Public Country–by–Country Reporting

Why and how multinationals should lift the lid on their taxes

December 2023

Summary

Public Country-by-Country Reporting (pCbCR) of financial and tax 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 recent Annual General Meetings of Amazon, Cisco, Chevron, ConocoPhillips ExxonMobil and Microsoft) and legislative requirement (as advancing everywhere from the European Union to Australia).

> *Across the globe, 35% of multinational profits (US$1 trillion) are artificially shifted to tax havens each year, leading to a 10% worldwide reduction in corporate income tax revenue (which equates to a US$170 billion annual deficit). The corporation tax shortfalls are particularly large in the European Union (20%) and UK (25%).*
>
> *EU Tax Observatory (October 2023)*

Voluntary publishing rates may currently be low, but they are steadily increasing, especially across Europe.[ii] 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]

Where mandatory pCbCR has been introduced (e.g., in connection with large European banks and extractive industries), there is evidence of reduced use of tax havens, reduced profit shifting, increased effective tax rates and increased domestic tax revenue mobilisation.

Mandatory pCbCR would enable low and lower middle income countries to have access to large multinationals' CbCR data for the first time – given the majority of these countries are currently locked out of global confidential information sharing systems.

Businesses that are Fair Tax Mark accredited are well placed to transition painlessly to a world where a step change in tax transparency is increasingly expected, if not a mandatory requirement.

Background and impact

For many tax justice organisations around the world, public Country-by-Country Reporting is the number one campaign demand (closely followed by beneficial ownership disclosure).[iv]

Comprehensively implemented pCbCR significantly enhances the ability of stakeholders across the world to have 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 tax transparency will enable capital markets to make more informed economic decisions, which in turn improves capital allocation and economic efficiency.

As of 2014, **European Union** banking groups have been required to publicly disclose tax payments, profits, and economic activity for each country in which they operate.[v] Subsequently, the fraction of European banks' foreign profits booked in tax havens has fallen steadily since 2019.[vi] The number of subsidiaries of European banks in tax havens has also declined significantly, especially in relation to countries offering both tax shelter and financial secrecy, and for banks with high exposure to reputational risk.[vii] European multinational banks experienced a significant increase in their effective tax levels after the introduction of mandatory pCbCR regulation, relative to unaffected banks – especially those banks with a history of involvement in tax havens.[viii]

Similarly, as of 2016, extractive industries based in the European Economic Area (**European Union**, plus **Iceland**, **Liechtenstein** and **Norway**) have also been required to undertake a limited form of pCbCR.[ix] Payments that must be reported, on a country-by-country basis, include: taxes on income, production or profits; royalties, dividends, licence fees and rental fees; other payments, such as discovery and production bonuses. The European Union's focus on these sectors was heavily influenced by the Extractive Industries Transparency Initiative (EITI)[x], within which tax transparent, resource-rich developing countries have been found to enjoy significantly higher domestic tax revenue mobilization.[xi]

Confidential Country-by-Country (CbC) disclosure to tax authorities is increasingly common in developed countries around the world[xii]; however, OECD analysis of anonymised and aggregated CbC disclosures by 7,600 multinationals to tax authorities confirms that there is still a significant misalignment between the location where profits are booked and the location where economic activities actually occur.[xiii] The OECD says that: "the data continues to point to the existence of base erosion and profit shifting," Tellingly, revenues per employee tend to be higher where headline rates of corporation tax are zero, and in investment hubs.

Fair Tax Mark accreditation requires that headline CbC data should be publicly disclosed. Unfortunately, a recent international analysis by PwC of 269 listed companies from eight countries (**Austria**, **Brazil, Germany**, **Ireland**, **South Africa**, **Spain**, **Switzerland** and the **United Kingdom**) found that just 5% undertook full pCbCR in a rigorous manner.[xiv] One in five large companies reported their profit per country, and about a quarter disclosed the income tax accrued (ie total tax accrual). Large **Spanish** companies and **European** companies in the extractive and banking sectors accounted for the bulk of positive activity – as would be expected given the legislative drivers that are in place for these segments. It is noteworthy, however, that a significant number of the companies required to undertake limited pCbCR by law, went on to voluntarily go much further and embrace the spirit as well as the letter of the tax transparency law.

