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Ref: Review of Country-by-Country Reporting (BEPS Action 13)

Dear Secretariat,

Thank you for the opportunity to comment on the *Review of Country-by-Country Reporting (BEPS Action 13)* (“the consultation document”). We appreciate the opportunity to respond to what is a detailed and thoughtful consultation document.

Business at OECD has long supported the OECD’s work on cooperative compliance, and the transparency provided to tax authorities by the country-by-country (“CbC”) report is important in that respect. We support periodically reviewing and updating the requirements to ensure that the CbC reports give tax administrations the information that they need to perform high level risk assessments in a constructive, targeted and consistent way.

Nevertheless, we do also believe it is too soon after the introduction of CbC reporting (“CbCR”) to implement major changes, not least because the cost of CbCR as well as the cost of any changes made to the reporting requirements have, historically, been underestimated. Most tax authorities have yet to interact with reporting taxpayers on filed reports, and so the full challenges with (and opportunities for) existing filing requirements are not yet known. Moreover, with the ongoing work of the Inclusive Framework’s digitalizing economy project, it seems premature to make Action 13 changes before we know what changes that project may require to CbCR.

We urge the OECD to also keep in mind that the purpose of CbCR is as a tool to conduct high level risk assessment and should not impose requirements that act in opposition to that underlying principle. Consistency of information, application and interpretation is of utmost importance, as deviations by countries increase complexity and administrative costs, and can result in double taxation. Introducing any changes to the CbCR regime could diminish consistency (in at least the short term) and thus could result in starting the clock over for purposes of consistent risk assessment. It is important that these negative impacts are weighed up against the purported benefits of any changes.

Many members remain strongly opposed to any attempt to make CbC report information public, for a number of reasons, including that the reports contain commercially sensitive data.

We further note in that respect that requiring per-entity reporting for Table 1 would significantly increase the risk that sensitive commercial and strategic data be disclosed at a very granular level, if public reporting were to be introduced in certain jurisdictions.

Again, thank you for the opportunity to comment on this consultation, and *Business at OECD* looks forward to working with you further on this project.

Sincerely,

A handwritten signature in black ink that reads "Will Morris". The signature is written in a cursive, slightly slanted style.

Will Morris
Chair, Taxation and Fiscal Policy Committee,
Business at OECD (BIAC)

Appendix 1: General Remarks

Chapter 1 – Appropriate and Effective Use of CbC Reports

According to feedback from our members, at present only a few jurisdictions appear to be preparing statistical analysis of reported CbC data, and the level of aggregated data currently mandated in most instances requires additional qualitative explanations.

Some jurisdictions impose master file requirements beyond the Action 13 standard which create heavy compliance burdens. This is especially true for entities that do not have a local presence in a jurisdiction. It is important that master file requirements are globally consistent without leading to modifications from the final report template. Thus, a single standardized master file would ensure consistent information is available to all tax administrations while providing consistent and uniform data collection obligations on affected companies. Filing dates should also be standardized (such as respecting the reporting date set out in the Ultimate Parent Entity (UPE) jurisdiction) in order to avoid higher compliance burdens. Some jurisdictions that require local filing of the MF do not provide guidance on timing when the UPE and CE have different fiscal year ends.

There continues to be some confusion regarding reciprocal exchange, with members reporting that where the UPE jurisdiction sends but does not receive CbC reports, some countries still demand an additional local filing even if they are also receiving it from the UPE jurisdiction. This unnecessary duplicative reporting creates the risk of inconsistency and should be restricted to rare circumstances.

To date, experience with jurisdictions requiring the master file to be translated into the local language demonstrates a high compliance burden on MNEs (as the extensive master file can run more than 100 pages in some instances) and creates consistency issues regarding which version is the authoritative document. The filing process can also be burdensome and require assistance from local advisors to convert and submit the Master File.

Some jurisdictions have imposed onerous requirements in seeking additional information that is not relevant for the purposes of risk assessment and functions more as a commercial data collection exercise (e.g. requesting the names and addresses of the top ten unrelated party lenders to the MNE group). Differences in definitions and formatting requirements (e.g. one page per CbC jurisdiction versus multiple pages) also create a substantial workload on affected companies; an effort to encourage uniformity would be appreciated.

