To	Tax Policy and Statistics Division, Centre for Tax Policy and Administration	Date	March 6, 2020
From	KPMG International	Ref	Public Consultation Document - Review of Country-by-Country Reporting (BEPS Action 13)
Cc	Manal Corwin, KPMG LLP, United States Kimberly Tan Majure, KPMG LLP, United States Christopher Morgan, Head of Global Tax Policy, KPMGI		

Comments on the Public Consultation Document - Review of Country-by-Country Reporting (BEPS Action 13)

Professionals in the member firms of KPMG International[1] ("***KPMG***") welcome the opportunity to comment on the OECD's public consultation document entitled "*Public Consultation Document: Review of the Country-by-Country Reporting (BEPS Action 13)"* released on February 6, 2020 (the "***Consultation Document***").

The Consultation Document poses several questions regarding proposals to modify the BEPS Action 13 CbC reporting template and guidelines (together, "***CbC guidance***"), consistent with the mandate in the BEPS Action 13 Report to reassess the CbC report by the end of 2020.[2]

KPMG's comments on the Consultation Document are presented below.

1 Introduction and Overview

We appreciate tax authorities' need for further refinement of the CbC reporting template and implementing principles, and commend the Working Group[3]'s ongoing efforts to clarify and improve existing guidance. We also acknowledge the difficulty of effectively utilizing data from the CbC reports across different jurisdictions, industries, and taxpayers, and creating rules that will help tax authorities more efficiently focus their examination efforts.

The current CbC reporting framework including, in particular, the interim guidance issued by the Working Group, reflects a balance between the need for increased transparency and uniformity in reporting, and a sensitivity to the differences in existing tax, financial, and regulatory rules across jurisdictions and filers. Underlying this balance is an understanding that eliminating such differences may require filers and tax authorities to expend disproportionate resources – on compliance, administration, and enforcement – for the reasonably anticipated benefits of standardizing the data.

[1] KPMG is a global network of professional services firms providing Audit, Tax and Advisory services. We operate in 154 countries and territories and have 200,000 people working in member firms around the world. The independent member firms of the KPMG network are affiliated with KPMG International Cooperative, a Swiss entity. Each KPMG firm is a legally distinct and separate entity and describes itself as such.

[2] For purposes of this letter, all Topic references are as designated in the Consultation Document, Table of Contents.

[3] In June 2018, the Inclusive Framework directed the OECD Committee on Fiscal Affairs' (CFA) Working Party 6 (on the Taxation of Multinational Enterprises) and Working Party 10 (on Transparency and Exchange of Information) to work together to conduct this 2020 review.

Consistent with this understanding, we believe that potential changes to CbC reporting should be evaluated through a cost-benefit lens. Filers have undertaken substantial CbC compliance expenditures in the past several years, as MNE Groups have created new processes to gather and present the required data, and to keep apace of the evolving guidance in the relevant reporting jurisdictions. These costs were necessary to build effective and sustainable compliance procedures, and any changes to the existing rules will require changes to those procedures, likely resulting in additional significant costs to filers, and potentially to tax authorities as well. Therefore, we urge caution in making any change to the CbC requirements unless it results in a substantial benefit. That is not to say that governments should never make any changes; rather, our central message is that if a change is to be made, the anticipated benefit of the change should be high, because the added compliance burdens are likely to be high.

We believe that some of the proposed changes meet that high bar. More specifically, we believe that some of the proposals will increase certainty for filers and will be beneficial for that reason. In addition, we think that some of the proposals (with certain modifications) may help improve the usability of the CbC reports without imposing significant burdens on filers. Accordingly, we have organized our discussion of the proposed items using those two characteristics (i.e., certainty and usefulness), grouping them along the lines of their primary (although by no means only) effect of their inclusion in the CbC report.

a) Topics that affect certainty with respect to CbC filing obligations.

The Consultation Document proposes several items that, in our opinion, would affect certainty with respect to filers' CbC reporting obligations if adopted, particularly in terms of when a CbC filing obligation is triggered.

First, we agree that the consolidated group revenue threshold should be revised to take into account an MNE Group's revenue for more than one fiscal year (Topic 8). We believe this change would remove much of the uncertainty that potential filers face with a single-year test, and increase the stability of the filing population (in other words, MNE Groups will be less likely to fall into and out of reporting status from year to year). In addition, a longer testing period would allow first-time filers more time to gather and prepare their data, thereby increasing the consistency and viability of initial filings. A multi-year revenue threshold could easily and effectively be implemented either by testing MNE Group revenue for each of the two immediately preceding fiscal years (i.e., requiring the MNE Group to have revenue of at least €750 million in each such year before triggering a filing obligation), or by testing the MNE Group's average annual revenue for the three immediately preceding fiscal years.

