tax Havens, Tax Notes, 1190-1200

²⁴⁰ Clausing, K.A. (2011), The Revenue Effects of Multinational Firm Income Shifting, Tax Notes, March 28, 2011.

²⁴¹ Heckemeyer, J. and M. Overesch (2013), Multinationals. Profit Response to Tax Differentials: Effect Size and Shifting Channels, ZEW Discussion Paper No. 13-045.

²⁴² Riedel, N. (2014), Quantifying International Tax Avoidance: A Review of the Academic Literature University of Bochum, Paper Prepared for the European Tax Policy Forum

²⁴³ IMF (2014), Spillovers in International Corporate Taxation, IMF Policy Paper, May 9, 2014, See appendix IV.

²⁴⁴ 'CIT-efficiency' is calculated as a ratio of actual CIT revenue divided by the potential CIT revenue. Whereas, the potential CIT revenue is calculate by multiplying standard CIT rate with reference tax base. As the actual revenue is normally smaller than the potential CIT revenue, the value of CIT-efficiency is smaller

A study commissioned by European Parliament Research Service²⁴⁵ has used the indicated methodology to estimate the loss of corporate income tax revenue. They measure the size of the tax gap as the difference between ‘revenue without profit shifting’ and ‘actual revenue’. According to the study, revenue losses at the EU level due to corporate tax avoidance are estimated to be EUR 50-70 billion.

The **effective tax rates** based on accounting data have received increasing attention in recent years as they demonstrate the low level of taxation among multinational companies compared to higher statutory corporate tax rates²⁴⁶ in force or the higher actual effective tax rates²⁴⁷ of domestic companies. These developments strengthen the case for more tax transparency and country-by-country reporting, which requires companies to report their activities separately for each and every country in which they operate.

A widely used practice is one where multinational companies negotiate special tax treatment in the context of re(locating) the business activities to ensure the effective tax rates are lower than the statutory rate. Taxable income can be minimised compared to economic profit when some income can be exempt from tax, write off the cost of assets faster than their actual decline in value (depreciation rules), or claim tax credits for certain business purchases. In addition, the effective corporate tax rates depends on other factors such a company’s investment policy, tax loss carried forward, capital allowances and R&D incentives etc. It cannot be confirmed that all these practices are a result of tax shifting activity and therefore, effective tax rates cannot always be used as a measure of outcomes of tax shifting activity.

The amount of payable tax is influenced by the way in which investment is financed: by retained earnings, new equity or debt. To better understand some of these differences, measures for the effective average tax rate (EATR)²⁴⁸ and the effective marginal tax rate (EMTR)²⁴⁹ have been constructed. Data for these two indicators for all EU Member States and a number of other countries are published yearly by ZEW²⁵⁰. The literature finds that it is mainly the statutory rate which influences profit shifting. Discrete investment decisions depend on the effective average tax rate and capital flows depend on the effective marginal

than one. The smaller the CIT-efficiency, the less effective is the CIT raising revenue relative to the benchmark.

²⁴⁵ Dr Robert Dover, Dr Benjamin Ferrett, Daniel Gravino, Professor Erik Jones and Silvia Merler,(2015) 'Bringing transparency, coordination and convergence to corporate tax policies in the European Union; Part I: Assessment of the magnitude of aggressive corporate tax planning, EPRS | European Parliamentary Research Service

²⁴⁶ The statutory corporate tax rate is the rate that is imposed by applicable tax law on taxable income of corporations.

²⁴⁷ The effective corporate tax rate (ETR) measures the taxes a corporation pays as a percentage of its economic profit.

²⁴⁸ The EATR is the share of taxes to be paid in the return on an investment with a return exceeding the cost of capital.

²⁴⁹ The EMTR signifies the share of taxes on the marginal investment, which generates no net return over the cost of capital.

²⁵⁰ ZEW (2014), Effective tax levels using the Devereux-Griffith methodology: Final Report 2014, TAXUD/2013/CC/ 120.

tax rate. In 1998²⁵¹, the average EATR was 5.1 percentage points lower than the average statutory rate (29.1 % and 34.2 %, respectively) and the EMTR 13.5 % (at a rate of 20.7 %). In Table 10, it is shown that as the statutory rate declines, the effective tax rate is also reduced, but to a lesser extent than the statutory rate. The difference between the statutory rate and the effective average rate has been reduced by 3.1 percentage points and the difference between the effective marginal tax rate and the statutory rate by 6.2 percentage points. However, the difference between statutory and effective rates did not fall in all Member States. In Belgium, Estonia, Hungary and Portugal, it increased and in Malta it did not change. It is in the line of expectations that effective rates will fall when statutory rates do and that the absolute reduction will be less for the effective rates. It is, however, not immediately clear if the different trajectories are an indication of base broadening. The statutory rate is clearly part of the effective rates. As the indicators used are averaged across types of investment (buildings, machinery, intangibles) and ways of financing (retained earnings, new equity, debt), the evolution of the effective rates in absence of any change of the base is not clear-cut.

Table 10: Change of average CIT rate, effective average tax rate, effective marginal tax rate, 1998-2014 in percentage points, EU-28

	1998-2000	2000-2005	2005-2010	2010-2014	Total 1998-2014
CIT rate ²⁵²	-2	-6.1	-2.1	-0.3	-10.4
EATR	-1.7	-4.3	-2	0.1	-8
EMTR	-1.9	-1.4	-2.5	0.8	-4.9

Source: ZEW and Commission services

²⁵¹ 1998 is the first year of the ZEW publications.

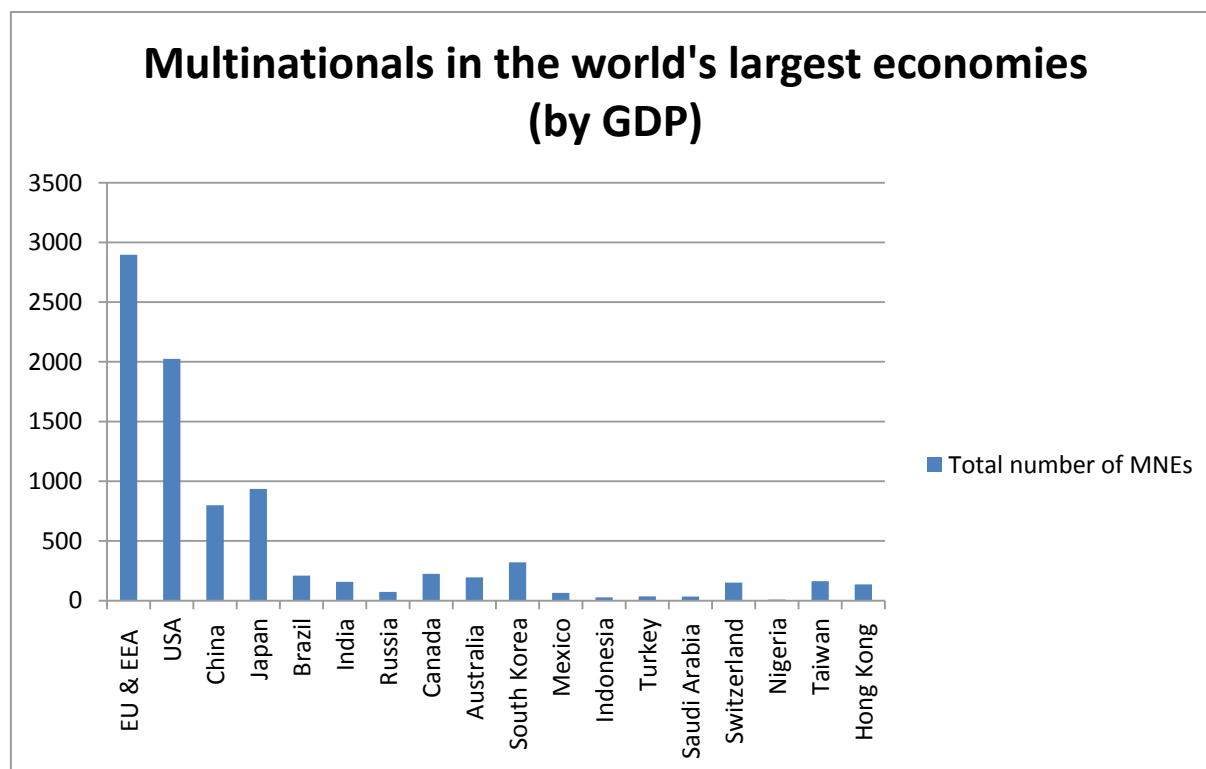
²⁵² To keep the table consistent, in this table CIT rate data from ZEW are being used. These differ slightly from those published in Taxation Trends in EU-Member States.

ANNEX M: BREAKDOWN OF MNEs BY COUNTRY/REGION

1) Analysis of MNEs standalone

There are around 10,000 MNEs worldwide which turnover exceeds EUR 750 million (source: S&P Capital IQ). The Figure below provides a breakdown per largest economies (ordered in accordance with their GDP).

Figure 3 – Number of very large MNEs per country



Source: S&P Capital IQ - ordered in accordance with the largest economies' GDP

Table 11: Number of MNEs standalone per region

Country/Region	Total number of MNEs
EU & EEA	2,897
USA	2,025
Japan	936
China	799

2) Analysis of MNE Groups

The largest MNEs worldwide may belong to a single MNE group. Based on the database of the largest MNEs above, it has been determined that there are around 6,500 MNE groups which comprise at least one MNE whose turnover meets or exceeds EUR 750 million. The figure below provides a breakdown of MNE groups in the EU and the world's largest economies.