Table 1 exists to provide a high level risk assessment, and not a granular tax audit tool, so information on an entity level could be achieved by pulling the individual tax returns rather than repackaging that information in a different format (which requires reformatting for currency, GAAP standard, etc.) which would inevitably need to be reconciled to the local tax return in any event.

We note that the notification process could be simplified and standardized, as all participating jurisdictions use slightly different formats, processes, and timing. MNE Groups have also reported difficulties with the deadlines for submitting a CbC notification: a number of jurisdictions have provided for a deadline which is the last day of the reporting Fiscal Year of the MNE Group. While this does follow the Model Legislation, we call for this provision to be amended since MNE Groups do not hold the necessary information to provide a CbC notification as early as the end of the Fiscal Year to be reported. We recommend either doing away with the notification requirement entirely, or making it easier for the

taxpayer to satisfy, such as by adding it as a field in the tax return or creating a common standardized form that can be submitted in all jurisdictions, and by amending the submission due date.

On the issue of whether the current revenue threshold is satisfactory or else should be adjusted, our members suggest no change to the threshold, and it seems prudent to delay expansion of the number of MNEs subject to this requirement until processes for assessing risk and otherwise using the data have been established and validated. The process of collecting all the information for the CbCR is time intensive, often involving significant monetary investment in systems changes. For smaller companies, this could pose an excessive burden as noted in Paragraph 41 of the discussion draft. As CbCR data is incorporated into tax authorities' audit processes, the OECD can then consider lowering the threshold.

Chapter 2 – Scope of CbC Reporting

We suggest greater clarification on the definition of research and development expenditures, as there are often differences for both accounting and tax purposes between jurisdictions on this issue.

Chapter 3 – Content of a CbC Report

Our membership is divided on the question of providing consolidated versus aggregated data, and point to various factors to support their views. While some feel that aggregated data appears to inflate certain metrics that may be counted twice (e.g. related party revenues), others note that they simply do not have consolidated data available at a country level, because existing reporting rules and systems do not require it (e.g. consolidation at UPE only, multiple local subgroups, etc). Regardless of the view taken, our members agree that any changes must take into account the administrative burden on groups and weigh this against the anticipated benefits. In order to establish a level playing field, some members suggest the ability to report data on either a consolidated or aggregate basis, irrespective of the UPE jurisdiction, as long as the basis of preparation is disclosed.

A majority of members believe that Table 1 data should continue to be reported on a jurisdictional basis rather than per-entity (although a minority are of the view that it could provide tax authorities with a clearer picture of constituent activity in each jurisdiction in some circumstances). There is a perception that an entity approach could lead to countries using the reported information as the basis for tax assessments without conducting any transfer pricing analysis, which would be antithetical to the stated goal of using CbC reports as simply a risk assessment tool. Moreover, moving to per-entity reporting for Table 1 would raise very serious concerns for business as it may tremendously increase the risk that sensitive commercial and strategic data be disclosed at a very granular level if public reporting were to be introduced in certain jurisdictions. This would impact both MNE Groups headquartered in such jurisdictions, but also MNE Groups not headquartered there but which have constituent entities in such jurisdictions.

For companies using consolidated financial statements, it will be burdensome to adjust accounting and tax systems, as well as to dissect consolidated data into constituent parts (such as allocating tax accrued/paid to the appropriate constituent entities).

Adding constituent entity data to Table 1 does not seem commensurate with the underlying principle of the CbCR acting as a high-level risk assessment tool, and is likely to significantly increase the datasets required to be provided (as much as a 24x increase for some companies). There is also a likelihood of

jurisdictions misinterpreting the additional data. The constituent entity concept is a CbCR concept, not one used in financial, statutory or tax accounting, and so the provision of constituent entity relating numbers will require additional, often manual, adjustments.

One of the biggest challenges faced by members is determining the correct sources of data on which to base the Action 13 report. Many multinational entities currently use data from consolidated reporting packages, as this is centrally available and can usually be reconciled for control purposes. A move to entity reporting could instead require the use of statutory account figures, which may be more burdensome if there is the need to reconcile reports to local accounts and explain resulting differences. Local statutory accounts often are measured differently than the UPE's group reporting standard, are prepared in a manner not easily amenable for data extraction, and may not fully disclose all Table 1 requirements. It is likely that if the OECD chooses to adopt a per-entity reporting requirement, flexibility would be needed to allow the use of different data sources depending on specific jurisdictions.