Regardless of which approach is used, we recommend coordination with the adoption of a standard convention for determining MNE Group revenue for a taxable period other than 12 months (Topic 11). An approach based either on an annualization of consolidated group revenues (i.e., gross-up of revenue earned during the short period) or on a pro-ration of the €750 million revenue threshold to reflect the period of the MNE Group's existence would be fair and administrable. If the revenue threshold is based on the average revenue over a multi-year period, annualization of revenue may make more sense; if the revenue threshold looks to whether the threshold is met in each of a number of years, then a short period could be dealt with either through annualization of revenue or pro ration of the threshold.

In addition, the Consultation Document enquires whether extraordinary income (Topic 9) and/or gains from investment activity (Topic 10) should be included in consolidated group revenue. We believe it is appropriate, and simpler for both filers and tax authorities, to harmonize the definition of "revenue" for purposes of the reporting threshold with the definition of "unrelated party revenue" for purposes of Table 1 reporting. Further, we also believe that investment gains or losses should be treated symmetrically such that losses can also be included in determining the consolidated group revenue.

Some of the other changes proposed in the Consultation Document, by contrast, would increase uncertainty or perhaps cause taxpayers to flip into and out of reporting status. For example, periodic rebasing of the reporting threshold (Topic 7) would tend to increased uncertainty of MNE Groups with revenues hovering around the €750 million threshold. We note that the adverse effect of this item could be somewhat mitigated if the threshold were applied over a multi-year testing period (Topic 8), as opposed to a single-year testing period.

Topic 5 (separate CbC reports for groups under common control) raises similar concerns about increasing uncertainty as to a group's reporting status, in particular with respect to the treatment of investment entities. MNE Groups have spent significant time and resources addressing the treatment of investment entities under the current CbC rules, which are based on financial accounting consolidation standards that are well-known. Any departure from these standards is likely to create confusion, uncertainty, and significant compliance burdens (consider for example, consolidation of multiple MNE groups that would not otherwise be required to consolidate their operations under the applicable accounting standards). Any new standard should be crafted in a way to try to reduce those uncertainties and burdens. In addition, there would be complications and uncertainty as to who should be responsible for coordinating the information among two or more Groups under common control (for example in a situation where an individual resident in jurisdiction A had common control of two MNE groups headquartered in jurisdictions B and C, both managed by separate and autonomous executive committees with no lines of communication between the two groups).

The proposal in Topic 5, however, appears to abandon the financial accounting consolidation standards in favor of a vaguer standard that could have far-reaching consequences. Specifically, the proposal in Topic 5 discusses the possibility that the expanded reporting requirements would apply to investment entities that are not required to consolidate their holdings, if "individuals acting together" directly or indirectly control two or more groups.

In this regard, we note that the discussion on Topic 5 also states that it would not apply to widely-held collective investment vehicles. The Commentary on Article 1 of the OECD Model Tax Convention on Income and Capital defines collective investment vehicles as funds that are "widely-held, hold a diversified portfolio of securities, and are subject to investor-protection regulation in the country in which they are established."[4] The exception suggests that an investment vehicle other than a collective investment vehicle would be in the scope of the proposed expansion, if it owned more than 50% of the voting rights or equity of an underlying investment – in other words, it suggests that an investment vehicle could cause otherwise unrelated investors to be treated as "acting together" for purposes of the proposed rule.

[4] Commentary on Article 1 of the OECD Model Tax Convention on Income and Capital (2017 version) (the "Commentary"), ¶ 22.

The limits of such a rule are unclear. For example, if two pension funds formed an investment entity that owned more than 50% of the voting rights of the parent companies of two groups, would the two groups be combined under the proposed rule? The pension funds are ultimately beneficially owned by individuals, who under this construct could be viewed as "acting together" and possessing the requisite control. This would also be true for any investment vehicle that does not meet the Commentary's definition of "collective investment vehicle." We do not think that the proposed expansion is intended to go so far, but as drafted it could be so construed. Thus, if the proposed expansion in Topic 5 is adopted, we suggest that it be limited to apply only to an individual or related individuals who directly or indirectly control the relevant groups, whether the individual or related individuals hold through an investment entity or otherwise.

