

# FORVIS



## **Transfer Pricing: The Emergence & Development of Public Country-by-Country (“CbC”) Reporting**

February 16, 2023

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# Meet the Presenters



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# Agenda

- Trend of Global Tax Transparency
- Introduction of Public CbC Reporting
- Development of Public CbC Reporting
- Impact on Large MNEs – What to Prepare

# Trend of Global Tax Transparency

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# Background

- Tax evasion & avoidance – Financial scandals, offshore tax evasion, etc.
- Base erosion & profit shifting (“BEPS”) practice – OECD indicated that approximately \$100B to \$240B tax revenues were being lost annually to BEPS practice by multinationals
- In response, growing support has been shown towards higher global tax transparency from relevant stakeholders for different reasons
  - Policymakers
  - Investors
  - Businesses
  - General Public

# Trend of Global Tax Transparency

## *Growing Interest & Support*

- Policymakers
  - OECD initiatives
    - Global Forum on Transparency & Exchange of Information for Tax Purposes (2010)
    - BEPS Project – 15 Actions (2015) – Action 13: Country-by-Country Reporting
  - EU directives
    - Capital Requirement Directive (2013)
    - Accounting Directive (2013)
    - DAC 6 (2018), DAC 7 (2021), & DAC 8 (proposed in 2022)
  - Local jurisdictions

# Trend of Global Tax Transparency

## *Growing Interest & Support*

### ■ Investors

- Calls for companies to publish tax information on a country-by-country basis in recent years (2015-2017), e.g., the United Nations' Principles for Responsible Investment, Norges Bank Investment Management
- The CFA institute called on FASB to make changes to the way in which firms should disclose income tax information in 2016
- Global Reporting Initiative ("GRI") issued new standard GRI 207 related to public disclosure of CbC tax information in 2019

### ■ Businesses

- Voluntary disclosure implemented – Vodafone, Unilever, Shell, Eni, BHP, Repsol, & Rio Tinto
- Voluntary disclosure being discussed – Amazon, Microsoft, Cisco

Source: FACT Coalition report: *Trending Toward Transparency, The Rise of Public Country-by-Country Reporting*, April 2019

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# Introduction of Public CbC Reporting

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# BEPS Action 13 CbC Reporting – NOT Public

## BEPS Action 13 Report: Country-by-Country Reporting (2015)

- Large multinational enterprises (MNEs) with annual consolidated group revenue above EUR 750MM in the preceding year are required to prepare a CbC report with aggregate data on the global allocation of income, profit, taxes paid, & economic activity among tax jurisdictions in which they operate

### A. Model template for the Country-by-Country Report

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

Name of the MNE group: Fiscal year concerned: Currency used:										
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							

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	Dormant
	1.													
	2.													
	3.													

Table 3. Additional Information

Name of the MNE group: Fiscal year concerned:
<i>Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the Country-by-Country Report.</i>

# BEPS Action 13 CbC Reporting – NOT Public (Cont'd)

- BEPS Action 13 Report: Country-by-Country Reporting (2015)
  - This CbC report is shared with tax authorities for use in high-level transfer pricing & BEPS risk assessments. There has not yet been consensus among relevant jurisdictions with regards to making the CbC report public
  - Key facts of current implementation status

100+ Jurisdictions

Have introduced CbC reporting filing obligation

3300+

Bilateral relationships exist for the exchange of CbC reports

134 Jurisdictions

are covered in the fifth annual peer review process

# What Is Public CbC Reporting (EU)?

- EU takes the lead in pushing forward public CbC reporting
  - Initial proposal for public CbC reporting for EU-headquartered MNEs was put forward by the European Commission in April 2016, but it was deadlocked until 2021
  - Council Directive (EU) 2021/2101 for public CbC reporting in the EU was adopted on November 24, 2021 & entered into force on December 21, 2021. EU member states must transpose the Directive into domestic legislation by June 22, 2023, & the rules will apply for fiscal years starting on or after June 22, 2024. EU member states can choose to adopt the rules earlier

