

## The OECD attaches almost impossible conditions to count...

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The OECD's regulations on the use of country-by-country reporting, [published today](#), are nigh on absurd. They say:

*Countries participating in the OECD/G20 BEPS Project agree to the following conditions underpinning the obtaining and the use of the CbC Report.*

- **Confidentiality.** Jurisdictions should have in place and enforce legal protections of the confidentiality of the reported information. Such protections would preserve the confidentiality of the CbC Report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a TIEA or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes. Such protections include limitation of the use of information, rules on the persons to whom the information may be disclosed, ordre public, etc.

- **Consistency.** Jurisdictions should use their best efforts to adopt a legal requirement that MNE groups' ultimate parent entities resident in their jurisdiction prepare and file the CbC Report, unless exempted as set out in paragraph 9. Jurisdictions should utilise the standard template contained in Annex III of Chapter V of the Transfer Pricing Guidelines, and included in the September Report. Stated otherwise, under this condition no jurisdiction will require that the CbC Report contain either additional information not contained in Annex III, nor will it fail to require reporting of information included in Annex III.

- **Appropriate Use.** Jurisdictions should use appropriately the information in the CbC Report template in accordance with paragraph 25 of the September Report. In particular, jurisdictions will commit to use the CbC Report for assessing high-level transfer pricing risk. Jurisdictions may also use the CbC Report for assessing other BEPS-related risks. Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the CbC Report. They will further commit that if such adjustments based on CbC Report data are

made by the local tax administration of the jurisdiction, the jurisdiction's competent authority will promptly concede the adjustment in any relevant competent authority proceeding. This does not imply, however, that jurisdictions would be prevented from using the CbC Report data as a basis for making further enquiries into the MNE's transfer pricing arrangements or into other tax matters in the course of a tax audit.

Let's interpret this, kindly.

The first requirement is that country by country reporting should never go on public record: the OECD is backing large multinational companies demands that their accounts should remain as opaque as possible. Now, of course I accept that tax information has to remain private, but this statement will be interpreted by big business and the Big Four firms of accountants to suggest that all country-by-country data should remain firmly out of the public domain, and that is to be deeply regretted. The whole original purpose of country-by-country reporting was to provide stakeholders with the information that they need to appraise whether the companies in which they might invest, or in which they have an interest, are properly paying the tax that they owe in the right place at the right rate, and at the right time. Unless country-by-country reporting data is put on public record this will not, of course, be possible. The OECD appears to begin drawing this process.

Secondly, the OECD would now appear to have set itself up as a global accounting standard setter, and has set the rules for country-by-country reporting in stone for time immemorial, or so it would seem. If it is an accounting standard setter, then it should say so, and in that case, like any good standard setter, it should provide for post-implementation reviews so that the lessons from experience of use can be built into any standard to ensure that it really does meet the expectations that it was designed to fulfil. There is no indication that this will happen in the case of country-by-country reporting.

The third requirement is, however, by far the most absurd. The obvious use for country-by-country reporting data (and the purpose for which I designed it, so I have some authority to comment on this issue) is to undertake what are called unitary apportionment formula allocations of profit to jurisdictions based upon what are called key allocation drivers (in the case of the OECD's country-by-country reporting template these are third-party sales, headcount and net assets) to then determine whether the allocation of total group profits of the multinational corporation that has earned them has been appropriately made to individual jurisdictions when compared with the results presented to the tax authorities of the respective countries involved. The OECD has specifically ruled out an adjustment to profit for the taxation purposes based on any such calculation based upon country-by-country reporting data.

To put it politely, these measures, in combination, appear to be the USA trying to strangle the impact of country-by-country reporting at birth. When coupled with the **[failure to share this data with developing countries](#)**, that I've already noted,

**this is a bad day for country-by-country reporting, and for progress in seeking to make sure that multinational corporations pay the right amount of tax that they owe in the right country that they owe it.**