



Valdis Dombrovskis  
Commission Vice-President  
DG FISMA, European Commission

Brussels, 15 November 2016

**Subject: The Federation comments on the European Commission's public Country by Country Reporting proposal**

Dear Sir,

The Federation of European Accountants (the Federation) has the following comments on the European Commission's proposed introduction of a public Country by Country Reporting (CBCR) requirement applicable to Multinational Enterprises (MNEs) into the Accounting Directive 2013/34/EU. The Federation is committed to inform the debate around public CBCR through the technical expertise of its constituents from across Europe.

**1) We support transparency and restoring trust in tax systems**

Recent tax related revelations, investigations, the continuing economic crisis and the overall complexity of tax systems have contributed to a gradual erosion of public trust. The Federation fully acknowledges such legitimate public concerns, and the ensuing demand for meaningful information about businesses' tax policies and activities.

In last year's consultation on corporate tax transparency, the Federation supported the principle of public CBCR as part of an international initiative. Since then we have seen an increasing number of national developments in respect to CBCR, and believe that this makes the need to develop a truly international standard even more critical. All stakeholders must come together to develop a standard that provides consistent reporting requirements across the globe - informing stakeholders with meaningful data, keeping the costs of compliance for international businesses at a reasonable level and reducing inconsistencies as well as risks of confusion.

The Federation's [template](#)<sup>1</sup> for a CBC report could be a good starting point in the EU and beyond. The template was discussed in the Federation's recent and very successful [roundtable](#) debate on the subject<sup>2</sup>.

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<sup>1</sup> [http://www.fee.be/images/publications/Tax\\_policy/160711\\_CbCR\\_Template.pdf](http://www.fee.be/images/publications/Tax_policy/160711_CbCR_Template.pdf)

<sup>2</sup> <http://www.fee.be/library/list/51-tax-policy/1607-20-october-2016-country-by-country-reporting-roundtable.html>

The Commission, together with the European Parliament and the Council, has made good progress in past months with the aim of restoring public trust and building more resilient and transparent tax systems. The Federation is committed to playing its part, informing the debate and putting forward suggestions for concrete solutions.

## **2.) Ensuring high quality corporate reporting in the public interest**

The Federation believes that the legitimate public demand for greater transparency and information is best met by information that is relevant, understandable and trustworthy.

The potential audience for financial statements has increased significantly in recent years. In parallel, the complexity and volume of the information contained in the financial statements has expanded. CBCR information is no exception to this trend. It would therefore be advisable for companies and policy-makers to consider innovative means of presenting the public CBCR information, making full use of recent technological developments and new means of communication.

The Federation has recently issued a paper on the Future of Corporate Reporting, which proposes new approaches to presenting relevant yet inherently complex information to a wider user audience, employing innovative technological solutions. This [paper](#)<sup>3</sup> might offer solutions and inspiration for the presentation of CBCR data as well.

## **3) EU should strive for a global standard**

The Federation considers public CBCR in principle to be an appropriate means of ensuring greater transparency in businesses' tax affairs and restoring public trust in the international tax infrastructure. A targeted, globally coordinated and proportionate public CBCR framework could be a valuable tool to deal with legitimate concerns stemming from civil society.

Like with other tax initiatives in past years, greatest effectiveness would be ensured through international coordinated initiatives. Therefore, the Federation would suggest that the EU improves international coordination in this field with relevant bodies such as the OECD, the UN, the International Accounting Standards Board (IASB) and the Financial Accounting Standards Board (FASB).

The proposed threshold of €750 million may not be the ideal solution in a EU context, given for example the different reporting thresholds already present in the Accounting Directive. Having said that, the proposed threshold is a pragmatic compromise for the time being. Its purpose is to ensure international consistency with the scope established in OECD's BEPS Action 13. Reflecting on the current debate on the level of threshold, we propose maintaining the threshold proposed by the Commission for the time being and perhaps consider reviewing it once there has been sufficient time to monitor and assess the impact of these proposals in practice.

Finally, the Commission has committed to reviewing the public CBCR provisions in 5 years. However, given the fast pace of developments in the areas of tax and international disclosure initiatives, it would be advisable for the Commission to review the proposal in 3 years' time instead.

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<sup>3</sup> [http://www.fee.be/images/publications/Corporate\\_Reporting/FEECogitoPaper\\_-\\_FutureofCorporateReporting.pdf](http://www.fee.be/images/publications/Corporate_Reporting/FEECogitoPaper_-_FutureofCorporateReporting.pdf)

#### 4) The information must be useful and meaningful

Public CBCR should be primarily a tool to help businesses communicate information regarding their tax policies and practices to interested stakeholders. The European Commission acknowledges this by making the proposal of an amendment to the EU Accounting Directive (2013/34/EU). Its purpose is to ensure that “companies pay their fair amount of taxes in the country where they generate their profits”<sup>4</sup>:

- providing stakeholders with (detailed) information on a MNE’s tax position
- discouraging tax avoidance and aggressive tax planning through public transparency.