# What Is Public CbC Reporting (EU)? (Cont'd)

- The EU public CbC reporting rules require large MNEs with a total consolidated group revenue of EUR 750MM, regardless of jurisdiction for the ultimate parent company, to publicly report their CbC tax & financial information on companies' websites & in an EU member state business register
- EU Public CbC Report will require the following information of all members of the group to be disclosed
  - Identity of ultimate parent entity & subsidiaries included in the consolidated financials, nature of the MNE's activities, year covered, currency used, headcounts in each jurisdiction, turnover (including related-party turnover), profit or loss before income tax, income tax paid, accumulated earnings, & explanations on any discrepancies with income tax paid

# What Is Public CbC Reporting (EU)? (Cont'd)

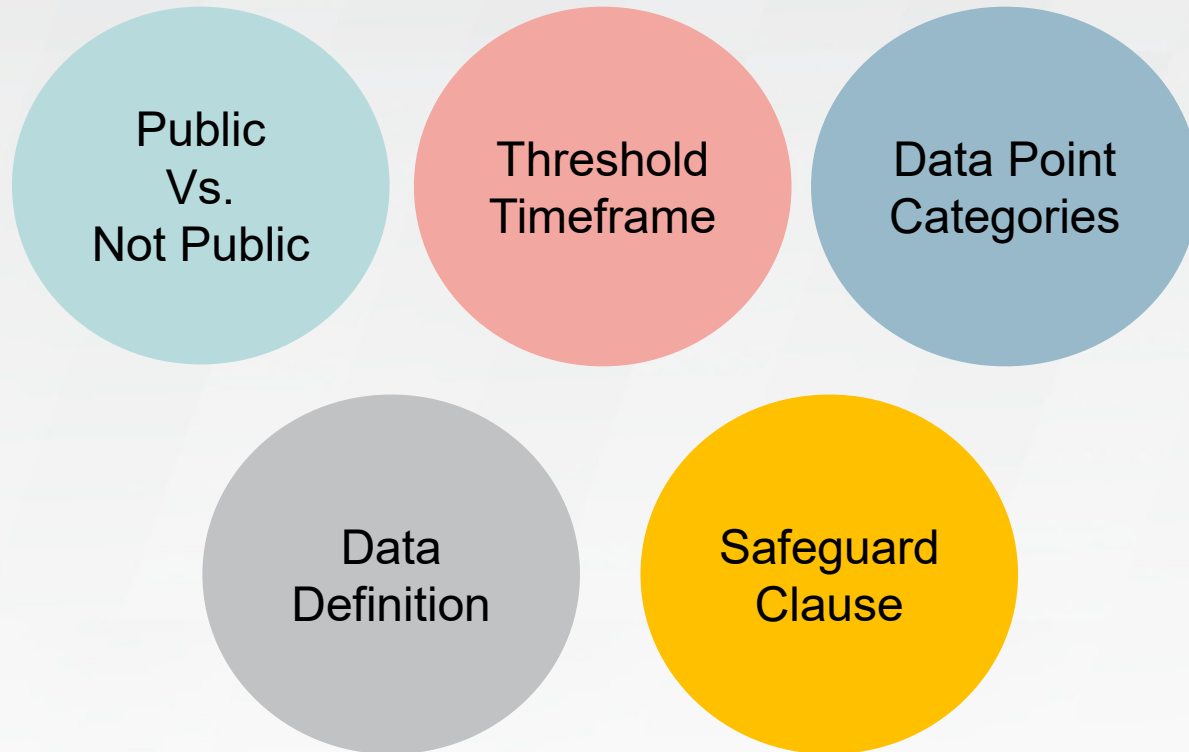
- The information must be broken down for each relevant EU member state & each “non-cooperative” jurisdiction. Information for all other jurisdictions may be reported on an aggregated level
- Reports are to be published in an EU member state business register, but also on the companies’ websites, where the CbC reports are to remain accessible for at least five years
- Once the rules are implemented into domestic laws, in-scope groups will have 12 months after the end of the balance sheet date of the relevant financial year to publish the report on income tax information

