

Let's talk straight about country-by-country reporting

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Tax Notes International has published an article on the intended scope of the country-by-country reporting this morning ([behind a paywall](#)).

Tax Notes International has a very high reputation as a repository for professional comment on tax issues, and as such this article is somewhat confusing. It concluded by saying:

Add to the list of issues the OECD must resolve by year-end the scope of CbC reporting and the definition of MNE group. Given the timeline for CbC reporting, those should take highest priority.

This seems bizarre since the article also notes:

The OECD transfer pricing guidelines define MNE group as a group of associated enterprises with business establishments in two or more countries.

It then, correctly, notes that:

The guidance issued to date on BEPS action item 13 does not refer to the transfer pricing guidelines for a definition of MNE group. Rather, it suggests that an MNE group is equivalent to a consolidated financial group. Annex III to the September 16 discussion draft defines a constituent entity for purposes of completing Annex III for the CbC report as any separate business unit of the MNE group (company, corporation, trust, partnership, and so forth) that is included in the consolidated group for financial reporting purposes.

Precisely, might be my response. The OECD has already completed the task that Tax Notes International has set because it has followed the design of country-by-country reporting, for which I am largely responsible. This is because it has recognised that country-by-country reporting is not about disclosure of the tax base but is instead about the provision of relevant and reliable accounting information for use, in this instance, to determine whether or not the tax base the multinational corporation declares actually reflects the real economic substance of the transactions that it is undertaken in the

places where it trades.

Tax Notes International appear to be confused on this issue: they have noted alternative definitions of the multinational corporation, and tried to bring tax considerations into the discussion, but all of these are irrelevant. The whole thing about country-by-country reporting is that it is, when used for tax purposes, a risk assessment tool and not a basis the tax assessment in its own right. And if that risk assessment tool is to have any relevance then it must be the case that it can be reconciled with the accounts of the group whose tax affairs are being considered, because these are the starting point for the assessment of tax, whether we like it or not.

In that case what is Tax Notes International doing? Is it just missing the point? Is it trying to throw a deliberate spanner into the works? Or Is it just space filling? I fear it may be the second, and if that is the case it is a pretty disappointing indication that the tax profession is really seeking to find some fairly disingenuous excuses to not comply with the requirements of country-by-country reporting even when the principle has been agreed and clearly described.

It's time they got on with accepting the new way of the tax world, even if they did not write it this time.