The use of consolidated data for Table 1 may result in only some changes for those MNEs already using group consolidated packages to prepare CbCR. Consolidated data might provide a more realistic view of activities in individual jurisdictions as it could remove items that skew the data (e.g. dividends or impairment flows that repeat in the profit before tax calculation). However, we note that not all MNEs currently use group consolidated packages to prepare their CBC reports, and the burden of change on those that do not would be significant.

Because Table 1 allows tax administrations to see which jurisdictions are receiving related party income, total related party expenses may be a useful metric in order to determine which jurisdictions are bearing related party expenses.

For companies preparing financial statements under US GAAP, it would be extremely burdensome to separately identify service fees as these currently must be netted off against expenses. The same compliance concern exists with regard to reporting related party interest and royalties.

Further clarification should be made regarding the "stateless" entity section of the CbCR. We suggest that "stateless" should be defined as only including those entities where earnings are not taxed anywhere.

A few members find it beneficial to report information on deferred tax charges, as this might help consideration of the country effective tax rate. Clarification would be useful on the issue of deferred tax, specifically that the reported amount in Table 1 should not include deferred tax relating to other comprehensive income or items booked directly in equity, as this would distort the effective tax rate calculation.

Many members are concerned that the inclusion of industry codes in Table 2 would lead to overwhelming efforts to remap group structures; this information is often considered sensitive and the current activity descriptions provide a sufficient identification mechanism. Taxpayers have already spent considerable time mapping entity activity in Table 2, which may not be directly correlated with the relevant industry classification code. There is also a high likelihood of expanded controversy regarding the applicability of codes to benchmarking studies, thus limiting future analysis. For example, applying an industry code to every legal entity in addition to classifying the main business activity is exceedingly burdensome for a UPE with many subsidiaries that acquires companies regularly. Adding this to the

CbCR requirements may result in taxpayers taking a practical approach, perhaps applying the most common code in cases where they don't have enough information about the constituent entity or the constituent entity is engaged in multiple activities, which would reduce the effectiveness of this requirement. Nevertheless, some members feel that using standardized industry codes is an improvement over current CbC activity definitions, which can be too limiting, and will help streamline year-on-year report preparation. Some members do find it challenging to utilize only one industry code per country as some constituent entities undertake multiple activities in different industry segments. It might therefore be prudent to have a predominant code (perhaps determined by relative turnover), with room to include secondary codes for completeness and a more accurate risk assessment. This, however, reduces the effectiveness of using the industry code.

If (despite our concerns regarding the timing of such changes) new columns are added to Table 1, we suggest that detailed definitions be provided in order to achieve as much clarity and consistency as possible. Adding pre-determined fields to Table 3 may be worth considering for required information, as long as kept simple and companies are still allowed to make use of the free text area. Pre-populated responses may in some instances lead to more limited answers; free text should still be allowed in order to provide specific answers. Additional pre-populated inputs may include: (i) the exchange rate used if different than the parent company GAAP; (ii) the basis of employee headcount; (iii) whether stated capital includes/excludes APIC.

One reporting issue identified by members is that accounting adjustments from local GAAP to group GAAP may be performed on a country or regional basis, rather than on a constituent level. Therefore, Table 1 financial data based on the group GAAP may not be readily available per constituent entity, and so reporting should be allowed based on the local GAAP consistently across years; this approach is in line with the Action 13 final report (Chapter V, Annex III, 'Source of data').

For the most part, our members agree that fields required in the XML schema should be incorporated into the reporting template (e.g., tax identification number) so that the template and schema match; however, some members did question the link of these data points to a high-level risk assessment given the limited value added in relation to anticipated costs. TINs can be difficult for the UPE to obtain or may not be available for entities in jurisdictions where there is no corporate tax.

Conclusion

In general, businesses are concerned that any changes to reporting requirements to require additional information not impose disproportionate compliance burdens. Many MNEs are also adhering to other voluntary reporting standards, such as the Global Reporting Initiative, and so changes to CbCR may lead to increasing duplication and confusion both by respondent companies and tax authorities to enhanced data inflows. Requirements should remain flexible and allow for the provision of more meaningful information to stakeholders.