Public CBCR is not primarily a tool for tax administrations to monitor taxpayer compliance. Tax authorities have an increasing range of more powerful tools available for such purposes, including the exchange of CBCR under BEPS action 13 (already implemented in the EU via amendments to the Directive on Administrative Cooperation) and the detailed country files also required under BEPS 13. Consequently, it is not necessary for public CBCR to repeat the disclosures required for CBCR information provided to tax authorities.

The CBC report must deliver meaningful information to stakeholders and the Federation believes that meaningfulness is helped if the report facilitates a broad reconciliation between the profit as disclosed for accounting purposes and the profit declared for tax purposes. This is the purpose of the Federation’s [template](#)<sup>5</sup> – to help companies that decide to provide additional explanation to the market to highlight the major reasons why the accounting profit differs from the taxable profit, where the effective tax rate of the company differs from the headline rate of tax for the country concerned, and what other taxes the company pays apart from corporate income tax.

Where the information disclosed in the template highlights variances that are not otherwise explained, we encourage businesses to adopt a principle-based approach. This means, for example, disclosing such additional information (i.e. explanations on the availability of tax incentives offered for investment) as necessary to avoid misunderstanding or misinterpretation.

Multi-national entities are subject to different reporting standards at a national level and the financial statements filed locally are often the basis for tax reporting. These figures may then be restated to be in accordance with the Generally Accepted Accounting Principles (GAAP) of the entity responsible for reporting the public CBCR tax information as part of a consolidation process. This restatement could potentially change certain key figures involved in the reconciliation of the accounting profit to the profit for tax reporting purposes.

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<sup>4</sup> [http://europa.eu/rapid/press-release MEMO-16-1351\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-16-1351_en.htm?locale=en)

<sup>5</sup> [http://www.fee.be/images/publications/Tax\\_policy/160711\\_CbCR\\_Template.pdf](http://www.fee.be/images/publications/Tax_policy/160711_CbCR_Template.pdf)

It could be very burdensome for these businesses to restate all the figures required for CBCR disclosures to bring them into line with the accounting policies of the CBCR reporting entity. Consequently, we believe that businesses should be permitted to use already available information under the reporting framework most appropriate for the entity in question, such as the International Financial Reporting Standards (IFRS), US GAAP or a local GAAP. As such, the CBCR reports could, for example, be based on the financial statements submitted to the relevant tax authorities under the local GAAP. Such flexibility is implied in the preamble to the Directive, which refers to “reporting specifications of BEPS’ action 13” but the Federation encourages the Commission to explicitly explain the sources of information that can be used by the preparers and to provide guidance as to how the required CBCR data should be calculated.

One key application for the data presented in a CBCR template is to calculate an effective tax rate per country. The Federation therefore encourages businesses to voluntarily present additional information on material variances between the effective and headline rates of tax so as to assist with the interpretation of the ratios.

Overall, it is evident to see how the collected CBCR information can be compared across jurisdictions often using different definitions and accounting standards, especially outside the EU. From a practical point of view, this again demonstrates why there should be more international coordination on public CBCR.

#### **5) The geographic scope proposed by the commission is a pragmatic first step**

The Federation recognises concerns that disclosing the information individually for each country in which the company operates may result in the disclosure of economically sensitive information that could negatively impact the competitiveness of the European economy. The Commission has proposed the following solution to require disclosure for:

- each Member State separately
- separate disclosure for certain jurisdictions failing to meet international standards of tax good governance and
- a “pooled” disclosure for the rest of the world

as a practical means of dealing with this concern.

As with the turnover threshold, we propose maintaining the geographical scope proposed by the Commission for the time being, and perhaps consider reviewing it once there has been sufficient time to monitor and assess the impact of these proposals.

## **6) We ask for caution and greater clarity on collective responsibility and sanctions**

The Federation commends the Commission for addressing concerns that there would not be a level-playing-field between European headquartered companies and those headquartered in third countries. Pursuant to the draft Directive, Member States will have the responsibility of ensuring that the members of the administrative management and supervisory board of MNEs' subsidiaries inside the EU - where the ultimate parent is headquartered outside of Europe - have a collective responsibility for the publication of the relevant public CBCR information of the group as a whole.

The Federation is concerned, however, about the feasibility of imposing sanctions on the management of a subsidiary when they will usually have no control over the actions of the management of the controlling entity. It is possible that the concept of holding individuals responsible for the (in)actions of those that ultimately control them may even run contrary to national law in some Member States. The current provisions are, consequently, too ambiguous as to how the subsidiary can enforce the need to provide accurate information on its management structure.

