Country by Country Reporting

An overview and comparison of initiatives

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June 2021

Contents

Introduction

Background to this paper

- Trend of companies being scrutinized as to whether they are paying their 'fair share' of taxes continues to gain traction and has now moved to a global debate around transparency and how multi-national businesses are taxed. With the internationalization of businesses, rise of the digital economy and the challenges of the OECD Base Erosion and Profit Shifting (BEPS), companies are preparing for the new environment.
- The landscape is changing and providing greater transparency around tax, either to tax authorities around the world and/or to the public is something companies are now preparing for. Given the rapidly changing environment it can be difficult to keep pace with the various proposals and to assess the impact that these will have on your business and to plan how you will comply.
- This paper sets out a high level summary of the various initiatives (adopted and pending) to assist you in assessing how these will affect you. To discuss any of these in more detail please get in touch with the contacts in this report or your usual KPMG contact.

Introduction

Content

- There are now a number of frameworks, both legislative and voluntary, that have been implemented or are being considered for implementation. Initially these focused on the financial and extractives sectors, but other proposals and initiatives impact on all industries and sectors.
- The initiatives discussed in this paper cover:
  - Action 13 of the OECD's BEPS (Base Erosion and Profit Shifting) Action Plan regarding Country-by-Country reporting and transfer pricing documentation.
  - EU public Country-by-Country reporting (pending).
  - Capital Requirements Directive IV (CRD IV).
  - EU Accounting Directive: Chapter 10.
  - US Proposal on Public Country-by-Country Reporting and Dodd Frank Act: Section 1504.
  - Extractive Industries Transparency Initiative (EITI).
  - Global Reporting Initiative (GRI) Standard 207.
- This paper provides a brief introduction into the different reporting requirements, current status and some of the issues to be considered. The key requirements of the legislative frameworks are summarized into a table for comparison on page 39. The paper is based on our understanding of the key requirements as at June 2021 and should not be taken to be comprehensive. It will be updated periodically as and when there are any new developments.

Introduction

Challenges

- Country-by-country reporting was initially focused on a few specific sectors, but given the requirements from the OECD, the EU initiatives and public interest in multinationals' cross-border tax affairs, this is now a pressing issue for all qualifying multinationals.
- Companies need to consider the level of resources and costs involved in gathering the data, the ease of gathering the data and potential system changes and how technology can assist. Consideration should be given to whether a form of assurance over the process is appropriate given the potential uses of the data both by tax authorities and the public.
- Providing an accompanying narrative and articulating the tax position also assists in making the information as useful as possible to the reader.
- The tax transparency debate is constantly evolving and companies should be actively involved in shaping this debate, as well as keeping abreast of proposals and how this may impact them.
- With environmental, social and governance (ESG) rising on leadership agendas globally, tax practices and governance are becoming critical ESG measures, with tax transparency often being used as a key metric for demonstrating a responsible attitude towards tax. One thing that has become clear, however, is that not all businesses are at the same point in their tax transparency journey and not all have the same tax transparency destination.

CbC Reporting — BEPS Action 13

Introduction

On 19 July 2013 the OECD released an Action Plan on Base Erosion and Profit Shifting (BEPS). The Action Plan covered 15 specific Actions. Action 13 focuses on a company's global value chain and transfer pricing policy and documentation. It aims to introduce consistent documentation and access to information to ensure all relevant tax authorities have access to the same information about a group's value chain and the resulting tax consequences for the purposes of high level transfer pricing risk assessment.

The BEPS Action 13 report (Transfer Pricing Documentation and Country-by-Country Reporting), published on 5 October 2015, provides standards for a three-tiered (Master File, Local File and Country-by-Country Report) standardized approach to transfer pricing documentation. For the purpose of facilitating implementation, BEPS Action 13 includes a CbC Reporting Implementation Package, which consists of model legislation — that could be used by countries to require the ultimate parent entity of an MNE group to file the CbC Report in its jurisdiction of residence, and three model Competent Authority Agreements (CAA) that could be used to facilitate implementation of the exchange of CbC Reports, based on the Multilateral Convention on Administrative Assistance in Tax Matters (MCAA), bilateral tax conventions or Tax Information Exchange Agreements (TIEAs), respectively.

The CbC Reporting requirements has been implemented for fiscal years beginning on or after 1 January 2016, and annual CbC reporting is a BEPS "minimum standard" and shall be implemented by all Inclusive Framework countries.

According to the OECD, currently 90 jurisdictions have introduced a CbC reporting obligation, and over 2500 relationships are in place for the exchange of CbC reports between jurisdictions.

In February 2020, the OECD launched a public consultation process seeking input from stakeholders in conducting the 2020 review and revised guidance are expected in 2021.