Companies should not be required to constantly absorb compliance costs arising from significant changes where benefits of the changes have not been clearly articulated and are assessed to exceed those costs. In particular, it is necessary to involve accounting and systems experts in the context of potential changes because of the major costs arising from ERP design changes and lead time to develop and implement new procedures, which are both labor and investment intensive. Any additions to the

reporting standard should carefully consider the corresponding burden on companies to ensure the benefits are commensurate with new compliance obligations, and will not need to be changed again in short succession.

Appendix 2: Detailed response to the respective questions outlined in the consultation document

Q1: What comments do you have regarding the general status of implementation of CbC reporting by members of the Inclusive Framework?

We recognize the significant efforts that have taken place by the OECD and tax administrations in delivering BEPS action 13 since 2015. However, there are several implementation issues which are not considered in the consultation.

One key element that still puts a significant burden on companies is the non-harmonized ways countries implement CbCR. This concerns in particular the exchange of information and the information that is demanded by certain countries.

For information exchange, some countries demand a local filing when there is no or not a reciprocal information exchange agreed with the country of the UPE. Especially in the latter case, a local filing demand is difficult to understand since the country will receive the information anyway via the agreed information exchange (the sending country just doesn't want the reciprocal information). Therefore, we suggest that a requirement to file outside the jurisdiction of the UPE should be permitted only in very restricted circumstances – e.g. where a surrogate entity files, or where the UPE jurisdiction refuses to forward the reports to other tax administrations. These rules need to be consistently applied by all jurisdictions in order to avoid inconsistency and potential lack of version control. On the other hand, the OECD should require countries that are slow to implement exchange agreement to speed up this process, in order to relieve companies from the burden of multiple filings.

With regard to the information demanded by certain countries, additional focus should be placed on the range of definitional differences between jurisdictions (i.e. the differences in Country Code between ISO and US Standard, or differences between definitions of Employees and Capital measures in the Russia CbC), as well as the different formats required (e.g. the US IRS Form 8975 constitutes one page per CbC country; Romania has a unique format; etc.).

Finally, it seems that the notification process can be simplified. Though many notifications contain similar information, all jurisdictions have a unique format for notification, a different process for submission of the relevant forms, and different timings. We therefore recommend removing the notification requirement entirely or making it easier for the taxpayer to satisfy, such as adding it as a field in the tax return or a standardization of the notification form and the timing of notification.

Q2: What comments do you have with respect to the use of CbC reports by tax administrations? To date, what impact has this had on the number and nature of requests for additional information?

The majority of our members have not yet been approached by tax administrations with regard to questions on filed CbC reports. This could be explained by the staggered implementation of requirements globally as well as variation in quality of taxpayer data (which should improve as additional guidance is released by the OECD). The assimilation of the data is still in its infancy and it may take an additional 2-3 years to really understand the use of CbCR.

That said, it would be useful to understand how these reports are being used to drive tax authorities' risk assessments and audit plans, and whether the potential risks identified were actually validated through audit. This is in order to avoid that they are utilized beyond their initial intent (a tool for risk assessment) and to understand whether there needs to be additional qualitative explanation in order to draw the right conclusions out of the numbers.

Q3: What comments do you have regarding cases where jurisdictions have implemented master file requirements that differ from or go further than the documents listed in Annex I to Chapter V of the OECD Transfer Pricing Guidelines?

It is a clear desire of all our members to have the Action 13 implementation as harmonized as possible. This is to avoid excessive compliance cost for preparation and follow up of the different reports. There are currently several countries that demand documentation beyond Annex I to Chapter V of the OECD Transfer Pricing Guidelines (e.g. Italy requires a specific TP documentation layout and France seeks information on subcontracted R&D activities; the Indian requirements have been mentioned across all our member feedback as particularly excessive and time consuming). However, those deviations also distort the intent of Action 13 to provide all tax authorities with equal access to information, and it is not clear that these requirements add useful information.

Similar to format deviations, different requirements for filing timings and local language requirements also put additional complexity and pressure on companies. We urge the OECD to promote consistency globally regarding format and content of Action 13 documents.