Figure 4 – Number of very large MNE groups per country

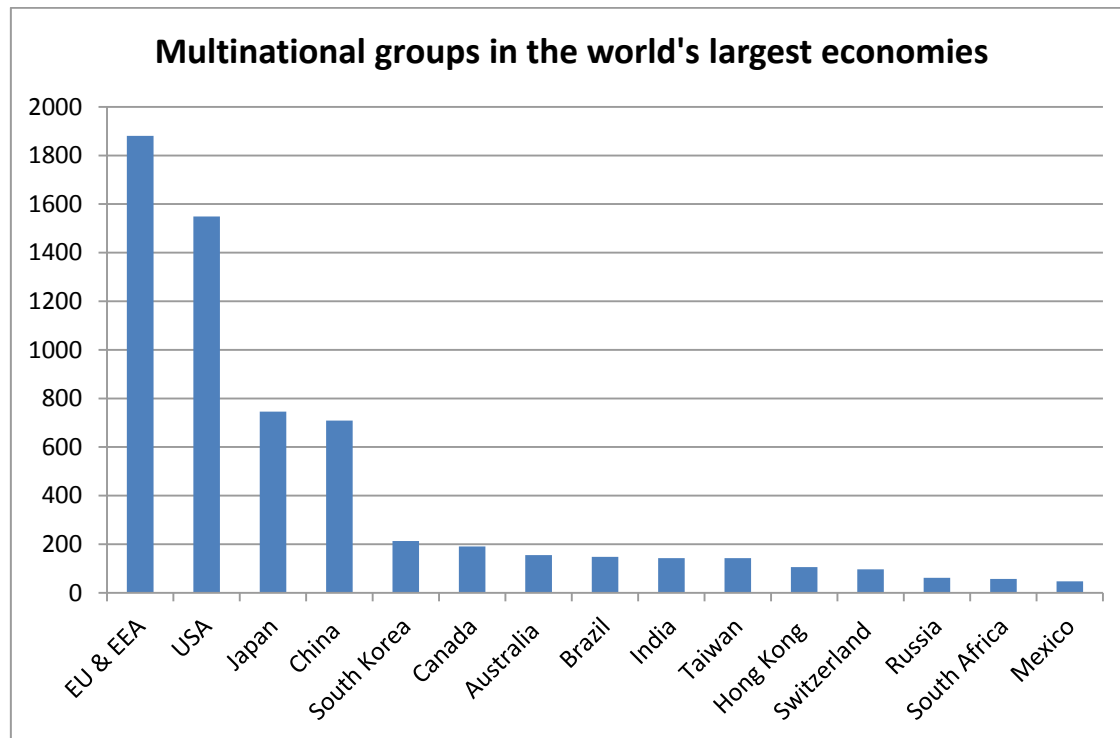


Table 12: Number of MNE groups per region

Country/Region	Total number of MNE groups
EU & EEA	1881
USA	1549
Japan	746
China	709

ANNEX N: U.S. SEC DEFINITION OF A SIGNIFICANT SUBSIDIARY²⁵³

²⁵³ Source: Cornell law school, 17 CFR 210.1-02 - definitions of terms used in regulation S-X (17 CFR part 210)

The term *significant subsidiary* means a subsidiary, including subsidiaries which meet any of the following conditions:

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed combination between entities under common control, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exclusive of amounts attributable to any non-controlling interests exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

A registrant that files its financial statements in accordance with or provides a reconciliation to U.S. Generally Accepted Accounting Principles shall make the prescribed tests using amounts determined under U.S. Generally Accepted Accounting Principles. A foreign private issuer that files its financial statements in accordance with IFRS as issued by the IASB shall make the prescribed tests using amounts determined under IFRS as issued by the IASB.

ANNEX O: WORLDWIDE PUBLICATION REGIME OF INDIVIDUAL ACCOUNTS

Within the European Union, individual accounts of all listed and private limited liability companies have to be made publicly accessible; it is however not generally the case outside the EU, except for issuers of listed securities or specified industry sectors:

In Argentina, financial statements must be prepared and filed but are not publicly available.

In Australia, the law requires all companies to lodge an annual return to the Australian Securities and Investments Commission. Once submitted, the return becomes a document available to members of the public upon payment of a prescribed fee.

In Brazil, listed corporations with investments in subsidiaries must prepare and publish audited consolidated financial statements in addition to their own financial statements (Brazilian Corporate Law, section 289). This is not mandatory for non-listed (Brazilian Corporate Law, section 249),

In Canada, public disclosure is required only for public corporations. Private corporations are not required to make public their financial statements.

In China, companies not listed are generally not required to publish their financial statements periodically unless they are engaged in certain activities (e.g. commercial banks which total assets are over RMB 1 billion, securities companies, insurance companies). Companies with listed shares or debts are required to published their financial statements

In India, publicly listed companies must report key financial information regarding their subsidiaries, as well as on the countries in which their subsidiaries are incorporated. This information is useful and beneficial, although it is not a perfect substitute for country-by-country reporting (Third and fourth proviso of Section 136(1) of the Companies Act, 2013).

In Japan, financial statements have to be kept at the office of the corporation or mailed for inspection by shareholders and creditors. In additional, condensed balance sheet have to be published in newspapers after the shareholders' meeting.

In South Africa, there is no requirement that the individual accounts of subsidiaries must be publically available. Only the parent companies separate financial statements are published with the consolidated financial statements. The individual subsidiaries must prepare individual financial statements for tax purposes, but this is not publically available.

In Switzerland, there are no obligations to publish or file individual accounts with the commercial register. The only exceptions are listed companies, banks and insurance firms.

In the United States, only listed companies have to disclose individual accounts. Companies which are not publicly traded are only obliged to file income tax returns. Private companies are not required to publically disclose financial statements but may be required to deliver audited financial reports to third parties pursuant to contractual agreements.

ANNEX P: INTERACTION WITH CBCR REQUIREMENTS FOR BANKS AND EXTRACTIVE INDUSTRIES

This Annex examines the interaction with existing sectorial CBCR regimes in the EU, should the EU decide to create a "general" CBCR regime applicable to all sectors. As explained in Annex D, two sectors are currently obliged to publish a CBCR by virtue of EU law passed in 2013 (Accounting Directive and revised Capital Requirement Directive respectively): the extractive and logging of primary forests sector, and the banking sector. The interplay of the EU sectorial and "general" CBCR regimes with the regime to be implemented by the Anti-Tax-Avoidance Package (hereafter "ATAP") of 28 January 2016 is also examined to some extent.

Extractive and logging of primary forest sectors

The objective of the "extractive" CBCR is mainly to grant local populations of resource-rich countries more power to hold their governments to account as regards the exploitation of their natural resources. The objective retained in this document for a public CBCR differs greatly as it relates to public scrutiny on corporate income taxes. This results in large difference as regards the content of a CBCR report. As a result, should the EU adopt a new "general" CBCR regime, extractive and logging industries should be subject to both CBCR.

As seen below, except for any additional burden implied by the co-existence of different CBCR regimes, this would trigger no major issue for those industries. All the CBCR regimes can perfectly co-exist for these industries.

As regards the scope of application, the "extractive" CBCR is to be published by large EU companies and all issuers in the EU when they are active in the extractive and logging of primary forests. The concept of a "large" company is based on thresholds defined in the Accounting Directive, similar to the approach retained in sub-options (a) examined in this document. If, as examined in this impact assessment, only very large MNE groups join the "general" regime, a fraction of EU companies currently publishing an "extractive" CBCR would also have to prepare a "general" CBCR. It is expected that at the same time they would have in addition to file a specific additional CBCR with tax authorities as a result of the ATAP. If beyond very large MNE groups, parents of large MNE groups would be subject to a new "general" regime, then most EU companies currently publishing an "extractive" CBCR would also have to prepare a "general" CBCR – however only a fraction filing an "ATAP" CBCR with tax authorities. It is not envisaged in this impact assessment to extend the "general" CBCR regime to issuers in the scope of the Transparency Directive. In this way, smaller issuers and groups with a turnover below EUR 750 million would escape the "general" regime and would continue publishing the "extractive" CBCR only. A few non-EU MNEs that currently publish an "extractive" CBCR in compliance with the EU or forthcoming third country legislation (Canada, USA, ...) might be subject to dual or triple reporting obligation, depending on the option and their size, due to their international operations being captured by various jurisdictions' reporting requirements. Provisions in the Accounting Directive to the effect of granting equivalence to third country regimes on a case-by-case basis should alleviate this burden.

In 2011, the Commission Services estimated there to be 419 large unlisted extractive companies (which are not members of EU listed groups), and 171 EU listed extractive companies in the EU, as well as 26 forestry listed and unlisted large MNEs²⁵⁴.