Timeline

The key dates in relation to Action 13 are:

- October 2015 — Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 — 2015 Final Report
- September 2017 — Country-by-Country Reporting: Handbook on Effective Implementation
- September 2017 — Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment
- April 2017 — Guidance on the Implementation of CbC Reporting (updated as of December 2019)
- September 2017 — Guidance on the Appropriate Use of Information Contained in CbC Reports
- May 2018 — Country-by-Country Reporting — Compilation of Peer Review Reports Phase 1 (Phase 2 released in 2019 and Phase 3 in 2020)
- November 2019 — Common errors made by MNEs in preparing Country-by-Country reports
- May 2020 — 2020 Review of Country-by-Country Reporting Consultation (revised guidance expected in 2021)

CbC Reporting — BEPS Action 13

Who does it affect?

Multinational enterprises (MNEs) with consolidated group revenues in excess of 750 Euros (EUR) million in the previous accounting period (or near equivalent amount in domestic currency, as of January 2015).

MNEs are generally required to file a CbC report in the jurisdiction where the ultimate parent entity (UPE) is resident for tax purposes. If other jurisdictions in which the MNE group operates also require CbC reporting, they may receive a copy of the UPEs report from the tax administration of the UPE's residence jurisdiction, assuming there is an applicable exchange agreement in effect.

However, countries that have implemented a secondary filing requirement may require local entities to file locally a copy of the CbC report in the following circumstances: 1) the UPE is not obligated to file a CbC Report in its jurisdiction of tax residence; 2) the jurisdiction in which the UPE is resident for tax purposes has a current International Agreement (Treaty/TIEA) but does not have a Qualifying Competent Authority Agreement in effect with the jurisdiction in which it operates; or 3) the exchange mechanism is not effective.

Under certain conditions, if the UPE is not subject to CbC reporting requirements, it may avoid multiple filings by designating another MNE group member as a Surrogate Reporting Entity (SPE). In this case, the SPE would file a surrogate CbC report in its tax residence jurisdiction, and use that jurisdiction's exchange network to circulate the report to the other operating jurisdictions.

Timing and submission

The filing requirements apply for accounting periods beginning on or after 1 January 2016.

The report should be filed within 12 months of the end of the relevant reporting period.

It is intended that the report will be exchanged by tax authorities electronically, using a common XML (Extensible Markup Language) schema, which was released in 2017 and updated in 2020.

The UPE's tax authority will automatically share the report with countries entitled to receive the template providing there is a competent authority agreement for the exchange of CbC reports in place.

CbC Reporting — BEPS Action 13

Reporting requirements

Table 1 — CbC template to include on a tax jurisdiction basis:

- Revenues (split between related party and unrelated party).
- Profit (loss) before income tax.
- Income tax paid.
- Income tax accrued — Current year.
- Stated capital.
- Accumulated earnings.
- Number of employees.
- Tangible assets other than cash and cash equivalents.

Table 2 — should list for each tax jurisdiction (i.e. country):

- Name of constituent entities resident in each tax jurisdiction.
- Tax jurisdiction of incorporation if different from tax jurisdiction of tax residence.
- Business activities for each constituent entity from a pre-defined list of options.

Table 3 — "Disclosure" should include any further brief information or explanation considered necessary by the reporting entity or that would facilitate the understanding of the compulsory information provided in the CbC Report.

CbC Reporting – BEPS Action 13

Some key considerations

Sources of data

Recognizing that groups have different financial systems, accounting policies and approaches to tax management and reporting, the OECD have allowed flexibility in the source of data. Although a consistent approach should be followed year on year it appears that changes can be made if the reasons and implications for this are explained. Groups will need to determine the best approach for them and consider the implications of using group versus local GAAP.

Entity versus country level reporting

The template requires data to be disclosed on an aggregated country basis, rather than an entity level, which was originally proposed. Groups may nevertheless need to gather data entity by entity and then aggregate it to produce the country level data where they do not currently consolidate all entities and all the data points on a country basis.

Scope

Clarity has been provided that 'any separate business' is in scope of the rules including trusts and partnerships.

Entities that are included within the consolidated group for financial reporting purposes should be included in the template. This may simplify the process of determining how to treat joint ventures and minority interests (addressed in the guidance).

CbC Reporting – BEPS Action 13

Some key considerations

Data Definitions

The OECD have provided guidance on what should be included for each piece of data although this is deliberately high level. There is an expectation of consistency in application across the data points, across countries and over time. It is worth investing time up front to determine how to interpret the guidance for your group, agree on the assumptions you are going to make and documenting these to ensure consistent application and retain support for the final filing. The source of data should be disclosed in Table 3.

Independent contractors

Independent contractors may be included where they are 'participating in ordinary operating activities'. Groups will need to consider what this means for their business and the most appropriate reporting.

Reconciliation

There is no formal requirement for reconciliation to group financial statements or local filings. However groups should consider whether it is appropriate to do this for internal control purposes, and to have the relevant facts should local administrations raise queries.

Filing mechanism

The CbC report should be filed with the tax authority of the UPE's country, which will then share this automatically with countries where the MNE has a taxable presence, provided that a Competent Authority Agreement is in place and certain conditions are met regarding confidentiality, consistency and appropriate use.