Q4: Are there any benefits from clarifying the definition of a Group to include a single entity that conducts business through one or more permanent establishments, in other jurisdictions in addition to those described in this document?

Q5: Are there any practical challenges to MNE groups resulting from clarifying the definition of a Group to include a single entity that conducts business through one or more permanent establishments in other jurisdictions, in addition to those described in this document?

Careful consideration should be given to any modifications of the CbC report governing rules aimed at broadening the scope of covered entities. A proper analysis should also be conducted on the pros and cons: additional costs for the new companies included vis à vis the benefits expected from such measure. Tax administrations should be required to demonstrate why they need additional information (or existing information in different formats) and that the benefits to them outweigh the additional costs to businesses of collection (and to other tax administrations - who do not claim to need the data - of processing it) before additional burden is automatically pushed onto businesses.

Q6: Are there any benefits from requiring a CbC report to be filed by groups under the common control of an individual or individuals acting together, in addition to those described in this document?

Q7: Are there any practical challenges to MNE groups from requiring a CbC report to be filed by groups under the common control of an individual or individuals acting together, in addition to those described in this document?

Q8: From the perspective of groups, what definition of control should be used to determine whether groups are under common control that would balance the dual aims of providing useful information to tax administrations while not placing an excessive burden on groups?

Q9: From the perspective of groups, what proportion (e.g. one quarter, one third etc.) of the CbC reporting threshold could be used as a threshold, to require a CbC report to be prepared by groups under the common control of an individual or individuals acting together, that would balance the dual aims of providing useful information to tax administrations while not placing an excessive burden on smaller groups?

Careful consideration should be given to any modifications of the CbC report governing rules aiming at broadening the scope of covered entities. A proper analysis should also be conducted on the pros and cons: additional costs for the new companies included vis à vis the benefits expected from such measure.

Regardless of the decisions made, clear guidance and definitions (e.g. of “control” in connection with existing accounting standards) should be provided and homogeneous enforcement ensured so there is no room for uncertainty.

Q10: Are there any benefits from reducing the consolidated group revenue threshold, in addition to those described in this document?

Q11: Are there any practical challenges to MNE groups resulting from reducing the consolidated group revenue threshold, in addition to those described in this document?

Many of our most engaged members are above the threshold and therefore it might be less relevant to them. However, given that tax authorities are still assessing the best ways to analyze this report and how to process the vast amount of data collected, it would be prudent to delay expansion of MNEs subject to this requirement until processes for assessing risk and otherwise using the data have been established and validated. The process of collecting all the information for the CbCR is time and resource intensive, often involving significant monetary investment in systems changes. For smaller companies, this could pose an excessive burden as noted in Paragraph 41 of the discussion draft. As CbCR data is incorporated into tax authorities’ audit processes, the OECD can then consider lowering the threshold.

Q12: Are there any benefits from each of the options for re-basing a non-EUR denominated threshold, in addition to those in this document?

Q13: Are there any practical challenges to MNE groups from each of the options for re-basing a non-EUR denominated threshold, in addition to those in this document?

Q14: Option 3 and Option 4 refer to an agreed percentage movement in the value of a jurisdiction's consolidated group revenue threshold that would trigger a requirement to re-base the threshold. From the perspective of MNE groups, at what level should this percentage be agreed (e.g. 5%; 10%) in order to balance the goals of consistency and comparability?

Q15: Are there any other options for re-basing a non-EUR denominated threshold that should be considered, in addition to those in this document?

No comments.

Q16: For each of the options for applying a threshold that takes into account consolidated group revenue of more than one fiscal year described in this note, are there any benefits, in addition to those in this document?

Q17: For each of the options for applying a threshold that takes into account consolidated group revenue of more than one fiscal year, are there any practical challenges to MNE groups, in addition to those in this document?

Q18: Are there any other changes to the operation of the consolidated group revenue threshold which should be considered, in addition to those in this document?

No comments.

Q19: Are there any benefits from including extraordinary income in consolidated group revenue, in addition to those in this document?

Q20: Are there any practical challenges to MNE groups from excluding extraordinary income in consolidated group revenue, in addition to those in this document?

