

SYNOPSIS REPORT ON THE CONSULTATION ACTIVITIES UNDERTAKEN BY THE EUROPEAN COMMISSION TO ASSESS THE POTENTIAL FOR FURTHER TRANSPARENCY ON CORPORATE INCOME TAXES

The Commission services consulted widely the opinions of stakeholders between June and December 2015. This report summarises the contributions shared with the Commission through ad hoc exchanges, meetings (list of stakeholders given below), and the public consultation which took place over summer 2015. The latter garnered the views of over four hundred respondents representing firms, industry associations, NGOs, citizens and think tanks¹. All inputs received during the consultation have been carefully considered and taken into account. None have been discarded or neglected, but due to the wide array of views voiced by different stakeholders, the policy options explored in the Impact Assessment may not necessarily reflect the views of all parties.

General Views

1. In terms of possible corporate transparency initiatives, how should the EU position itself in relation to its international partners such as the OECD/G20?

Virtually all NGOs & trade unions and the vast majority of private individuals who participated in the public consultation believe that the EU should be at the forefront and possibly go beyond the multilateral approach supported by the G20. In their view, this can be achieved on the basis of the OECD BEPS Action Plan by furthering public disclosure. This is supported by a view that emerged from discussions at the Platform for Tax Good Governance, which cited the purpose of country-by-country reporting (CBCR) as being larger than tax issues – that its broader objective is to give people a better understanding of MNEs' contribution to society, in terms of growth, jobs and investment.

The business community (firms and industry associations) are generally less keen on public disclosure, concerned that this approach would place European companies at a competitive disadvantage relative to their non-EU counterparts. While 45% of business respondents in the public consultation believe that the EU should implement international initiatives at the same pace as global partners – to ensure a level the playing field – a third deem current reporting requirements to be sufficient.

2. What objectives, if any, should a new EU initiative on corporate tax transparency aim to achieve?

Almost all individuals and civil society organisations believe that a new EU initiative should aim to achieve the following objectives: ensure firms pay tax where profits are made, help tax authorities orient their audits on firms, ensure firms invest based on economic merit, and

¹ The Commission Services: 1) undertook a public consultation that garnered the views of over four hundred stakeholders, launched June 2015; 2) participated in a Roundtable with Commissioners Dombrovskis, Hill and Moscovici, which convened Members of the Commission, representatives of the business community, an intergovernmental organisation (IGO) and civil society, held October 2015; 3) engaged in an exchange of views on technical issues at the Platform for Good Tax Governance in September 2015; and 4) held bilateral ad hoc discussions with companies, NGOs and other stakeholders.

promote fairer competition between multinationals and SMEs. Three-quarters of these groups agree that a new initiative should aim to: stop harmful tax competition between Member States and that firms should act as they say in terms of aligning corporate tax planning with contribution to welfare.

Approximately a third of business respondents agree with all of the above objectives, even though almost half do not support the aim that firms should pay taxes where profits are made. Only a quarter of firms believe a new initiative should ensure taxes are paid where profits are generated. Roughly a third of companies disagreed with the objectives proposed in the public consultation.

3. Which options would be most effective in achieving the stated objectives?

Most businesses and industry associations do not believe that implementing BEPS 13 at the EU level would achieve the stated objectives, let alone public transparency. A considerable number nevertheless believe it would be effective for 1) ensuring firms pay taxes where profit is made, 2) stopping harmful tax competition between Member States and 3) helping tax authorities orientate their audits on firms. There is virtually no support for disclosure requirements beyond BEPS 13 as firms argue that public CBCR would distort competition between very large multinationals & smaller enterprises and be counterproductive to the aim of aligning profits with economic activity.

On the contrary, there is unanimous agreement from individuals, NGOs and trade unions that "No EU Action" would be counterproductive towards achieving the objectives. Three quarters of NGOs and trade unions insist that the most appropriate course of action would be a full public disclosure of tax information. These respondents believe this would be the most effective way for achieving all the objectives. While a non-Member State participant at the Platform for Tax Good Governance suggested that public CBCR is useful for detecting base erosion and profit shifting, another wondered whether public disclosure was necessary at all for meeting the objectives.

Transparency towards Tax Authorities

4. What effect would a BEPS-like initiative have on companies' tax practices?

Very few in the private sector agree that more transparency towards tax authorities would encourage businesses to widespread compliance with tax rules and end the use of tax gaps, mismatches and loopholes etc.

Unlike the business community, 80% of NGOs & trade union and over half of private individuals in the public consultation argue that greater transparency towards authorities would increase tax compliance and reduce the exploitation of tax gaps, mismatches and loopholes designed to minimise payments. A large proportion of business respondents suggest that a) impact on tax behaviour will depend on the individual company and b) the few groups with the most aggressive tax practices are more likely to re-evaluate their tax-planning strategies.