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CbC Reporting — BEPS Action 13

Some key considerations

Transfer Pricing Documentation

The OECD has recommended a ‘big picture’ approach to documentation. It has outlined a three-tiered structure: in addition to the CbC Report, a ‘Master File’ (MF) contains high-level information regarding the MNE’s global business operations and transfer pricing policies (it should be available to all relevant tax administrations) and a ‘Local File’ (LF) specific to each country that should identify material related party transactions, the amounts involved in those transactions, and the company’s analysis of the transfer pricing determinations made with regard to those transactions.

The MF focuses on value drivers of business profit; companies will need to elaborate on the group’s five largest products and/or service offerings.

Groups will need to consider the format and approach for the MF, and how they leverage existing documentation to produce it. As the file will be shared with multiple tax authorities, it is essential that it is succinct, clear and consistent with existing public information about the company.

The intention is that both the MF and LF should be filed directly with the tax administrations in each relevant jurisdiction.

Many countries are now in the process of enacting legislation to bring this into effect. Some require the LF and/or MF to be filed with the corporate income tax return, some require filing of the LF and/or MF within the same deadlines as those applicable for the corporate income tax return, while others provide time for companies to prepare once requested by the tax authority.

Notably, only the CbC Report is a BEPS minimum standard (i.e. all BEPS Inclusive Framework members are expected to implement the requirement). It therefore remains up to the individual countries whether or not to implement MF and LF requirements.

EU Public Country-by-Country Reporting

Introduction

On 12 April 2016, the European Commission (EC) published its proposal for public CbC, under an amendment to the Accounting Directive 2013/34/EU. The initiative was in deadlock until the beginning of 2021, due to disagreements on its legal basis and its implications for the applicable legislative procedure (requiring either unanimous agreement by EU Member States or qualified majority voting — QMV). A breakthrough was achieved in February 2021 based on a revised proposal put forward by the Portuguese Presidency of the Council of the EU.

The proposal sets out a requirement for details of the business activities, number of employees, turnover (including related party turnover), profit, accumulated earnings, and income tax accrued and income tax paid to be made public, via disclosure on the company's website, as well as being filed with a business register within the EU.

According to the agreed-upon compromised text (please refer to the next slide for more information on the status of the proposal), this will be on a country by country basis for data within EU Member States and jurisdictions deemed as non-cooperative by the EU, as well as those that have been on the so-called EU "Grey List" list for two consecutive year. Data for all other territories will be aggregated into a single line of the report.

Under the so-called "comply or explain clause", companies covered by the rules could chose not to report commercially sensitive information. The omission must be disclosed and explained in the report, and companies would be requested to make it public in a future report within five years (reduction from the original six-year time frame proposed). Information related to countries included on the EU list of non-cooperative jurisdictions and on the EU "Grey List" should never be omitted.

EU Public Country-by-Country Reporting

Status and Timing

Following an exchange of views among Member States' internal market and industry ministers during an informal public videoconference of the Competitiveness Council configuration (COMPET) on 25 February 2021 the Council Presidency obtained a mandate (adopted on 3 March 2021) to begin negotiations on the proposal with the European Parliament.

The European Parliament's negotiating mandate was approved on March 2021 in anticipation of the start of interinstitutional negotiations (so-called "trilogue" between the Council, the European Parliament and the European Commission).

The Council and the European Parliament announced on 1 June, 2021 a provisional political agreement. On June 9, 2021 the EU Member State representatives in the Permanent Representatives Committee approved the compromise text and on 14 June, the text was also endorsed by the European Parliament's joint Committees on Economic and Monetary Affairs (ECON) and Legal Affairs (JURI).

In terms of next steps, the Council would adopt its position at first reading, following the standard legal linguistic checks. The European Parliament is expected to approve the Council's position after the summer recess.

EU Public Country-by-Country Reporting

Status and Timing (cont.)

The draft directive does not include a concrete start date but does provide some provisional timelines. It is proposed that Member States would transpose its provisions into their national legislation within 18 months from the date the directive enters into force (on the twentieth day following that of its publication in the Official Journal of the EU). It is proposed that the new rules would apply, at the latest, from the commencement date of the first financial year beginning on or after one year from the transposition date. The report should be published within 12 months after the balance sheet date.

Assuming that the Directive is adopted in September 2021 and enters into force in October 2021, Member States may have until April 2023 to transpose the rules into domestic legislation. The requirement would apply, at the latest, from the first financial year beginning on or after April 2024 (i.e. January 2025 for calendar year taxpayers). However, this timeline may be subject to change and Member States may choose earlier transposition and reporting deadlines.

EU Public Country-by-Country Reporting

Key challenges

Differing country implementation

As with OECD CbC requirements, countries may interpret legislation in different ways, and introduce it to differing timelines so groups need to consider how they achieve a consistent disclosure for each country and, once the proposal is adopted, monitor developments in each EU jurisdiction. Other countries in Europe (e.g. Norway, the UK) have also expressed an interest in introducing similar requirements, so developments outside of the EU will may also be relevant.

Material discrepancies: explanations for public understanding

The public report will require groups to explain 'material discrepancies' at a group level between the taxes accrued and the taxes paid. This goes further than the OECD BEPS recommendation, requiring multinational groups to reconcile and contextualize their data, and consideration will need to be given to how to explain this for the public audience.