Q21: From the perspective of MNE groups, which approach to this issue (e.g. including extraordinary income in consolidated group revenue if these items are separately presented in the consolidated group statements; excluding extraordinary income from consolidated group revenue if these items are separately presented in the consolidated group statements; or some other approach) would balance the dual aims of relative simplicity and a consistent outcome for MNE groups preparing consolidated financial statements under different accounting standards?

Companies have already set up their systems in order to report the information as it is now. The consideration of income as extraordinary may vary from one jurisdiction to the other, which may lead to inconsistent treatment among MNEs. Further, IFRS requires consolidated income reporting including

extraordinary income. Therefore, disclosing income on a consolidated basis is preferred and any extraordinary items could be included as a note in Table 3 of the CbC report.

Q22: Are there any benefits from including gains from investment activity in an MNE group's consolidated financial statements, in addition to those in this document?

Q23: Are there any practical challenges to MNE groups from including gains from investment activity in an MNE group's consolidated group revenue, in addition to those in this document?

Q24: From the perspective of MNE groups, which approach to this issue (e.g. including gains from investment activity in consolidated group revenue if these items are separately presented in the consolidated group statements; excluding gains from investment activity from consolidated group revenue if these items are separately presented in the consolidated group statements; or some other approach) would balance the dual aims of relative simplicity and a consistent treatment of MNE groups preparing consolidated financial statements under different accounting standards?

No comments.

Q25: Where the preceding fiscal year is less or more than 12 months, are there any benefits from a jurisdiction requiring an adjustment to (a) consolidated group revenue of the preceding fiscal year or (b) the consolidated group revenue threshold, in determining whether an MNE group is an excluded MNE group, in addition to those in this document? Otherwise, it would appear a jurisdiction could take either approach.

Q26: Are there any practical challenges to MNE groups in applying the consolidated group threshold as described in this document, in cases where the preceding fiscal year is less or more than 12 months, in addition to those in this document?

No comments.

Q27: Are there any benefits from including constituent entity information in Table 1, in addition to those in this document?

Q28: Are there any practical challenges or other concerns to MNE groups from including constituent entity information in Table 1, in addition to those in this document?

The benefits and challenges of presenting Table 1 information by entity, rather than by tax jurisdiction, that are outlined in the consultation document seem to suggest that the benefits are limited – indeed unclear – and the challenges and disadvantages are clearer and more substantial. One key aspect for our members is that the dataset produced for jurisdictions and tax administrations will be significant (4-fold to 24-fold) and might not add additional value (e.g. in the allocation of FTEs across the entities within the jurisdiction, in case the employment contracts are centrally concluded with one of the constituent entities in the jurisdiction). Breaking down country data could also require a complete change of the

financial reporting tools if such data is not currently available. It will therefore be a significant investment for MNEs to deliver such information. Entity data may also add confusion and effort in order for all parties to appropriately understand the data. Further, given that CbCR is a tool to conduct high level risk assessment, there is a risk that countries use entity by entity information as an easy way to impose tax without detailed transfer pricing analysis.

Taking into account certain other aspects, e.g. the consideration of impact of the OECD project on taxing the digitalizing industry, or other disclosure requirements such as the Global Reporting Initiative, we agree with the implicit assessment that a requirement to provide Table 1 data on an entity by entity basis is not to be recommended.

Finally, we believe that per-entity reporting for Table 1 would significantly increase the risk that sensitive commercial and strategic data be disclosed at a very granular level, if public reporting were to be introduced in certain jurisdictions. This would impact both MNE Groups headquartered in such jurisdictions, but also MNE Groups not headquartered there but which have constituent entities in such jurisdictions.

Q29: Are there any benefits from requiring the use of consolidated data in Table 1, in addition to those in this document?

Q30: Are there any practical challenges or other concerns to MNE groups from requiring the use of consolidated data in Table 1, in addition to those in this document?

While the use of consolidated data has its merits, as outlined in the consultation document, especially by not overstating related party revenues in a jurisdiction, many of our members fear that the practical implementation would be very difficult and extremely onerous.

