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**6 March 2020**

**Subject: OECD Public consultation – Review of Country-by-Country Reporting (BEPS Action 13)**

Dear Mr. Bradbury

Accountancy Europe thanks the OECD for the opportunity to provide its views on Country by Country Reporting (cbc reporting) under BEPS Action 13. Please find below Accountancy Europe's comments on the issues raised in the consultation, and, where possible, to the direct questions asked.

Overall, in our opinion, insufficient time has elapsed since the inception of BEPS Action 13 to truly assess its success and what the critical areas for improvement may be. Significant changes to BEPS Action 13 should only be made after thorough fact-finding and research.

However, there are undoubtedly non-fundamental changes that could be made to improve the effectiveness and efficiency of cbc reporting. One such change would be moving to a multi-year approach to determine whether a group exceeds the consolidated group revenue threshold. If properly designed, this could be effective in dealing with many of the issues arising from, for example, currency fluctuations (where a jurisdiction's threshold is not euro denominated) and exceptional\extraordinary items.

Due to the short response period, we have had insufficient time to seriously consider the numerous specific questions in respect of '*identifying advantages and challenges for the proposals over than those that have already been noted in the document*'. Whilst we accept that a short deadline for consultation responses can be justified in cases where the topic is particularly urgent, such as with the Pillar One and Two consultations, the one-month deadline for this consultation is too short for a stakeholder organisation such as Accountancy Europe to obtain input from its a broad and diverse membership. Consequently, with the exception of specific questions 1 to 3, we have concentrated on giving our views on the broader questions.

## **CHAPTER ONE – IMPLEMENTATION AND OPERATION OF BEPS ACTION 13**

### **1. IMPLEMENTATION OF THE BEPS ACTION 13 MINIMUM STANDARD**

#### **SPECIFIC QUESTION 1.**

We believe that it is too early to accurately gauge the general implementation status of Action 13 – particularly as some of the jurisdictions in the Inclusive Framework have only recently implemented the minimum standards. Consequently, it is too early to make significant changes to the provisions until more practical experience and data is available.

However, our constituents have identified certain issues in practice, particularly relating to rebasing the threshold and divergences in national master files, which are described below.

### **2. THE APPROPRIATE AND EFFECTIVE USE OF CBC REPORTS**

#### **SPECIFIC QUESTION 2.**

Our constituents have reported that very few cases under the new cbc reporting rules have come to audit, so it is very difficult to gauge how the reports are being used by tax authorities and how this is influencing their traditional audit approach.

Nevertheless, we have received some indications that transfer pricing audits are considerably more focussed due to the risk analysis done by the tax authorities of the information provided by MNEs under cbc reports.

### **3. OTHER ELEMENTS OF THE BEPS ACTION 13 REPORT**

#### **SPECIFIC QUESTION 3.**

Some significant divergences in national master file requirements have been noted. For example, Australia has been identified as a country that has imposed significant additional reporting requirements in its master file, which causes a significant additional burden on MNEs with subsidiaries based there.

National tax authorities should not habitually change master file requirements in excess of the documents listed in Annex I to Chapter V of the OECD Transfer Pricing Guidelines. Where there is believed to be a pressing need for additional documentation, it should be considered whether Annex I should be revised to ensure consistency of application between jurisdictions.

## **CHAPTER TWO – SCOPE OF CBC REPORTING**

### **4. SHOULD A SINGLE ENTERPRISE WITH ONE OR MORE FOREIGN PERMANENT ESTABLISHMENTS BE A GROUP FOR THE PURPOSES OF CBC REPORTING?**

In principle, we believe that BEPS Action 13 should apply to MNEs that exceed the threshold irrespective of how their overseas operations are structured. Consequently, where an MNE operates through branches rather than subsidiaries, as is common in the financial services industry, there is no conceptual reason why these groups should be excluded.

However, there are practical issues in including such ‘groups’ under the aegis of BEPS 13. Although tax reporting information for permanent establishments would normally be available, it may not be the case that full financial statements would be available for each establishment.

As in all cases, it should be considered whether the scale of the perceived issue is sufficient justification for complicating the rules for all, or whether the specific problem of fixed establishments and profit allocation could be dealt with in another fashion.

### **5. SHOULD SEPARATE CBC REPORTS BE PREPARED BY GROUPS THAT ARE UNDER COMMON CONTROL AND WHICH IN AGGREGATE HAVE CONSOLIDATED GROUP REVENUE ABOVE THE CBC REPORTING THRESHOLD?**

As with 4. above, in principle, we believe that BEPS Action 13 should apply to MNEs that exceed the threshold irrespective of how their overseas operations are structured. Consequently, ‘groups’ under common ownership should be included if their combined turnover would exceed the reporting threshold.