A focus on comparing the costs and benefits of particular changes also suggests to us that caution is warranted when consideration is given to expanding the scope of MNE Groups that are required to report, e.g., by reducing the reporting threshold (Topic 6). While we can understand that tax authorities may want to receive more information about all taxpayers, we note that, in our experience, implementing the required systems and also having to change the systems due to developments carries a significant cost for MNE Groups; the cost is proportionately more burdensome for smaller groups. We therefore suggest it would be better to focus CbC reporting changes on making sure that the CbC information that is reported is useful, before expanding the scope of reporting and so imposing the costs on smaller MNE Groups.

b) Topics intended to increase the effectiveness of the CbC report.

Several of the proposals in the Consultation Document appear intended to increase the usefulness of the CbC report as a pre-audit risk assessment tool. We believe that some of the proposals would increase consistency and certainty, and reduce confusion with respect to the CbC report without imposing significant additional burdens on taxpayers. In particular, we view the proposal in Topic 18 to add certain predetermined fields to Table 3, as a supplement to the free text response field, as potentially very useful for both filers and tax authorities. The Consultation Document provides several examples of possible fields that could be included in Table 3. We believe that adding predetermined fields could increase consistency across CbC reports, in that providing standardized language not only ensures that the required information is included in the report, but also reduces any misunderstandings due to differences in language or phrasing. Standardized fields may reduce possible confusion as to the content of a required statement and, paired with free text responses, is an easy mechanism for increasing the clarity and efficiency of the reports.

Similarly, we agree that modifications could be made to the CbC template that would increase consistency and reduce confusion with respect to the reporting for constituent entities not resident in any tax jurisdiction. Currently, information for all constituent entities that are not resident in any tax jurisdiction (i.e., Stateless entities) is aggregated in a single line on Table 1, regardless of the reasons as to why an entity might not be resident anywhere, and regardless of where those entities are formed or operate. Topic 15 proposes four different approaches to changing the reporting of such Stateless entities. Each approach focuses on categorization of the Stateless entities into one of three pre-defined categories, and would require additional reporting to various degrees. However, none of the suggested approaches directly address the taxation of the income earned through the Stateless entity. We believe that the tax treatment of the income is more valuable for tax authorities to understand than the nature of the entity through which the income was earned.

We believe it may be preferable to take an approach that is simpler than any of the Topic 15 proposals, but affords increased visibility with respect to Stateless entities and the treatment of their income at the owner level. Currently, while Stateless entities are clearly identified in Table 2 and their revenue and profits, etc., are duplicated and reported as part of the aggregate data in their owners' jurisdiction, neither the duplicated data itself nor the tax implications of the data to the owners are identified on the CbC report. We recommend that, where duplication of Stateless data is required, the filer's free text narrative include disclosures regarding the owners' jurisdictions of residence and the amount of revenue and profits currently included in those jurisdictions. Predetermined text fields (Topic 18), if adopted, could be used to standardize the Stateless disclosures. This approach would allow tax authorities to see where the owners of the Stateless entities reside, and may give some indication (through the effective tax rate) as to whether the income of the Stateless entities impacts the tax liability of the owners.

In addition, we believe that some of the "white noise" surrounding Stateless entities could be reduced by treating entities that are "fiscally transparent" as resident in the jurisdiction in which they are formed, if they are wholly owned by constituent entities that are tax residents in that same jurisdiction. We note that taxpayers in various jurisdictions may already apply the rules this way and do not perceive any threat of inappropriate base erosion in such case. Indeed, such simplification may assist tax authorities conduct more focused risk analysis.

We also believe that modifying the aggregation of data within a jurisdiction could increase the effectiveness of the CbC report. As noted in the discussion of Topic 13, aggregate reporting unnecessarily duplicates revenue - particularly with respect to transactions between constituent entities residents in the same tax jurisdiction - as well as stated capital. This, in turn, skews various risk assessment metrics, e.g., revenue per employee.

However, we do not think that consolidation by jurisdiction (as proposed in Topic 13) is necessary to address this issue, nor is it practical. In our experience, most MNE Groups are not required to (nor do they) prepare consolidated financial statements by jurisdiction, especially for MNE Groups with a number of separate entry points for investments into the jurisdiction. Requiring taxpayers to consolidate by jurisdiction thus would create a significant new compliance burden. The required data often would have to be pulled from multiple financial accounting or reporting systems, and significant adjustments often would need to be made to revenue (third party as well as related party) and intercompany balances.