Having regard to the respective content of an "extractive" CBCR and a "general" CBCR as envisaged in Section 4.1.1, there would be little interaction. Operations covered by an "extractive" CBCR are solely those relating to extractive or logging activities. The only overlap (i.e. information required under the "extractive" and "general" CBCR) would relate to income tax paid. The Accounting Directive requires the disclosure of corporate income taxes paid annually to each government in a wider caption on "taxes levied on the income" in the sectorial CBCR²⁵⁵. There is a "de minimis" threshold (EUR 100,000) permitted by the Accounting Directive for the extractive CBCR, which is not envisaged for amounts reported on taxes paid with a CBCR extended to all sectors. In addition, the general CBCR would include information on countries where a group has no extractive operations, whereas no disclosure of payments is required for such countries with the sectorial CBCR. Due to these differences, the amount of corporate income taxes paid will have to be reported in different ways in both CBCR. Other than this, there would be no conflicts as regards the information to be reported. A combination of the two has for instance been done in Norway, where Chapter 10 of the Accounting Directive was implemented with an additional requirement that tax payments must be published in context with figures about employees, production, investments, revenues, some costs and tax accruals²⁵⁶.

Banking sector

EU Credit institutions and investment firms (hereafter "banks") must publish as from 2015 a sectorial "bank" CBCR pursuant to Article 89 of the CRD4.

Just as the envisaged "general" regime, the "bank" CBCR regime seeks information on the turnover, number of employees, profit before tax and tax amounts and there is thus an apparent similarity between the two regimes in terms of data to be reported. There are likely to be differences in the details (for example because of technical specification in either regime regarding scope of consolidation, tax paid/accrued, geographical aggregation of certain data, etc).

Different scenarios can be considered for the interaction of the new "general" CBCR regime and the existing "bank" CBCR. The main question is whether the existing "bank" CBCR should continue to apply or not following the adoption of the new "general" CBCR regime. Banks have marked their preference during the consultation process for an alignment of the CBCR regimes in order to avoid administrative burden and confusion. The EU may, recognising different objectives for a "bank" and a "general" CBCR, decide that banks should join the "general" regime.

But if the existing "bank" CBCR would cease to apply, significantly less banks would fall under the CBCR reporting requirement. Indeed, the "bank" CBCR applies to all banks

²⁵⁴ Commission Staff Working Paper, [Impact Assessment for financial disclosures on a country by country basis](#), 2011

²⁵⁵ Article 43 and 41 of the Accounting Directive

²⁵⁶ Ministry of Finance (Norway) "[Forskrift om land-for-land rapportering](#)"

regardless of their size; the new "general" regime would apply only to companies of a certain size and not to smaller banks. It is estimated for the EU, that out of around 6,400 banks²⁵⁷, 1,230 are banking groups²⁵⁸ of which about 150+ are very large groups (revenues above EUR 750 million²⁵⁹). Also, the new "general" regime would not apply to banks with certain legal forms (such as cooperatives), while the existing "bank" regime applies to them regardless of their legal form.

Such limitation of the scope of application does not seem justified given the specific objective of the "bank" CBCR. The objective stated for the "bank" CBCR is "regaining the trust of citizens of the Union in the financial sector²⁶⁰". This does not seem *prima facie* to be inconsistent with the specific objective identified in Section 3 of the main body of this document, namely to increase transparency in order to allow for public scrutiny. However these are not entirely the same. Indeed, the "bank" CBCR must be seen against the background of the financial crisis, in which unprecedented levels of public support were necessary in order to restore financial stability and the trust of citizens in the financial sector was heavily affected. This led to strong demands for banks to show greater accountability and increased transparency in their relations with the public. When assessing the economic consequences, the Commission found in October 2014 that "bank" CBCR is indeed expected by stakeholders to have some positive impact on transparency and accountability of, and on the public confidence in the European financial sector, this without significant impact on competitiveness, investment, credit availability or the stability of the financial system. There is therefore no justified reason to cancel the existing "bank" CBCR and this should continue to apply.

The EU may, recognising different objectives for a "bank" and a "general" CBCR, decide that banks should join the "general" regime. However a parallel existence of the "bank" CBCR and the new regime could possibly lead to a double CBCR reporting obligation for those banks that fall within the scope of application of both regimes²⁶¹. To avoid this, and given the similarities of a "bank" CBCR with one of the "general regime" type, it seems appropriate to exclude from the scope of application of the new regime EU banks that report CBCR on the basis of Article 89 of CRD4²⁶².

In the case of option 3A and 3B of the new regime, non-EU MNE groups would be required to report CBCR data at the consolidated level of their ultimate parent. No similar obligation exists under the "bank" regime (reporting to be done by institutions in the EU, only for their

²⁵⁷ Source: European Banking Authority

²⁵⁸ Source: Centre for European Policy Studies (CEPS)

²⁵⁹ Source: Orbis

²⁶⁰ CRD4, Recital 52

²⁶¹ Very large limited liability banks would also have in any case to report an ATAP type of CBCR to tax authorities. All CBCR models seek information on the turnover, number of employees, profit before tax and tax amounts. Despite the apparent similarity, there is likely to be differences in details. For instance the group's consolidation scope of a "bank" CBCR should be based on prudential requirements, whereas this is not necessarily the same scope as per GAAP. Technical specification in either regime regarding tax paid/accrued, geographical aggregation of certain data, etc. may result in slightly different figures from one regime to another. Those slight differences may not be worth the burden of pursuing different regimes.

²⁶² This would also have the advantage of avoiding thorny interpretational questions with respect to the 'boomerang' clause set out in Article 89(5) of the CRD4

activities controlled from the EU, not for the entire group). Therefore it does not seem appropriate to exclude non-EU MNE banking groups from the new "general" regime.

ANNEX Q: ADDITIONAL BACKGROUND ANALYSIS SUPPLEMENTING THE ECONOMIC ANALYSIS SECTION OF THE IMPACT ASSESSMENT OF INCREASED CORPORATE INCOME TRANSPARENCY

1. Introduction

This annex contains supplementary information backing up the economic analysis presented in Sections 5.1. of the impact assessment. In particular, the focus is on the possible behavioural responses of firms to increased corporate income tax transparency requirements and the impact of these possible responses on *market efficiency*, *competitiveness*, and the *international level playing field* in terms of firm-level productivity growth. These effects are discussed for two alternatives of a legally binding public CBCR:

- for *very large* MNEs with annual turnover of at least EUR 750 million; depending on the Option chosen at least 2,000 MNE groups in the EU, as well as at least 6,500 MNE groups internationally, would be concerned under this alternative ;
- for *large* MNEs²⁶³; at least 20,000 groups²⁶⁴ would be concerned in the EU under this alternative.

Given data availability and available literature, the possible effects of a labelling approach, as well as the differences in geographic scope between various options , could not be assessed.

1.1. Starting point: the conflicting objectives of firms in a competitive market environment

Firms face conflicting objectives: on the one hand they have to achieve a sufficiently high level of *distributed profits*, or *net income*, to ensure their continued funding. Shareholders, banks, as well as market participants in equity and bond markets monitor the firm's capacity to generate revenues that exceed costs enough as to remunerate shareholders, pay a risk-adjusted return to bondholders, etc. On the other hand firms need to stay competitive: at any point in time their *user cost of capital (ucc)* must not rise above the level prevailing in its industry/market. To stay competitive, the firm has to constantly invest into new products and processes, i.e. to innovate, and continue to achieve an excess of earnings over cost of inputs (gross profits), as in a competitive market firms can only achieve such excess over cost by finding new (innovative) combinations of (existing) inputs that so far its competitors have not yet discovered.²⁶⁵ This innovative combination of inputs will be represented by the firm's production function, f , in the firm's profit optimization problem (see Box 1).

²⁶³ This refers to the concept of 'large companies' as defined in the Accounting Directive (Article 3). Large groups exceed at least two of the three following threshold criteria applied to the balance sheet of the parent undertaking: (a) a balance sheet total of at least EUR 20 million, (b) an annual net turnover of at least EUR 40 million, (c) an average of at least 250 employees during the financial year.

²⁶⁴ This figure should be read as lower bound of a range where the upper bound is subject to considerable uncertainty as a result of data availability and comparability; it cannot be excluded that the upper bound could be as high as 100,000 firms in the EU.

²⁶⁵ This excess over cost was first systematically discussed by Schumpeter (1908).

Firms employ various strategies to make this situation last as long as possible, including industry and trade secrets, patents and licences, etc. *Transparency* is a *bad* in this context as long as the mechanism for capturing the surplus created by the innovation (its rent) is not specified and enforced. Once this is done, *transparency* can become a *good*.

Firms also have to find out which share of its profits (net income) needs to be re-invested into search for future innovations, one of the most difficult decisions to make given the uncertainty about the chances of success of any particular attempt.²⁶⁶ It is useful to give an order of magnitude: in the most research intense industries (e.g. pharmaceuticals, automotive, etc.), a single product development can imply committing several billions of euros over a number of years without any certainty if the investment will eventually pay back. Under which funding arrangements and market conditions the management of a firm can best develop and implement a long-term vision on investments is one of the most hotly debated questions in corporate finance. The current policy stance of the European Commission is broadly agnostic, targeting a situation where firms can choose from a menu of funding technologies that is as broad as possible as long as financial stability concerns remain within acceptable limits.