However, there are probably even more practical issues with doing this for groups under common control than with including organisations operating through PEs - particularly as accounting and tax rules related to consolidating entities under common control differ from country to country.

In some cases, it may be obvious that the entities are under common control but in others it may be very difficult to ascertain. The pool of shareholders and senior management could be quite different, and it could be a difficult process to establish common control in these circumstances – particularly when the groups in question are established in different jurisdictions and potentially using different legal structures. Although the groups in question should be expected to know if they are under common control, it may be very difficult for tax authorities to check compliance with the reporting requirements.

As 4. above, it should be considered whether the scale of the perceived issue is sufficient justification for complicating the rules for all - or whether the specific problem could be dealt with in another fashion. This is particularly the case for the entities that could be captured by this proposal as they will have to develop new systems to meet the common reporting requirement.

## **6. SHOULD THE LEVEL OF THE CONSOLIDATED GROUP REVENUE THRESHOLD BE REDUCED?**

The level of the consolidated group revenue threshold should be periodically reviewed to ensure that it is still appropriate to meet the BEPS Action 13 policy objectives. However, we are not convinced that there is a current need to reduce the current threshold of 750 million euro.

The consultation document states that the current threshold accounts for approximately 90 percent of relevant corporate revenues whilst only including 10 to 15 percent of MNE groups. We believe that this is a very effective result.

Lowering the threshold without a clear, empirically based, need to do so risks a significant additional administrative burden on smaller groups unprepared for the reporting requirements - with potentially little gain for tax authorities. Indeed, it is our understanding that many tax authorities are struggling to make proper use of the cbc information that they already receive and would be ill prepared to assimilate what could be a significant increase in data.

It should be noted that a reduction in the threshold would also result in exacerbating the administrative burden for companies affected by the proposals in Questions 4 and 5 above.

## **7. SHOULD A JURISDICTION WITH A CONSOLIDATED GROUP REVENUE THRESHOLD DENOMINATED IN A CURRENCY OTHER THAN EUR BE REQUIRED OR PERMITTED TO REBASE ITS THRESHOLD PERIODICALLY?**

We believe that there should definitely be a formalised, voluntary mechanism to rebase where countries do not denominate their threshold in EUR. We have had experience with the practical issues that large currency fluctuations can cause in BEPS Action 13 filings.

For example, the near 20% devaluation of the Indian rupee against the Euro has resulted in MNE groups having to develop systems to file locally in India rather than, in this particular case, through the group's headquarters in Germany. This was because the group was below the threshold in EUR and the German tax authority would not accept the Action 13 reports.

However, we are not convinced that countries should be able to rebase at will as this could result in considerable uncertainty for both business and tax authorities. It also has the potential to cause considerable short-term fluctuations where MNE groups drop in and out of reporting.

We would recommend a mechanism for periodic review – perhaps between 3 to 5 years – but with a potential ‘quick response’ mechanism that could be activated in cases of severe currency fluctuation. This could be, for example, where a currency increases or decreases by more than 20 percent in a single year. This would provide a suitable mix of certainty for taxpayers and tax authorities combined with flexibility for jurisdictions to respond rapidly to exceptional circumstances.

## **8. SHOULD THE THRESHOLD FOR EXCLUDED MNE GROUPS TAKE INTO ACCOUNT MORE THAN ONE YEAR OF CONSOLIDATED GROUP REVENUE?**

An MNE that has to report under BEPS Action 13 faces considerable costs in developing reporting processes and IT systems when reporting for the first time. Consequently, it is important that companies habitually close to the threshold do not face a situation where they drop in and out of reporting due to annual fluctuations.

Consequently, we believe that there are good reasons why a multi-year approach should be implemented to determine whether the reporting threshold is breached.

A multi-year approach reduces the issue of one-off items (exceptional or extraordinary as per 9. below) being responsible for a group having to report for a single year.

It also potentially alleviates the problems described in 7. above in relation to short term currency fluctuations for jurisdictions where the threshold is denominated in currency other than EUR.

Our initial view is that the Option 1 (*An MNE group could be required to file a CbC report if its consolidated group revenue is above the threshold for the two immediately preceding fiscal years (or other number of years to be determined)*) is a good place to start. This two-year approach works in other applications - such as the determination of company size in the EU Accounting Directive - and provides an element of smoothing but without too much complexity. Using more than two years as a basis may also work, but too long a period opens up the possibility of internal factors, such as reorganisations, or external factors, such as changes in the threshold, complicating the issue.

## **9. SHOULD EXTRAORDINARY INCOME BE INCLUDED IN CONSOLIDATED GROUP REVENUE?**

Within the European Union, the mandatory use of IFRS for companies listed on a public exchange means that for many European companies that report under BEPS Action 13, exceptional\extraordinary income would not normally be disclosed separately in the consolidated financial statements. Consequently, it would make sense to include them in consolidated group income.