# What Is Public CbC Reporting (EU)? (Cont'd)

- EU Directive 2021/2101 states the below related to potential penalty settings
  - *“The obligations on Member States to provide for penalties and take all the measures necessary to ensure that those penalties are enforced pursuant to Directive 2013/34/EU apply to infringements of the national provisions as regards the disclosure of income tax information by certain undertakings and branches adopted pursuant to this Directive”*

# What Is Public CbC Reporting (EU)?

## *Differences from BEPS Action 13*



Parameter	Action 13 CbC Report	Public CbC Report
Names of entities	✓	✓
Business activities	✓	✓
Number of employees	✓	✓
Revenue aggregated total	✓	✓
Revenue from third party	✓	X
Revenue from related party	✓	X
Profit before tax	✓	✓
Tangible assets	✓	X
Corporate income tax paid	✓	✓
Corporate income tax accrued	✓	✓
Stated capital	✓	X
Accumulated earnings	✓	✓

Source: IBFD report: *EU Public Country-by-Country Reporting*, 22 April 2022



# Development of Public CbC Reporting

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# Current Development of Public CbC Reporting

## *Local Adoption*

Country	Stage/Status	Comment
Romania	<b>Implemented</b>	Disclosure rules (Sep 2022) to apply for the first reporting year starting on or after <b><u>January 1, 2023</u></b>
Slovakia	<b>Implemented</b>	Effective for accounting periods beginning on or after June 22, 2024
Spain	<b>Implemented</b>	Effective for accounting periods beginning on or after June 22, 2024
Poland	Announced	Legislation implementing “public” country-by-country reporting directive announced (November 2022)
Sweden	Published	Draft legislation (June 2022); public consultation ended (Sep 2022)
Netherlands	Published	Draft legislation (July 2022)
Germany	Published	Draft legislation (Sep 2022); public consultation closed (Oct 2022)
Hungary	Published	Draft legislation (Oct 2022)
Ireland	Drafted	Public consultation closed (Feb 2022); draft legislation not yet published
U.S.	Proposed	<u><i>Details on the next slide</i></u>
Australia	Proposed	<u><i>Details on the next slide</i></u>

# Current Development of Public CbC Reporting

## *Local Adoption (Cont'd)*

- United States
  - On June 16, 2021, the U.S. House of Representatives passed H.R. 1187, the “ESG Disclosure Simplification Act of 2021.” The bill requires public companies to disclose certain CbC financial information, e.g., total income tax paid on a cash basis
  - The bill needs to pass in the Senate, then be signed by the president to become law, which will grant the SEC the authority to amend securities laws to require more ESG information from public companies. However, certain Senators voiced concerns
  - U.S. SEC Chair Gary Gensler indicated support of FASB’s plan for greater tax transparency. The SEC is evaluating the need for increased tax & financial reporting by MNEs. However, there are still uncertainties
- Australia
  - Australia’s 2022-2023 federal budget proposes new public CbC reporting of certain tax information by MNEs beginning July 1, 2023

# Impact on Large MNEs – What to Prepare

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# Preparation for Public CbC Reporting

## *Key Questions to Consider*

Who is the audience?	<ul style="list-style-type: none"><li>• Tax authorities, investors, competitors, &amp; general public that likely do not have background in tax &amp; financial reporting</li></ul>
What data & information to disclose?	<ul style="list-style-type: none"><li>• Consider presenting data in a way that accurately shows the total tax contributions of the company, including non-CIT taxes</li><li>• Consider adding qualitative explanation &amp; clarification</li></ul>
Who should be involved in preparation stage?	<ul style="list-style-type: none"><li>• Internal ESG department</li><li>• External advisors</li></ul>
What procedures/tools to put in place?	<ul style="list-style-type: none"><li>• Data/information preparation process/tool</li><li>• Global compliance tracking process/tool</li></ul>
When to take actions?	<b>ASAP</b>



# Questions

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