Shareholder *structure* seems to be among the major determinants of the extent to which a firm has to give preference to the profit distribution motive in the short run, or can invest into its future competitiveness via process and product innovation.²⁶⁷ In developed economies, not to the least against the backdrop of an ageing society accumulating increasing (financial) wealth, large institutional investors are becoming ever more important. Some institutional investors (e.g. pension funds, life insurers, investment funds, sovereign wealth funds) promise their customers a certain yield that is fixed in nominal terms and in a particular currency. As this yield needs to be achieved on a continuous basis, these investors/shareholders²⁶⁸ can exhibit very inflexible behaviour when it comes to (announced) levels of distributed profits²⁶⁹. In the finance literature the conflict between short- and long-run revenue objectives is the subject of numerous analyses of why private firms go public, or on the contrary, decide to remain private, or even, more rarely, go private²⁷⁰ after having been traded on a public exchange.

²⁶⁶ Schumpeter (1908) arrived at the (pessimistic) view that in the long run firms in a competitive environment would not be able to sustain a sufficiently high level of R&D expenditure which is why the state would have to organize basic research instead. Japan, in some sectors where upfront development costs are particularly high, followed up on this reasoning, and for some time was very successful in R&D intense industries. Also, a Commission working paper showed how the U.S. used large public investments to kick-off R&D intense sectors (Denis et al 2005). Policies in those two highly industrialized nations and the constant struggle of firms to protect their product and process innovations from being copied by competitors have more than confirmed the writings of Schumpeter.

²⁶⁷ A recent U.S.-based anecdote for this challenge was the going private of Dell. Having built one of the leading computing hardware producers, the firm's founder observed in 2013 that his vision for the firm had become impossible to reconcile with the expectations of the firm's shareholder base about short-term distribution of profit. While he saw the need to put additional capital at risk to ensure the economic future and growth of the firm, shareholders showed a preference for short-run profits.

²⁶⁸ An example often cited is the Calpers fund in the U.S. who invests lifetime savings of state, school, and public agency members who save for their pensions and healthcare.

²⁶⁹ How to make large institutional capital more "patient" and thereby more aligned with the long-term growth and competitiveness objectives of the firm (and thus of the economy at large) is a central topic of the Commission's current flagship project of building a Capital Market Union.

²⁷⁰ See [interview with Michael Dell](#) who, in 2013, took the PC producer named after him private in what is so far the largest going private operation in U.S. corporate history; Dell had been listed for more than 25 years.

The dual objective of the firm is the point of departure to look into *two* economic dimensions of increased corporate income tax transparency due to a compulsory public CBCR imposed on either *very large*, or *large* MNEs: *market efficiency*, and *competitiveness*. Tentative implications for the evolution of the international level playing field, and the likely impact on productivity growth (the jobs & growth dimension) at the EU level are drawn. Two important caveats need to be kept in mind: First, the analysis presented in this section applies to MNEs that are not part of the extracting or logging industry which shall be subject to additional disclosure requirement with respect to their payments made to governments (e.g. in countries where minerals of tropical timber are located) given the frequent issues with corruption in this context. The analysis also does not apply to credit institutions subject to increased disclosure requirements under the Capital Requirements Directive (CRD4). Second, the analysis is based on the presumption that large and very large MNEs evolve in a *competitive environment*; how to deal with super-normal economic profits that have their origin in some form of market power is beyond the scope of this analysis.

2. *Market efficiency*

Given the very scarce direct evidence about the economic impact of the increased *public* transparency of firms' corporate income across countries, we have looked for possible analogies in the economics and finance literature. In the literature on IPOs, as well as in a smaller literature on going private, we found a similar trade-off between additional transparency vis-à-vis market participants and the implied loss of control of the firm over its investment decisions.

2.1. *Listing and delisting as an analogy for the trade-offs facing firms in the case of public disclosure requirements*

The decision to go public is one of the most complex decisions a firm has to make during its lifetime. Especially for a large private firm that falls within the scope of the increased transparency requirement, a public CBCR has some elements in common with the listing decision. Indeed, one could expect that for a (albeit small) number of very large private firms that were already close to being indifferent between being a private or a public firm, public CBCR could tilt the balance *in favour* of an IPO. The transparency requirement shifts the trade-off between positive and negative impacts in the individual firm's assessment, as with the disclosure rules the firm will anyway bear the disclosure costs and the loss of confidentiality. This could result in an *improvement* in market efficiency as the additional listings would increase choice and risk sharing opportunities for investors.

However, for smaller firms that fall into the lower end of the scope the trade-off may be such that it become more attractive to scale down sufficiently to remain *outside* the scope of the public CBCR requirement. Hasegawa et al (2013) in one of the rare large-scale real world experiments with public disclosure requirement find that a non-negligible number of Japanese firms downscaled sufficiently to avoid falling under the public disclosure regime.

How beneficial or how harmful from an overall (macroeconomic) growth and employment perspective such threshold effects could eventually turn out to be will depend on where the threshold is actually put. The OECD BEPS threshold of 750m annual turnover can reasonably be expected to fall into the first category; as far as the possible impact of the much lower threshold in the case of public CBCR for large MNEs is concerned, we do not feel comfortable formulating such an expectation. What can be said with certainty on the basis of

firm-level data we are aware of is, that any negative threshold effects would materialize to a very different degree across EU Member States for the simple reason that firm size varies greatly across EU Member States. Table 14 shows a number of P&L items for non-financial firms in different EU Member States. Although the mean value does not give information on the distribution of firm size within a country, it is helpful in the assessment of differences between Member States.

Table 14 – Mean values of certain P&L items in given Member States

Mean values per country (in 1000s of euro)	Germany	United Kingdom	France	Italy	Spain	Poland
Revenue	143354	145393	20585	12720	12565	21999
EBITDA	11235	14732	2015	1550	1469	2271
EBIT	6305	9340	1233	700	946	1378
Interest	1372	6	198	169	132	144
Tax Payments	1608	2445	296	258	208	237
Net Income	3068	6889	739	273	606	997

Source: Kühnhausen and Stieber (2014) using BvD (ORBIS) data

In a very large sample of 1.2 million non-financial companies (NFCs) that may or may not qualify as MNEs, the average German and UK firms has roughly *seven* times the revenue of the average French and Polish firm, and roughly *eleven* times the revenue of the average Italian and Spanish firm. Clearly, the lower CBCR threshold (for large MNEs) compared to the BEPS threshold would first cut into the German and UK population of firms, while it would take even lower thresholds to also capture increasingly firms in France²⁷¹ and Poland, and even much lower thresholds for Italy and Spain, not to speak about firms in smaller EU Member States (average firm size being correlated with domestic market size).

Returning to the discussion of possible *direct* cost items of increased public transparency, the increased public transparency implies a direct cost for the firms in the form of yearly layout on auditing, certificating and dissemination of accounting information. Since many of these expenses do not increase proportionally with the size of the firm, *they weigh relatively more on smaller companies*. For what concerns the loss of confidentiality, the cost is due to the fact that the increase in transparency requirements forces companies to disclose information whose secrecy may be crucial for their competitive advantage.

On the side of possible benefits²⁷², the increase in public transparency requirements may help firms gain access to more diversified sources of finance, in particular non-bank finance, to the extent that informational asymmetries vis-à-vis potential investors are alleviated. This argument is based on the traditional role of banks to screen, score, and monitor otherwise hidden company and project finance risks. An increase in public transparency reduces the information asymmetry between the issuers and possible investors. In this way, more individuals could be willing to invest in the firm without going through intermediaries. However, one can raise doubts how valid the bank screening function still is. Banks use more and more automated scoring models. In this respect, higher public transparency would add to

²⁷¹ In the context of the 2015 European Semester, the Council, on a Recommendation from the European Commission, has recommended to FRANCE to "By the end of 2015, reduce regulatory impediments to companies' growth, in particular by reviewing the size-related criteria in regulations to avoid threshold effects." ECOFIN 387, Brussels, 15 June 2015.

²⁷² See Pagano, Panetta and Zingales (1998) for a discussion.

open data that advanced data analytics methods rely on, and much of the additional transparency benefits may eventually accrue to traditional banks as well, at least to those equipped with the necessary analytical toolkit. As a result, the company could benefit from more competition among its potential lenders, lower its cost of credit and improve its access of external finance. Where such benefits could accrue most will again depend on firm-level and market characteristics.

Even larger firms may benefit from higher public transparency and a broadening of their investor base. However, the analogy with the IPO must not be driven too far, since the public CBCR would be mandatory for all firms falling within the scope *at the same time*. Hence, the public CBCR would not change the firm's visibility *relative* to other firms (again, with the notable exception of very large private firms). Another possible benefit of increased transparency could materialize via an *intensification in market monitoring* (in addition to monitoring by banks, shareholders and bondholders, or credit rating agencies).

Indeed, increased transparency about the geographical complexity of the MNE should expose managerial decisions to increased market scrutiny. MNEs that have grown organically via mergers and acquisitions may not put a sufficiently high price on complexity, and as long as the firm is profitable, there may be little incentive to optimize the structure of the firm. In this way, CBCR could help to better align the incentives of both managers and shareholders.²⁷³ Moreover, the shareholders of the company can exploit the increased transparency to design more efficient compensation schemes for their managers. Another possibility is that the initial shareholders can better liquidate their investment in the company thanks to the increased liquidity of firms' stocks.

Finally, as mentioned before, by increasing disclosure requirements there could be an additional incentive, at least for the biggest private firms, to go public, as part of the IPO costs has already been paid. In this context, Boehmer and Ljungqvist (2004) look at evidence from privately-held firms. The analysis focuses on the IPO timing: going public raises a trade-off between the benefit of higher valuations that outside investors are willing to pay and the cost to the entrepreneur of having to give up his private benefits of control once the company has gone public.