Alignment with OECD CbC requirements

The public CbC reporting requirements are similar to the OECD proposals, but clarification is required to confirm whether the data definitions are the same (e.g. net turnover versus revenue for Action 13).

EU Public Country-by-Country Reporting

Who does it affect?

The Directive applies to EU headquartered companies with a consolidated net turnover exceeding EUR750 million for each of the last two consecutive financial years.

For non-EU headquartered companies, the legislation is relevant if they exceed the threshold above and their EU presence includes either medium-sized* or large** subsidiaries (as defined in Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings), or branches that meet the criteria in terms of net turnover.

Banks established in the EU are already within the scope of CRD IV and can continue to follow CRD IV (instead of these proposals) provided their disclosure covers all of the entities in their group. Non-EU parented banks operating in the EU which are not within the scope of the CRD IV requirements, will now have to publish a country-by-country report if their revenues exceed the abovementioned threshold. The Directive does not provide for an exemption for entities that are subject to the reporting requirements under Chapter 10.

** Medium: more than above, but below EUR 20 000 000, net turnover: EUR 40 000 000; average number of employees during the financial year: 250*

*** Large: more than above EUR 20 000 000, net turnover: EUR 40 000 000; average number of employees during the financial year: 250*

EU Public Country-by-Country Reporting

Disclosure requirements

For EU-parented groups, the EU parent would publish the data on its website and also file directly with the national central register, commercial register or companies register in the relevant Member State.

The non-EU ultimate parents have the option to publish the required information on their website and assign one of its EU subsidiaries/branches to file the report with the trade registry in its EU Member State of residence. Alternatively, if the report is not published on the non-EU parent's website, the publishing and filing obligation would shift to each EU subsidiary or branch, to the extent that the requested information is available to the EU entity. If the requested information is not available the EU-based entity should explain in the report the reasons of this omission.

There is a mandatory requirement that auditors state whether an undertaking is required to report and, if so, whether the data was disclosed in compliance with the Directive's publication and accessibility rules.

The data requirements listed below will be reported on an aggregated basis by each EU Member State, non-cooperative and grey-listed jurisdictions. Data for all other territories will be aggregated into a single line of the report.

EU Public Country-by-Country Reporting

What to report

- Net turnover (including related party turnover).
- Profit/(loss) before income tax.
- Income tax accrued — Current year.
- Income tax paid.
- Accumulated earnings.
- Number of full time equivalent employees.
- Nature of business activities.

The European Parliament's initial position was to require additional data points, such as stated capital and fixed assets, but these items were not included in the final compromise text.

The European Commission will develop a common template and electronic reporting formats machine-readable.

Capital Requirements Directive IV

Introduction

The Capital Requirements Directive IV (CRD IV) brings in transparency rules for EU institutions. CRD IV has introduced a requirement for institutions to disclose a number of data points, on a country by country basis.

Timing

The first year report relating to the most recent accounting period ending prior to 01 July 2014 required public reporting of name, nature of activities, geographical location, turnover and number of employees and in scope entities.

After the first year reporting period, institutions must disclose the following additional items: profit or loss before tax, tax on profit or loss and public subsidies received.

The ongoing reporting deadline is 31 December each year (starting 31 December 2015) and disclosures should relate to the most recently ended accounting period prior to the reporting deadline.

Key challenges

Differing country implementation

Some countries have interpreted legislation in different ways, for example regarding filing requirement for data where parent is elsewhere, so groups need to consider how they achieve a consistent disclosure for each country.

Recognizing wider contribution

The disclosure requirements for tax are limited to corporate income tax only, which is only one part of a company's total tax contribution. The legislation allows for disclosure of more information than required, and so groups should consider their overall strategy and whether they want to pro-actively demonstrate their wider contribution and/or include narrative related to the information disclosed.

Alignment with OECD CbC requirements

The CRD IV reporting requirements are similar to the OECD requirement, but only apply to regulated entities and have less data points, so institutions need to ensure data is consistent in each report, and that they create an efficient single compliance process to manage both obligations.

Capital Requirements Directive IV

Who does it affect?

CRD IV applies country by country reporting to ‘institutions’. Institutions are defined as credit institutions and investment firms. Credit institutions are defined as 'a business whose undertaking is to receive deposits or other repayable funds from the public and to grant credits for its own account'. This includes all banks. Investment firms are ‘any person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis’. Broadly, this excludes firms which are not permitted to hold client money.

Disclosure requirements

CRD IV does not provide a template for disclosures and does not allocate responsibility for providing such a template to any particular organization. Institutions have determined their own approach to disclosure, based on common practice reporting.

Reporting requirements

What needs to be reported

CRD IV requires credit institutions and investment firms to report the following information by member state and third countries in which it has an establishment, on a consolidated basis:

a. Nature of activities and geographical location.

b. Turnover.

c. Number of employees (on a full time equivalent basis).

d. Profit or loss before tax.

e. Tax on profit or loss.

f. Public subsidies received.