Analogous analysis, from the EU Tax Observatory also found that overall CbCR publishing rates are low, but increasing rapidly; and that **European** countries account for 80% of multinationals publishing CbCRs.[xv]

The era of 'Say what you pay' is rapidly dawning

Public country-by-country reporting will soon be mandatory for large multinationals operating across the **European Union** - albeit with some substantial loopholes.[xvi] 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.[xvii] An estimated 6,000 multinationals active in the EU would need to publicly disclose their tax-related information from end December 2026 onwards. Some countries are bolting on added requirements to the EU mandated pCbCR disclosures; such as **Hungary**, which will require multinationals 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.[xviii]

Parallel developments in **Europe** include, **Spain** unilaterally advancing a basic form pCbCR in 2018, with all large Spanish businesses required to disclose profits made and taxes paid in each country.[xix]

In April 2023, draft pCbCR legislation was published in **Australia**.[xx] This would, in the words, of International Tax Review, usher in a "new era of tax transparency".[xxi] 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 currently still represent a world-leading and welcome push for tax transparency.[xxii] Australian pCbCR measures will apply from summer 2024, as per the EU pCbCR Directive. Final legislation has yet to be introduced, and it is possible that proposals may be amended further still.

> *"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 **United Kingdom** Government agreed that pCbCR was merited and accepted an amendment to the Finance Bill. To date, these powers have not been enacted, but a fresh campaign is building in the UK to ensure that this now happens, supported by the Fair Tax Foundation and the All-Party Parliamentary Group on Anti-Corruption and Responsible Tax.[xxiii] In the United Kingdom, 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."[xxiv]

In the **United States**, the Securities and Exchange Commission has signalled support for the Financial Accounting Standards Board to prioritise pCbCR.[xxv] 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.[xxvi] 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.

The impact of the introduction of comprehensive pCbCR by the likes of Australia or the UK would be substantial, and send ripples across the globe. For example, it would mean that the 49 African nations that are locked out of the world's confidential CbCR information sharing system would have multinational data access for the first time. Currently, only **Ghana**, **Mauritius, Nigeria**, **Seychelles** and **South Africa** are plugged into the global automatic exchange of financial account information - which is so crucial to fighting illicit financial flows.[xxvii] Tax transparency is fundamental to the sustainable development of a country and its government's capacity to respond to its people's needs. It is generally accepted that IFFs most certainly surpass aid flows and investment in volume in Africa. While almost every country faces IFFs, the consequences for developing countries are particularly damaging, given their limited resources. It prevents countries from financing much-needed public services, hampering economic and social development.

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

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

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.

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[xxxiii] 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?
- Seven magnificent reasons to pursue Fair Tax Mark accreditation
- Identifying tax havens (includes our latest Tax Haven Listing)
- Model tax notes
- Model tax policy