Other studies have raised the point that intensification in monitoring following an increase in transparency could also turn out to be negative for the company. When analysing a listed firm's decision to go private, Boot, Gopalan and Thakor (2006) point to shareholders' effort to control managers' decisions as much as possible in order to maximise the likelihood that managers make a project-choice decision in line with their interests (the Dell case mentioned earlier). However, this stringent monitoring may induce lower managerial effort in uncovering growth opportunities. The same argument could apply in the case of increased public corporate transparency via CBCR. Indeed, investors with short-term yield objectives could exploit this increased transparency to gain additional monitoring power over managers. This monitoring could then result in lower managerial effort and as a consequence in lower growth possibilities for the firm.

²⁷³ Some market observers have made the link between the complexity of the Volkswagen Group with several hundred international operations and its recent management and oversight failure in the U.S. emission test scandal.

According to another study by Ellul, Jappelli, Pagano and Panunzi (2015) transparency could have still other effects having an impact on market efficiency. First of all, as discussed previously, through investor confidence, an increase in transparency could raise firms' access to funding and reduce firms' cost of capital.²⁷⁴ On the other hand, depending on the degree and geography of BEPS13 implementation, it could increase the visibility of firms' decisions to tax authorities, thereby reducing firms' ability to lower the fiscal pressure they are facing. Their main concern, in this case, is that corporate taxes could be expected to decrease investment through two channels. First of all, through an increase in the cost of investment; Secondly, by discouraging firms' transparency and as a consequence limiting firms' access to capital markets. From their analysis it follows that firms choose the level of transparency and of investment jointly.

This latter point is fundamental in our analysis. Since the firm jointly decides on a number of profit drivers, one cannot assume that an increase in transparency will mechanically lead to an increase in the total amount of taxes paid by firms. Even if transparency may reduce firms' possibility to elude taxes, it cannot prevent firms to change the composition of their investments in a way which minimises their tax expenditures.

2.2. Other impediments to market efficiency: cost of complexity

Especially in the case of very large MNEs, the Volkswagen case has raised to awareness that not only large international financial institutions can become too complex to manage²⁷⁵. Against this background, especially long-term oriented shareholders are more likely to be critical about highly aggressive tax avoidance practices. To the extent that these practices require highly complex corporate structure; the latter could lead to excessive costs of complexity as well as additional reputational risks. Obviously, reputational risk will differ strongly from one firm to another for any given level of complexity of corporate structures; only a small sub-set of large, or very large, MNEs are household names where a materialization of reputational risk can be expected to have a direct impact on market outcomes²⁷⁶.

Balakrishnan, Blouin, Guay (2011) find a positive relationship between tax avoidance and opacity: tax aggressiveness causes increased financial complexity and decreases corporate transparency. Landry et al (2013) find for a sample of Canadian firms that family-owned firms are less tax aggressive than non-family-owned firms. They also find that corporate social responsibility and (absence of) tax aggressiveness are not well aligned.

²⁷⁴ Evers et al (2014) take a more sceptical view noting that market participants already face an information overload and do not actually consider the full information sets available.

²⁷⁵ According to data obtained from the S&P Capital IQ database, the Volkswagen Group has around 500 subsidiaries and/or strategic investments in other companies.

²⁷⁶ This aspect has not received much attention so far; e.g. the very small number of household names that figured in the discussion of corporate income tax transparency in the European Parliament were also those where the reputational risk argument comes to mind first; on the other hand, many of the 6,500 very large MNE, and even more so most of the 20,000+ large MNEs are not known to the public as they produce intermediary products or services rather than final consumption goods and services. In those (majority) of cases the reputational risk argument will be more one-sided in the sense that the firm has little to gain from a more positive public image.

Evers et al (2014) find, on the one hand, that direct cost of CBCR may depend on the complexity of the group structure and the scope of disclosure requirements. On the other hand, concerning the hypothesis that enforced disclosure reduces tax aggressiveness; they argue that disclosure requirements, depending on the precise implementation, could even trigger new forms of tax avoidance behaviour. They conclude that it is mainly up to (tax) legislators to remove gaps and loopholes and reduce leeway in domestic and international tax laws (e.g. limit the leeway of companies with respect to constructing tax minimizing group structures).

Damodaran (2006) examines possible costs of complexity of the source of which lies in the different regulatory frameworks governing financial disclosure itself; he notes that increased disclosure requirements on accounting statements can obscure important information and render the financial statements longer and more complex. But also corporate structure (e.g. number and levels of subsidiaries) can make (group) financial statements less transparent. Another source of complexity stems from new and differentiated ways of raising funds: information unavailable to investors also remains hidden from potential hostile acquirers.

Boutin et al. (2013) analyse the role of (group) internal capital markets via the impact of group cash holdings as opposed to individual firm liquidity. While the focus is on the impact of internal capital market on product market competition/entry, their finding that access to group liquidity affects product market behaviour of affiliated firms by alleviating financial constraints is interesting in the present context. As their findings do not support the view that group membership is per se anticompetitive, the alleviation of financial constraints demonstrates an important benefit of MNEs that needs to be weighed against possible costs of complexity.

There are two factors that play a role on which side of the trade-off the proposed measures are likely to impact more: the first factor is within the scope of the proposal itself: the scope of public CBCR in terms of the size of the MNE (parent); on the basis of the analogy with the literature presented here, as well as the analysis of firm level data, the OECD BEPS threshold seems more likely to generate market efficiency improvements. Lower thresholds increase the risk of CBCR avoidance, and very low thresholds may become too costly in terms of the firm's need to protect at least some of its process innovation in order to generate the necessary profits for its future growth.

We can now sum up the discussion on the market efficiency channel where an increase in corporate transparency does not necessarily imply an increase in the rate of corporate income tax facing the MNE (pure transparency channel). Even if such a change does not lead to overall higher fiscal pressure on the MNE, due to changes in the power relation between shareholders and management this pure transparency channel can be expected to be non-neutral across firms and across EU Member States. Depending on shareholder structure it can be expected to lead to more short-sighted investment behaviour of the firm in the case of firms with strong control exercised by shareholders over firm manager e.g. via a pronounced presence of institutional investors with inflexible yield objectives. For MNEs with weak shareholder control of firm investment behaviour the expectation is that a pure transparency channel will be ineffective. Costs of complexity need to be assessed against negative threshold effects where firms could choose a particular level of investment and employment in order to stay below increased public disclosure limits.

The introduction of a threshold is negative, i.e. the threshold is set at an arbitrary level, not at the efficient size of the firm. There could be an analogy with employment protection

legislation (EPL) which has come under increasing scrutiny in EU Member States implementing structural reforms in labour and product markets. It is now widely recognized that arbitrary administrative thresholds that lead to strong jumps in *ucc* (user cost of capital) may become important barriers to the growth of firms and the economy as a whole, especially when these jumps in *ucc* occur at relatively low levels (e.g. 20 employees, 50 employees). It is an open empirical question where the kinks in *ucc* due to increased corporate income transparency could prove most harmful. However, it is fair to say that a threshold effect is more likely to produce negative effects for firm (productivity) growth and employment in the case of the large MNE cut off point as compared to the very large MNE cut off point in this impact assessment.

3. *Competitiveness*

When looking at possible impacts of increased corporate transparency on firm level competitiveness, it is helpful to state the problem in precise terms. Contrary to market efficiency, competitiveness is a much more stringently defined concept. To keep it short: firm compete, *ceteris paribus*, i.e. firms in the same industry/sector, on user cost of capital (*ucc*). Taxation impacts *ucc* through a multitude of channels creating a complex dual optimization problem. From a competitiveness angle, CBCR would first and foremost reveal to the public (to the extent that the wider public can process the information provided) the complexity of tax policy across EU Member States and internationally. But in a second step, it could also reveal strategic choices of the firm that otherwise remain unobserved on the consolidated balance sheet of the MNE group.

The firm chooses optimal levels of investment and employment that maximize the present value of the total distributed profits. This means the firm will react to any changes in parameters that it does not directly control: the firm's profits rise with lower corporate income tax, with lower wages, it also rise with higher amortization allowance and with higher financial leverage.