Instead of requiring a full consolidation by jurisdiction, we recommend modifying the current approach that requires aggregation to include in-country eliminations. In other words, taxpayers would take the data that they already generate for CbC reporting purposes, but would eliminate related party revenue and stated capital from within the same jurisdiction. This would more effectively highlight intercompany payments between constituent entities resident in different tax jurisdictions.

Along the same lines, we do not believe that entity-by-entity reporting would improve the effectiveness of the CbC report. While entity-by-entity reporting would significantly increase the amount of data in the CbC report, it is not clear to us that the additional data would benefit tax authorities. Current CbC reporting provides tax authorities with an overall view of an MNE Group's global operations, and the significance of a particular jurisdiction to those operations, that tax authorities could not otherwise glean from individual tax returns on the one hand, or consolidated financial statements on the other. We believe jurisdiction-based CbC reporting to be a particularly useful complement to the Master File narrative, to demonstrate how an MNE Group's operations and objectives in specific jurisdictions translate into revenue, tax, and the location of certain factors of production in those jurisdictions. There are many reasons as to why an MNE Group might operate a single enterprise through multiple constituent entities in the same jurisdiction. Indeed, in our experience, MNE Groups often have numerous entities within single jurisdiction, as a result of both organic growth and acquisitions. Entity-level data may shift the focus of the CbC report to tax consequences of transactions arising wholly *within* a jurisdiction, and could obscure overall patterns of behavior *between* jurisdictions.

As a simplified example, consider a scenario in which an MNE Group ("Group A") has a company in Jurisdiction X that is engaged in manufacturing and sales as well as the support services for those functions. Group A also has three constituent entities in Jurisdiction Y, one of which manufactures products, one of which has sales activities, and the last of which provides administrative services to the first two. On a jurisdictional basis, the Jurisdiction X activities are comparable to Jurisdiction Y activities, and to the extent their data is reported on this basis, tax authorities are able to perform a side-by-side assessment of the two enterprises. Additional detail regarding how Jurisdiction Y revenues, profits, assets and employees are allocated among the three constituent entities does not facilitate the analysis of the level of substance in Country Y or whether the MNE Group is paying an appropriate rate of tax in Jurisdiction Y, and in fact may hinder this exercise. Thus, we believe reporting on a jurisdictional basis to be the best mechanism for informing the high-level risk assessment envisioned by the BEPS Action 13 Report.

Likewise, the proposed inclusion of additional information (Topic 14) or standardized industry codes (Topic 17) would significantly increase filers' compliance costs, and it is not clear to us that the proposals would help with tax authorities' risk assessment.

In our experience, with respect to Topic 14, information regarding specific payments between constituent entities is typically maintained locally, in the format required for local tax, regulatory, or other business reasons. Depending on where the MNE Group is filing tax returns, the MNE Group may not generally be required to collect and report such information centrally, if related party payments are made outside of the countries in which the returns are being filed. For even those companies with seemingly large resources, the cost of pulling this data together would be significant.

With respect to Topic 17, we believe that the current approach to providing main business activities on a jurisdictional level is of more use to tax authorities and more practical for taxpayers than providing standardized industry codes. As noted in the Consultation Document, there is currently no universally accepted set of standardized industry codes. Rather, such codes are generally applied and maintained at a local or regional level; whatever codes are developed for CbC reporting purposes would need to be interpreted and applied, sometimes to constituent entities engaged in multiple lines of business. Taxpayers may not have determined codes for every entity, and creating them solely for CbC purposes seems disproportionate when the CbC already requires information about the main business activities of each entity.

Current CbC guidance is still in need of refinement, both in terms of identifying and defining the universe of required data, and in terms of interpreting and using reported data for effective tax administration. We believe that new guidance could most usefully focus on achieving clarity and consistency with respect to current filings, without adding new elements to the mix.

KPMG Contacts	**Firm**	**E-mail**

Manal Corwin	KPMG in the US	mcorwin@kpmg.com
John DerOhanesian	KPMG in the US	jderohanesian@kpmg.com
Kimberly Tan Majure	KPMG in the US	kmajure@kpmg.com
Christopher Morgan	KPMG in the UK	christopher.morgan@kpmg.co.uk
Michael Plowgian	KPMG in the US	mplowgian@kpmg.com
Jane Rolfe	KPMG in Australia	janerolfe@kpmg.com.au