Endnotes

[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] In the **European Union**, Article 89 of the Capital Requirements Directive (Directive 2013/36/EU or 'CRD IV') provides for country-by-country reporting by financial institutions, such as banks, building societies, other credit institutions and certain investment firms. CRD IV became law in 2013, with implementation by Member States required by 1 January 2014, and the first reporting from 30 June 2014. Disclosures include net banking income, earnings before tax, amount of taxes paid and the number of employees for each country where the bank has an affiliate. See https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0338:0436:EN:PDF
[vi] EU Tax Observatory (October 2023). Global Tax Evasion Report 2024. Draws on the work of Giulia Aliprandi, Kane Borders, Francisco Gabriel, and Gerrit von Zedlitz (2022), "Public Country-by-Country Reports: A New Database", EU Tax Observatory note. For an assessment of the quality of the data and a comparison to companies' audited consolidated accounts, see Giulia Aliprandi and Gerrit von Zedlitz (2023), "Benchmarking Country by Country Reports", EU Tax Observatory working paper.
[vii] See Eberhartinger, E., Speitmann, R., & Sureth-Sloane, C. (2020). Banks' tax disclosure, financial secrecy, and tax haven heterogeneity. WU International Taxation Research Paper Series No. 2020-01
[viii] Michael Overesch and Hubertus Wolff (July 2018). Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance
[ix] In 2013, an update to the EU Accounting and Transparency Directives saw country-by-country reporting mandated for large firms in the oil, gas, mining and forestry sectors, where payments to governments exceeded €100,000. Came into force in 2016, with the first reports lodged in that year. Directive 2013/34/EU1 ('the Accounting Directive') introduced in 2013 country-by-country reporting requirements for logging and extractive industries of their payments to governments. Directive 2013/50/EU2 ('the Transparency Directive') introduced similar reporting requirements for companies from logging and extractive industries with securities admitted to trading on a regulated market. Note, the reporting rate of logging companies is very low as regulations focus on primary forests and do not capture sub-contracting, which is common in this sector.
[x] The Extractive Industries Transparency Initiative (EITI) was created in 2003 at the instigation of "Publish
What You Pay". It requires extractive companies to publish all payments made in detail in the government's accounts. Similarly, governments must publish all payments received from extractive companies (oil, gas, and mining). 56 countries worldwide have implemented EITI. See Driving impact - outcomes and impact of EITI implementation
[xi] See Harouna Kinda (September 2022). Does transparency pay? The impact of EITI on tax revenues in resource-rich developing countries.
[xii] 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 110 jurisdictions have now passed legislation mandating such CbCR obligations. However, it needs to be noted that very few low and lower middle income countries have access to these confidential CbCR information sharing arrangements.
[xiii] See Corporate Tax Statistics (Fifth Edition). OECD, November 2023

[xiv] Tax transparency and sustainability reporting in 2023 (October 2023). See https://www.pwc.com/gx/en/services/tax/esg-tax/tax-transparency-and-sustainability-reporting-in-2023.html
[xv] **Italy**, **Spain**, the **United Kingdom**, the **Netherlands** and **Norway** - account for about 64% of multinationals publishing CbCRs. See Giulia Aliprandi, Kane Borders (February 2023). Tax Transparency by Multinationals: Trends in Country-by-Country Reports Public Disclosure.
[xvi] 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). **Hungary** and **Slovakia** have opted not to introduce the safeguard clause, and Germany's will run for four (not five) years. 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
[xvii] So much so, that in scope businesses will need to publish a country-by-country report for 2023 by 31st December 2024.
[xviii] Bloomberg Tax (24.01.2023). ESG Gets Tax Teeth With EU's Corporate Sustainability Directive
[xix] Law 11/2018 amended the rules on the disclosure of non-financial information in Spain. See https://www.boe.es/boe/dias/2018/12/29/pdfs/BOE-A-2018-17989.pdf
[xx] See https://treasury.gov.au/consultation/c2023-383896
[xxi] International Tax Review (16.04.2023). Opinion: Australian public CbCR opens new era of tax transparency
[xxii] 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
[xxiii] UK opts for public country-by-country reporting (7th September 2016)
[xxiv] 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. See https://fairtaxmark.net/
[xxv] See United States: SEC signals support for country-by-country reporting
[xxvi] 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
[xxvii] See Tax Transparency in Africa 2023 – Africa Initiative Progress Report (July 2023)
[xxviii] 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
[xxix] One of the world's largest sovereign wealth funds. See Tax and Transparency - expectations towards companies
[xxx] Significantly, S&P Global input into the Dow Jones Sustainability Indices. See Five Years of Pushing for Change: Assessing Corporate Tax Strategies
[xxxi] 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)
[xxxii] Contains public CbCR data for over 100 multinationals from 2017 to 2021. See https://taxobservatory.shinyapps.io/company_cbcr_data/
[xxxiii] Note: these requirements are consistent with the GRI207-4 reporting standard and the OECD BEPS Action 13 disclosure template

Fair Tax Foundation
Holyoake House
Hanover Street
Manchester
M60 0AS

fairtaxmark.net
info@fairtaxmark.net

+44 (0)161 250 6595

Fair Tax® Foundation