Box 1: The optimisation problem of the competitive firm²⁷⁷

A representative firm in country i contemplating investment I in continuous time $t \in [0, \infty)$. Let the firm's technology is given by neo-classical a production function $f(K_t, L_t)$. With levels of capital K_t and labour L_t , at most $Y_t = f(K_t, L_t)$ units of output can be produced (and exactly Y_t is actually produced). Further, if I_t is the firm's gross investment and ρ is a constant rate of depreciation (determined by available technology shared by all firms), then the law of motion for the net capital stock K_t may be written as

$$\dot{K}_t = I_t - \rho K_t, \text{ where } \dot{K}_t \equiv \frac{d}{dt} K_t$$

Let b be a constant share of gross investment that is financed through (external) borrowing (e.g. via bank loans). Then the firm's accumulated debt at time t is

$$D_t = \int_0^t b p_\tau I_\tau d\tau$$

where p_t is the price per unit of physical capital. The firm's distributed profit at time t can now be written as

$$\Pi_t = (1 - s)[\bar{p} f(K_t, L_t) - w_t L_t - r D_t - A_t] + A_t - (1 - b) p_t I_t$$

where \bar{p} is constant price of the firm's output, w is the constant unit wage, s is the (statutory) corporate income tax rate, the firm's total interest payments are $r D_t$, where r is a constant interest rate. The remainder $(1 - b) p_t I_t$ is financed by retained profit. It is assumed that all relevant fiscal provisions sum up to a flat corporate income tax at a rate s and a depreciation allowance at a constant rate of δ . then

$$A_t = \int_0^t \delta_{t-\tau} p_\tau I_\tau d\tau$$

is the depreciation allowance accumulated up to the time t . Choosing optimal levels of investment and employment, $\{I_t^*\}$ and $\{L_t^*\}$, the firm maximizes the net present value of the sum of total *distributed* profits. Solving the firm's optimal control problem, the *user cost of capital* can be written

$$ucc_t \equiv \frac{d}{dK_t} f(K_t, L_t) = \frac{p_t}{\bar{p}} \frac{1-s(b+z)}{1-s} \left[r - \frac{\dot{p}_t}{p_t} + \rho \right] \quad (1)$$

where z is the speed of amortization of the firm's investment.

Distortive international tax competition: In the absence of distortions from non-market factors such as taxation or labour and product market regulation, one would expect that the user cost of capital is the same in two different countries i and j (law of one price). Therefore, observed distortions would be expected to come from different policies, particularly tax policies. More precisely,

$$ucc_t^i - ucc_t^j = f(s, b, z)$$

where the statutory CIT rate, s , is set by (national) tax policy, and b and z are co-determined by country-specific policies (including taxation of corporate income). Firms (under competitive market conditions) would then be expected to change tax jurisdictions (in reaction to differences in s), and choose financial leverage, b , and their investment strategy, z , in a way that maximizes distributed profits. The MNE, by choosing the location of its corporate headquarters, thus chooses s jointly with other variables that impact distributed profits.

The cost factors that the firm cannot influence in this setting are the market price for its output, the price of (one unit) of physical capital, and the technologically determined rate of depreciation of its capital stock. Policy will typically not change the former either, but may

²⁷⁷ This Section draws on Kaniowski (2002).

have an impact on the latter two (via CMU type policies, as well as education and R&D policies).

Otherwise, tax policies impact many other cost items that determine firms' net income: tax policy sets the corporate tax rate, a multitude of different tax policies have numerous impacts on gross wages, tax policy determines the degree of deductibility of interest payments with significant consequences for the amount of leverage firms choose, and tax policy has important consequences for the speed of amortization of investment.

For simplicity, let us assume that before the introduction of public CBCR, the MNE group had found the lowest possible combination of statutory tax rates via its (aggressive) tax planning. There are at least two different channels how increased corporate income transparency can impact the firm's competitiveness: 1) a "pure" transparency channel that may increase market efficiencies and under certain assumptions (also depending on shareholder structure) lead to lower cost of capital. 2) a "mixed" transparency channel where in addition to 1) the firm will pay significantly higher income tax after the introduction of the transparency requirement. Outcome 1) was discussed in the section on market efficiency; Outcome 2) raises a number of additional competitiveness issues and will be discussed in the present section.

A discussion of the different elements that the firm can control and that add up to distributed profits²⁷⁸, denoted below as Π (in period t), is helpful to understand the first round options facing the firm that needs to react in a change to its costs:

$$\Pi_t = (1 - s) \overbrace{[\bar{p} f(K_t, L_t)]}^{\text{Total earnings}} - \underbrace{w_t L_t}_{\text{Wages}} - \overbrace{r D_t}^{\text{Debt service}} + s A_t - \underbrace{(1 - b) p_t I_t}_{\text{Re-invested earnings}} \quad (2)$$

Under the possibility that increased corporate tax transparency also leads to an increase in the corporate income tax *rate*, s , for the firm, it is useful to discuss all possible second round effects at the level of firm as the firm protects its target level for Π under the new " s ".

²⁷⁸ A reminder of the equation for net income (from Wikipedia):

- Net sales (revenue)
- Cost of goods sold
- = Gross profit
- SG&A expenses (combined costs of operating the company)
- R&D
- = EBITDA
- Depreciation and amortization
- = EBIT
- Interest expense (cost of borrowing money)
- = EBT
- Tax expense
- = Net income (EAT)

The representative firm will profit from:

- a lower (statutory) CIT rate, s
- a lower wage rate, w
- a higher amortization allowance, A
- higher financial leverage, b

These options can be further discussed with respect to their geographical implications, or their short-term or more medium-term nature. To benefit from changes to s , w , or A , the firm will regularly consider a re-location of at least parts of its activities. In contrast, an increase in financial leverage can be implemented without significant locational decisions; as a result it will likely be an important element of the short-term response of many firms. Recent OECD committee work (not publicly available yet) points in this direction as well, and associates especially low productivity firms with this response. However, in the medium-run, given the many different ways each firm can react to a negative shock to its profitability, reactions to any negative impacts stemming from increased corporate transparency can be expected to vary from one firm to another.

3.1. International level playing field and impact on productivity growth (the jobs & growth dimension) at the EU level and across EU Member States.

To assess the impact of increased corporate transparency on growth and employment one needs to discuss the general equilibrium effects of such a measure. In the case of the pure transparency channel this is rather difficult to model and quantify. For the case where higher transparency comes in conjunction with a significant increase in corporate tax revenues, it is possible to make a number of observations. First, the second round effects will determine how the measure plays out in general equilibrium, i.e. much will depend on firms' responses to protect Π and ucc ; also, and that complicates the analysis further, but still allows a number of educated conjectures, the current tax policy landscape is highly uneven with a few EU Member States threatened to lose substantial revenue and another small group of EU Member States facing the challenge to deal with MNE responses as well as with the challenge to spend higher revenue in a productive manner.

Moreover, if corporate income tax revenues are higher in the new long-run equilibrium, the overall impact on productivity growth (jobs & growth) will depend on how the extra revenue is spent.

In the discussion of the possible impact on productivity growth it becomes immediately evident why it is important to fully specify the optimization problem of the firm. One common mistake that is thereby avoided is to give the impression that it is possible to increase tax revenues without any impact on (the firm's) growth potential. The optimization problem underlying our analysis exactly rules out that higher corporate income tax revenue is paid via lower investments, i.e. via the continued (*ad infinitum*) depletion of the firm's capital stock²⁷⁹. Unfortunately, this intellectual discipline is not always applied in a rigorous manner in the context of so-called tax gap calculations that tend to leave this part of the problem unspecified.

²⁷⁹ In more formal terms this is ensured via the transversality conditions that a solution to the firm's dynamic optimal control problem needs to satisfy.

In addition, higher amortisation allowances, accelerated depreciation of the existing capital stock, etc. cannot lead to a sustained increase in tax revenues without changing the investment schedule of the firm. These measures can only alter the distribution of tax revenue over time. How the altered revenue schedule impacts growth and employment depends on a number of factors that we can only very briefly mention here, e.g. use of the temporarily higher revenues, size of the output/employment gap, technological developments, etc.

This is all the more regrettable as it is possible in principle to state at least some of the conditions that policy makers should care about in order to avoid negative impacts on productivity growth and employment. After all, economic activity organized by firms can be regarded as a voting process indicating where public infrastructure is resulting in high returns to factors of production. If additional tax revenues were used to ensure and perhaps even increase the provision of public goods where the latter produce the highest (marginal) increase in productivity of capital, the impact on growth could be even positive (e.g. in the presence of increasing economies of scale).

If the firm reacts to the increase in s by adjusting its financial leverage, b , this reaction will likely be non-neutral in terms of investment and financial leverage across EU Member States. NFCs have different starting points of leverage, profitability, of firms belonging to the same sector across EU Member States.

A rigorous discussion in the economic literature of the issue how shareholder structure impacts firms' investment behaviour goes back at least to Grossman and Hart (1980) and Shleifer and Vishny (1986). The main argument is that informational asymmetries and monitoring costs will not allow diluted and atomistic shareholders to help enforce management decisions that could increase the long-run value of the going concern. Based on this line of reasoning, the following question is what is the time-preference ("degree of patience") of one or several large shareholders if they exist.

Haldane (2015) reviews a lot of evidence and literature to confirm that we should know more about the impact of the shareholder-management relationship on firm performance, when it can be associated with more pro-cyclical behaviour, and under which condition it can be associated with superior long-term productivity. Referring also to the Kay review (Kay 2012) he notes how *shareholder interests* have become more dominant in management decisions on the level of distributed profits even during economic downturns. This indicates that such dominance could lead to sub-optimally low levels of retained earnings and, à la long, investments. It is not clear how better informed investors, in the presence of a more or less strong version of public CBCR, could be expected to revert this trend.

Bertomeu et al (2011) establish a hierarchy of optimal securities and disclosure policies that varies with the volatility of the firm's cash flows. Debt securities are often optimal, with the form of debt—risk-free, investment grade, or “junk”—varying with the firm's cash flow volatility. In their model, more voluntary disclosure does not cause firms' cost of capital to decline. However, mandatory disclosures alter firms' voluntary disclosures, their capital structure choices, and their cost of capital, i.e. they are more distortive and lead to strategic reactions by firms.

