The Revamping of Public CbCR in Europe: much ado about nothing?

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The vexed question of whether country-by-country reports (CbCRs) on multinational enterprise (MNE) tax affairs should be made public has been a recurrent topic in the tax debate for years.

In Europe several countries were late applying the law to file public CbCR without success. Furthermore, the approach adopted by European countries with reference to public CbCR has not been homogeneous. Recently, the implementation of public CbCR may now resemble the tax evasion and the avoidance of the G20 recommendations of the 2016 Legislator. Public CbCR was proposed as an amendment to the Accounting Directive 2013/34/EU. Hence requiring a qualitatively varying other than the asymptotic memory for the harmonisation of 34 notes. The latest proposal could become a reality in Europe by June 2021 given the large support obtained during the internal negotiations.

In the following paragraphs the authors explore the case for public CbCR in light of the revamping of the EU proposals, analyzing the different arguments in relation to the policy issue.

### Consistency of data and useful competition

A pillar for the exchange of a CbCR is the confidentiality of the information. Hence, the disclosure of CbCR data into the public domain may have commercially sensitive information - which, by definition, is confidential - available to the public, causing potential reputational damages for a business in a significant infringement of taxpayer rights. This is particularly relevant in the case of public CbCR proposal, since it would result in a discriminatory treatment towards MNEs located in the European Union. With public CbCR competition could be induced in the information accessed and an unfair competition situation could arise. Therefore, the public CbCR should be able to access to information without the negative effects that could result from the public CbCR.

### Voluntary public CbCR: is it an opportunity?

On the other side, the approach adopted by some groups - including lobbying and others - published the group CbCR on a voluntary basis considering public disclosure an opportunity to demonstrate their support to transparency. This approach seems to be too with the finance panacea tax. In fact, in order to avoid CbCR, the European Commission indicated giving the most appropriate, even though it is doubtful whether transfers pricing insight can be extrapolated from an analysis of the CbCR data. On the other hand, the Australian Parliament requested the wider publication of the Taxation and Financial Statements Report. It is not given for granted that the public CbCR is an opportunity to improve the transparency of corporate tax affairs. It may be premature.

### For the voluntary CbCR data useful information in the general public?

Article 3 introduces a new form of tax transparency, which includes the preparers of 31 local lists. However, the CbCR emerges therefore in principle, which even though it is doubtful whether transfers pricing insight can be extrapolated from an analysis of the CbCR data on a standalone basis. In fact, out of the 21 files only, the Australian Parliament requested the wider publication of the Taxation and Financial Statements Report. It is not given for granted that the public CbCR is an opportunity to improve the transparency of corporate tax affairs. It may be premature.

### The requirements envisaged in the public consultation document

Before the European Union makes any definitive decision on the obligation to publish reports, it would be wise to analyze the developments of the OECD level, 18 in a decade increased in standard requirements. Whether certain requirements are not applicable to the MNE group subject to public CbCR requirements conduct only one line of business in a particular country, companies could merely determine the business to profit margins, which are as important source of competitive information.

### Public’s self-function

The most well-established argument for publishing CbCR is that providing more tax information to the public may regulate public pressure on the MNE to publish the relevant information. However, the MNEs’ reputation, especially in light of the public CbCR proposal, may involve a public trust in the MNE group’s tax affairs. The MNE group will decide whether the relationship between the government and the MNE group will be further strengthened.

### Interpreting the MNE’s reputation

The modern trend towards transparency should be read also in light of the numerous initiatives in favor of corporate social responsibility and sustainability. For example, the GRI group subject to public CbCR requirements conduct only one line of business in a particular country, companies could merely determine the business to profit margins, which are as important source of competitive information.

### Efficiency and drawbacks

The case for public CbCR in light of the revamping of the EU proposals, analyzing the different arguments in relation to the policy issue.

### Value added by CbCR?

The viability of public CbCR: are the benefits outweighing the drawbacks?

### Public CbCR: is it an opportunity?

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During the Competitiveness Council (COMPET) meeting held on February 25, 2021, a compromised text issued by the Council Presidency for a public CbCR in Europe was discussed and the proposal seemed to have a broad support by Member States. Following this breakthrough, the Council and the European Parliament approved on March 3 and March 4, 2021 respectively, mandates for their respective negotiating positions, with the aim to reach a potential agreement on the directive in the first half of 2021. For further details see European Council, Press release – Council approves greater corporate transparency for big multinationals, (3 March 2021), available at https://www.consilium.europa.eu/en/press/press-releases/2021/03/03/council-approves-greater-corporate-transparency-for-big-multinationals/ (accessed 02 May 2021).


The other elements included in Table 2 of the CbCR are the following: Profit/loss before income tax, Income tax paid, Income tax accrued, Additional taxes (state or local), Stated capital, Accumulated earnings, Tangible assets (other than cash and cash equivalent), Number of employees; while Table 2 provides details regarding the main business activity(ies) of each Constituent Entity.
