Public Country-by-Country Reporting
– Why and how multinationals should lift the lid on their taxes

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Background

Public Country-by-Country Reporting of financial and tax-related information by multinational enterprise is probably the hottest topic in financial reporting right now.[i] It is the subject of both an increasing number of investor resolutions (witness the Annual General Meetings of Amazon, Cisco and Microsoft in 2022) and legislative requirement (as advancing everywhere from the European Union to Australia). Publishing rates may currently be low, but they are increasing rapidly, especially across Europe.[ii] Moreover, a recent global tax survey found that 85% of senior business leaders within multinational business expect stakeholder interest in tax behaviours to increase in the coming years, and 60% expect to align themselves with one or more tax transparency standards.[iii]

> *Across the globe, close to 40% of multinational profits (US$970bn) are artificially shifted to tax havens each year, leading to a US$250bn reduction in corporate income tax revenue.*
>
> *https://missingprofits.world*

For many tax justice organisations, public Country-by-Country Reporting (pCbCR) is a number one campaign demand (closely followed by beneficial ownership disclosure).[iv] At the Fair Tax Foundation, we believe that comprehensively implemented pCbCR significantly enhances the ability of stakeholders across the world to form an informed opinion as to whether a business is paying the right amount of tax, in the right place and at the right time. Moreover, as with international financial reporting standards more generally, enhanced transparency will enable capital markets to make more informed economic decisions, which in turn improves capital allocation and economic efficiency.

Confidential Country-by-Country (CbC) disclosure to tax authorities is now common in many parts of the world[v], however, Fair Tax Mark accreditation requires that this information (or equivalent) should be publicly disclosed. Ideally, this information would be provided in an open data format and be machine readable.

A recent OECD analysis of anonymised and aggregated CbC disclosures by 7,000 multinationals to tax authorities confirms that there is still a significant misalignment between the location where profits are reported and the location where economic activities actually occur.[vi] Tellingly, revenues per employee tend to be higher where headline rates of corporation tax are zero, and in investment hubs.

The era of 'Say what you pay' is dawning

Public country-by-country reporting will soon be mandatory for large multinationals (MNCs) operating across the European Union – albeit with some substantial loopholes.[vii] The EU pCbCR Directive came into force in 2021, and is now being transposed into the domestic legislation of individual EU Member States at varying paces – with Romania being the first to enact legislation, from 1st January 2023.[viii] An estimated 6,000 multinationals active in the EU would need to publicly disclose their tax-related information. Some countries are bolting on added requirements to the EU mandated pCbCR disclosures; such as Hungary, which will require MNCs to newly explain differences between total tax accruals and cash taxes paid. France and Sweden require a breakdown of activity in European Economic Area States (i.e., Iceland, Liechtenstein and Norway), as well as in EU Member States. Others have opted to not introduce the suggested "safeguard clause" that allows in scope businesses to defer disclosure for up to five years on the basis of 'commercial sensitivity', such as Slovakia. Fines for non-compliance range from €5,000 in Ireland to €250,000 in Germany. It should also be noted that the EU Corporate Sustainability Reporting Directive may lead to additional mandatory tax disclosures in the areas of tax policy and tax governance, via the linkages to the OECD Guidelines for Multinationals.[ix]

In April 2023, draft pCbCR legislation was published in Australia.[x] This would, in the words, of International Tax Review, usher in a "new era of tax transparency".[xi] Given that it would apply to any large multinational enterprise doing business in Australia through a resident entity or permanent establishment – i.e., should the likes of US-headquartered Amazon exceed the threshold in Australia, then it would need to disclose its pCbCR across the globe, or face penalties. An estimated 2,500 entities will be subject to the new regime. In June, a Bill was introduced to Parliament and a small number of the transparency requirements were removed, but the proposals still represent a world-leading and welcome push for tax transparency.[xii] Australian pCbCR measures will apply from summer 2024, as per the EU pCbCR Directive.