5. What would be the impacts of having a BEPS-like initiative? Is there likely to be any effect on public finance?

Impact on competitiveness and level playing field

Reference was made at the Platform for Tax Good Governance to a letter sent by members of the US Congress to the US Treasury, challenging the Federal government's right to implement CBCR. The member argued that if the US does not comply with CBCR it would result in asymmetric information between EU and US firms. More information on the part of US companies would tilt the playing field in their favour i.e against EU companies. The implications of this could be profound as the US is regarded as by far the EU's largest competitor.

Impact on public finance

Half of all businesses that responded to the public consultation believe this would lead to a relocation of tax bases between Member States. Two-thirds of private individuals and a quarter of NGOs and trade unions argue that further transparency would lead to an increase in tax paid in Europe (against 15% individuals and just one NGO who believe European tax receipts will fall). However, many business respondents have indicated that the full BEPS package is likely to increase taxes paid in 'source' (mostly non-EU) states and decrease taxes paid in 'resident' (mostly EU) states.

Impact on costs

A coalition of NGOs brings to attention an estimate by the UK Treasury that one-off costs would be negligible and that costs to affected businesses would be £200,000 a year. An individual commented in the public consultation that costs will be minute if existing resources are simply reshuffled or reorganised. Non-profit organisations conclude that the small or negligible costs of CBCR would be far outweighed by the wider benefits to society of cracking down on base erosion and profit shifting.

An individual respondent remarked: “firms will claim that the costs of preparing a consolidated CBCR are considerable but I doubt whether they will exceed the costs of the complicated structures presently employed to escape tax!”.

Impact on business-friendliness and attractiveness to invest

Virtually all NGOs and trade unions believe that transparency under BEPS 13 would foster a pro-growth environment, and interestingly, half of all SMEs and microenterprises agree. Not a single one of these feels that BEPS would have a negative impact on the business environment. In contrast, however, only a few firms and industry associations reaffirm this view. The vast majority of the firms and industry associations in the public consultation believe that there is not likely to be significant change to firms' willingness to invest in the EU.

Transparency towards the Public

6. What would be the advantages/benefits of a public disclosure of CBCR compared to a disclosure to tax authorities only? Would a public disclosure of CBCR be more effective in meeting the objectives than a disclosure to tax authorities only?

According to some NGOs and tax justice campaigners, the importance of information being made public is grounded in the fact that one should not have to rely on information leaks and the work of whistleblowers to tackle the issues presented by BEPS: “without leaks and whistleblowers, even governments see only a little into the inner workings of companies”.

NGOs and trade unions see largely only benefits to having public transparency. To illustrate, one said: “We see only potential benefits. If the public sees the tax contribution of MNEs to society, the revenue from income tax will increase – levelling the playing field between MNEs and SMEs”. In their opinion, public CBCR would provide information to a wide range of stakeholders, thereby strengthening efforts to monitor governance, corporate social responsibility, tax payments, and potentially corrupt practices. NGOs also claim that there is strong interest from investors wishing to gain more insight into the geographical location of business activities and risks arising from aggressive tax planning.

Furthermore, a public CBCR would allow public interest groups and investigative journalists to verify whether companies are paying their share of tax in the countries where they conduct business, especially where tax authorities lack the capacity. This would enable third parties to support the monitoring and analysis that will be carried out by the tax authorities participating in BEPS. Civil society organisations highlight that perhaps more importantly than anything else, public disclosure of tax-related information is the only option that would promote accountability and restore public trust in large companies.

A commonly held view is the ability of public CBCR to help tackle the pervasive tax arrangements made between large multinationals and tax authorities. One individual opined: “Tax authorities in numerous countries have been known to make secret deals with large organisations. This is inherently undemocratic and unjust. Only by exposing data to the public (citizens, NGOs & the media etc.) will businesses be forced to act”.

Businesses on the other hand, are not so convinced and fear the consequences of publicised tax information (see question 8). One view which reflects the general sentiment of firms and industry associations is that the EU should focus on ensuring that the corresponding legislative implementation of BEPS will be coordinated and not lead to further unilateral differentiation amongst its Member States: “working towards a greater degree of harmonisation and producing practical guidance and tools to enable implementation would be far more effective than reporting CBCR information to the public. There is no need for the EU to introduce additional transparency requirements that go beyond BEPS as this would not combat aggressive tax planning, harmful tax regimes and tax fraud but will indeed harm the competitiveness of the EU as a region”.

7. What could be the social impacts?

(increases transparency/accountability & public trust in firms, CSR)

NGOs and trade unions have advocated for public CBCR on the grounds that it may be the most effective option for enabling the public to make informed judgements about a company's contribution to the society in which it operates. They reason that a better understanding of groups' activities and geographical location, public CBCR would place stakeholders in a stronger position to assess if taxes are being paid where business activity takes place, and possibly serve as a tool for identifying the risk of tax avoidance and tax evasion.