Capital Requirements Directive IV

Reporting requirements (cont.)

When is reporting required

- Items a to c had to be publically reported by all institutions on 1 July 2014.
- In addition items d to f needed to be provided to the European Commission confidentially by Global Systematically Important Institutions (GSIIs) by 1 July 2014.
- By 31 December 2015, annual reporting of items a to f was required by all institutions.
- The information should be published (if possible) as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution and must be audited.

EU Accounting Directive: Chapter 10

Introduction

In July 2013 a Directive on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings was approved by the European Parliament. This piece of legislation follows on from the Dodd Frank Act Section 1504 legislation in the US, and requires large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests, to prepare and make public a report on payments made to governments on an annual basis.

Status

Member states issued laws to enforce its application and reporting had to begin for financial years commencing on or after 1 January 2016 at the latest.

Under EU rules, listed and large non-listed companies that are active in the oil, gas, mining or logging sectors have specific reporting obligations.

They must report all payments to governments broken down by country. They must also report by project if these payments have been attributed to a specific project.

Timing

Companies in scope are required to publish the report no later than 11 months in after the end of their financial year by filing electronically with their local trade register.

EU Accounting Directive: Chapter 10

Who does it affect?

Large undertakings and public-interest entities in the EU, with an activity involving exploration, prospection, development and extraction of minerals or oil and gas, or the logging of primary forests.

In addition, the rules will apply to many foreign-resident groups that are listed on an EU stock exchange.

The definition of large is determined by meeting two of three criteria in relation to balance sheet total, turnover or average number of employees.

Public interest entity refers to entities with transferable shares listed on a regulated market in the EU, certain credit institutions and certain insurance institutions.

What does it require?

The disclosure of all payments to governments in individual and consolidated reports.

The reports are part of a company's annual financial reporting obligations and shall be published as laid down by the laws of each Member State.

Where the parent of a subsidiary is located in a Member State, and that subsidiaries payment is included in a consolidated report by the parent, the subsidiary is relieved from its reporting obligations.

EU Accounting Directive: Chapter 10

Disclosure requirements

- All single or series of payments over EUR100,000 within a financial year.
- The total payments made to each government.
- For each type of payment, the total amount of payments made per project.
- Payments in kind need to be reported in value or in volume.
- This will be on a consolidated level where the parent has an obligation to prepare consolidated financial statements.

Reporting requirements

Payments (amount paid whether in money or in kind) to be disclosed

- Production entitlements.
- Taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes.
- Royalties.
- Dividends.
- Signature, discovery and production bonuses.
- License fees, rental fees, entry fees and other considerations for licenses and/or concessions.
- Payments for infrastructure improvements.

U.S. Public CbC Reporting Proposal: Disclosure of Tax Havens and Offshoring Act

Two separate proposals have been introduced over the last several years:

— *Disclosure of Tax Havens and Offshoring Act*

— *Stop Tax Haven Abuse Act*

Closely aligned with BEPS Action 13

Information on a country-by-country basis presented in an *aggregated or consolidated* form

Key public information: revenue (with both related and unrelated parties), PBIT, tax paid/accrued, stated capital, accumulated earnings, full time employees and tangible assets

SEC registrants would be required to publicly disclose online their CbyC Reports

State of play

Bicameral legislation reintroduced on May 11, 2021 and passed by the House of Representatives on June 16, 2021

Next steps

— Bill must be considered and passed by the Senate and signed by the President to be adopted.

— If introduced, effective date would be one year from the date on which the SEC adopts a final rule implementing the CbyC provision.

Dodd Frank Act: Section 1504

Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) was signed into law by President Obama on 21 July 2010 and primarily focuses on financial regulatory reform.

Section 1504 of the Act concerns the reporting of financial payments to governments and government agencies made for the purpose of developing oil, gas and mineral reserves. The intent of Section 1504 is to help combat global corruption and empower citizens of resource-rich countries to hold their governments accountable for the wealth generated by those resources, by making resource extraction payments more transparent.

Section 1504 requires extractive companies listed on U.S. stock exchanges to disclose, in an annual report, payments made to governments for oil, gas and mining.

Dodd Frank Act: Section 1504

Status

The rules were first adopted by the SEC in August 2012, but were subsequently challenged in court and then vacated by the U.S. District Court for the District of Columbia in July 2013 on two grounds. First, the SEC misread the statute to require the public filing of the payments disclosure to be made by issuers. Second, the SEC's failure to include an exemption in the 2012 Rules for countries that prohibit payment disclosure was "arbitrary and capricious".

In September 2014, Oxfam America filed a suit to compel the SEC to adopt new rules. Discussions have continued between the SEC and industry representatives, and revised regulations were published by the SEC on 11 December 2015. The SEC adopted the proposed regulations as final in June 2016 and the final rule and form amendment were effective 26 September 2016. However, the revised rules were disapproved by a joint resolution of Congress pursuant to the Congressional Review Act (CRA) in 2017.