> *"The objective of these amendments is to improve information flows to help investors and the public compare entity tax disclosures, to better assess whether an entity's economic presence in a jurisdiction aligns with the amount of tax they pay in that jurisdiction."*
>
> *Australian government*

In 2016, under all-party pressure from Parliament, the UK Government agreed that pCbCR was merited and accepted an amendment to the Finance Bill (although, to date, those powers have not been enacted).[xiii] In the UK, annual polling has found that for the last five years, three quarters of the public agree that the UK should "take a lead and force multinational businesses to disclose how much income, profit and tax they pay in each country in which they operate."[xiv]

In the United States, the Securities and Exchange Commission has signalled support for the Financial Accounting Standards Board to prioritise pCbCR.[xv] Unfortunately, full blown pCbCR has so far been rejected; however, the latest Exposure Draft of the newly issued Income Taxes disclosure standard (Topic 740)(March 2023) proposes significantly enhanced quantitative and qualitative disclosures in relation to foreign tax on a jurisdiction by jurisdiction basis, if they meet a 5% threshold.[xvi] This is a far cry from what is progressing in Europe and Australia, but it is nevertheless a welcome step forward. This has in large part been driven by pressure from investors, lenders, creditors and other allocators of capital, who have been pushing for change in this area.

An increasing number of investors are now urging that MNCs should embrace such tax transparency as a core element of their 'ESG' credentials.[xvii] This includes some of the world's largest institutional investors (such as Norges Bank Investment Management[xviii]) and most influential ratings agencies (such as S&P Global[xix]). The Principles for Responsible Investment (PRI), the world's leading proponent of responsible investment, has supported pCbCR for a number of years.[xx]

The EU Tax Observatory maintains a CbC Reports database, and features Fair Tax Mark accredited exemplars such as Lush, Mundys, Orsted and SSE.[xxi]

Fair Tax

Fair Tax Mark's stipulations for pCbCR disclosures

Comprehensively implemented country-by-country reporting significantly enables stakeholders across the world to form an informed opinion as to whether a business is paying the right amount of tax in the right place at the right time. It provides an indication of the economic footprint within a jurisdiction and may signal emerging financial and reputational risks (of particular interest to investors). Crucially, it provides essential insights as to whether a business is complying with the commitments detailed in their public tax policy.

Analysis by Vienna University of the impact of pCbCR on the European banking sector (a business sector that was required to undertake pCbCR in advance of other sectors in the EU) found that the number of subsidiaries of European banks in tax havens declined significantly after the introduction of mandatory public CbCR.

In addition to the taxes declared and paid (or claimed back) in each jurisdiction, stakeholders should be able to discern income, profit and the resources deployed.

Multinational businesses that engage in aggressive tax planning and artificial profit shifting to low-tax or secrecy jurisdictions are unlikely to voluntarily publicise their results on a country-by-country basis, as this would better enable stakeholders to question unusual or disproportionate financial reporting. Conversely, voluntary pCbCR disclosure demonstrates to stakeholders that an MNC has confidence in its accounting, transfer pricing approach and is adhering to its responsible tax policy commitments.

In order for country-by-country reporting to be meaningful and significant, a broad range of data should be disclosed, and this should be accompanied with a narrative explanation. For a multinational business to become Fair Tax Mark accredited the majority of the following data[xxii] should be reported on a country-by-country basis:

- A full list of subsidiary companies and permanent establishments, and their country of registration
- Tax residencies for each subsidiary and permanent establishment
- External revenues (based on place declared)
- Inter-company revenues
- Total revenues declared
- Profit (loss) before taxes
- Current tax
- Deferred taxes
- Cash taxes paid
- Gross assets
- Number of employees
- Employment costs
- Gross liabilities
- Net assets
- Reconciliation with consolidated accounts – numerical or explanatory

We have prepared a country-by-country reporting table that can be used – and which, if completed fully, would score full points in section 3 of our Global MNC Standard assessment.

The Fair Tax Foundation takes an incremental view to disclosures, especially in the first Fair Tax Mark accreditation cycle, with an expectation of agreed additional disclosures progressing in future cycles. We are also pragmatic about the need to produce quantitative disclosures connected to entities that are in the process of being wound down or sold.