We are not proposing a European level legislative solution to this issue, but there is currently insufficient legal clarity about the provisions on penalties, sanctions and responsibility. This is a crucial point that, if left open, may pose serious challenges to the practical applicability of and compliance with the Directive. This is particularly the case as implementation at Member State level could lead to inconsistency in application across the EU - especially as Member States have different legal requirements in respect of management structures (i.e. single tier vs dual tier Boards).

## **7) The form and date of publication should be clarified**

The amending Directive establishes that the CBC report must be published on a public register in accordance with Member States' rules on publication of annual financial statements and other statutory information. The report must also be simultaneously available on the website of the MNE or the relevant subsidiary or branch for a period of five years at least, "together with" the financial statements and management report.

The Federation's interpretation of the text is that the information is to be published as a separate report, although this is not explicitly stated. We support in principle the publication of this information in a separate report because it would avoid the addition of significant volumes of CBCR information into already lengthy and complex company reports. However, publication in a separate report also introduces complications regarding the 'chronology' of preparation and publication and in respect to assurance.

Regarding chronology, it appears that the intention of the draft amending Directive is that the CBC report should be published at the same time as the annual financial statements, presumably for the same fiscal year. In many cases, it is unlikely that the CBC report required by BEPS action 13 will be ready at the time of publication of the annual financial statements for the same accounting period, and thus MNEs will only be able to collect all the information necessary for the CBC report after the end of the subsequent year, or otherwise use estimates. One solution could be for the CBC report to refer to the year preceding the accounting period of the financial statements, which would also assist the auditor in performing the independent check in accordance with article 48f.

On a final note, the Federation suggests that the publication requirements should be made more specific in the draft amending Directive in respect of:

- that the CBC report is a separate report and is not part of the financial statements, and
- the accounting period that the CBC report is to cover (i.e. the same as the annual financial statements that it is to be issued with or for a different period).

This would help reduce the possibility in differences in Member State transposition, which would create an additional administrative burden for MNEs.

### **8) The need for external assurance on CBCR beyond the audit of the underlying information should be driven by markets' demand**

According to the amending Directive's audit requirements, whenever the financial statements are audited, the statutory auditors must also check that the CBCR report has been provided and made accessible as required. If the company has failed to do so, the auditor must indicate this in their audit report.

This constitutes, effectively, a limited role for the auditors that involves merely 'existence checking' that the information has been provided, but not actually requiring the auditor to provide assurance on the content of that information. We presume that it is assumed that the information used in the public CBCR reports will have been derived from already available information that has been audited and/or submitted to local tax authorities and subjected to their scrutiny.

This existence check role for auditors may generate an expectation-gap as the users of public CBC reports might assume that the auditor has provided assurance over the information. Therefore, should the CBCR information be found to be non-factual or misstated at any point in time, statutory auditors might be incorrectly blamed for not identifying these errors.

One solution would be to include an explanation in the audit report that clearly discloses the specific 'checking' role of the statutory auditor and that no assurance has been obtained over the information. This would help to ensure that with regard to the information itself, the users of public CBC reports have a clear and realistic picture of the function of the companies' statutory auditors in the process.

Another solution is to remove the requirement for an existence check altogether, as in our view it is of limited value. The arguments for this is that the underlying data in the report will already have been subject to audit and that as it is mandatory for the companies affected to disclose the CBC report on their website, it will be very easy for interested stakeholders to confirm themselves whether the business has complied with its requirements. In this case, the need for additional assurance on the CBCR information will be driven by market demand.

## 9) Clearer guidance needed on materiality from the Commission

The application of the materiality principle has the potential to focus attention on key matters, reduce the costs of preparation and is an accepted financial reporting principle in the 2013 Accounting Directive. However, materiality in CBCR of tax information is a difficult issue and it may not be compatible with current practices in financial reporting and auditing. It is likely to become an even more important consideration if the data for the rest of the world were to be “de-pooled” in the future. Consequently, we believe that it is very important for the Commission to consider the role that the application of materiality could have on public CBCR reporting and produce some clear guidance on this issue.

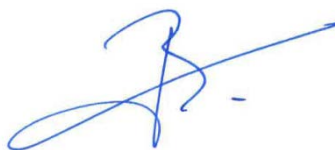
We hope that you will find the comments above useful. For additional information on this letter, please contact Paul Gisby, Manager, from the FEE Team on +32 2 893 33 70 or via e-mail at paul.gisby@fee.be.

Sincerely,

On behalf of the Federation of European Accountants,



Petr Kriz  
President



Olivier Boutellis-Taft  
Chief Executive

## About the Federation of European Accountants

The Federation of European Accountants represents 50 professional institutes of accountants and auditors from 37 European countries, with a combined membership of over 875,000 professional accountants working in different capacities. As the voice of the European profession, the Federation recognises the public interest.

The Federation is in the EU Transparency Register (No 4713568401-18).