Slemrod et al (2012) analyse the effect of the introduction of a threshold both on taxpayers' and firms' behaviour. The authors argue that both individual and corporate taxpayers, whose tax liability would otherwise be close to the threshold, will underreport so as to avoid disclosure. Moreover, since the costs of manipulating one's income are increasing in the

amount of manipulation needed to escape disclosure, the frequency of reports with taxable income or tax liability just above the threshold should be less than what it would be in the absence of a disclosure rule, and the discrepancy should decline as taxable income increases above the threshold. In order to prove it empirically, they assumed a counterfactual Pareto distribution for the tax returns (without the disclosure) and found that the “missing tax returns” seem to be primarily located near the threshold, and then dissipate as one moves further from the threshold.

4. Conclusions

The aggregate impact on EU competitiveness compared to the rest of the world cannot be fully assessed by looking at firm-level effects alone. In particular, first round effects of the implementation of BEPS13 could very well favour the EU. As a result, BEPS13 implementation in OECD member states could imply an increase in overall corporate income revenue in the EU. It is unlikely that possible negative firm-level effects analysed here could outweigh any such first round effect.

However, other firm-level reactions analysed here suggest that in the medium to longer run elements such as degree of shareholder control²⁸⁰, shareholder structure, as well as CBCR threshold effects would become more relevant. In the case of the lower threshold for CBCR (the large firms alternatives) a new EU-wide artificial barrier to firm (revenue) growth could result in losses in market efficiency that could affect growth, investment, and jobs in the medium to longer run.

In this respect, several studies hint to the importance to embed increase public corporate transparency requirements in a *coherent approach* to corporate taxation, auditing/accounting, and capital markets reform in order to reap the potential benefits from increased transparency: overcoming borrowing constraints, higher investor recognition, better monitoring of performance (of managers) and improved firm liquidity.

Finally, a fairer distribution of fiscal pressure *across the firm size spectrum* could further SMEs' capacity to support growth and job creation, i.e. shift economic activity from larger to smaller firms; this could, in turn, and possibly depending on the sector, also further market entry, competition, and innovation. It would be certainly more rewarding and motivating for start-ups to no longer face the stark contrast in effective tax rates compared to well-established incumbents, and certainly corporate income taxation should not, as it seems to do currently, give incumbents further means to protect their market against new entrants.

²⁸⁰ Somewhat misleadingly, this is referred to as "corporate governance" in the theoretical and empirical finance literature referenced here

ANNEX R: DESCRIPTION OF A POSSIBLE LABELLING SYSTEM.

This annex examines a labelling system as a way to promote corporate transparency on a voluntary basis. In other words, a company could provide tax-related information publicly and seek to signal compliance with minimum standards on the basis of a labelling system designed at EU level. By nature, such a system would accept companies of any size, and could expand to business beyond EU borders.

A labelling system necessitates "labellers" entitled to grant "marks", has to be attractive to business, yet ensure that "labellers" keep committed to good work and do not sell their label to business. An EU labelling system ("fair taxpayer label") could have the following features:

- Design of the labelling system

In order to ensure minimum quality and harmonised criteria, and for the label to be recognised as authoritative, it would seem appropriate that sufficiently authoritative bodies at EU level determine criteria to be complied with by companies, as well as an overarching framework for the designation of "labellers". This may necessitate EU legislation.

- Authority to grant labels to companies

An EU labelling system may build on national competent authorities, such as e.g. tax or other authorities. However, to involve authorities would appear as too rigid and burdensome for a voluntary labelling system implying rubber stamping of companies. Instead, a lighter touch system where private stakeholders would comply with criteria set at EU level may be more accurate. Compliance with standards set by an EU framework could e.g. be verified regularly and publicly attested by an independent third party (auditor...). In this way, market participants could freely decide to join the EU system as "labellers", allowing them to grant marks / label to companies for a fee. There are currently only a few players on the EU market (Fair Tax Mark in the UK, Taxparency in the Czech Republic, ...), but the population of "labellers" could thrive based on the attractiveness of an EU labelling system to companies.

- Companies' disclosure

Given the voluntary nature of the system, it would make sense that companies necessarily make a statement on their tax policies. Labelling systems in the EU generally require in addition the publication of a CBCR. Beyond the mark, it would also seem necessary that either "labellers" ensure the after-sale service by verifying regularly the compliance of companies with the criteria set to receive the mark, or that marks be granted only for a short period (say, one year).

ANNEX S: COMPLIANCE COSTS

The information envisaged in a public CBCR in the options is either reported, aggregated for the group, in the financial statements of large MNEs or easily accessible. The Turnover, Profit before tax and Corporate Income Tax accrued are a separate caption of the Profit & Loss as per GAAP applicable in the EU, and with other GAAP used for general purpose financial statements as well. The number of employees must be given in the notes under GAAP applicable in the EU. Whereas this may not be the case with other GAAP, MNEs will generally have the information on their headcount by country or in such a granular way that figures per country can be reconstructed without heavy workload, given the importance of this information for their management. Finally, Corporate Income Tax paid may either be reported in a MNEs' cash flow statement depending on GAAP or options used, or computed for internal purposes in a usual way, for instance for use by a tax department. However, there may be a number of MNEs for whom such information may represent a new exercise. These would have to set up additional collection and computation processes for the purpose of preparing a public CBCR with such information.

The UK government estimated the costs of an OECD BEPS CBCR to be in the region of £0.2 million per annum per MNE²⁸¹, i.e. annual recurring costs around EUR 0.3 million for UK-headed MNEs with a consolidated turnover above EUR 750 million. One-off costs are expected to be negligible. In the Netherlands, the government estimates that there would be about 150 very large MNEs to prepare and submit a CBCR based on the OECD model. The associated administrative costs for companies would amount in average to EUR 0.5 million each²⁸², which is comparable with findings in the UK. The structure of MNE groups in the UK and the Netherlands are believed to be not so specific that such figures could not be extrapolated to non-UK and non-Dutch MNEs of the same size. In a response to the public consultation, a business posited that reporting itself will cause "about EUR 1 million per year for an MNE with 40 000 employees".

In a study on the CRD4 type of CBCR prepared by PWC for the European Commission²⁸³, two banks provided a quantification of the annual recurring costs estimated to be in the region of EUR 20 000 (excluding external audit) to EUR 50 000 (including external audit) at the headquarters level, and EUR 40,000 external costs. The one-off costs for the first year are estimated by both banks to be around EUR 10,000, excluding external costs, one bank indicating additional external one-off costs in the region of EUR 200,000. As only two banks provided quantitative data, this cannot be taken as being representative of the sector as a whole.

²⁸¹ HMRC, [Country-By-Country Reporting](#), 2015

²⁸² [Wijziging van enkele belastingwetten en enige andere wetten \(Overige fiscale maatregelen 2016\)](#), p.25

²⁸³ PriceWaterhouseCoopers – [General assessment of potential economic consequences of CBCR under CRD IV](#), 2014, p. 98

The Commission services surveyed in addition three MNEs which currently volunteer to publish a CBCR, and were kindly willing to share information with the Commission. These MNEs exceed the OECD turnover threshold. They operate in various industry sectors. One is subject to an EU CBCR obligation on a small part of its operations, but publishes a CBCR of its own on the main part of its operations. Table 11 summarises the findings of this survey.

Table 13: Manhours per country and reporting entity - survey of MNEs with voluntary CBCR

	MNE A	MNE B	MNE C
Group Tax Code /Tax strategy	✓	✓	✓
CBCR type	Voluntary	Voluntary	Voluntary
<i>Turnover</i>	✓		
<i>Nr of Employees</i>	✓		
<i>Profit before tax</i>	✓	✓	
<i>Direct taxes (altogether)</i>			✓
<i>Corporate Income Tax accrued (separately)</i>	✓	✓	
<i>Corporate Income Tax paid (separately)</i>			
<i>Indirect / borne taxes (altogether)</i>		✓	✓
<i>Other KPIs</i>	✓		✓
<i>Narrative</i>	✓	✓	✓
Audit	-	NGO	Auditor (Limited Review)
Size indicators			
<i>Number of reporting entities in the group</i>	197	200	500
<i>Number of countries reporting internally</i>	2	6	63
<i>Average number of reporting entities per country</i>	99	33	8
Manhours per unit			
<i>Recurring manhours per country</i>	8	125	40
<i>Recurring manhours per reporting entity</i>	0.1	4	5
<i>Source: European Commission</i>			

MNE B reported a total annual cost of EUR 280,000 for a total of around 750 man hours. MNE C reported an annual fee of EUR 70,000 for the auditor. No other direct measures of costs were provided by either of these MNEs. All MNEs surveyed reported that their voluntary CBCR was built progressively based on either simple tools (MS-Excel) or existing internal tools (consolidation software). As a result, one-off costs had not been significant for any of them.

As regards recurring costs, there are clear indications in the table above that resources involved tend to increase along with the size of a group (number of reporting entities), the number of countries, and the group's structure. Manhours to prepare the 2014 CBCR range from 8 to 125 hours per country, and 0.1 to 5 hours per reporting entity, respectively. Publication activities generally consist of posting the CBCR on a web site, or filing it with a business register. Companies surveyed all reported that this entailed no significant costs.

MNEs with a group turnover above EUR 750 million are reported to control directly or indirectly between 1 up to more than 5,000 subsidiaries, with an average of 98 subsidiaries²⁸⁴.