Note: related resources include:
- Global Multinational Business Standard (English and Spanish)
- Why focus on corporation tax?
- Identifying tax havens (includes our latest Tax Haven Listing)
- Model tax notes
- Model tax policy

[i] The focus of this paper, and the Fair Tax Foundation more generally, is corporation tax. The reasons we have such a focus, as does much of the global tax justice movement, are set out in our paper 'Why corporation tax matters so much', which is available at https://fairtaxmark.net/wp-content/uploads/Why-focus-on-corporation-tax.pdf

[ii] See Tax Transparency by Multinationals: Trends in Country-by-Country Reports Public Disclosure (February, 2023)

[iii] Deloitte Ninth Annual BEPS Global Survey (July 2022).

[iv] See Tax Justice Network (November 2020).

[v] The OECD minimum standard described in BEPS Action 13 requires large multinationals (consolidated revenues of €750m and over) to privately disclose CbCRs to an appropriate tax authority starting from the fiscal year 2016. More than 100 jurisdictions have now introduced such CbCR obligations.

[vi] Corporate Tax Statistics (Fourth Edition). OECD, November 2022

[vii] In general, will apply to fiscal years starting after June 22nd 2024, with the first Reports due by end December 2026. EU Member States are required to transpose the directive into national legislation by June 22nd 2023. However, a substantial minority missed the deadline and have not even initiated the process of transposition and in July were sent letters of formal notice by the European Commission. Worryingly, the list of laggards includes prominent tax havens, such as Malta and Cyprus, Applies to MNCs with consolidated revenues over €750m for each of the last two consecutive years. Jurisdictions to be disaggregated are restricted to a) EU Members States, b) countries on the EU list of non-cooperative jurisdictions for tax purposes (referred to as the 'black list') and c) countries listed for two consecutive years or more on the list of jurisdictions that don't yet comply but have committed to reform (referred to as the 'grey list'). The Directive allows for Member States to introduce (or not) deferred disclosure for up to five years in relation to certain countries if they deem the information to be 'commercially sensitive' – although this 'safeguard clause' does not cover data related to the EU's list of non-cooperative jurisdictions (both 'black' and 'grey' lists). See DIRECTIVE (EU) 2021/2101 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2021, amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches

[viii] So much so, that in scope businesses will need to publish a country-by-country report for 2023 by 31st December 2024.

[ix] Bloomberg Tax (24.01.2023). ESG Gets Tax Teeth With EU's Corporate Sustainability Directive

[x] The amendments apply to reporting obligations for income years commencing on or after 1 July 2023. See https://treasury.gov.au/consultation/c2023-383896

[xi] International Tax Review (16.04.2023). Opinion: Australian public CbCR opens new era of tax transparency

[xii] Data disclosures in connection with related party expenses, effective tax rate and listing and valuing of intangible assets have been removed. See https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7057

[xiii] UK opts for public country-by-country reporting (7th September 2016)

[xiv] Fair Tax Foundation annual polling (2019 to 2023 inclusive). Based on nationally representative omnibus survey of c.2,000 adults. Most recent survey conducted between 14 and 17 April 2023. To be published w/c 5th June 2023. See https://fairtaxmark.net/

[xv] United States: SEC signals support for country-by-country reporting

[xvi] Will require all entities to disclose income taxes paid disaggregated by individual jurisdiction on the basis of a quantitative threshold of 5% of total income taxes paid. Also, with reference to the rate reconciliation, separately disclose reconciling items by nature and by jurisdiction, on the basis of a quantitative threshold of 5 percent, within the foreign tax effect category. See https://www.fasb.org/Page/ProjectPage?metadata=fasb-Targeted%20Improvements%20to%20Income%20Tax%20Disclosures&isPrintView=true

[xvii] We have a produced an exhaustive analysis of the history of pCbCR and other 'Essential Elements of Global Corporate Standards for Responsible Tax Conduct' (to June 2020) here

[xviii] One of the world's largest sovereign wealth funds. See Tax and Transparency – expectations towards companies

[xix] Significantly, S&P Global input into the Dow Jones Sustainability Indices. See Five Years of Pushing for Change: Assessing Corporate Tax Strategies

[xx] Supported by the United Nations since 2006. PRI has 5,000 signatories who between them have over US120trn assets under management. See Investors' recommendation on corporate income tax disclosure (2017)

[xxi] https://taxobservatory.shinyapps.io/company_cbcr_data/

[xxii] Note: these requirements are consistent with the GRI207-4 reporting standard and the OECD BEPS Action 13 disclosure template