On 16 December 2020 the SEC adopted a third set of rules implementing Section 1504. The rules are intended both (1) to achieve the statutory objective of increasing the transparency of payments to governments for the purpose of the commercial development of their oil, natural gas, and minerals and (2) to comply with the CRA. The adopted rules will require a domestic or foreign reporting issuer to disclose payments made by the issuer or a subsidiary or entity controlled by the issuer to the U.S. federal government or a foreign government if the issuer engages in the commercial development of oil, natural gas, or minerals.

The final and amended rules from 2020 are effective 16 March 2021, and require compliance after two-year transition period.

Dodd Frank Act: Section 1504

Highlights

The final rules will, among other things:

- require public disclosure of company-specific, project-level payment information
- define the term “project” to require disclosure at the national and major subnational political jurisdiction, as opposed to the contract, level, recognizing that more granular contract-level disclosure could be used to satisfy the rule
- add two new conditional exemptions for situations in which a foreign law or a pre-existing contract prohibits the required disclosure
- add a conditional exemption for smaller reporting companies and emerging growth companies (but limit exemption to companies not subject to an alternative reporting regime, which has been deemed by the Commission to require disclosure that satisfies the transparency objectives of Section 13(q))
- define “control” to exclude entities or operations that an issuer only proportionately consolidates
- limit the liability for the required disclosure by deeming the payment information to be furnished to, but not filed with, the Commission
- add relief for issuers that have recently completed their U.S. initial public offerings
- extend the deadline for furnishing the payment disclosures.

Dodd Frank Act: Section 1504

Who does it affect?

Any company that is engaged in the commercial development of oil, natural gas, or minerals, and is required to file annual reports with the Securities and Exchange Commission (SEC) i.e. 10-K, 20-F or 40-F.

This includes a subsidiary of that company, or an entity under the control of the company.

What does it require?

Affected companies are required to submit annually their global payments to governments covering:

- The type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas or minerals, as well as the currency used.
- The type and total amount of such payments made to each government.

When?

Annual deadline requires an issuer to submit Form SD no later than 270 days following the end of its most recently completed fiscal year.

Dodd Frank Act: Section 1504

Disclosure requirements

An annual report must be filed on Form SD with the SEC, in XBRL format using specified electronic tagging as defined by the SEC.

— De-minimis reporting requirement of 100,000 US dollars (USD) for one payment or a series of payments.

— The total payments to each government.

— The total amount of payments made per project and business segment.

— The payment disclosure must be made on a cash basis instead of an accrual basis.

— There is no audit requirement for the payment information.

Reporting requirements

Payments to be disclosed

— Taxes levied on corporate profits, corporate income, and production, but will not be required to disclose payments for taxes levied on consumption, such as VAT, personal income taxes, or sales taxes.

— Royalties (including unit-based, value-based, and profit-based), fees (such as; license, rental, and entry) and bonuses (including signature, discovery, and production bonuses).

— Dividends.

— Payments for infrastructure improvements.

— Community and social responsibility payments.

— Payments in kind must be reported at cost, or if not possible, at fair market value (e.g. production entitlement payments and infrastructure payments).

Extractive Industries Transparency Initiative (EITI)

Introduction

The Extractive Industries Transparency Initiative (EITI) is a voluntary initiative launched in 2002, promoting public awareness of how countries manage their oil, gas and mineral resources and is widely viewed as the driver for global transparency for improving governance of natural resources in the extractives industry.

It is an international standard with a flexible methodology that is voluntarily entered into by governments in order to reconcile payments between the parties in developing nations. It is developed and overseen by a coalition of governments, companies, civil society, investors and international organizations.

As of October 2020, 55 countries implemented the EITI standard. Approximately 69 of the world's largest oil, gas and mining companies, 9 civil societies and 15 countries support the EITI.

Who does it affect?

Governments and extractives industry companies involved in exploration and production of oil, natural gas or minerals.

EITI is signed up voluntarily by countries, but once they sign up it requires that all companies and all government agencies making or receiving material payments participate.

What does it require?

The framework provides guidance on the disclosure requirements, but it is for the implementing country to define the details.

Companies must report to the government running the EITI country program using the relevant template.

Country governments produce the report.

Reports are analyzed and reconciled by a third party, and then published.

Extractive Industries Transparency Initiative (EITI)

Reporting requirements

Disclosure requirements

- Companies disclose all material payments to government.
- Governments disclose extractive industry revenues.
- Materiality levels are set by the country multi-stakeholder group.
- Contextual information on the industry and country must be provided in the report.
- EITI compliant countries must make the reports publically available.

Payments to be disclosed

- The host government’s production entitlement (such as profit oil).
- National state-owned company production entitlement.
- Profits taxes.
- Royalties.
- Dividends.
- Bonuses, such as signature, discovery and production bonuses.
- License fees, rental fees, entry fees and other considerations for licenses and/or concessions.
- Any other significant payments and material benefit to government.

The EITI standard has been updated in 2019 and here is an overview of the key changes.

Global Reporting Initiative — GRI

Introduction

Global Reporting Initiative (GRI) is an independent, international organization that provides businesses and other organizations with the global common language to communicate their impacts and take responsibility for those impacts.