Using the multi-year approach described in 8. above would then reduce the possibility that extraordinary income requires MNE groups to report for only a single year.

## **10. SHOULD GAINS FROM INVESTMENT ACTIVITY BE INCLUDED IN CONSOLIDATED GROUP REVENUE?**

As investment activity is an important source of revenue for many large MNEs, we believe that gains arising from investment activity should be included in consolidated group revenue.

**11. IN CASES WHERE THE IMMEDIATELY PRECEDING FISCAL YEAR OF AN MNE GROUP IS OF A PERIOD OTHER THAN 12 MONTHS, SHOULD THE CONSOLIDATED GROUP REVENUE THRESHOLD (OR, ALTERNATIVELY, CONSOLIDATED GROUP REVENUE IN THE IMMEDIATELY PRECEDING FISCAL YEAR) BE ADJUSTED IN DETERMINING WHETHER THE MNE GROUP IS AN EXCLUDED MNE GROUP?**

We believe that it is appropriate to pro-rate the consolidated group threshold where the MNE's groups preceding fiscal year is longer or shorter than a year. This would be the simplest method for dealing with long or short accounting periods and is often used by national governments for their financial reporting and tax reporting regulations.

We do not believe that the consolidated group revenue should be pro-rated. For long accounting periods MNE groups would typically have the financial information for both the separate periods, for tax purposes at least. Also, extending or reducing the accounting period is often associated with a change in an MNE group such as significant acquisitions, mergers or group reconstructions. In such circumstances, pro-rating the MNE group's income could produce extrapolated results considerably divergent from commercial reality.

Consideration should also be given to how pro-rating the threshold would interact with taking a multi-year approach described in 8. above. Should both concepts be agreed, a set methodology should be prescribed for the circumstances when one of the periods included in the multi-year approach is a long or short accounting period.

### **CHAPTER THREE – CONTENT OF THE CBC REPORT**

**12. SHOULD INFORMATION IN TABLE 1 BE PRESENTED BY ENTITY RATHER THAN BY TAX JURISDICTION?**

We do not have a view on this question.

**13. SHOULD CONSOLIDATED DATA RATHER THAN AGGREGATE DATA BE USED IN TABLE 1?**

Within the European Union, the EU Accounting Directive allows exemption from consolidation for small and medium sized groups as well as for intermediate groups where the ultimate parent company prepares consolidated accounts. Even where consolidated financial statements are prepared there may be entities excluded from consolidation.

Consequently, using consolidated data could be a considerable additional burden on some groups and this would be a wider issue if the thresholds were reduced. We would recommend that such a step should not be taken until the need for it had been thoroughly proven.

**14. SHOULD ADDITIONAL COLUMNS BE ADDED TO TABLE 1?**

The purpose of BEPS Action 13 reports is high level risk assessment. Much of the proposed additional information is in the master file or available to tax authorities from other sources, such as from tax return filings or existing automatic exchange of information.

Before additional columns are added to Table 1 a detailed analysis should be performed to ensure that the each and every column added is essential for the purpose of high-level risk management.

**15. SHOULD CHANGES BE MADE TO HOW CONSTITUENT ENTITIES THAT ARE NOT RESIDENT IN ANY TAX JURISDICTION FOR TAX PURPOSES ARE CATEGORISED FOR CBC REPORTING PURPOSES AND HOW INFORMATION ON THESE ENTITIES IS REPORTED IN TABLE 1?**

We do not have a view on this question.

**16. SHOULD FIELDS REQUIRED IN THE XML SCHEMA (E.G. TAX IDENTIFICATION NUMBER) THAT ARE NOT IN THE CBCR TEMPLATE IN THE ACTION 13 REPORT BE INCORPORATED INTO THE TEMPLATE?**

In our opinion, it would be logical to ensure that fields required in the XML schema are incorporated into the BEPS Action 13 template.

**17. SHOULD STANDARDISED INDUSTRY CODES BE INCLUDED IN TABLE 2?**

We do not have a view on this question.

**18. SHOULD PRE-DETERMINED FIELDS BE ADDED TO TABLE 3, IN ADDITION TO FREE TEXT?**

It would be beneficial to thoroughly analyse the additional information provided by MNE groups in the cbc reports, perhaps using natural language data analytics or some other form of artificial intelligence-based process, to quantify those categories of additional information most often provided voluntarily. If this information could then be provided by a check box, drop down box etc this would simplify the reporting process for the MNE group and the risk assessment process for the tax authority.

This would be particularly beneficial for MNE groups reporting for the first time (for example, should the threshold be reduced).



Please do not hesitate to contact us should you require any further information on this response.

Yours sincerely,

Signed by

**Olivier Boutellis-Taft**

Chief Executive

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