Public disclosure of tax-related information, they argue, is also instrumental for promoting their own awareness of the need to pay taxes – through its ability to identify corruption, tax agreements and illicit tax practices by shedding light on relevant information. The increased means through which civil society are able to help authorities in monitoring improves regulatory oversight and provides valuable information to lawmakers regarding if and how laws should be changed to reduce exploitative tax practices and secretive tax arrangements.

Business leaders expressed concerns of misinterpretation of the information disclosed in a CBCR, due to limited understanding of technicalities by the public. This, they argue, would cause undue and unfair damage to firms' reputations. Some industry representatives were emphatic in their view that pressure groups might well leverage this to bring law-abiding firms to disrepute – with negative consequences on corporate image and business profitability.

8. What could be the impacts for companies in term of Competitiveness, Level playing field (impact on attractiveness to do business/invest in EU?) and costs?

Impact on business-friendliness and attractiveness to invest

There is unanimous agreement (93%) among NGOs and trade unions who participated in the public consultation that the impact on business-friendliness from tax information made public would be positive. Roughly three-quarters of private individuals share this view, with opinion divided between the remaining respondents. Almost three-quarters (72%) of firms and industry associations, however, assert that a public disclosure would hamper the business environment, scaring off foreign direct investment. The EU would become a less attractive place to invest.

Impact on competitiveness & level playing field

At the Roundtable on Corporate Transparency business leaders argued that public transparency runs the very real risk of exposing trade secrets: one firm claimed it was expropriated after investment plans were exposed in the media. Among the risks highlighted include: a) the exposure of business strategies of EU firms; b) distorted competition undermining the success of European multinationals, especially vis-à-vis US firms; c) double taxation and increased opportunity for tax disputes.

In a letter to the Commissioner (also submitted as feedback to the public consultation), one business association stressed the need to ensure that any additional transparency initiatives are taken and implemented at the global level, and that country-by country reporting be primarily a risk assessment tool for tax administrations to better understand the global context of an MNE group and improve their tax audits process.

Impact of costs arising from public CBCR

The costs of dealing with a greater number of tax disputes could also place firms at a competitive disadvantage vis-à-vis those that are not subject to reporting obligations, businesses asserted.

Moreover, they point out that governments participating in the OECD process have agreed to allow flexibility over where the data can be gathered from to mitigate some of the additional costs: “Any requirement to provide more granular data over the OECD’s proposals, or to publically disclose the information will likely substantially increase the cost of reporting”.

9. What other impacts can one expect with public disclosure?

Developing Countries

Comments put forward by NGOs and individuals generally suggest a positive impact on relations with developing countries. These would improve if the EU would be seen as a more credible partner. A key idea reiterated in the feedback was that clamping down on harmful tax practices via enhanced transparency would help free up resources for development purposes – infrastructure, health, education and financing of SMEs to name a few.

One think tank pointed out that: “A recent IMF report estimates the impact of multinationals’ profit reallocation on developing countries to be over \$200 billion a year, three times as high as on OECD countries in terms of GDP”. Firms and business associations, however, are less certain of the benefits.

Impacts on BEPS

An IGO called for the swift implementation of the OECD BEPS Action Plan by the EU and pointed out the risks a unilateral measure could have on the multilateral approach, for example that it could remove the incentive for non-EU states to report tax information.

List of stakeholders with whom the Commission services had ad hoc exchanges

Firms

Amazon
Fortum
General Electric (GE)
Repsol
Legal and General
SSE Corp

Industry Associations

Association Française des Entreprises Privées (AFEP)
BDI/BDA, the German Business Representation
Business Europe
Confederation of Finnish Industries
European Association of Tax Law Professors (EALTP)
European Banking Federation (EBF)
European Issuers
Federation of European Accountants
International Regulatory Strategy Group (IRSG)

Commission Expert Groups

Platform for Tax Good Governance (see below)

Intergovernmental Organisations

Organisation for Economic Cooperation & Development (OECD)

NGOs, Trade Unions and Think Tanks

ActionAid
Cologne Institute for Economic Research
Eurodad
Friedrich-Ebert-Stiftung
International Regulatory Strategy Group
One Campaign
Oxfam
Transparency International

Members of the Platform for Tax Good Governance

The Platform consists of the tax authorities of each of the 28 EU Member States and 15 organisations representing business, civil society and tax practitioners listed here:

American Chamber of Commerce
Association of Chartered Certified Accountants
Business Europe
Bund Deutscher Unternehmen
Christian Aid
CIDSE
Confédération Européenne des Syndicats Indépendants
Confédération Fiscale Européenne
Dutch Association of Tax Advisors
European Association of Tax Law Professors
European Federation of Public Service Unions
Federation of European Accountants
International Chamber of Commerce
Mouvement des Entreprises de France
Oxfam International