BIAC Statement on Country by Country Reporting ("CbCR") Implementation

January, 2017

"Consistent and effective implementation of the transfer pricing documentation standards and in particular of the Country-by-Country Report is essential." – OECD, Action 13: 2015 Final Report

1. BIAC has been supportive of the CbCR initiative since its inception as a High Level Risk Assessment Tool and method to improve transparency to (and between) governments. BIAC recognises the need for tax authorities around the world to have access to data on global activities in order to determine where to focus their own scarce resources. Providing tax authorities the data they need plays a vital part in maintaining and (re)building trust in the international tax system.
2. During the OECD's Base Erosion and Profit Shifting ("BEPS") Project, BIAC brought together accountants, finance professionals, systems experts and other members of the business and tax communities to provide constructive and detailed input on the practical application of proposals made by the OECD, including the CbCR recommendations per the Action 13 discussion draft.
3. The BEPS Action 13 recommendations are thus the product of considerable discussion between governments, businesses, and many other stakeholders whose views were heard during the consultation. For example, business explained the administrative and systems difficulties that would result from strict rules on data sources, and the OECD responded by acknowledging that taxpayers should have the option to compile their CbCR from either local statutory account reporting ("bottom-up") or via allocation of the MNE group's consolidated income ("top-down"). Further, the OECD specifically did not mandate that the numbers be audited.
4. The result is that the OECD's recommendations on Action 13 – while not satisfying every concern that business raised – represent an outcome that should serve governments' needs, whilst also minimising the burden on business to the extent possible.
5. Since the release of the Final Action 13 report in October 2015, BIAC has supported implementation of the consensus recommendation reached at the OECD in respect of CbCR. Consistent implementation across jurisdictions is, in our view, the best way to create a transparent and fair international tax system without creating undue complexity for taxpayers.
6. BIAC continues to call for consistency in implementation of the OECD's CBCR recommendations. In particular, we recommend that all participating countries allow "surrogate" filing of CbC reports (and accept CbC reports filed under surrogate mechanisms in other countries) so that MNEs are not required to make multiple filings where their "home country" has not yet implemented CbCR rules. We welcome the OECD's position that voluntary filings made in an MNE's "home country" and shared with other countries should be seen to satisfy those other countries' requirements.
7. As MNEs have sought to prepare their CbC reports, various difficulties have arisen. Some of these difficulties relate to differences in countries' primary legislation (for example, filing deadlines in advance of the recommended 12 months, or later implementation dates). Other difficulties relate to global implementation more broadly (for example, requirements to notify tax authorities by 31 December 2016 of which country will be receiving the report in 2017 without systems in place to

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make such notifications, and a lack of clarity on the process of submitting a CbC report in a jurisdiction which is not the parent company location).

8. BIAC is also concerned about calls for the public disclosure of CbCR data, particularly by the European Commission, who participated throughout the OECD BEPS process and endorsed the OECD recommendations in October 2015. Public disclosure has no clearly articulated specific purpose.
9. No thorough impact analyses have been conducted on the public disclosure of CbCR data for either taxpayers or tax authorities. Businesses have legitimate concerns about providing their competitors with access to granular detail on their operations. In particular, where this data is not aggregated or subject to materiality thresholds, it is possible for competitors to draw significant conclusions about where there activities are scaling up (or down) and the type of activities that are being undertaken there.
10. Divergence from the OECD's CbCR template by any public CBCR will create substantial implementation costs and may require businesses to reconfigure – once again – their financial and tax reporting systems.
11. Making CbCR data public is not demonstrably in the public interest. Experiences of businesses already reporting under industry specific regimes such as the EU Accounting Directive (extractive and logging businesses) or EU Capital Requirements Directive IV (credit institutions and investment firms) are that the data has been expensive to collect, audit, publish and maintain, with remarkably little public interest being shown in the data published.
12. To date, we believe that insufficient attention has been given to the impact of public disclosure on cooperative compliance relationships between taxpayers and tax authorities, the benefits of which have been demonstrated by the OECD's own research[1]. Successful cooperative compliance requires taxpayers to be transparent with tax authorities and, conversely, requires tax authorities to show sensitivity to the needs of business, taking into account their costs of compliance and preventing the misuse of taxpayer data. Open dialogue between taxpayer and tax authorities can help to mitigate the risk of "false positives" from the CbC data taking up tax authority resource.
13. We also believe that insufficient consideration has been given to the impact on tax authorities' effectiveness and reputation if everything has to be done in real-time and in the glare of publicity. As noted above, the maintenance, and in some cases (re)building, of public confidence in tax systems is of key importance to business and governments post-BEPS.
14. Further, if some jurisdictions implement public CbCR requirements without a global consensus, this could discourage investment and economic activity in those jurisdictions, particularly where even a small investment into a country would result in publication of significant information on their global operations. This is particularly true for those businesses who feel the publication of data could compromise their competitive position.
15. BIAC believes that careful, considered, multilateral debate enables effective tax policy making. BIAC calls for detailed and inclusive discussions about the full implications of public disclosure of CbCR –

[1] *Study into the Role of Tax Intermediaries*, OECD, 2008, *Co-operative Compliance: A Framework*, OECD, 2013, and *Co-operative Tax Compliance: Building Better Tax Control Frameworks,* OECD, 2016

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for both taxpayers and tax authorities – to be undertaken to ensure that these issues can be appropriately understood and addressed in advance.

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