According to the GRI, a topic Standard on Tax was developed in recognition of the vital role that tax contributions have on sustainable development, and in response to widespread stakeholder demands for tax transparency. Developed by an independent, multi-stakeholder expert group, GRI 207 was launched in December 2019 and is available for download in nine languages.

The GRI Tax Standard (GRI 207), which came into effect for reporting from 2021, is the first and only globally applicable public reporting standard for tax transparency. It sets expectations for disclosure of tax payments on a CbC basis, alongside tax strategy and governance.

The disclosures in the GRI Standard are designed to help an organization understand and communicate its management approach in relation to tax, and to report its revenue, tax, and business activities on a country-by-country basis.

Global Reporting Initiative — GRI

Status

The GRI Tax Standard is effective for reports or other materials published on or after 1 January 2021.

According to the GRI news center, some multinational companies are already voluntarily implementing tax disclosure at the country level, and the five early adopters have already all begun using GRI 207 for their tax reporting.

Who does it affect?

The GRI Tax Standard can be used by an organization of any size, type, sector or geographic location that wants to report on its impacts related to this topic.

Disclosure requirements

GRI requires disclosures on all material topics. These topics are based on their impact on a variety of internal and external stakeholders, financially and otherwise. From a sustainability perspective, tax is always expected to be material regardless of the tax footprint of a group, as taxes are considered to be important to stakeholders.

Global Reporting Initiative — GRI

This Standard includes disclosures on the management approach and topic-specific disclosures. These are set out in the Standard as follows:

— **Management approach disclosures** — narrative explanation of how an organization manages a material topic, the associated impacts, and stakeholders' reasonable expectations and interests.

  — Disclosure 207–1 Approach to tax — description of the approach to tax, including:

    — whether the organization has a tax strategy and, if so, a link to this strategy if publicly available

    — the governance body or executive-level position within the organization that formally reviews and approves the tax strategy, and the frequency of this review

    — the approach to regulatory compliance

    — how the approach to tax is linked to the business and sustainable development strategies of the organization.

Global Reporting Initiative — GRI

- Disclosure 207–2 Tax governance, control, and risk management — A description of the tax governance and control framework, including:
  - the governance body or executive-level position within the organization accountable for compliance with the tax strategy
  - how the approach to tax is embedded within the organization
  - the approach to tax risks, including how risks are identified, managed, and monitored
  - how compliance with the tax governance and control framework is evaluated.
    - A description of the mechanisms for reporting concerns about unethical or unlawful behavior and the organization's integrity in relation to tax.
    - A description of the assurance process for disclosures on tax and, if applicable, a reference to the assurance report, statement, or opinion.

Global Reporting Initiative — GRI

— Disclosure 207–3 Stakeholder engagement and management of concerns related to tax — A description of the approach to stakeholder engagement and management of stakeholder concerns related to tax, including:

  — the approach to engagement with tax authorities

  — the approach to public policy advocacy on tax

  — the processes for collecting and considering the views and concerns of stakeholders, including external stakeholders.

— **Topic-specific disclosures**

  — Disclosure 207–4 Country-by-country reporting — The reporting organization shall report the following information:

    — All tax jurisdictions where the entities included in the organization's audited consolidated financial statements, or in the financial information filed on public record, are resident for tax purposes.

Global Reporting Initiative — GRI

- For each tax jurisdiction reported in Disclosure 207–4-a:
  - names of the resident entities
  - primary activities of the organization
  - number of employees, and the basis of calculation of this number
  - revenues from third-party sales
  - revenues from intra-group transactions with other tax jurisdictions
  - profit/loss before tax
  - tangible assets other than cash and cash equivalents
  - corporate income tax paid on a cash basis
  - corporate income tax accrued on profit/loss
  - reasons for the difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax.
- The time period covered by the information reported in Disclosure 207–4

Comparison of data requirements

		Action 13 BEPS Country by Country reporting	Public Country by Country Reporting (EU Proposal)	Capital Requirements Directive IV	The EU Accounting Directive: Chapter 10	The Dodd Frank Act: Section 1504
Basic information	Entity name	✓		✓		
	Activities	✓	✓	✓		
	Geographical location/Tax jurisdiction	✓		✓	✓	✓
	Project name				✓	✓
	Receiving government				✓	✓
Financial data	Revenue	✓	✓	✓		
	Profit or loss before tax	✓	✓	✓		
	Tangible assets other than cash or cash equivalents	✓				
	Stated capital	✓				
	Accumulated earnings	✓	✓			
Tax data	Income taxes paid	✓	✓	✓	✓	✓
	Income tax charge	✓	✓			
Other data	Public subsidies received			✓		
	Dividends				✓	✓
	Royalties				✓	✓
	License fees, rental fees, entry fees				✓	✓
	Signature, discovery and production bonuses				✓	✓
	Production entitlements				✓	✓
	Payments for infrastructure improvements				✓	✓
People data	Number of employees	✓	✓	✓		

