

Country-by-country reporting is open for discussion

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The OECD announced yesterday that:

Discussion Draft on transfer pricing documentation and country-by-country reporting released for public comment

30/01/2014 - Action 13 of the [BEPS Action Plan](#) released on 19 July 2013 calls for a review of the existing transfer pricing documentation rules and the development of a template for country-by-country reporting of income, taxes and economic activity for tax administrations.

An initial [draft of revised guidance on transfer pricing documentation and country-by-country reporting](#) was released for comment by interested parties today.

The Committee on Fiscal Affairs believes that it is essential to obtain input from stakeholders on this Discussion Draft to advance the work. Specific issues on which comments would be appreciated are noted in the draft.

Comments should be submitted in writing to transferpricing@oecd.org by 23 February 2014. A public consultation event will be held at the OECD in Paris at the end of March 2014 with specifically invited persons selected from among those who provide written comments.

An open discussion of the draft with all interested persons will take place at a future date to be determined in April or May.

I will be making a submission to this process on behalf of the [BEPS Monitoring Group](#) that represents an informal alliance of major NGOs, academics and campaigners.

What slightly amused me was to be told by a journalist yesterday that a tax partner from a major firm of accountants who was deeply sceptical of the OECD BEPS process thought that NGOs would be delighted with the draft

revised guidance because it included country-by-country reporting. I hate to disillusion him, but that is far from the case.

What the OECD has presented here is just about the minimum they can supply and fulfil the mandate given to them by the G8 and G20 to create a country-by-country reporting template to help beat tax abuse. It is a very, very long way from what [I call country-by-country reporting](#). So, without writing the whole submission now let me highlight the major concerns I have.

First and foremost country-by-country reporting is not an arm's length pricing issue. It is a risk assessment tool with the regard to the whole of the base erosion and profits shifting process. That means to bury it, quite deeply, in just one part of the action plan to which in large part it is unrelated is just wrong, and is a downgrading of the issue that fails to reflect its significance as a mechanism for identifying tax abuse. Country-by-country reporting needs to stand alone in this process for that reason.

Second, to reduce country-by-country reporting to a few variables - sales, labour cost or headcount, profit before tax, tax paid and some indications of capital - makes no sense. If a figure for profit by country is available then so too is a full profit and loss account and balance sheet by country available. That has to be the case. Profit is not a number in its own right, it is a residual after all other transactions that have been recorded and only makes sense when measured against the capital maintenance concept that underpins the logic of any balance sheet. So in that case why not publish a full set of accounts for each jurisdiction? This data is not even for the public record, after all.

Third, the OECD has doubt about what figures to use. It asks whether or not the reported data should be based on entities or countries. Isn't the clue in the title? This is country-by-country reporting. Entities can trade in many places. We want to know - and tax authorities want to know - what happens in their country.

Then it asks if the data should be 'bottom up' or 'top down' i.e. should the data be based on the local information of the companies trading in the group or on the share of the group activity as shown by the group accounts that actually is thought to occur in the country being reported upon. Again, simple logic provides the answer here. Since all accounting data only makes sense in comparison, and to base the country-by-country report on local data which local tax authorities already have would provide them with nothing to compare with - since the data would be what they already have - the data to be supplied by country-by-country reporting has to be top down data i.e. the share of the group result that happens locally.

But this then opens further issues. For a start, on what basis are revenues to be declared? All local accounts will report sales on a source basis i.e. those that happen from the location. It would obviously be important for the sake of comparison that the group accounting data be consistent i.e. on a source basis in the first instance. But this then requires by implication that revenues then be split between third party and intra-group because local accounts will include both but the group only intra-group sales if the total is to reconcile back to published data (as it must, for credibilities sake - although the consultation makes no reference to such basic ideas as checking numbers in total which any auditor would think essential). So both need to be given, but then there is the further issue that if BEPS is to be identified (and remember that is the goal) destination based sales need also to be disclosed because this indicates activity like that if Google in Ireland where it is very obvious that the source based sales have little to do with Ireland and a lot to do with elsewhere. So all this sales data is needed to make any sense of this data in a BEPS context - which is what matters.

Then finally let me deal with two other issues. The first is the figure for tax paid. Why is this in cash when the figure for profit is to be declared on an accruals basis? Has no one in the OECD yet realised that cash and accruals are not the same thing and not comparable? Surely what is needed is not such a mish-mash of data that makes no sense and provides almost no basis for comparison (note, that word again) but instead a reconciliation of the group's overall tax opposition by country showing what it owed at the start of the year, what it says it owed for the year (in the income statement and elsewhere) less what it paid to leave what it owed at the end of the year. Then cash and the tax charge would be reconciled and, vitally, if someone was not paying the evidence would be available. This is accounting data that makes sense and I will tell you that when I was an auditor I never allowed a tax charge in the accounts to be signed off unless someone had done such a reconciliation so please do not tell me the data does not exist; I am sure it does.

Finally, let's turn to the data on capital values. Here another mish-mash is suggested, with shareholder equity and tangible assets plus cash being offered as measures. The difficulty here is a simple one and yet the OECD has to state what it requires. Is this to simply reflect what the group says, whatever its accounting policy, or is the OECD suggesting that there should be measures in place for this purpose so standards for comparison are available? It is not clear - and yet the opportunity for differences are enormous. Guidance is needed.

And what is needed most of all is a commitment to what I am now calling Tax Reporting Standards - standards that set the requirements for accounting

disclosure for tax purposes. What this consultation proves is how badly we need them.