

# Country by Country Reporting - The European Commission Weighs Its Options

August 25, 2015

Public Policy & Government Affairs

---

A perception of aggressive tax planning and profit shifting to low tax jurisdictions has raised concerns with a number of governments around the world, including the member States of the EU. For better or worse, one response has been the introduction and consideration of country by country reporting rules. In this regard, on 17 June 2015, the European Commission launched a public consultation on corporate tax transparency, which covers a variety of tax transparency measures, including country-by-country reporting (see [here](#)). The consultation is intended to gather feedback on these measures, and respondents are invited to submit written responses to the European Commission. The deadline for consultation responses is September 9, 2015. The responses received in the consultation will be considered by the Commission, which is to draft an impact assessment of any country by country reporting rules.

## Country by Country reporting - OECD action and EU policy options

As the European Commission considers options for additional tax transparency, it is likely to be guided by OECD plans in this area, which if adopted, in certain cases, would require multinational companies to disclose key financial information on every country where they operate. The OECD and G20 countries are finalizing a 15-point action plan to tackle [base erosion and profit shifting \(BEPS\)](#). One particular action point, BEPS Action point 13 (BEPS 13), recommends that, at State level, very large multinational enterprises (turnover > EUR750m) provide a Country-By-Country Report (CBCR) to the relevant tax authority. On 8 June 2015, the OECD issued the [Implementation Package](#) in relation to this BEPS 13, and the EU likely will use these OECD recommendations on country by country reporting standards as a starting point for rules it might consider. However, OECD and G20 countries are not obliged to follow or implement the recommendations of the BEPS project, and not all EU Member States are OECD members.

Of note, regulated credit institutions in the EU are already obliged to disclose country-by-country reports (CBCR) under the Capital Requirements Directive IV (CRD IV), which is being implemented in the EU member states.<sup>1</sup> As an alternative (or supplement) to OECD based rules, the European Commission may consider extending these requirements to all other sectors.

---

<sup>1</sup> Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV).

### **Details of the Commission's consultation**

As part of the consultation, the Commission has requested feedback on which types of companies should offer more transparency in the form of information disclosure, to whom any such information should be disclosed (e.g., tax authorities, the public, or both), and what type of information should be disclosed. In its invitation for comments, the Commission (more specifically the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) proposed a range of tentative options to improve tax transparency.

- i. No EU Action
- ii. Implementation of BEPS 13 at EU level
- iii. Publication of anonymized/aggregated data by the EU tax authorities
- iv. Public disclosure of tax-related information by enterprises
- v. Publicly available corporate tax policies published by enterprises in relation to their approach towards tax compliance and planning

A key consideration will be the scope of the transparency requirements – whether such requirements will follow the same scope as the OECD or define the scope more broadly. If public disclosure is to be required, consideration must be given to what level of information would be necessary to include in a publicly available country-by-country report, with options ranging from disclosing information already required under both CRD IV and BEPS 13, to disclosing additional information such as subsidiary operations and tangible assets in each country, accumulated earnings (normally only available to tax authorities), tax rulings (normally exchanged between tax authorities), and public subsidies received (currently only required from financial institutions). An additional consideration will be which companies will be required to disclose this information, including specifically whether non-EU multinationals with branches or subsidiaries in the EU will be covered. As part of their submission, respondents have the opportunity to estimate the additional costs and resources involved in country-by-country reporting.

Additionally, feedback is solicited on ways to improve information exchange between tax authorities, and the impacts of any such information exchanges.

### **Objectives of the Commission's consultation**

The objective of the consultation is twofold: to explore ways to increase pressure on companies to reduce perceived aggressive tax planning and increase intra-authority peer pressure on tax authorities in Member States to take measures to stop 'tax competition' between Member States. The Commission is also concerned that corporate tax avoidance distorts the internal market and the level playing field between taxpayers - in particular between locally based Small to Medium Enterprises (SMEs) and large multinational companies who have the potential to use more sophisticated tax planning tools to spread their tax base internationally. In this regard, the Commission impact assessment is to assess whether providing more information to either tax authorities or to the public would increase public pressure and influence behavior.

This consultation is part of a broader Commission Action Plan on Corporate Taxation. Under this action plan, the Commission aims to re-launch the Common Consolidated Corporate Tax Base (CCCTB) to ensure effective taxation and increase transparency. This is the Commission's second action plan relating to corporate tax. The first Action Plan on efforts to combat tax evasion and tax fraud was launched in December 2014. As part of this first action plan, on March 18, 2015 the Commission presented a package of measures to boost tax

transparency. This tax transparency package included a proposal for the automatic exchange of information on cross-border tax rulings between Member States. This proposal must receive a unanimous vote of approval all the Member States in the Council in order to become applicable. If the proposal is approved by the Council, it will enter into force on January 1, 2016.

### **Actions in the European Parliament**

In a parallel legislative procedure and independent of the Commission consultation, on July 8, the European Parliament adopted certain amendments to the Shareholders Rights Directive that would oblige certain large undertakings to publicly disclose country-by-country reports (see [here](#)). The information required by the proposed amendment includes: names, nature of activities and geographical location; turnover; number of employees on a full time equivalent basis; value of assets and annual cost of maintaining those assets; sales and purchases; profit or loss before tax; tax on profit or loss; and public subsidies received. The amendments also contain rules concerning disclosure of a summary of tax rulings. However, the Parliament's amendments did not receive the support of the Commission, and the proposals have been sent back to the Parliamentary committee for consideration. The committee has a maximum of two months to report on the concerns of the Commission. This proposal is being considered by both the European Parliament and the Council of the EU in parallel. The Council of the EU, which represents the governments of the EU Member States, is also analyzing this proposal and will propose its own draft text of the Shareholders Rights Directive. Once the Parliament and Council have proposed draft texts, these two institutions along with the Commission will meet to work out a compromise in what is known as the Trilogue process. It is expected that this negotiation process will last until early 2016. The European Parliaments actions demonstrate its appetite to adopt rules on country-by-country reporting.

### **Conclusion**

Feedback received in the consultation will shape the Commission's thinking on tax transparency, and the consultation itself is the first step on the path towards European country-by-country reporting.

Multinational companies with a European presence should expect the Commission to recommend rules that will increase scrutiny in the future - either from tax authorities or the public, or from both. The Commission's consultation process provides companies with an opportunity to have their say on the scope of this disclosure. Many companies and interest groups have already provided valuable inputs into the CBC reporting initiative in BEPS 13. However, since the EU initiative has the potential to impose different requirements than BEPS 13, companies should consider submitting comments and (at the very least) should pay close attention to the feedback provided in, and the Commission's report of, the consultation. Covington is able to draw on the combined expertise of its Tax practice and its Public Policy & Government Affairs practices to assist clients on this consultation.

The period for feedback in the consultation will close on September 9, 2015, and the Commission's impact assessment will be published in Spring 2016.

If you have any questions concerning the material discussed in this client alert, please contact:

Guy Dingley	+44 20 7067 2026	<a href="mailto:gdingley@cov.com">gdingley@cov.com</a>
Samuel Maruca	+1 202 662 5161	<a href="mailto:smaruca@cov.com">smaruca@cov.com</a>
Sebastian Vos	+32 2 549 52 67	<a href="mailto:svos@cov.com">svos@cov.com</a>

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to [unsubscribe@cov.com](mailto:unsubscribe@cov.com) if you do not wish to receive future emails or electronic alerts.