We therefore suggest an assessment on the investment necessary and effort required by MNEs, since for most of them, consolidated data at a country level does not exist. Significant process and technical investment would be required across the MNE to identify and eliminate only transactions within a jurisdiction. This would take time to put in place, and unless carried out well, is likely to lead to different approaches being taken by different MNEs. It is also not clear how the impact of consolidation can be restricted to related party revenue as referred to in the consultation – there may be an impact on the PBIT numbers, Accumulated Earnings, and Stated Capital.

Another consideration is the relation to other existing reporting, e.g. the Transfer Pricing Informational Returns (TPIR), or other OECD projects such as the taxation of the digitalizing economy. In any case, definitions need to be clear and appropriate to the item being reported by the MNE.

For the 2020 review, we would recommend maintaining the status quo in this area, which seems to be a more prudent approach.

Q31: For each of the possible new items of information considered in this section, are there any benefits from including an additional column in Table 1 of the CbC report template, in addition to those in this document?

Q32: For each of the possible new items of information considered in this section, are there any practical challenges or other concerns to MNE groups from including an additional column in Table 1 of the CbC report template, in addition to those in this document?

Q33: If any of the possible new items considered in this section were added to Table 1 of the CbC report template, what additional instructions or guidance would be helpful to MNE groups?

We understand the additional measures will provide a more granular breakdown of the related party revenue and expense. However, it is not fully evident that the doubling of the measures versus the data already provided is necessary to determine a high-level risk assessment. If it is judged that there is a potential risk, further appropriate enquiry can be followed locally, particularly when much of the additional suggested requested information is already available to countries in various forms.

Our members opinions differ on adding deferred tax charge to the CbC report. Combined with the 'income tax accrued' column, this could enable a more reasonable consideration of the country effective tax rate to be made in some cases (paragraphs 129-131 explain this issue well). However, in some cases, the fluctuation of valuation allowance based on recoverability of deferred tax assets may undermine the accuracy of effective tax rate analysis, and most members did not consider there was sufficient benefit to mandate the inclusion of deferred tax on the CbC report.

Some members thought that related party expense may be a necessary element to understand potential outflows and hence BEPS risk. If necessary, this should be added as an extra column, but without the breakdown of interest, royalty, and service fees: for groups which prepare their financial statements under US GAAP, it may be extremely difficult to identify service fee income and service fee expense where these service fees are calculated on a cost plus basis (which is very common), because US GAAP in many cases requires these service fees to be netted off against expenses and not separately identified. If service fees were to be separately identified, this would require a huge annual exercise to go manually through the accounts of each constituent entity.

We are unclear as to the need for the inclusion of R&D spend by country when the location of R&D is already included in Table 3. Similarly, a clear definition and scope of R&D would need to be provided, for example the handling of third party or contracted-out R&D.

We also think it would be premature to make any proposed changes to CbC without first taking account of the outcomes of the OECD project on taxing the digitalizing economy in order to avoid multiple rounds of change and investment. We therefore caution the OECD to limit additional columns of information to the extent it does not put a disproportionate compliance burden on MNEs who also have to adhere to other disclosure reporting such as GRI. We also note that several countries already have annual disclosure forms as part of the tax return filing process that include detailed schedules for all types of related party transactions (e.g. Local File A in Australia, T106 in Canada, Form 5472 in the US, etc.) Therefore, including several of the suggested new items would be unnecessary doubling up of reporting.

Finally, we would note that a concurrent increase of the types of information to be provided in Table 1 together with the introduction of per-entity reporting requirement for Table 1 would create a major disruption in the operation of the Action 13 minimum standard, implying a huge administrative and operational hurdle.

Q34: For each of the possible approaches considered in this section, are there any benefits in addition to those in this document?

Q35: For each of the possible approaches considered in this section, are there any practical challenges or other concerns to MNE groups in addition to those in this document?

We recognize the need to clarify the content of the 'Stateless' entity section within CbC. This categorization currently covers many different types of entity. One suggestion is that the proposal should seek to maintain a Stateless classification that only includes those entities where the earnings are not taxed anywhere. In addition, we question if the duplication of revenue and PBIT items between Stateless and the partners adds complexity and confusion for those assimilating the CbC report.

Of the proposals within the consultation document, to increase the level of clarity of the Stateless category and maintaining a balance in the level of data necessary, Approach 1 would appear be the most practical.