Comparison of legislative requirements

	OECD BEPS Action 13 CbC Report	Public Country by Country Reporting (EU Proposal)	Capital Requirements Directive IV	The EU Accounting Directive: Chapter 10	The Dodd Frank Act: Section 1504
Who is affected	Multinational Enterprises (MNEs) with a consolidated group revenue in excess of EUR750 million.	Multinational Enterprises (MNEs) with a consolidated group revenue in excess of EUR750 million which are either EU-parented or have EU subsidiaries or branches.	CRD IV applies country by country reporting to 'institutions' in the EU. Institutions are defined as credit institutions and investment firms.	Large undertakings and public interest entities incorporated in the EU, active in exploration, prospection, development and extraction of minerals or oil and gas, or logging of primary forests. In addition, it will apply to many foreign-resident groups that are listed on an EU stock exchange under the FCA's Disclosure and Transparency Rules.	SEC registered companies engaged in the commercial development of oil, natural gas, or minerals.
When does it come into effect	The final Action 13 Report regulations was published on 5 October 2015. The first period in scope is accounting periods beginning on or after 1 January 2016.	EU proposal awaiting final adoption by EU Parliament and EU Council (expected by June 2021), before being transposed into local Legislation. Exact timing and periods affected unclear but expected from the commencement date of the first financial year beginning on or after one year from the transposition date.	Names and activities, turnover and number of employees were initially reported on 1 July 2014 based on most recently available financial statement. Subsequent full reporting is due by 31 December each year starting from 31 December 2015 relating to the most recently ended accounting period.	Reporting begins for financial years commencing on or after 1 January 2016 at the latest.	The final and amended rules from 2020 are effective 16 March 2021 (and require compliance after two-year transition period). Annual deadline requires an issuer to submit Form SD no later than 270 days following the end of its most recently completed fiscal year.
Threshold	Multinationals with consolidated group revenues of more than EUR750 million (or local equivalent).	Multinationals with consolidated group revenues of more than EUR750 million (or local equivalent).	No threshold.	Payments (singular or series) exceeding EUR100,000.	Payments (singular or series) exceeding USD100,000.
Data aggregation	— By country	— By country (EU Member States and Tax Havens on list yet to be drafted). — Aggregated on single line for all other territories.	— By country — By institution	— By country — By project — By government	— By country — By project — By government

Comparison of legislative requirements

	OECD BEPS Action 13 CbC Report	Public Country by Country Reporting (EU Proposal)	Capital Requirements Directive IV	The EU Accounting Directive: Chapter 10	The Dodd Frank Act: Section 1504
Format of report and audit requirement	Set template format separate from tax return and accounts. Electronic filing likely using XML. No audit requirement based on OECD recommendations.	Disclosure on company website(s) and country's trade register. No prescribed format. Auditor to confirm that required data has been published, and published in the correct places.	In practice, this has been on institutions websites, with financial statements stating how the requirement has been met. Audit requirement.	Part of a company's annual financial reporting obligations and shall be published as laid down by the laws of each Member State. Audit requirements will be dependent on the Member State laws.	Form SD — Electronic filing using XBRL. No audit requirement.
What needs to be reported	— Constituent entities resident in tax jurisdiction — Tax jurisdiction of incorporation if different from tax jurisdiction of residence — Activities by entity — Revenues (split between related party and unrelated party) — Earnings before income tax — Income tax paid (including WHT) — Current income tax charge — Stated capital — Accumulated earnings — Number of employees — Tangible assets other than cash and cash equivalents	— Net Turnover — Profit/(Loss) before tax — Income tax charge — Income tax paid — Accumulated earnings — Number of employees — Activities by country	— Institution name — Country — Nature of activities and geographical location — Tax on profit or loss — Profit or loss before tax — Turnover — Number of employees — Public subsidies received	— Project name — Name of receiving government — Country of receiving government — Taxes levied on income, production or profits — Dividends — Royalties — License fees, rental fees, entry fees — Production entitlements — Signature, discovery and production bonuses — Payments for infrastructure improvements	— Project name — Name of receiving government — Country of receiving government — Taxes levied on income, production or profits — Dividends — Royalties — License fees, rental fees, entry fees — Production entitlements — Signature, discovery and production bonuses — Payments for infrastructure improvements

Sources

OECD BEPS Action Plan 13

BEPS Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 — 2015 Final Report

Guidance on the implementation of CbC Reporting

Public CbC Reporting (EU Proposal)

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

Capital Requirements Directive IV

Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms

EU Accounting Directive: Chapter 10

DIRECTIVE 2013/34/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings

Dodd Frank Act Section 1504

U.S. SEC — Section 1504 Specialized Disclosures

Extractive Industries Transparency Initiative (EITI)

EITI website

Global Reporting Initiative — GRI

GRI website

KPMG Tax Impact Reporting

Navigating tax transparency - KPMG Global (home.kpmg)

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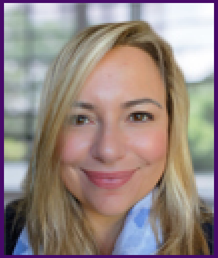

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