EU MNEs that are large but not very large have 34 subsidiaries in average²⁸⁵. As the average reporting cost per group entity/subsidiary is estimated in the region of EUR 300,000/98= around EUR 3,000 in very large MNEs, recurring costs of a public consolidated CBCR could amount to EUR 3,000 x 34= EUR 102,000 in average in large MNE groups that are not very large. These costs may vary significantly above or below this average depending on each MNE groups' structure or situation. For instance, the number of subsidiaries (which may range from none or few to several hundreds) as well as their location, the industry, the reporting system, etc. can heavily influence the costs. Large MNE groups are expected to have generally less abundant administrative resources than very large MNE groups. In comparison to the latter, the administrative burden of the former is expected to be relatively heavier, despite lower cost in absolute terms.

²⁸⁴ Based on research by Commission services using the BvD ORBIS firm database; the distribution is highly skewed, i.e. the arithmetic mean is around 100, but the median is estimated to be considerably lower; this is in line with some recent academic works that found that a few hundred global MNEs to responsible for a very large share of global base erosion and tax shifting activity.

²⁸⁵ *ibid*

ANNEX T: WHO IS AFFECTED BY THE INITIATIVE AND HOW

The objective of this annex is to set out the practical implications of the initiative for enterprises and public administrations.

Option 3A has been assessed as the preferred Option. It would not affect public administration but all ultimate parent companies with a consolidated turnover above EUR 750 million and at least a subsidiary in the EU. According to our assessment, 65% of these companies would be located in 5 EU Member States.

The policy may have EEA relevance.

Implications differ if the ultimate parent company is established in the EU or in a third country.

Enterprises with an ultimate parent company in the EU:

Ultimate parent companies established in the EU, with a consolidated turnover above EUR 750 million would have to comply with the reporting requirement. Enterprises having an ultimate parent company in the EU would not be affected by the proposed reporting requirement. Ultimate parent companies would have to publish a specific report as part of their reporting requirement no later than 12 months after the balance sheet date. The information should be reported in an EU language in a single currency (usually the functional or reporting currency of the group). This report would include for the given year the following information on a country-by-country basis: Income tax accrued (current tax), income tax paid, turnover, profit before tax, number of full time employees. This information should be broken down by country for each EU Member State (combining several tax jurisdictions as the case may be) and aggregated for operations taking place outside the EU. Banks in the scope of Article 89 of the CRD4 would not have to comply with this new reporting requirement and would continue to publish a CBCR based on the CRD4 model. This report would be filed within the business register of the country of incorporation of the ultimate parent company. Moreover, the report would be made publicly available on the website of the ultimate parent company.

Operationally, it would require ultimate parent companies to prepare a report by consolidating information received from the group's entities on a country-by-country basis. Such a report would have to be published and filed within a business register.

Enterprises with an ultimate parent company outside the EU:

Any medium and large limited liability undertaking in the EU would be required to determine the name and registered office of its ultimate parent entity. The same requirement would apply to EU branches of comparable size opened by companies not established in the EU. Where the ultimate parent would be established outside the EU, they would in addition have to determine whether this ultimate parent has a consolidated turnover above EUR 750 million. If these conditions are met, the EU subsidiary/branch would be required to publish a report concerning the operations of their ultimate parent company.

Operationally, the EU subsidiary/branch will have to request from its ultimate parent company the consolidated CBCR prepared in accordance with the EU requirement.

Companies in the scope would have to file the report within a business register and publish it as well on a website. In order to avoid the duplication of such reporting, a mechanism would ensure or allow that only one undertaking publishes the report.

The report would contain the same information in the same format and timing as the one required for ultimate parent companies established within the EU.

Currency: [specify]	Brief description of the nature of activities	Number of employees	Net turnover (with third parties and with related parties)	Amount of profit or loss before tax	Amount of income tax accrued	Amount of income tax paid
Belgium						
Bulgaria						
Czech Republic						
Denmark						
Germany						
Estonia						
Ireland						
Greece						
Spain						
France						
Croatia						
Italy						
Cyprus						
Latvia						
Lithuania						
Luxembourg						
Hungary						
Malta						
The Netherlands						
Austria						
Poland						
Portugal						
Romania						
Slovenia						
Slovakia						
Finland						
Sweden						
United Kingdom						
Norway						
Iceland						
Liechtenstein						
Third countries (total)						

Template of a possible report on income tax information

ANNEX U: PROFIT SHIFTING²⁸⁶

Multinational companies can exploit differences in tax rates by shifting profits from a high tax to a low tax country. The gain from shifting profit is the tax rate differential. If the tax rate in country A is 30% and the tax rate in country B is 5%, the gain for each Euro taxable profit shifted is 25 cents. There are different ways of shifting profits. The most common are transfer price manipulation, intra-firm debt shifting and intellectual property location.

Transfer price manipulation occurs by manipulating the price of cross-border deliveries, services and other transactions between related companies. The transfer price is a cost to the company receiving the delivery or service and reduces the profit of that company. On the other hand, it is an income to the providing company and it increases the profits of that company. Therefore a high transfer price leads to low profits in the receiving company and high profits in the providing company. If profits are taxed at a lower rate in the country of the receiving company, a low transfer price can reduce the total amount of payable tax without changing total pre-tax profits. Although transactions between related companies should be priced as if they were concerning a third party (arm's length principle), there is some flexibility in the methods and imprecision in the data used for determining transfer prices. Also there is some room for related companies to structure their transactions. This flexibility can be used by multinational companies to reduce the amount of payable tax. The mechanism is illustrated in the following table:

	Base			Alternative A		
	Parent (country B)	Subsidiary (country A)	Total	Parent (country B)	Subsidiary (country A)	Total
Turnover	100	70	170	100	60	160
Costs	70	50	120	60	50	110
Profit (before tax)	30	20	50	40	10	50
Tax rate	5%	30%		5%	30%	
Payable tax	1.5	6	7.5	2	3	5

In the base scenario, a parent company in country B sells finished products for 100 units. It buys intermediary products from a subsidiary in country A for 70 units. This is the arm's length price, consisting of a cost of 50 and a profit mark-up of 20. The parent has no other costs. Now, the total pre-tax profit of the multinational is the sum of the profits of the parent, 30 and those of the subsidiary, 20. In total, the pre-tax profits are 50. 30 is taxed at 5% and 20 is taxed at 30%, leading to a total payable tax of 7.5. If there are no easy comparable goods to determine the arm's length price of the intermediary product, the company could change the conditions of delivery or argue for a lower mark-up reduce the price of the intermediate

²⁸⁶ Commission Staff Working Document on Corporate Income Taxation in the European Union accompany the Communication from the Commission to the European Parliament and the Council on a Fairer Corporate Tax System in the EU: 5 Key Area of Action (SWD/2016/06 final)

product to 60 (Alternative A). While total pre-tax profits remain unchanged, the profits of the parent are increased to 40 and the profits of the subsidiary are reduced to 10. A profit of 10 has been shifted from the subsidiary to the parent and, as a consequence, from high-tax country A to low-tax country B. As a result, the total payable tax is reduced by 2.5 to 5.

Another mechanism for cross-border profit shifting is debt shifting. Multinational companies have large freedom in establishing intragroup financial relations. By using internal loans instead of internal equity, they can convert income streams from dividends to interest. As dividends are usually taxed in the source country and interests in the residence country this leads to a shift of profits. This is illustrated in the table overleaf.

Assume the same base scenario as in the table above. The parent company fully owns the subsidiary company. The subsidiary is fully financed by equity provided by the parent company. Net profits from the subsidiary are repatriated to the parent. According to the DTC between country A and country B dividends from country A are exempt from additional taxation in country B (participation exemption).

	Base			Alternative B		
	Parent (country B)	Subsidiary (country A)	Total	Parent (country B)	Subsidiary (country A)	Total
Earnings (before interest and taxes)	30	20	50	30	20	50
Interest	0	0	0	15	-15	0
Taxable Profit	30	20	50	45	5	50
Tax rate	5%	30%		5%	30%	
Payable tax	1.5	6	7.5	2.25	1.5	3.75
Net profit	28.5	14	42.5	42.75	3.5	46.25
Repatriated dividend	14	-14	0	3.5	-3.5	0
Net profit after repatriation	42.5			46.25		

In this case the payable taxes are identical to the ones in the previous example: 1.5 in country A and 6 in country B. Now consider an alternative situation (Alternative B) in which the subsidiary still is fully financed by the parent company, but part of this financing has taken the form of a loan. Assume that the value of the loan is 150 and the yearly interest to be paid 15. Note that this internal loan does not have to have consequences for the external financing of the multinational company. Now, the transfer of income from the subsidiary to the parent takes two forms: interest and dividends. The interest paid from the subsidiary is deductible in country A and taxed in country B. The dividend is taxed in country A and exempt in country B. So, by increasing the debt of the subsidiary, the multinational has shifted 15 units of profits from country A to country B. This leads to a reduction of payable tax from 7.5 to 3.75.

The mechanism of profit shifting through the use of royalties is very similar. If the subsidiary company is using intangible assets of which the property rights are in the hand of the parent, a stream of royalties from the subsidiary to the parent will emerge. This stream will reduce profits in the source country (country A) and increase them in the residence country. An arm's length price of these royalties is almost impossible to assess.