Q36: Are there any benefits from including additional information required in the CbCR XML schema in the CbC report template, in addition to those in this document?

Q37: Are there any practical challenges or other concerns to MNE groups from including additional information required in the CbCR XML schema in the CbC report template, in addition to those in this document?

Our members are divided about the benefits of including additional information such as tax identification numbers. While some consider it natural to incorporate TIN and other items required in the XML schema into the CbCR template, others question the benefit of including entity addresses or the TIN codes in the content of CbCR to deliver a high-level risk assessment, as the more relevant data for assessing the financial movements is the country of residence, which is already included. For large MNEs, this information is not always readily available to the UPE.

The compliance burden and sourcing of information can be challenging for large and diverse MNE groups, especially when such niche information like this is often not readily captured in existing reporting systems.

Q38: Are there any benefits from including standardised industry codes in the CbC report template, in addition to those in this document?

Q39: Are there any practical challenges or other concerns to MNE groups from including standardised industry codes in the CbC report template, in addition to those in this document?

Q40: From the perspective of MNE groups which of the existing industry code standards is most likely to be the least burdensome and most useful in providing information on the activities of constituent entities?

The majority of our members would deem it impractical and impossible to align on utilizing just one set of industry code standards. The activities currently included in Table 2 are appropriate to understand the main roles of each entity. They are generally a good fit with the activities seen within an MNE, whom have no doubt spent significant amounts of time in assigning the current activities in Table 2 to each entity, determining the main activities. The activities currently do not cover the 'sector' of the MNE operations, but this can be resolved with a note in Table 3.

Additional industry codes in Table 2 would first lead to additional administrative work as a mapping of entities using the existing functional categories is already performed. Further, the use of industry codes can be very sensitive information to provide; the list of codes mentioned would need to be very exhaustive to cover the full extent of an entity's activity. There is also a concern that the codes that some entities use may become inaccurate or obsolete – in other words that they may reflect a former, discontinued activity and are not updated to accurately describe what the entity does today, whereas the existing Table 2 provides the flexibility to deal with this.

While standardized industry codes, such as universally recognized SIC codes, could replace the current CbC activity definitions which can be too limiting, there is no clear mapping between SIC and NACE for all codes. Additionally, the SIC code system has not been updated in many years. Notwithstanding limitations of the code systems themselves, applying an industry code to every legal entity in addition to classifying the main business activity is exceedingly burdensome for a UPE with many subsidiaries that acquires companies regularly. Adding this to the CbCR requirements may result in taxpayers taking a practical approach, perhaps applying the most common code in cases where they don't have enough information about the constituent entity or the constituent entity is engaged in multiple activities, which would reduce the effectiveness of this requirement.

Q41: Are there any benefits from including predetermined fields in Table 3 of the CbC report template, in addition to those in this document?

Q42: Are there any practical challenges or other concerns to MNE groups from including predetermined fields in Table 3 of the CbC report template, in addition to those in this document?

Q43: From the perspective of MNE groups, what predetermined fields could be included in Table 3 that would provide useful information to a tax administration in interpreting a CbC report, while not being burdensome for an MNE group?

Adding pre-determined fields to Table 3 may be worth considering if kept simple, but it may also be beneficial to have additional guidance notes for Table 3 alongside the free text format which could detail the sorts of qualitative information that tax authorities would expect. Companies should still be allowed to make use of free text area. The concern of our members is that while having predetermined fields and boxes to check will save time for the taxpayer and make the responses more consistent for the tax authority, pre-population may in some instances lead to more limited answers. Therefore, free text should still be allowed to provide for specific answers – either as an additional section at the foot of Table 3, or alongside each pre-populated question.

As regards the examples provided in the Consultation Document, we believe that the information in category 3 (“A material acquisition, disposal or restructuring of Constituent Entities has occurred during the reporting fiscal year”) should be removed as this information is already provided in the Master File and / or Local File. Duplicating this information would add to the existing administrative burden. In addition, the question of "materiality" raises a question of interpretation which will create uncertainty.

We therefore recommend removing category 3 information which should not become a mandatory item of information in the CbC report. It should be noted that MNE Groups may remain free to include any information which they view as useful, in the free text field.